

DISPUTE RESOLUTION SERVICE

D00009135

Decision of Independent Expert

Goodridge Limited

and

K300 Limited

1. The Parties

Complainant: Goodridge Limited
Exeter Airport Business Park
Fair Oak Close
Exeter
Devon
EX5 2UP
United Kingdom

Respondent: K300 Limited
437 Buxton Road
Great Moor
Stockport
Cheshire
SK2 7HE
United Kingdom

2. The Domain Name

goodridge.co.uk ("the Disputed Domain Name")

3. Procedural History

The Complaint was filed with Nominet on 5 October 2010. Nominet validated the Complaint the same day and notified the Respondent by post and by email, stating that the Response had to be received on or before 26 October 2010. On 6 October 2010, the Respondent asked for an extension of this deadline. Nominet granted an extension and informed the Respondent that it had to respond to the Complaint by 2 November 2010. The Respondent filed a Response on 2 November 2010 and the Complainant filed a Reply on 17 November 2010.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so, on 20 May 2011, Nominet informed the Complainant that it had until 6 June 2011 to pay the fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). On 2 June 2011 the Complainant paid Nominet the required fee.

On 16 June 2011 the undersigned, David Taylor ("the Expert"), confirmed to Nominet that he knew of no reason why he could not properly accept the invitation to act as an Expert in this case and further confirmed that he knew of no matters which ought to be drawn to the attention of the parties which might appear to call into question his independence and/or impartiality.

On 23 June 2011, the Complainant submitted a non-standard submission to Nominet, in accordance with paragraph 13b of the Nominet Dispute Resolution Service Procedure ("the Procedure"). The Expert is not bound to look at 13b submissions but decided to do so in this case in the interests of fairness.

On 29 June 2011, the Respondent submitted a non-standard submission to Nominet, in accordance with paragraph 13b of the Procedure. Here again, the Expert was not bound to look at this submission but decided to do so in the interests of fairness.

On 8 July 2011, the Complainant submitted a new non-standard submission to Nominet, in accordance with paragraph 13b of the Procedure. The Expert is not bound to look at 13b submissions and decided not to do so in this instance as the Complainant's Section 13b Paragraph requesting the Expert to consider its non standard submission did not convince the Expert that the Complainant's new submission would have any effect on the decision.

4. Factual Background

The Complainant is a company that manufactures performance fluid transfer systems and operates in the original equipment manufacturer, automotive, motorcycle, motorsport, defence and specialist industrial sectors.

On 31 July 1991 the Complainant filed a UK trade mark in the term GOODRIDGE (number 1472205); on 10 March 2006, the Complainant filed another UK trade mark in the term GOODRIDGE (number 2416266); and on 14 March 2006, the Complainant filed a figurative UK trade mark "G" (number 2416577). The three trade marks have since been registered (on 13 August 1993, 17 November 2006 and 1 December 2006 respectively). UK trade mark number 1472205 was thus registered twelve years before the Disputed Domain Name was acquired by the Registrant in 2005.

In 1999, the Complainant registered the domain name <goodridge.net> which it uses to promote its products.

The Respondent is a UK registered company incorporated in 2003 which markets and sells products manufactured by companies such as the Complainant. The Respondent first started selling the Complainant's brake hoses in early 2005.

The Disputed Domain Name was first registered on 23 June 2001. In July 2005, the Respondent purchased the Disputed Domain Name. Around December 2005, the Complainant asked the Respondent to transfer the Disputed Domain Name to the Complainant. The Respondent first declined to do so in 2006. Since then the parties regularly exchanged correspondence in this respect, had meetings and discussed this matter over the telephone until 2010.

The Disputed Domain Name is currently pointing to a website selling the Complainant's products exclusively.

5. Parties' Contentions

Complaint

Complainant's Rights

The Complainant explains that it was called Goodridge Racing (UK) Limited up to 31 December 1976, was then called Goodridge (UK) Limited until 30 September 2009 and since then has been registered under the name Goodridge Limited.

The Complainant asserts that it owns two UK trade marks in the term GOODRIDGE, filed respectively in 1991 and 2006, as well as a figurative UK trade mark "G" filed in 2006. The three trade marks were registered on 13 August 1993, 17 November 2006 and 1 December 2006 respectively.

The Complainant further asserts that it has been the registered owner of the domain name <goodridge.net> since 18 January 1999.

