

DISPUTE RESOLUTION SERVICE

DRS10134

Decision of Independent Expert

Direct to You Online Ltd

and

Void Design

1. The Parties

Complainant: Direct to You Online Ltd
Address: 22 Mount Way
Chepstow NP16 5NF
Monmouthshire
Country: United Kingdom

Respondent: Void Design
Address: Frederiklaan 73
Eindhoven
Noord Brabant
5616NC
Country: Netherlands

2. The Domain Names

bathroomlightingcentre.co.uk and outdoorlightingcentre.co.uk (together “the Domain Names”)

3. Procedural History

- 3.1 On 26 July 2011 the complaint was received. On 27 July 2011 the complaint was validated and notification of it sent to the parties. On 15 August 2011 a response reminder was sent. On 16 August 2011 the response was received and notification of it sent to the parties. On 19 August 2011 a reply reminder was sent. On 23 August 2011 the reply was received and notification of it sent to the parties. On 23 August 2011 a mediator was appointed. Following failure of the mediation, on 21 September 2011 the expert decision payment was received.
- 3.2 On 21 September 2011 Patricia Jones (“the Expert”) confirmed to Nominet that she knew of no reason why she could not properly accept the invitation to act as expert in DRS 10134 and further confirmed that she knew of no matters which ought to be drawn to the attention of the parties which might call into question her independence and/or impartiality.

4. Factual Background

- 4.1 The Complainant trades in lighting under the names Outdoor Lighting Centre and Bathroom Lighting Centre. The Complainant operates e-commerce websites for outdoor and bathroom lighting from, respectively, outdoor-lighting-centre.co.uk and bathroom-lighting-centre.co.uk.
- 4.2 The Respondent operates websites which act as a portal through to a third party website where products can be purchased. The Respondent is active in the Netherlands, Belgium, Germany and the United Kingdom.
- 4.3 The Respondent registered the Domain Names on 8 January 2011. Initially, the websites at the Domain Names advertised the products of Easy Lighting, a competitor of the Complainant (including products identical to those of the Complainant). The Respondent's sites at the Domain Names currently advertise the products of another retailer and act as a portal through to that retailer's site where those products can be purchased.
- 4.4 The Respondent is also the owner of the following domain names (the dates in brackets are their registration dates which the Expert has ascertained by conducting 'whois' searches): chandeliersshop.co.uk (23 November 2010); ceilinglightshop.co.uk (8 January 2011); spotlightshop.co.uk (23 November 2010); walllightshop.co.uk (23 November 2010); floorlampshop.co.uk (23 November 2010); tablelampstore.co.uk (8 January 2011); ledlightshop.co.uk (23 November 2010) and growlightshop.co.uk (23 November 2010). The Respondent also operates websites from these domain names which advertise lighting products and which act as a portal through to the website of a retailer where the products can be purchased.
- 4.5 On 15 June 2011 the Respondent was notified by Paid on Results Limited (which operates the affiliate marketing scheme in which the Respondent participates in relation to its use of the Domain Names) that the Complainant objected to the use of outdoorlightingcentre.co.uk. The Respondent was also notified that its logo and the colours used could be seen as being like the logo and feel of outdoor-lighting-centre.co.uk. The Respondent was asked whether it would place its web content on a different domain name.
- 4.6 On the same day, the Respondent replied that it was surprised outdoor-lighting-centre.co.uk was in use because outdoorlighting.co.uk was free to register and that the similarity in logos was coincidence, the same style being used by the Respondent for other affiliate websites such as spotlightshop.co.uk, bathroomlightingcentre.co.uk and sites in Holland and Germany. The Respondent believed Outdoor Lighting Centre to be generic and said that it would not stop using outdoorlighting.co.uk.
- 4.7 On 27 June 2011 the Complainant's solicitors sent a letter to the Respondent complaining about the use of the Domain Names and of Outdoor Lighting Centre and Bathroom Lighting Centre in the Respondent's visible site content and as metatext (including in the metatitle/metadescription which are visible in search engines). It was alleged that the purpose of such behaviour was to divert, confuse and profit from the Complainant's customers and potential customers and that the Respondent had set out to target the Complainant's customers, for example by

copying the look and feel of the Complainant's websites. The letter demanded the transfer of the Domain Names to the Complainant.

