

DISPUTE RESOLUTION SERVICE

D00012700

Decision of Independent Expert

KSM Superclean Ltd

and

Ultraclean Systems (UK) Ltd

The Parties:

Lead Complainant: KSM Superclean Ltd

KSM Superclean Ltd

Olympic Complex

Drybridge Road

Dundonald

Ayrshire

KA2 9BE

United Kingdom

Respondent: Ultraclean Systems (UK) Ltd

11C Gillies Street

Troon

Ayrshire
KA10 6QH
United Kingdom

The Domain Name(s)

supercleansystems.co.uk

Procedural History

1. I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed being of such a nature as to call in to question my independence in the eyes of one or both of the parties.

2. The following is the brief procedural background, -

10 April 2013	Complaint received and validated by Nominet. Notification of Complaint sent to the parties.
29 April 2013	Response reminder sent.
30 April 2013	Response received, notification of response sent to the parties.
06 May 2013	Reply reminder sent.
08 May 2013	Reply received and notification of reply sent to the parties.

Factual Background

3. The Domain Name was first registered on 2 October 2007 by the Respondent, which at that time was incorporated under the name of Superclean Systems (UK) Ltd. (“SSUKL”). SSUKL changed its name to that of the Respondent on 19 November 2007. The Domain Name then resolved to a website with a holding page re-directing visitors to www.ultraclean-systems.com, a website

operated by the Respondent. The holding page is still directing traffic to that website.

4. The Respondent and the Complainant are trade competitors in the supply of micro-contamination removal products. Mr Peter Weidig (“Mr Weidig”) is a director of the Respondent and was an employee of the Complainant until he left the company in late November or early December 2007.

Parties’ Contentions

The Complaint

5. The Complaint alleges as follows, -
 - 5.1 The Complainant was incorporated on 1 May 2003 as company number SC248716 and owns registered trade mark no: 2152404 ‘KSM Superclean’. It also owns the domain name ‘ksmsuperclean.com’.
 - 5.2 Mr Weidig commenced his employment with the Complainant on 13 June 2003. However, he was actively involved in setting up a new company, the Respondent, in direct competition to the Complainant, while still an employee. In so doing, he acted in breach of contract. SSUKL was ‘registered at Companies House’ on 24 September 2007. Mr Weidig’s home address was the address to which the Domain Name is registered. Following his registration of the Domain Name on 2 October 2007, Mr Weidig tendered his resignation by letter to the Complainant dated 8 November 2009.
 - 5.3 On 13 November 2007 the Complainant received a faxed order confirmation from Cotel Mouldings, one of its suppliers, addressed to SSUKL at Mr Weidig’s home address. Mr Weidig was called to a meeting with the Complainant’s Managing Director and asked to explain his conduct. He admitted that he had intended to set up a company supplying micro-contamination removal products in

competition to the Complainant. However, he had now decided not to pursue this as he was returning to Germany. The result of the meeting was that Mr Weidig was asked to leave the premises and not to work out the remainder of his notice.

- 5.4 On 19 November 2007 the Respondent changed its name from SSUKL to Ultraclean Systems (UK) Ltd, so removing the contentious word 'Superclean' from its name. On 21 November 2007 the Respondent registered the domain name 'ultraclean-systems.com' and used the Domain Name for a 're-direct website' hosted at ultraclean-systems.com.
- 5.4 On 21 November 2007 letters were written by Maclay, Murray Spens LLP (the Complainant's lawyers) to SSUKL and to the Respondent alleging breach of his contract of employment by Mr Weidig and passing off by the Respondent.
- 5.5 Mr Weidig initially sought to hide his involvement with SSUKL and to circumvent his contractual obligations to the Complainant by making his then partner, Shona Marr, its director. After a safe period of time had elapsed, Mr Weidig became a director of the Respondent, which was on 28 September 2010 when the Respondent notified Companies House that Mr Weidig had become a director of the company.
- 5.6 In the weeks following Mr Weidig's departure in mid-November 2007, the Complainant was notified by some of its customers and distributors that Mr Weidig had been in touch with them, to offer products in competition to those supplied by the Complainant and to solicit them as customers. At the same time, Mr Weidig let it be known that the Complainant's Managing Director was about to leave the company. That was a misrepresentation and a further solicitor's letter was sent on behalf of the Complainant to Mr Weidig complaining about that matter.