Abusive Registration

The Complainant argues that the Disputed Domain Name is abusive for three reasons, as set down in the Policy as follows:

- *The Respondent is using or threatening to use the Domain Name in a way which is confusing or is likely to confuse people and businesses into believing that the Domain Name is registered to or operated or authorised by or otherwise connected with the Complainant (paragraph 3(a)(ii))*

The website at the Disputed Domain Name is dedicated to the Complainant's products and the website states that "Goodridge.co.uk" is a trading name of K300 Limited.

In addition, the Respondent used the Complainant's "G" logo on the website to which the Disputed Domain Name resolves until 22 February 2010.

Finally, third parties have been confused and believed that there was a direct connection between the Complainant and the Disputed Domain Name. In this respect, the Complainant provided evidence showing that a customer had used both the Complainant and the Respondent's part numbering systems in an order.

The Complainant therefore argues that there is clear evidence of the Respondent's intention to confuse people or businesses into believing that the Disputed Domain Name is registered to, operated by or otherwise connected with the Complainant.

- *The Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name (paragraph 3(a)(i)(A))*

In December 2005, when the Complainant first contacted the Respondent to obtain the transfer of the Disputed Domain Name, the Respondent offered to sell the Disputed Domain Name to the Complainant for £20,000 but the Complainant considered this offer to be unreasonable.

Later on, the Complainant's counsel requested the Respondent to cease using the Complainant's trade marks. On this occasion the Respondent offered to transfer the Disputed Domain Name for consideration other than simply its relevant out of pocket costs.

Finally, at a meeting between the parties, the Respondent offered to sell the Disputed Domain Name to the Complainant for a five figure sum.

The Complainant therefore argues that the Respondent has pursued the selling of the Disputed Domain Name to the Complainant for valuable consideration in excess of the Respondent's documented out of pocket costs directly associated with acquiring or using the Disputed Domain Name.

- *The Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names which correspond to well known names or trade marks to which the Respondent has no apparent rights and the Disputed Domain Name is part of that pattern (paragraph 3(a)(iii))*

Stuart Cookson-Smith, the managing director of the Respondent, is the registered owner of the domain name <recaro-seats.co.uk> which incorporates the name of the company Recaro GmbH, a long established and well known manufacturer of seating used in sports cars and other products, while the Respondent has no substantive association with this company or its subsidiaries or authority to use its trade marks or other intellectual property rights.

The Complainant therefore asserts that the Respondent is the registrant of a domain name which corresponds to a well known name or trade mark in which the Respondent has no apparent rights.

Response

The Respondent provided its version of the factual background as follows:

The Respondent started to sell the Complainant's products in January 2005 and was supplied with such products by a company named Design 911 UK Ltd.

On 7 April 2005, the Respondent contacted the Complainant with a view to becoming a dealer of the Complainant's products. The Respondent asserts that it was given verbal permission at that time to use on the Respondent's own website the Complainant's logo and images. The Respondent further states that, during a subsequent telephone conversation, the Complainant explained that normally the Complainant would sell through distributors and gave the Respondent the details of a company named CAM Auto Developments Ltd. The Respondent's relationship with CAM Auto Developments Ltd. has been ongoing since 2005 and has even been encouraged by the Complainant. The Respondent contends that, in email correspondence between the Complainant and CAM Auto Developments Ltd., the Respondent was referred to as a "dealer".

The Respondent contends that it purchased the Disputed Domain Name after it was already a dealer for and selling the Complainant's products with the authorisation of and support from the Complainant and never hid the fact that the Respondent had registered the Disputed Domain Name.

On 28 September 2005, a representative of the Complainant requested the Respondent's full company details for inclusion as an authorised dealer on the Complainant's website.

The Respondent claims that the Complainant approved the website at the Disputed Domain Name with some minor changes and supplied the Respondent with press release material, company information and images for use on the website.

The Respondent refutes the Complainant's assertion that it only became aware of the Respondent's registration of the Disputed Domain Name in December 2005 and asserts that the Complainant's Group Marketing manager had congratulated the Respondent on such purchase on 29 September 2005.

The Respondent states that it agreed to remove the Complainant's logo from the website at the Disputed Domain Name, when requested to do so, as an act of goodwill, with a view to trying to resolve the matter amicably. Indeed, according to the Respondent, the Respondent has traded for a full five years using the content and images supplied by the Complainant and the "G" logo was only registered in December 2006, 12 months after the image was supplied to the Respondent and approved for use on the Respondent's website. The Respondent further states that no other dealer has been asked to remove the logo from their websites.