- 4.8 On 1 July 2011 the Respondent replied denying the allegations and disputing that there could be any confusion or diversion of customers given that the Respondent appeared below the Complainant in the natural search results for 'outdoor lighting centre'. The Respondent also did not believe that customers would enter such a long URL directly into their browsers. The Respondent said that it was willing to omit 'centre' from the meta-titles on the websites and that it would change its logos to a different colour scheme, but this has not happened.
- 4.9 The Respondent's sites appear below the Complainant's sites in Google natural search results for 'outdoorlightingcentre', 'bathroomlightingcentre', 'bathroom lighting centre' and 'bathroom-lighting-centre'. The Respondent's sites are described in the search results as 'Outdoor Lighting – online shop' and 'Bathroom Lighting Centre – online shop'.

5. Parties' Contentions

- 5.1 The Parties' contentions are as set out below.

The Complainant's complaint

- 5.2 The Complainant alleges that the Respondent is trying to "pass off" its sites as those of the Complainant and deceive and confuse the Complainant's customers by presenting very similar looking sites to the Complainant's. The Complainant believes that the Respondent is deceiving users into visiting its sites who believe them to be those of the Complainant.
- 5.3 The Complainant says the Domain Names are virtually identical to the Complainant's domain names.
- 5.4 The Complainant alleges that the Respondent has copied the look and feel of the Complainant's logos in order to deceive visitors to the Respondent's sites. The Complainant says the Respondent has ignored the Complainant's cease and desist letter.
- 5.5 The Complainant states that it has evidence of the Respondent's deception of visitors to its sites. The Complainant has been contacted by some of its customers who cannot find the Complainant's telephone number anymore. The Complainant believes this is because the Complainant's sites have a telephone number whereas the Respondent's do not and is an indication that customers are visiting the Respondent's sites believing them to be those of the Complainant.
- 5.6 The Complainant says the Respondent has aggressively pursued a search engine optimisation strategy, so as to position its sites immediately below the Complainant's Google positions. The Complainant alleges that this has been done to take "hot" prospects away from the Complainant who type in the Complainant's trade names when they are at the point of buying and that the Respondent channels this traffic to competitors, via affiliate links.

- 5.7 The Complainant alleges that the Respondent's sites have closely mimicked the Complainant's sales copy and headlines, in some instances word for word, in order to give the impression to visitors that they are the Complainant's sites.
- 5.8 The Complainant says that the Respondent is earning revenue by sending traffic to the Complainant's competitors, in order to make affiliate commissions, and taking sales away from the Complainant.

The Respondent's response

- 5.9 The Respondent states that the Complainant has no relevant registered trademarks and disputes that the Complainant has unregistered trademark rights for the following reasons:
- (a) The Respondent contends that the Domain Names are descriptive because they are composed of the word 'centre' and the keywords 'bathroom lighting' or 'outdoor lighting' which describe the content of the Respondent's websites, which function as centres for outdoor and bathroom lighting products.
 - (b) The Respondent argues that the Domain Names are generic as 'bathroom lighting' and 'outdoor lighting' are generic search terms. Based on a Google search of domain names that contain 'centre', the Respondent also argues that 'centre' is generic and is used in a similar way as 'shop' or 'store'.
 - (c) The Respondent contends that the Domain Names are not distinctive. The Respondent has identified other domain names which it says are similar to the Domain Names including: lightingcentre.co.uk; thelightingcentre.co.uk; lightingcentre.com; lightingcentre.net; bathroomlightingcentre.com; lightingdesigncenter.biz and cardiff-bathroom-centre.co.uk. The Respondent says that many of these were registered before 2008, no real distinction can be made between them and the Domain Names and this explains why the Complainant has no registered trademarks.
 - (d) The Respondent asserts that other parties are more entitled to unregistered trademark rights than the Complainant. The Respondent states that some of the online stores which operate from the domain names listed at (c) above have been in business for longer than the Complainant and the Respondent, such as lightingcentre.co.uk which was registered on 8 November 1999. The Respondent argues that these companies can demonstrate stronger rights to the Complainant's unregistered marks.
 - (e) The Respondent argues that the Complainant has provided no evidence of established goodwill or reputation. The Respondent says the Complainant has only provided unverifiable results from its unnamed tracking software which show, on average, 2 searches for each of the Complainant's websites per day. The Respondent alleges this is negligible when dealing with search volumes of 10,000 per keyword and suggests that a large part of these searches could originate from the Complainant.
- 5.10 The Respondent denies that the Domain Names are an Abusive Registration for the following reasons:

