

DISPUTE RESOLUTION SERVICE

D00011309

Decision of Independent Expert

Olsen Doors & Windows Ltd

and

Lee Davenport

1. The Parties:

Complainant: Olsen Doors & Windows Ltd
Unit 25, British Fields
Ollerton Road, Tuxford
Newark
Nottinghamshire
NG22 0PQ
United Kingdom

Respondent: Mr Lee Davenport
5 Park Farm
NEWARK
NG23 6NW
United Kingdom

2. The Domain Name(s):

olsenuk.co.uk (the “disputed domain name”)

3. Procedural History:

08 May 2012 11:47 Dispute received
08 May 2012 13:23 Complaint validated
08 May 2012 13:30 Notification of complaint sent to parties
11 May 2012 12:10 Response received

11 May 2012 12:10 Notification of response sent to parties
11 May 2012 13:50 Reply received
11 May 2012 13:51 Notification of reply sent to parties
11 May 2012 13:51 Mediator appointed
16 May 2012 10:05 Mediation started
23 May 2012 14:33 Mediation failed
23 May 2012 14:34 Close of mediation documents sent
24 May 2012 14:02 Expert decision payment received

Michael Silverleaf was appointed as Independent Expert in June 2012 and confirmed to Nominet that he was independent of the parties and knew of no facts or circumstances that might call into question his independence in the eyes of the parties.

4. Factual Background

4.1 The following outline of the facts is taken from the complaint and the response. Very few of the facts set out in the complaint are challenged in the response and I have accordingly assumed they are true. Where there is a dispute of fact which I have been able to resolve I have done so.

4.2 The complainant, Olsen Doors & Windows Limited, is an importer of bespoke timber, aluminium clad and all aluminium doors and windows for the commercial and domestic construction industry. It was incorporated on 6 March 2009 to take over the business of Scandinavian Window Systems Limited which had failed and gone into administration. The complainant purchased the assets and intellectual property of Scandinavian Window Systems Limited from the administrators.

4.3 The complainant uses the mark OLSEN UK to promote its business and registered the domain name olsenuk.com on 16 March 2009 for this purpose. That domain name is used for the complainant's website and is promoted in a wide range of publications including local and national press and on Facebook and Twitter. On average the website has received 427 unique visitors per week since March 2011. The complainant has registered the trade mark OLSEN LIFT/SLIDE DOORS in classes 6 and 19 with effect from 25 August 2009. The products which appear in the complainant's promotional material are recognisable as modern, high quality Scandinavian style design doors and windows.

4.4 Since its establishment, the complainant's business has grown substantially. It currently has 11 staff and a growing customer base,

its products being specified by architects, construction companies and others for their projects.

4.5 The respondent is a former employee of Scandinavian Window Systems Limited. In 2009 he set up his own competing business called Park Farm Design. That was incorporated as Park Farm Design Limited in December 2010. Park Farm Design's website parkfarmdesign.co.uk has a home page displaying pictures of products which are highly similar in style and presentation to those of the complainant. It is clear that the businesses are direct competitors.

4.6 The complainant alleges that when the respondent set up his competing business he tried to use the brand name OLSEN and to take other intellectual property owned by Scandinavian Window Systems Limited including contacts and product information as well as unspecified physical items. These claims are not challenged in the response and I accordingly accept them.

4.6 The disputed domain name olsenuk.co.uk was registered on 22 March 2011. The response suggests that the disputed domain name was purchased before the establishment of Park Farm Design Limited but it can be seen from the dates set out above that this is incorrect.

4.7 The complainant asserts that the disputed domain name redirects to the website at www.parkfarmdesign.co.uk. The response admits that this was the case but says that the redirection has now ceased. It asserts that the redirection was "part of some website optimisation by a company previously employed by Park Farm Design not Park Farm Design Ltd." I do not understand what this means. Nor, whatever it means, does it seem credible that the redirection could have been done by someone employed by Park Farm Design Limited without its knowledge or consent.