Finally, the Respondent contends that the term "goodridge" has become a generic and descriptive term commonly used in the automotive and motorcycle industry to describe or search for stainless steel braided hoses. The Respondent also notes that the website

www.goodridge.com is used as a marketing site for manufacturers of hoses and fittings including direct competitors of the Complainant.

The Respondent concluded that the DRS complaint was without foundation and that the ulterior motive was "reverse domain hijacking".

Turning to the Complainant's assertions attempting to show the Respondent's abusive registration of the Disputed Domain Name, the Respondent commented as follows:

- *The Respondent is using or threatening to use the Domain Name in a way which is confusing or is likely to confuse people and businesses into believing that the Domain Name is registered to or operated or authorised by or otherwise connected with the Complainant (paragraph 3(a)(ii))*

The Respondent contends that it has always endeavoured to ensure that the website at the Disputed Domain Name could not be confused as being a website operated by the Complainant, including by:

- using the Respondent's logo at the top left of the website;
- stating on every page of the website: "*K300 – Dealers for Goodridge Hoses and Fittings*", "*Goodridge Hose, Lines, Parts and Fittings From K300*" and "*Goodridge Brake Lines Hoses and Fittings from K300 Performance*";
- heading each page with an image of a car with "K300" as the number plate;
- stating on the index page "*K300 are stockists and distributors of the complete range of high performance Goodridge products*";
- indicating that the customer is contracting with K300 in the website's terms and conditions;
- stating on the Contact section of the website: "*K300 Performance and K300 Ltd. are dealers for genuine Goodridge hoses and fittings and are not part of Goodridge Ltd. If you wish to contact Goodridge Ltd. and not K300 Ltd., please check the Goodridge Ltd. website for their contact details*" followed by a link.

According to the Respondent, if the Complainant was or is having problems with people not being able to contact it, it is because the Complainant is having problems with its own website; the navigation of its website is difficult and content is missing. The Respondent asserts that it offered to assist the Complainant in this respect and also offered to include the Complainant's own contact details on the Respondent's website but that the Complainant refused its offers explaining that it didn't wish to receive phone calls and that is why it had distributors.

The Respondent is of the opinion that the evidence brought by the Complainant as to confusion in relation to part numbers only shows that it is so difficult to find part numbers on the Complainant's website that customers may come to the Respondent's website to try to find them. In addition, the customer in question has had a long commercial relationship with the Respondent and knew precisely who the Respondent was.

The Respondent concluded that there has never been any threat to the Complainant's business and that rather the Respondent helped in building the Complainant's reputation.

- *The Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name (paragraph 3(a)(i)(A))*

The Respondent asserts that it has never approached the Complainant to try to sell the Disputed Domain Name and that it is the Complainant who offered to buy it from the Respondent for £1,000 on 22 December 2005, that the Respondent rejected this offer and that the Complainant then contacted the Respondent to ask if it had looked at its proposal and also stated that it wished to "revisit" its offer.

The Respondent therefore contends that the Complainant's assertion that the Respondent had offered the Disputed Domain Name for sale at a price of £20,000 is "complete fabrication" and denied having tried to sell the Disputed Domain Name for valuable consideration in excess of its documented out-of-pocket costs directly associated with acquiring or using the Disputed Domain Name.

- *The Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names which correspond to well known names or trade marks to which the Respondent has no apparent rights and the Disputed Domain Name is part of that pattern (paragraph 3(a)(iii))*

The Respondent asserts that any domain names which it, or its Managing Director, owns that are associated with a brand name result from the fact that the Respondent markets or sells the product related to the keyword in the domain name or because it has a right associated with that word or phrase.

The Respondent further contends that the Respondent is visited regularly by Recaro representatives at its premises and that it is an authorised dealer of Recaro's products.

The Respondent therefore denied being engaged in a pattern of abusive registrations.

The Respondent then argued that it could rely upon certain of the non-exhaustive factors listed at paragraph 4(a)(i) of the Policy and which may be evidence that the Disputed Domain Name is not an Abusive Registration. These factors read as follows:

"i. Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:

A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;

B. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

C. made legitimate non-commercial or fair use of the Domain Name;

(...)"