- (a) The Respondent says that its preferred domain name is as short possible, i.e. 'keyword.co.uk'. If this is not available, then it considers various combinations with 'shop' or 'store' combinations being more valuable than 'centre' combinations. The Respondent also says this explains why most of its domain names contain 'shop' or 'store' combinations. The Respondent states that at the time of registration of the Domain Names the combinations of 'bathroom lighting' and 'outdoor lighting' with 'shop' and 'store' were already registered, so the Respondent chose 'centre'.
- (b) The Respondent considers the Complainant's choice of domain names which incorporate hyphens to be unusual when the names were available for registration without hyphens. The Respondent says that it was unaware when it registered the Domain Names, that a similar name with hyphens was already registered. The Respondent asserts that since registration of the Domain Names it has been making fair use of the Domain Names by promoting products from its partner merchants and has never offered the Domain Names for sale.
- (c) The Respondent denies that the websites at the Domain Names are passing off for the following reasons:
 - a. The Complainant has provided no evidence of any damage caused by passing off. The Respondent says that its websites are based on a template, which was in use before the registration of its UK websites. The Respondent asserts that its website at badkamerverlichtingshop.nl, which is the Dutch equivalent of bathroomlightingcentre.co.uk, has been running since September 2010 and looks very similar to the Respondent's UK websites.
 - b. The Respondent offered to omit the word 'centre' from all page titles and to change the colour scheme of the logos but the Complainant did not respond to this offer. The Respondent contends that the Complainant is using common law to eliminate any fair competition.
 - c. The design of the Respondent's websites is very different from the Complainant's websites, with the Respondent setting out a number of alleged differences.

The Complainant's reply

- 5.11 The Complainant alleges that the Respondent looked at the main keyphrases for the outdoor and bathroom lighting markets in the UK, identified that the Complainant had sites with high natural search positions for key terms and then copied the Complainant's URL to gain a return on searches for the Complainant's business and to try to 'cannibalise' the Complainant's orders by pretending to be the Complainant.
- 5.12 The Complainant points out that the Respondent is using the same 3 words as the Complainant in the same order ('outdoor lighting centre' and 'bathroom lighting centre'). The Complainant says that the Respondent has optimised many page titles for the Domain Names which suggests that the Respondent is trying to drive traffic to the Respondent's sites using those terms rather than through generic terms. The

Complainant also says that the use of the Domain Names implies that the Respondent is the 'online shop for the outdoorlightingcentre or the bathroomlightingcentre' to confuse customers and pass off the Respondent's business as that of the Complainant.

- 5.13 The Complainant states that it has over 3 years of trading with numerous customers that cross buy from its businesses and who repeat buy from the Complainant.
- 5.14 The Complainant argues that its tracking software shows the searches carried out by potential customers of its businesses. The Complainant says that the Respondent is confusing these potential customers who type the Complainant's names into Google to find the Complainant's sites and is potentially 'hijacking' sales to them.
- 5.15 The Complainant says that the Respondent's offer to change parts of its websites following the letter from the Complainant's solicitor is an admission of wrongdoing.
- 5.16 The Complainant argues that the Respondent has intentionally chosen exactly the same trading name as the Complainant with similar coloured logos and copied parts of the welcome statements from the Complainant's websites to confuse customers and to pass off its business as that of the Complainant.
- 5.17 The Complainant points out that the Respondent's Dutch site, badkamerverlichtingshop.nl, does not include the Dutch word for centre whereas 'centre' has been used in the Domain Names for the UK site.

6. Discussions and Findings

- 6.1 Paragraph 2 of the Nominet Dispute Resolution Policy ("the Policy") sets out that for a Complainant's complaint to succeed it must prove to the Expert that:
 - 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.
- 6.2 The Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.
- 6.3 In its reply, the Complainant has invited the Expert to contact Easy Lighting in relation to its correspondence with the Respondent regarding copyright material allegedly used on the Respondent's websites at the Domain Names. The Complainant has also indicated that it would be willing to provide the Expert with details of its online tracking software, but not the Respondent. This invitation for the Expert to contact a third party and for the Expert to have regard to material which is not available to the other party is contrary to the Nominet Dispute Resolution Procedure ("Procedure"). I have considered whether it would be appropriate to request further statements or documents from the parties in relation to these issues under Paragraph 13 of the Procedure but have decided that this is not required.