- 5.7 The Complainant has Rights arising out of its ownership of its corporate name, of its .com domain name and its trade mark. It asserts the right to prevent competitors from using the Domain Name to draw internet traffic away from its own legitimate website. It also seeks to prevent the Domain Name from being used to display information that the Complainant's customers have found to be confusing.
- 5.8 The Domain Name is similar to the Complainant's trade mark. The intention behind the registration of the Domain Name was to enable Mr Weidig, at that time an employee of the Complainant, to compete unfairly against his employer both before and after termination of his employment, in breach of his contractual obligations. The purpose of the continued existence of the Domain Name is to enable the Respondent to draw internet traffic away from the Complainant and direct it to the website of the Respondent.
- 5.9 The Domain Name is an abusive registration for 3 reasons. First, it is a re-direct site only, leading to a site offering products in direct competition to the Complainant. Second, the Respondent's website states that the re-direct is in place due to a change of company name, which will have confused the Complainant's customers into believing that the Complainant has changed its name. Third, the Domain Name was registered by Mr Weidig while an employee of the Complainant, with a view to stealing its customers, in breach of his contract of employment.

The Response

6. The Response alleges as follows, -
- 6.1 The Respondent registered the Domain Name on 27 October 2007. At that date, the Respondent's name was SSUKL and so the Domain Name reflected this.

- 6.2 On 19 November 2007 the Respondent changed its name to its current name and trading style, Ultraclean Systems (UK) Ltd.
- 6.3 To keep the Respondent's clients and potential clients informed of the change, a holding page was created using the Domain Name, advising of the name change and re-directing any traffic to www.ultra-cleansystems.com.
- 6.4 The Complainant does not have Rights. Superclean Systems is not the same as nor is it identical to the Complainant's name. 'KSM Superclean' is the registered trademark. However, the Complainant has not demonstrated an infringement of the trademark. Further, the Complainant does not own exclusive rights in the words 'Superclean' or 'Superclean Systems'.
- 6.5 The Complainant has not explained its relationship with Superclean Systems Ltd. ("SSL"), which is listed as a dormant company at Companies House. Rights to an unregistered trading name or style cannot exist and a period of trading is necessary.
- 6.6 The correspondence relied on by the Complainant shows that it knew that the Respondent had registered the Domain Name before SSL had been incorporated. The inference is that the Complainant or a person connected to it incorporated SSL in July 2008 with the intention of 'hijacking' the Domain Name. The correspondence is of no other relevance, establishing neither Rights nor trade mark infringement.
- 6.7 The Respondent is a competitor of the Complainant. The Respondent has breached no contractual, legal or other regulatory obligations in registering or using the Domain Name; nor have any of its officers or employees thereby done so.
- 6.8 In accordance with paragraph 4a. of the DRS Policy, the following facts evidence that the registration is not abusive:

- The Respondent has used and continues to use the Domain Name in connection with a genuine offering of goods and services through the re-direct link.
- The Domain Name was legitimately connected with a mark which was similar to the Domain Name.
- The Respondent has made fair use of the Domain Name.
- The Domain Name is descriptive.

The Reply

7. The Reply alleges as follows, -

- 7.1 The Complainant's case is that the term 'superclean systems' is similar to its trade mark.
- 7.2 The Respondent's actions in setting up a rival business constitutes passing off.
- 7.3 The Complainant does not take issue with others using the term 'superclean'. It does object to the use of the Domain Name as part of a scheme in setting up a rival company by Mr Heidig in direct competition while still employed by the Complainant, which has led to the Complainant's customers mistakenly believing that the company had changed its name and had set up a new website.
- 7.4 The Respondent says that he did not breach his contract of employment. However, the Complainant was informed by its customers and distributors that he had been soliciting business from them only days after his departure from the company. One such

person was Mr Robert Corbet of Corbet A/S and this clearly shows that the Respondent was using privileged customer contact details and his knowledge of the Complainant's prices.