5. Parties' Contentions

5.1 The complainant asserts that the disputed domain name is an Abusive Registration for the following reasons:

(a) It may have been purchased by the respondent to prevent the claimant from registering it and with a view to selling it to the respondent for an inflated price.

(b) It is being used to disrupt the business of the complainant by redirecting internet users who make a simple error in entering the

complainant's domain name olsenuk.com to the website of the competing business run by the respondent.

(c) The use of the disputed domain name could lead to confusion amongst actual or prospective customers for OLSEN branded doors and windows that there is a trade connection between the complainant's products and Park Farm Design Limited.

(d) The complainant asserts that the registration and use of the disputed domain name is part of a course of unethical and unprofessional conduct by the respondent seeking to poach the complainant's customers.

5.2 The respondent asserts that the disputed domain name was lawfully purchased and will remain the property of Park Farm Design Limited. He says that the redirection to his website has ceased and says that he will make no further use of the disputed domain name to promote Park Farm Design's products although it may be used for other purposes or sold in future. He suggests that the complainant makes a sensible offer to purchase the disputed domain name which he expresses surprise was ever available.

6. Discussions and Findings

6.1 The version of the DRS Policy relevant to the present dispute is version 3 which relates to complaints lodged after 29 July 2008. Paragraph 1 of that policy defines an 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”

6.2 Paragraph 1 of the DRS Policy also defines “Rights” for the purposes of this procedure as including but not limited to those enforceable under English law. Under Paragraph 2 of the DRS Policy a complainant must show on the balance of probabilities

- (a) that it has Rights in a name or mark identical or similar to the Domain Name; and

(b) that the Domain Name in the hands of the Respondent is an Abusive Registration.

6.3 Paragraph 3 of the DRS Policy identifies a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. The relevant factors for the purposes of the present case are

“(a)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;
C. for the purpose of unfairly disrupting the Business of the Complainant;
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.”

The remaining factors are not relevant in the present case. I have accordingly taken the above factors into account in reaching my conclusions.

6.4 Clause 4 of the DRS Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. These include the following which are relevant to the present case:

“(a)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 commercially known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;

...

6.5 According to the Appeal Panel decision in the *Seiko* case (DRS 00248) whether a registration is an abusive registration under the DRS Policy is independent of whether a domain name registration is an infringement of trade mark and should be decided under the terms of the DRS Policy alone. The same decision also makes clear, however, that the relevant principles of English law should be applied in determining whether the Complainant has Rights under the Policy and that the Policy is founded on the principle of intellectual property rights which should be taken into account.

6.6 The first question in any DRS complaint is whether the complainant has Rights. This, as has been said in many cases, is a low threshold test and there is no doubt that in the present case the Complainant passes this test. It has a trade mark registration for a mark containing the word OLSEN registered for relevant products and its claims to operate a substantial business under the name OLSEN and OLSEN UK are not challenged by the respondent.

6.7 In view of the lack of substantive dispute between the parties as to the facts, resolution of this dispute is straightforward. It is clear that the respondent was well aware of the nature and existence of the complainant's business and its use of the name OLSENUK when he set up his own business. He clearly set up with the intention of competing directly with the successor to his former employer. Contrary to his assertions, the disputed domain name was not registered until some time after he had set up his own business. He has given no explanation of his reasons for registering the disputed domain name, asserting merely that his conduct in doing so was "lawful". I do not find that of assistance.

6.8 It seems to me to be clear that the respondent can only have registered the disputed domain name either for the purpose of seeking to confuse and divert potential customers to Park Farm Design's website when they were looking for the complainant's products or with a view to ransoming the complainant when it discovered the disputed domain name and the respondent's use of it. There is no other explanation which fits the undisputed facts. His suggestion in particular that the complainant "make a sensible offer to purchase" the disputed domain name is inconsistent with any other motivation.

6.9 It seems to me, therefore, that the disputed domain name is an abusive registration under at least paragraphs 3(a)(i) A and C and (ii) of the DRS Policy. I accordingly so find.

7. Decision

7.1 I direct that the disputed domain name olsenuk.co.uk be transferred to the complainant.

Signed: Michael Silverleaf

Dated: 6 July 2012