

Nominet UK Dispute Resolution Service

DRS 12938

Lockheed Martin Corporation

and

Tim Tremaine

Decision of Independent Expert

1 Parties

Complainant: Lockheed Martin Corporation

Address: 6801 Rockledge Drive
Bethesda, MD

Postcode: 20817

Country: United States of America

Respondent: Tim Tremaine

Address: The Brambles
Hewas Water
Cornwall

Postcode: PL26 7JF

Country: United Kingdom

2 Domain name

<lmco.co.uk>

3 Procedural History

- 3.1 On 13 June 2013 the complaint was received by Nominet, which checked that it complied with the Nominet UK DRS Policy ("the Policy") and DRS Procedure ("the Procedure"). Nominet notified the respondent on 14 June 2013. The respondent responded on the same day, 14 June 2013, and the complainant replied on 18 June 2013. The matter was not resolved in mediation. The complainant requested referral of the matter for expert decision under the Procedure, and on 11 July 2013 paid the applicable fee.
- 3.2 I was appointed as expert on 16 July 2012. I have made the necessary declaration of impartiality and independence.

4 Factual background

- 4.1 The complainant is an internationally known aerospace, defence and technology firm.
- 4.2 The domain name was registered on 24 December 2004 by Datagem Computer Consultants. It was later acquired by the respondent.

5 Parties' Contentions

Complainant

- 5.1 The complainant argues that there is a low threshold to establish "rights" under the Policy.
- 5.2 It says it has registered trade marks for the marks LOCKHEED and LOCKHEED MARTIN, including UK and Community trade marks. The complainant also says it owns unregistered rights in the trade mark LMCO, and that it is well known by that name. It says it has used the LMCO mark since 1995, and has substantial goodwill in it. The complainant says <lockheedmartin.co.uk> and <lockheedmartin.com> appear as the first two results of a Google search for the term "LMCO".
- 5.3 The complainant says it also owns domains including <lmco.com>, <lmco.eu>, <lmco.us>, <lmco.cn> and <lmco.co.in>. It says it uses <@lmco.com> for all of its email addresses.
- 5.4 The complainant says the domain name is identical to its LMCO trade mark, as well as its domains.
- 5.5 The complainant says the previous registrant of the domain name, before the respondent, was a company of which the respondent was company secretary. It says the respondent was previously a consultant for the complainant but stopped working for it (and claimed compensation for unfair dismissal) some time before August 2004. The domain name was originally registered in December 2004. The domain name was therefore registered following the respondent's termination of employment by the complainant.

- 5.6 The complainant says the domain name is an attempt by the respondent to create confusion with complainant's marks, and that the domain name is likely to mislead and divert web users. It says the respondent is trying to pass himself off as the complainant, and that he does nothing to prevent confusion.
- 5.7 The complainant says the respondent must have been aware of the complainant's trade mark LMCO when he registered the domain name, having done work for it not long before. While working for the complainant, it says the respondent was provided with an <@lmco.com> email address.
- 5.8 The complainant says the respondent appears to be using email addresses ending in <@lmco.co.uk>. It says the respondent has alleged that he has received classified information addressed to an <@lmco.co.uk> address but intended for individuals working for the complainant. The complainant says the continued use and registration by the respondent of the domain name may present a serious risk to national security.
- 5.9 The complainant says the domain name does not consist of descriptive words in which the respondent might have an interest. The respondent is not commonly known by the domain name, either as a business, individual or other organization.
- 5.10 The complainant says the respondent is not using the domain name in connection with a bona fide offering of goods or services. It says the respondent has owned the domain name for over eight years, and has failed to make any developments or demonstrable preparations to do so.
- 5.11 The complainant says the respondent is intending to sell the domain name, and has indicated to a prospective purchaser that he would expect about £5,000 to £6,000. The complainant says this indicates that he is aware of the significance and value of the mark LMCO to the complainant. The complainant says the respondent has registered the domain name primarily for the purposes of selling, renting or otherwise transferring the domain name to the complainant.
- 5.12 The complainant says the respondent has registered the domain name in bad faith, as it prevents the complainant from reflecting its mark in a corresponding domain name. It accordingly constitutes a blocking registration.
- 5.13 The complainant says the domain name has been registered primarily for the purpose of disrupting the complainant's business.
- 5.14 The complainant says 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 in which the respondent has no apparent rights. This constitutes further evidence of the domain name being an abusive registration

Respondent

- 5.15 The respondent simply says:

I have never knowingly or intentionally (sic) made any personal violation

to Lockheed Martin(US) Therefore this domain has always been a legitimate registration in Datagem Computer Consultants Limited (sic) and now Mr Tim Tremaine.