- 7.5 The Respondent has given no reason for the change of name. SSUKL was only in use for 56 days before its change, which was a mere 4 working days after the discovery of Mr Weidig's wrongdoing. In view of the time it would take to register a change of name at Companies' House, Mr Weidig must have changed the name of the Respondent on the same day that he became aware that the Complainant had discovered his wrongdoing.

Information pursuant to Paragraph 13a of the DRS Procedure

8. At the request of the Expert made on 11 June 2013, Nominet issued the following requests for further information to the parties pursuant to paragraph 13a. of the DRS Procedure ("the Procedure") –

"(1) The Complainant to provide a response to the following question by 12 noon on Friday 14 June 2013.

Please explain why it did not make its Complaint until April 2013, in view of its awareness by 21 November 2007 that the Respondent had registered the Domain Name on 2 October 2007 and was operating a website at www.supercleansystems.co.uk from the Domain Name (see the Complainant's solicitors' letter of that date) and that on 21 November 2007 the Respondent changed its name and the website was used as a 'redirect' to the Respondent's new website (see the Complaint).

The Respondent may make such response (if any) to the Complainant's answer to the above by 12 noon on Wednesday, 19 June 2013.

(2) The Expert has conducted a WHOIS search of the Domain Name and the results of that search were that the Domain Name was first registered

on 2 October 2007 and the Respondent is the current registrant. The Expert is minded to find that the date of first registration was 2 October 2007 (and not 27 October 2007) and that the first registrant was the Respondent (and not Mr Weidig).

Each side (Complainant and Respondent) shall have until 12 noon on Friday, 14 June 2013 to supply any further evidence and make any further submissions on these issues."

9. On 14 June 2013 the Complainant provided further information with respect to the date of first registration (confirming the date from the WHOIS search), but the Respondent did not do so. The Complainant provided the following information in response to paragraph (1) of the request under paragraph 13a. –

“We issued legal letters at the time of Mr Weidig's departure from KSM Superclean Ltd, but this was ignored. Apart from following through with legal action our company M.D. was unaware of any other action he could take in respect of the disputed domain. The M.D. approached me in June 2010 and asked if there was anything that could be done to prevent the misuse of the disputed domain. After some research I advised that we could use the Nominet DRS service. Complaint no DRS8685 was raised at that time and got past the mediation phase, however, our M.D. mistakenly thought that the expert's decision would cost £3000.00 and given that Mr Weidig was asking for a five figure sum to transfer the disputed domain to us, he thought that it was too expensive an exercise. The complaint was then allowed to lapse and we were informed that this would not prejudice us in any future complaint.”

The Respondent did not wait until 19 June 2013 to provide its response but provided information on the same date, 14 June 2013 in respect of (1), -

“The Company has not at any time advised the Complainant that they would transfer the domain name to them. The Complainant advised the

mediator involved in case DRS8685 that they would not be proceeding with the complaint and would raise court proceedings. This was never done.”

Nothing was provided by the Respondent after 14 June 2013. Each side, in its information provided on that date, supplied further information on other issues in this dispute (e.g. on the issue of confusion). I have ignored that information for the purposes of this decision, because I did not request it, nor is it necessary for the Expert to consider it in order to reach a decision under the DRS.

Discussion and Findings

10. The Complainant is required under subparagraphs 2a. and 2b. of the Dispute Resolution Policy (“the Policy”) to prove to the Expert on the balance of probabilities that:
 - 10.1 he has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
 - 10.2 the Domain Name, in the hands of the Respondent, is an Abusive Registration.
11. The Expert refers to the matters set out in paragraphs 3 and 4 above and adopts them as findings of fact.

Rights

12. By paragraph 1 of the Procedure, -

‘Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.’

As indicated in paragraph 10.1 above, the Policy does not require that the rights have to exist in a name that is identical to the domain name in dispute. It suffices if the Rights exist in a name that is similar to the domain name. It is not the case, as the Respondent alleges, that a Complainant under the DRS asserting a trade mark right must establish trade mark infringement. For the purposes of establishing Rights, it suffices if the word or mark in which a Complainant asserts Rights is similar to the domain name: see generally, DRS Experts' Overview, paragraph 2.3.