The Respondent submits that it purchased the Disputed Domain Name after the Respondent was already a dealer for and selling the Complainant's products with the authorisation of and support from the Complainant. According to the Respondent, since July 2005, the Respondent has only ever used the Disputed Domain Name to promote and market products supplied to it directly or indirectly by the Complainant.

In addition, the Respondent claims that, over more than five years, it has built a reputation in the market place for good service and has established itself as one of the prominent dealers of the Complainant's products. The Respondent provided a customer comments page showing the same.

Finally, the Respondent argues that a substantial amount of content and images were willingly supplied by the Complainant for use on the website at the Disputed Domain Name and that the website had "passed inspection". According to the Respondent, when it received a letter from the Complainant's counsel requesting that the Respondent removed the Complainant's logo, the Respondent only did so as an act of goodwill with a view to trying to resolve any issues amicably.

Consequently, the Respondent asserts that (i) it is using the Disputed Domain Name in connection with a genuine offering of goods or services; (ii) it is legitimately connected with a trade mark which is identical or similar to the Disputed Domain Name; and (iii) "fair use" is being made of the Disputed Domain Name.

The Respondent concluded that the Complainant had made a claim "*which is mostly a fabrication of half truths and outright lies in an attempt to acquire a domain name that is currently being used in a positive and productive manner, the reason being so that they can remove a major competitor to their future internet retail plans. The complaint is nothing more than a fabricated abuse of the DRS*".

Reply

The Complainant's Reply focuses on the following three points raised by the Respondent:

- *Abuse of the DRS procedure*

The Complainant submits that its sole motive in pursuing a complaint under the DRS procedure is to protect its brand and reputation. The Complainant further denies the Respondent's assertion that the Respondent is an authorised dealer of the Complainant's products. In addition, the Complainant asserts that it expressed its concern at the operation of the website at the Disputed Domain Name as soon as it became aware of the Respondent's registration.

The Complainant also contends that the Respondent has sought from the outset of the use of the Disputed Domain Name to confuse the users of the website at the Disputed Domain Name as to its association with the Complainant's name and brand.

- *Authorisation to use the Complainant's designs*

According to the Complainant, the product images provided on one occasion in 2005 were not and could not be interpreted as any authorisation at that time or since then to use the Complainant's logo.

- *The website www.goodridge.com*

The Complainant contends that the reference to the website www.goodridge.com in the Respondent's Response was irrelevant and that this website does not and has not, to the Complainant's knowledge, breached the Complainant's intellectual property rights or sought to undermine its brand or reputation. The Complainant has its own website and so does not need to acquire another one.

Complainant's non-standard submission

On 23 June 2011, the Complainant submitted a non-standard submission to Nominet, in accordance with paragraph 13b of the Procedure. The Complainant's non-standard submission provides that the Respondent's managing director has registered the domain name <brake-hoses-fittings.co.uk> which can be accessed using a sub-domain as follows: <http://goodridge.brakes-hoses-fittings.co.uk>. The Complainant submits that this is a further abuse of the Complainant's property rights.

Respondent's non-standard submission

On 29 June 2011, the Respondent submitted a non-standard submission to Nominet, in accordance with paragraph 13b of the Procedure.

The objective of this additional submission was to show that:

- (i) the Respondent is an authorised dealer of the Complainant;
- (ii) the Complainant's desire to protect its brand coincides with its new desire to have an internet retail website but that it is waiting for a decision that may be outside of its control before being able to move forward;
- (iii) since its management change, the Complainant has "woken up" to the potential for the internet retail marketplace in which the Respondent is a leading dealer for the Complainant's products;
- (iv) if the Complainant were to sell direct to the public, it would increase its profit by three to four times;
- (v) the Complainant provided the Respondent with product images to be included on the website at the Disputed Domain Name;
- (vi) there is no confusion about the Respondent being a retailer and the Complainant a manufacturer.

In this regard, the Respondent's non-standard submission provided (i) emails showing that the Complainant had authorised one of its distributors to sell the Complainant's

products to the Respondent; (ii) evidence showing that the Complainant had changed its name in 2009; (iii) a comparison of the Complainant's websites in 2010 and 2011; (iv) a WHOIS report showing that the Complainant had registered the domain name <goodridge-comp.co.uk>; (v) a snapshot of the Respondent's ordering system; (vi) an email showing that the Complainant had provided an update on its product line to the Respondent on 20 April 2011; (vii) a journal entry of a meeting between the parties; (viii) an email from a customer and comments from forums showing that customers understand that the Respondent is a reseller of the Complainant's products.