Complainant's Rights

- 6.4 Under Paragraph 1 of the Policy, Rights is defined as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”
- 6.5 The Complainant says that it owns outdoor-lighting-centre.co.uk which was registered on 30 December 2008 and bathroom-lighting-centre.co.uk which was registered on 20 January 2008. The Complainant also says that it has over 3 years of trading, that it started to trade from outdoor-lighting-centre.co.uk on 14 November 2008 and from bathroom-lighting-centre.co.uk from 10 November 2009.
- 6.6 The Expert has conducted ‘whois’ searches for both domain names. These show that outdoor-lighting-centre.co.uk was registered on 20 January 2008 by Alex Dutton, a UK individual and bathroom-lighting-centre was registered on 30 December 2008 by Paul Bhango, a UK individual. The Expert has ascertained from her own enquiry that the Complainant, which is a UK limited company, was incorporated on 3 March 2010. Accordingly, it appears that the Complainant is taking into account trading that took place before its incorporation.
- 6.7 In relation to the extent of its trading, the Complainant has provided evidence of the search terms used by visitors to its websites over the period April to July 2011. These show some limited monthly traffic to its sites (about 110 visitors a month to outdoor-lighting-centre.co.uk and about 44 a month to bathroom-lighting-centre.co.uk). However, despite the Respondent clearly putting the Complainant’s ownership of goodwill in ‘Outdoor Lighting Centre’ and ‘Bathroom Lighting Centre’ in issue, the Complainant has provided no other evidence to demonstrate the extent of its use of these marks or that they are recognised by the public as indicating the goods of the Complainant, such as accounts, sales figures, advertising and promotional expenditure and press cuttings.
- 6.8 In this respect, I consider the terms ‘Outdoor Lighting Centre’ and ‘Bathroom Lighting Centre’ to be highly descriptive of the Complainant’s business. They describe centres where collections of outdoor lighting and bathroom lighting can be found. As the Respondent has identified, there are other on-line entities which operate from domain names which include ‘lightingcentre’, to describe that a collection of lighting can be found at those sites. Accordingly, in the context of the Complainant’s business, ‘Outdoor Lighting Centre’ and ‘Bathroom Lighting Centre’ are highly descriptive terms.
- 6.9 I do not consider that the Complainant has established that ‘Outdoor Lighting Centre’ and ‘Bathroom Lighting Centre’ have acquired a secondary meaning, as being distinctive of the Complainant’s products. Nevertheless I am satisfied that the Complainant has sufficient Rights to found a complaint, taking into consideration that the question of Rights falls to be considered at the time the Complainant makes its complaint and that it is also well accepted that the question of Rights is a test with a low threshold to overcome. In this respect, the Complainant has provided evidence that it has some limited trading goodwill in the terms ‘Outdoor Lighting Centre’ and ‘Bathroom Lighting Centre’, which I consider to be sufficient for the Complainant to be able to plead in Court proceedings a passing off case, even though it may not be arguable. However, I consider the Complainant’s Rights to be

extremely limited given the descriptive nature of 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre', given that the only evidence of the Complainant's trading suggests that it is of limited extent and given that there is no evidence that the Complainant is widely known. This is relevant when I consider the issue of Abusive Registration of the Domain Names.

6.10 I regard the terms 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre' to be identical or similar to the Domain Names (disregarding the .co.uk suffix). Accordingly, I find that the Complainant has Rights in the names or marks, 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre', which are identical or similar to the Domain Names.

Abusive Registration

6.11 It therefore has to be considered whether the Domain Names, in the hands of the Respondent, are an Abusive Registration. Paragraph 1 of the Policy defines Abusive Registration as a domain name which either:

- 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.

6.12 It is sufficient to satisfy either of the limbs for there to be a finding of an Abusive Registration.

Abusive Registration under Paragraph 1(i) of the Policy

6.13 Paragraph 3(a) of the Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration under Paragraph 1(i) of the Policy 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;
 - B. as a blocking registration against a name or mark in which the Complainant has Rights; or
 - C. for the purpose of unfairly disrupting the business of the Complainant.