13. The trade mark 'KSM Superclean' was first registered on 30 October 1998 and was assigned to the Complainant, then incorporated under the name of HMS(466) Ltd., on 6 February 2004. The Expert finds that this mark is similar to the Domain Name, supercleansystems.co.uk, because both the trade mark and the Domain Name contain the words 'super' and 'clean' attached together, i.e. 'superclean', which is the, or at least a, prominent part of both. The word 'superclean' also comprises the majority of the letters in respectively, 'KSM Superclean' and 'supercleansystems'. (Under the DRS the .co.uk suffix is ignored for the purposes of the comparison.)
14. In those circumstances, the Expert concludes that the Complainant owns Rights in a name or mark, namely 'KSM Superclean', which is similar to the Domain Name. Thus, the Complainant has established that it has Rights.

Abusive Registration

15. By paragraph 1 of the Policy, -

'Abusive Registration means 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.'

By paragraph 3 of the Policy, -

'3. Evidence of Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is 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;

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.;

v.

b. Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration.

c.'

By paragraph 4 of the Policy, -

‘4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration

a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is 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;
or

ii. The Domain Name is generic or descriptive and the Respondent is making fair use of it.”

16. The following findings address the chronology of events. I have accepted the uncontradicted case of the Complainant on these matters, save where it is itself expressly contradicted (in minor respects) or supplemented by its solicitors' letters of 21 November 2007 (which refer to what were then very recent events), other documents annexed to the Complaint or uncontradicted parts of the Response.

17. Mr Weidig commenced his employment with the Complainant on 13 June 2003. However, he was actively involved in setting up a new company, the Respondent (then SSUKL), in direct competition to the Complainant, while still an employee of the Complainant. SSUKL was incorporated on 24 September 2007. Mr Weidig's home address was the address to which the Domain Name was registered. Following the Respondent's registration of the Domain Name on 2 October 2007, Mr Weidig tendered his resignation by letter to the Complainant dated 8 November 2009, stating that he would work out his contractual period of notice of one week. Mr Weidig advised the

Complainant that he was intending to go and work for the German Government.

18. On 14 November 2007 the Complainant received a faxed order confirmation from Cotel Mouldings, one of its suppliers, addressed to SSUKL at Mr Weidig's home address. Mr Weidig was called to a meeting with the Complainant's Managing Director and asked to explain his conduct. He admitted that he had set up a company with a view to supplying micro-contamination removal products in competition to the Complainant. He admitted that he had hidden his involvement with that company by not registering himself as a director or Company Secretary of the company: see the unanswered allegation to that effect in the letter of 21 November 2007. However, he had now decided not to pursue this new venture. The result of the meeting was that Mr Weidig was asked to leave the premises and not to work out his notice.
19. The Respondent initially used the Domain Name to operate a website advertising the business of SSUKL and did so until about 21 November 2007. On that date the Respondent registered the domain name 'ultraclean-systems.com' and changed the contents of the website to re-direct traffic to www.ultraclean-systems.com.
20. On 21 November 2007 a letter was written by the Complainant's lawyers to the Respondent alleging passing off and demanding undertakings. No undertakings were given.
21. In the weeks following Mr Weidig's departure, the Complainant was notified by some of its customers and distributors that Mr Weidig had been in touch with them, offering products in competition to those supplied by the Complainant and attempting to solicit them as customers. Mr Weidig also let it be known that the Complainant's Managing Director was about to leave the company. That was a misrepresentation and a further solicitor's letter, dated 14 December 2007, was sent on behalf of the Complainant, to Mr Weidig complaining about that matter.

22. On 28 September 2010 the Respondent notified Companies' House that Mr Weidig had become a director of the company. Although there is no direct evidence on the point, the Expert concludes that Mr Weidig did work for the Respondent from the time of his ceasing to be employed by the Complainant until that date and has since done so. All the indications from the evidence adduced by the Complainant are that Mr Weidig left to run a competing business through the Respondent and that he continues to be closely involved in its operations. The Response has not suggested otherwise.

23. The screenshot of the Website annexed to the Complaint states as follows, -

“SUPERCLEAN SYSTEMS
MICRO CONTAMINATION REMOVAL SOLUTIONS

Micro contamination removal solutions have entered new dimensions.
..... [SSUKL] are no longer trading under this name. We have increased the performance and range of our products and are now trading as Ultraclean Systems (UK) Ltd.