6. Discussions and Findings

General

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of the Disputed Domain Name, the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

"(i) The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

(ii) The Domain Name, in the hands of the Respondent, is an Abusive Registration."

Complainant's rights

The Policy defines Rights as *"rights enforceable by the Complainant, whether under English law or otherwise"*.

In this case, the Complainant has provided evidence that it owns registered trade marks in the term GOODRIDGE (see the Factual Background at Section 4 above), and so has proved that it has Rights as defined by the Policy.

The Policy also stipulates that the name or mark in which the Complainant has rights (GOODRIDGE) must be identical or similar to the Disputed Domain Name (goodridge.co.uk). It is accepted practice under the Policy to discount the .CO.UK suffix, and so there is no difference between the Disputed Domain Name and the Complainant's mark.

The Complainant's mark and the Disputed Domain Name are thus identical to one another.

As a result the Expert finds that paragraph 2(a)(i) of the Policy is satisfied and the Complainant has Rights in respect of a mark which is identical to the Disputed Domain Name.

Abusive Registration

Moving on to paragraph 2(a)(ii) of the Policy, Abusive Registration is defined in paragraph 1 of the Policy to mean a domain name which:

- (i) *was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's rights; or*
- (ii) *has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's rights.*

Paragraph 3(a) of the Policy sets out a list of five factors which may be evidence of Abusive Registration. The Complainant based its case on the factors set out in paragraphs 3(a)(i)(A), 3(a)(ii) and 3(a)(iii) which read as follows:

"i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

A. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

(...)

ii. Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;

(...)"

Paragraph 3(a)(i)(A) requires the Respondent to have registered the Disputed Domain Name primarily with the aim of reselling it for an inflated price.

In this instance, the Complainant alleges that the Respondent offered to sell the Disputed Domain Name at a figure of £20,000, that the Respondent then referred to a possible transfer for consideration other than simply for the relevant out of pocket costs and finally offered to sell the Disputed Domain Name for a five figure sum. However, the evidence which the Complainant provides to prove these allegations does not refer to any amount or consideration and simply underlines that *"K300 Limited have invested a great deal of money, time and effort not only in buying the domain name but also in developing the website"* and that *"K300 Limited have built a business of around £30,000 per year selling Goodridge products"*. The evidence also refers to *"other alternatives"* offered by the Respondent to the Complainant but this is not sufficient to infer that the Respondent offered the Disputed Domain Name for sale for an inflated price.

On its side, the Respondent provides evidence showing that it was contacted by the Complainant with an offer to buy the Disputed Domain Name for £1,000 and that the Complainant sent follow-up emails asking whether the Respondent had *"had a chance to*

look at the proposal" and expressing its wish "to revisit the possibility of buying the domain name".

Consequently, in light of the evidence provided to the Expert, the Expert finds that the Respondent does not appear to have offered the Disputed Domain Name for sale for an inflated price.

Factor 3(a)(iii), relied upon by the Complainant, requires the Complainant to demonstrate that the Respondent is engaged in a pattern of registrations which correspond to well-known names or trade marks and the Disputed Domain Name is part of that pattern. In this regard the Complainant has highlighted the registration as a domain name of a brand, RECARO, used by Recaro GmbH to sell racing and child seats, by Stuart Cookson-Smith, the Respondent's Managing Director, but the Respondent argues that it is an authorised dealer for Recaro GmbH's sports and child seats and its other products and enjoys a good relationship with it.

The Expert can make no finding with regard to the legitimacy or otherwise of such registration in this decision. Evidently this registration could equally be found to be abusive, but in view of the uncertainty and, in particular, because the Complainant only provides one instance of alleged abusive domain name registration, the Expert declines to find a pattern.

Regarding paragraph 3(a)(ii), it is helpful to refer to the "Expert Overview" document published on Nominet's website.

The Overview states as follows:

"3.3 Paragraph 3(a)(ii) concerns confusing use of the domain name. What is meant by confusing use?"

The 'confusion' referred to in this paragraph of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an Internet user seeing the domain name or the site to which it is connected believe or be likely to believe that "the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant"? ...

Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived.

Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name.

Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment (other than the generic domain suffix). See for example DRS 00658 (chivasbrothers.co.uk).

The further away the domain name is from the Complainant's name or mark, the less likely a finding of Abusive Registration. However, the activities of typosquatters are generally condemned - see for example DRS 03806 (privalege.co.uk) - as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity. See for example the Appeal decision in DRS 00248 (seiko-shop.co.uk)."

In this case, as far as actual confusion is concerned, the Expert feels that it is not possible to make a finding on this based on the evidence presented. The Complainant simply mentions that there have been incidences of confusion and only provides evidence showing that customers requesting products direct from the Complainant have quoted the Respondent's product codes when submitting orders. Furthermore, the Complainant does not appear to assert that anyone who actually visited the Respondent's website would believe it to be an official Goodridge website. A finding of actual confusion has therefore not been made out, given the lack of concrete evidence on this point.

Turning to the likelihood of confusion, the Complainant notes that the website at the Disputed Domain Name is specifically dedicated to the Complainant's products. The Complainant argues that the ordinary visitor to the website at the Disputed Domain Name will, in view of the exclusive reference to Goodridge products, consider that the Disputed Domain Name is operated or authorised by or connected with the Complainant, especially given that the website at the Disputed Domain Name states that "*goodridge.co.uk is a trading name of K300 Limited*".

The Respondent argues to the contrary, namely that it has always endeavoured to ensure that the website at the Disputed Domain Name could not be confused with a website operated by the Complainant.

In the Expert's opinion, the question is whether the use of the Domain Name by the Respondent causes initial interest confusion. As stated in the case of <joiedevivreolidays.co.uk> (DRS 05122), initial interest confusion is the "*phenomenon whereby visitors to the Domain Name, in the moment before they actually reach the website, believe that the Domain Name is in some way connected to the Complainant*". In other words, this initial confusion causes some advantage to the domain owner, and it is the gaining of that advantage, that is unfair. The advantage referred to does not need to be monetary and could simply be disadvantage to a third party, for example, disruption to a business.

The Expert believes that any reasonable Internet user who was looking to find an official Goodridge UK website in order to buy a genuine Goodridge product would actually type

the address www.goodridge.co.uk. In the Expert's view, certain customers may have been astute enough to realise that the Complainant had its own website, and thus tried to search for such website, but others may well have been misled by the Respondent's use of the Domain Name into thinking that the website at the Disputed Domain Name was the method chosen by the Complainant to commercialise its products online. The fact that the Disputed Domain Name is identical to the GOODRIDGE trade mark without any adornment (other than the generic domain suffix) and the fact that the website indicates that "goodridge.co.uk is a trading name of K300 Limited" may lead a reasonable person to conclude that K300 Limited owns rights over the term GOODRIDGE and is part of the Complainant.

In any event, whether confused or not, once on the website www.goodridge.co.uk, certain customers may then decide to buy Goodridge products via the Respondent instead of trying to contact the Complainant. There is thus a potential loss of business for the Complainant.

The Respondent could have selected a domain name which clarified at least the fact that it was a reseller of the Complainant's products such as <we-sell-goodridge.co.uk>. Clearly, such an example is more likely to point to the fact that the aim of the website at this domain name is merely to trade in the goods concerned while in the present case the Disputed Domain Name indicates some greater entitlement to use the GOODRIDGE mark itself.

In the Expert's view, it is not permissible for an entity, even if it deals legitimately in the goods of another party, to use a domain name which consists solely of the trade mark of that other party, without that third party's permission and this case is no exception. Whilst the evidence suggests that the Complainant has granted the Respondent permission to engage in certain retail activities involving the Complainant's products, the Complainant has never authorised the Respondent to use the Disputed Domain Name, and these are two separate issues. Indeed the Complainant has voiced its opposition to the Respondent's use of the Disputed Domain Name since December 2005.

In conclusion, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is satisfied that the Complainant has succeeded in proving, on balance of probabilities, that the Domain Name is an Abusive Registration in accordance with paragraph 2(a)(ii) of the Policy.

7. Decision

In light of the above findings, namely that the Complainant has Rights in a mark which is identical to the Disputed Domain Name, and that the Disputed Domain Name, in the hands of the Respondent, is an Abusive Registration, the Expert directs that the Disputed Domain Name be transferred to the Complainant.

Signed: David Taylor

Dated: 15 July 2011