6.14 The Complainant contends that the Respondent registered the Domain Names for the purpose of unfairly disrupting the business of the Complainant, by attracting users to the Respondent's sites who were looking for the Complainant and once there potentially diverting users into placing business with a competitor of the Complainant.

- 6.15 It is important to bear in mind when considering Paragraph 3(a) (i) of the Policy that it relates to the Respondent's motives at the time of registration of the Domain Names. It is an intrinsic part of this that for there to be an Abusive Registration under paragraph 1(i) of the Policy, it must be established that the Respondent had knowledge of the Complainant and/or its rights at the time of registration of the Domain Names.
- 6.16 The Respondent states that it was not aware when the Domain Names were registered that outdoor-lighting-centre.co.uk and bathroom-lighting-centre.co.uk were already registered and considers it unusual that the Complainant chose domain names which include hyphens when the equivalent without hyphens were available.
- 6.17 The Respondent also registered a number of other domain names at the time of or shortly before the Domain Names which are set out at paragraph 4.4 above. Like the Domain Names these domain names are highly descriptive in nature describing an on-line store or shop which sells certain goods. For example, chandeliersshop.co.uk describes an on-line shop for chandeliers. The websites at these other domain names act as a portal to the site of a third party retailer where the goods can be purchased, like the websites at the Domain Names.
- 6.18 The Complainant points out that these other domain names do not include 'centre', even though the 'centre' combinations were available for registration, but all incorporate, as an alternative, 'shop' or 'store'. In my view, the Respondent has provided a satisfactory explanation of this, namely that it prefers 'shop' or 'store' in a domain name where the keyword.co.uk is unavailable (in this case outdoorlighting.co.uk and bathroomlighting.co.uk) but the domain names incorporating 'shop' and 'store' were unavailable when the Domain Names were registered so 'centre' was used as an alternative. In my view it is credible that the Respondent chose 'centre' as an alternative to 'shop' or 'store', given that I consider 'centre' has similar descriptive qualities to 'shop' or 'store'. I therefore do not consider the fact that the Domain Names are the only ones to incorporate 'centre' to be an indication that the Respondent was aware of the Complainant.
- 6.19 The Complainant has pointed my attention to what it says are similarities between the wording on the Respondent's sites and its own and also similarities between the Respondent's logo and the Complainant's logo. In response, the Respondent says that its websites are based on a template which has been used in Holland since September 2010.
- 6.20 I have considered the similarities which the Complainant asserts and the Respondent's explanation when weighing the evidence as to whether the Respondent had knowledge of the Complainant or the Complainant's rights at the time of registration of the Domain Names. However, bearing in mind the Respondent's denial that it knew of outdoor-lighting-centre.co.uk and bathroomlighting-centre.co.uk at the time of registration of the Domain names, that I consider the Domain Names to be part of a pattern of descriptive domain names registered by the Respondent at or about the same time as the Domain Names and given the very limited extent of the Complainant's goodwill as I have described above, I do not consider that the Complainant has established, on the balance of probabilities, that the Respondent had knowledge of the Complainant and/or its rights at the time of registration of the Domain Names. Accordingly, I do not find

that the Domain Names, in the hands of the Respondent, are an Abusive Registration under paragraph 1(i) of the Policy.

Abusive Registration under Paragraph 1(ii) of the Policy

- 6.21 There is a non-exhaustive list of factors under the Policy which may be evidence that the Domain Name is an Abusive Registration including:

Paragraph 3(a)(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.

- 6.22 There is also a non-exhaustive list of factors under the Policy which may be evidence that the Domain Name is not an Abusive Registration including:

(a) Paragraph 4(a)(ii): The Domain Name is generic or descriptive and the Respondent is making fair use of it.

(b) Paragraph 4(e): Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) is not of itself objectionable under the Policy. However, the Expert will take into account: i. the nature of the Domain Name; ii. the nature of the advertising links on any parking pages associated with the Domain Name; and iii. that the use of the Domain Name is ultimately the Respondent's responsibility.

- 6.23 It is generally accepted that paragraph 3(a)(ii) of the Policy may cover initial interest confusion, where internet users are likely to visit the Respondent's site in the expectation of finding the Complainant, for example in response to a search engine request or an educated guess as to the Complainant's domain name.