If you are not automatically re-directed, please click here or visit 'our new website ultracleansystems.com'.

24. The Appeal Panel in DRS 04331 *verbatim.co.uk* determined that, for a complaint to succeed, -

“the Complainant must satisfy the Panel, as an opener, that the Respondent was aware of the existence of the Complainant or its brand at the date of registration of the Domain Name or at commencement of an objectionable use of the Domain Name.”

I adopt that approach, which is appropriate to this type of case.

25. In view of the facts found and set out above, it is clear that the Respondent was aware of the Complainant and its name, KSM Superclean, at the time when the Domain Name was registered on 2 October 2007.
26. The Expert finds that the reason for choosing the words ‘Superclean Systems’ as part of the name of the Respondent and supercleansystems.co.uk as its domain name was to choose names which were similar to that of the Complainant so as to enable the Respondent to solicit the custom of customers and suppliers of the Complainant by suggesting a connection with the Complainant, KSM Superclean, once Mr Weidig had started working for the Respondent and even before his departure from the Complainant, as indicated by the faxed order confirmation.
27. The fact that the name of the company was changed to Ultraclean Systems (UK) Ltd so soon after Mr Weidig’s activities had been discovered shows that Mr Weidig and the Respondent knew of the attractive force of the name first chosen for the company and the Domain Name and the propensity for confusion, so that both had to be changed. The Expert has borne in mind that the ‘KSM’ element of the mark was omitted. However, the unexplained decision to use the remainder of the mark with reference to this particular market in circumstances where Mr Weidig had incorporated SSUKL, an intended trade rival of his employer without revealing his involvement in that company to his then employer, amply justifies the inference that the intention behind registration of the Domain Name was to suggest a false connection with the Complainant, particularly in view of the confusion caused by the faxed order and the subsequent change in the Respondent’s name when Mr Weidig became aware that his activities had been discovered.
28. The Complainant says that customers have been confused and are likely to be confused by the Domain Name and by its use. The Respondent says that there is a genuine offering of goods and services through the ‘re-direct’ on the website; that all the website is doing is to inform visitors that the company has changed its name so that visitors can visit its ‘new’ website.

29. That argument raises the question of why should the Respondent maintain the website and continue to pay registration fees to re-direct customers because of a change of name that occurred over 5 years ago? The Response does not explain this important aspect of the Respondent's conduct. There is no reason why actual or even potential of the customers of the Respondent would need to be informed about a change of name that took place over 5 years ago.
30. The Expert infers that the reason why the Respondent has maintained the website is to take advantage of 'initial interest' confusion¹, which is likely to lead actual or potential customers of the Complainant to the Domain Name's website. Although the Respondent has pointed to a number of trading names including the word 'Superclean', it has not pointed to any which are in the same field of business. As indicated above, Mr Weidig's choices of name for the Respondent and its domain name before his plans were discovered evidenced the attractive force of the names chosen and their propensity to cause confusion with the Complainant. The mistake made by its customer in sending a faxed order confirms the likelihood of confusion and is an instance of actual confusion.
31. Returning to the date of the Complaint, it is likely that persons seeking the Complainant on the internet will experience initial interest confusion. They are likely to believe (wrongly) that the holding page is connected to or authorised by the Complainant. If the link does work, the visitor who has gone to the website as a result of that confusion will be led to the Respondent's other website and is likely to believe that the Complainant is trading from the website at ultraclean-systems.com, which is operated by the Respondent, a trade competitor of the Complainant.
32. If the link does not work, the visitors to the holding page website who are looking for the Complainant will realise when they access it that they have made a mistake, because the re-direct will tell them so. However, the visitor will have been alerted to the existence of a trade competitor, because of the additional statements on the website advertising the Respondent's business.

¹ People seeking to visit the Complainant's website using search engines or by guessing the relevant URL: see DRS Experts' Overview, paragraph 3.3.

They will have been tricked by the initial interest confusion and drawn into advertising for products which compete with those of the Complainant.