- 6.24 In this case given that the Domain Names are identical to the Complainant's domain names, when the hyphens are removed, and given that the Complainant and the Respondent are both trading as 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre' there is a risk of users visiting the Respondent's sites in response to a search engine request looking for the Complainant. There is also a risk that internet users will find the Respondent's sites when they are looking for the Complainant because they omit the hyphens when inputting the Complainant's domain names into their browser. Once at the Respondent's sites users will be exposed to advertising links for products being sold by the Complainant's competitor and users may then use the Respondent's sites as a portal to the competitor's site, thereby generating revenue for the Respondent.

- 6.25 Accordingly, on the face of it, there are circumstances under paragraph 3(a)(ii) of the Policy which indicate that the Respondent is using the Domain Names in a way which is likely to confuse people or businesses into believing that the Domain Names are registered to, operated or authorised by or otherwise connected with the Complainant. However, it is relevant to consider the extent of that likelihood of confusion given the Complainant's ownership of limited trading goodwill in 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre'. It is also relevant to consider whether the Respondent has made any changes to its use of the Domain Names following notification of the Complainant's Rights.

6.26 In this respect, I must bear in mind Paragraph 4 (a)(ii) of the Policy that a domain name may not be an Abusive Registration where the domain name is generic or descriptive and the Respondent is making fair use of it. As I have already found above the Domain Names are descriptive so the issue is whether the Respondent is making fair use of them. I also consider that Paragraph 4 (e) of the Policy is relevant as the Respondent is using the Domain Names in an analogous way to connecting them to parking pages and earning click-through revenue, by using the Domain Names as a portal to a third party website in respect of which it earns revenue.

6.27 In determining whether the Respondent's use of the Domain Names is fair I consider the Appeal Panel Decision in DRS04889 (Wise Insurance Services Limited and Tagnames Limited) to be of some assistance. In that case, the respondent registered a 'family' of 'wise-' prefixed domain names on the same day, one of which was wiseinsurance.co.uk, the domain name in issue. The domain name was used for the purposes of providing links to third party websites offering insurance services. In that case it was said:

"The Expert was exercised as to the risk of confusion if the Respondent continued to use the Domain Name to connect it to a parking page. However in the Panel's view, the limitations of the goodwill associated with the Complainant's use of its name, makes the likelihood of such confusion very low indeed, and given that the Complainant has adopted a descriptive name for its business it cannot, without more extensive rights, complain about the use of the same descriptive name by a third party.

Accordingly, on the Panel's view of the matter, the Respondent has not used the Domain Name unfairly, and as such there is no reason why Paragraph 4(a)(ii) should not apply here."

6.28 In my view the circumstances of this case are similar to those in DRS04889. As I have set out above I consider that there is a risk of confusion in relation to the Respondent's use of the Domain Names. However, as I found at paragraph 6.9 above, the Complainant has limited trading goodwill in 'Outdoor Lighting Centre' and 'Bathroom Lighting Centre'. I therefore consider that the likelihood of confusion will be very low indeed.

6.29 Further I have found that the Respondent was not aware of the Complainant at the time of registration of the Domain Names and I have thereby accepted the Respondent's explanation for any similarity between its logos and website content and those of the Complainant. In such circumstances the Respondent should be entitled to hold onto the Domain Names and use them (even if there was initial interest confusion contrary to my finding above) unless the Respondent has done something to take advantage of or to exploit its position after notification of the Complainant's Rights. In this case, the Complainant has not shown that the Respondent has made any change to the use of the Domain Names (save for a change to the third party with which the websites are associated) or done something to take advantage of or to exploit its position since it became aware of the Complainant in June 2011.

6.30 Accordingly, in view of my findings at paragraphs 6.28 and 6.29 I consider that the Respondent has made fair use of the Domain Names and Paragraph 4(a)(ii) of the

Policy applies. I also consider that the Respondent's use of the Domain Names is not objectionable under Paragraph 4(e) of the Policy.

6.31 I therefore find that the Domain Names, in the hands of the Respondent, are not an Abusive Registration under paragraph 1(ii) of the Policy.

7. Decision

7.1 I find that the Complainant has Rights in a name or mark which is identical or similar to the Domain Names.

7.2 For the reasons set out above I do not find that the Domain Names in the hands of the Respondent are an Abusive Registration.

7.3 I direct that NO ACTION be taken in relation to the Domain Names.

Dr Patricia Jones

Dated 14 October 2011