33. The Expert was initially troubled by the long delay in bringing this Complaint. The delay might have indicated that it was unlikely that there was any confusion within paragraph 3a.ii. of the Policy. There are DRS cases where delay in the bringing a claim may be fatal; see e.g. *5alive.co.uk*, DRS 00008347. However, this case is very different and unlike that case concerns the activities of a trade competitor which has taken active steps to use the Domain Name in furtherance of that competing business. The Complainant has given an adequate explanation of the delay in the pursuit of its rights under the DRS.
34. The question of confusion still remains and there is a single instance of confusion, over 5 years ago. However, initial interest confusion is inherently likely for the reasons set out above. Evidence of actual confusion is also often difficult to produce and the circumstances of this case render that no less so. The Expert also bears in mind the reason, as he has found it to be, for the initial choice of the Respondent's name and of the Domain Name and the decision to change the name of the Respondent and its domain name (*ultraclean-systems.com*).
35. I do not accept the Respondent's point about SSL. It is no part of the Complaint, which stands or falls by reference to the case advanced by the Complainant and the Rights it has established. The incorporation and trading status of SSL are not relevant to whether or not the Complaint should succeed or not.
36. The Expert now considers the specific arguments raised by the Respondent under paragraph 4 of the Policy. It argues that it has used and continues to use the Domain Name in connection with a genuine offering of goods and services through the redirect link. However, this paragraph of the Policy is prefaced with the words, 'Before becoming aware of the Complainant's cause for complaint ...'. That is not so. The Respondent chose the Domain Name with

the Complainant in mind. The cause for complaint was the registration of the Domain Name with a view to targeting the Complainant and its business by choosing a name which implied that the Respondent was in some way legitimately connected with the Complainant and to use Mr Weidig, while an employee of the Complainant, to siphon off the Complainant's customers.

37. Next it is said that the Domain Name was legitimately connected with a mark which was similar to the Domain Name. Again, paragraph 4 of the Policy contains the same preface. The same applies to its case of 'fair use' so far as that is advanced by reference to paragraph 4a.i.C of the Policy. There was no use made of the Domain Name, or connection between the Domain Name and the mark in question, i.e. Superclean Systems (UK) Ltd, at any time before the Respondent became aware of the Complainant's cause for complaint; i.e. registration of the Domain Name with a view to siphoning off its customers by falsely suggesting a connection with the Complainant.
38. Finally, it is said that the Domain Name is descriptive. It is only descriptive in a limited sense. It does not describe the business of the Respondent. The word 'cleaning' is non-specific and the word 'super' does not describe the business either. Further, the use was not fair as required by paragraph 4a.ii. of the Policy: see paragraphs 39 and 40 below.
39. Thus, the Expert finds that not only was the Respondent aware of the Complainant's name at the date of registration, but registered the Domain Name in order unfairly to disrupt the Complainant's business. The unfair disruption which the Respondent had in mind was to use the Domain Name to draw off customers and business from the Complainant by using the services of an employee of the Complainant, Mr Weidig, while hiding his involvement in that business from his employers, with a view to using the Domain Name so as to suggest a connection between the Complainant and the Respondent which did not exist². Those being the circumstances, none of the factors in paragraph 4 relied on by the Respondent have been made out.

² It is neither necessary nor appropriate to make findings as to whether or not Mr Weidig acted in breach of his contract of employment in setting up the rival company while still an employee of the

40. The Respondent is not making fair use of the Domain Name. It is using the Domain Name for no legitimate business purpose, but for the sole purpose of deceiving actual or potential customers of the Complainant into becoming customers of the Respondent by confusing them into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.
41. Therefore, the Expert finds that the Complainant has established Abusive Registration under each of paragraphs 3a.i.C and 3a.ii. of the Policy.

Decision

42. The Complainant has Rights in a name or mark, which is similar to the Domain Name, and the Domain Name in the hands of the Respondent is an Abusive Registration. The Expert therefore determines that the Domain Name ‘supercleansystems.co.uk’ be transferred to the Complainant.

Signed

Dated 4 July 2013

STEPHEN BATE

Complainant, in soliciting customers and using allegedly confidential information: see e.g. *celtic.com*, DRS 004632.