6 Discussion and Findings

General

6.1 Under paragraph 2(a) of the Policy a complainant must show on the balance of probabilities that:

- it has rights in respect of a name or mark which is identical or similar to the domain name, and that
- the domain name, in the hands of the respondent, is an abusive registration.

Rights

6.2 Rights are defined in the Policy as rights enforceable by the complainant, whether under English law or otherwise.

6.3 The complainant has produced documentary evidence from the Intellectual Property Office of its UK trade marks for LOCKHEED and LOCKHEED MARTIN, and from the Office for Harmonization in the Internal Market of its Community trade mark for LOCKHEED MARTIN. But none of these is similar enough to the domain name in my view to satisfy this element of the Policy.

6.4 The complainant has however provided some evidence from recent print and digital media in support of its contention that it is known as "LMCO". It has also produced evidence that it has owned the domain <lmco.com> since 1994, and a document of its own giving some support for its contention that it owns the domains <lmco.eu>, <lmco.us>, <lmco.cn> and <lmco.co.in> that it owns the domains <lmco.com> and <lmco.eu>, among others.

6.5 At the third level (i.e. disregarding "co.uk"), the domain name consists of the string "lmco".

6.6 In those circumstances I am satisfied that the complainant has rights in respect of a name which is identical or similar to the domain name.

Abusive Registration

6.7 Under paragraph 1 of the Policy, abusive registration means a domain name which either:

- 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
- has been used in a manner which took unfair advantage of or was unfairly

detrimental to the complainant's rights.

This definition obviously covers both the time of registration, and later use.

- 6.8 Under paragraph 3(a)(ii) of the Policy, circumstances indicating that the respondent is using a domain name in a way which has confused or is likely to confuse people into believing it is connected with the complainant may be evidence of abusive registration.
- 6.9 The complainant says that the respondent has received e-mail intended for it, at an <@lmco.co.uk> address. But it has produced no evidence in support of this. It has produced evidence that the respondent has used an <@lmco.co.uk> e-mail address, but this in itself does not demonstrate a likelihood of confusion.
- 6.10 Under paragraph 3(a)(i)(A) of the Policy, circumstances indicating that the respondent has registered or acquired the domain name primarily for the purposes of selling, renting or otherwise transferring it to the complainant for valuable consideration in excess of his costs may be evidence of abusive registration.
- 6.11 Under paragraph 3(a)(i)(B) of the Policy, it may be evidence of abusive registration where circumstances indicate that the respondent has registered or otherwise acquired the domain name primarily as a blocking registration.
- 6.12 Under paragraph 3(a)(i)(C) of the Policy, it may also be evidence of abusive registration where circumstances indicate that the respondent has acquired the domain name primarily for the purpose of unfairly disrupting the complainant's business.
- 6.13 The complainant says the respondent has indicated he expects to sell the domain name for about £5,000 or more. But it has produced no evidence in support of this.
- 6.14 The complainant has however produced evidence, in the form of a screenshot, showing that the domain name was for sale on May 16 2013, described as a "premium domain" and that the contact address for prospective buyers was <admin@timtremaine.co.uk>.
- 6.15 It has also produced evidence that the respondent did some work for it before 2004, and some evidence that he was provided with an <@lmco.com> e-mail address.
- 6.16 The respondent has not denied either of these matters.
- 6.17 It may be that at the time of evidence of the May 16 2013 screenshot, the domain name was held not by the respondent but by Datagem Computer Consultants. But that makes no real difference. The list of factors which may be evidence of abusive registration under paragraph 3a of the Policy is non-exhaustive.
- 6.18 I can therefore take it as evidence of abusive registration if circumstances indicate that the respondent caused a firm of which he was director to register the domain name in order to sell it for a profit.

- 6.19 Given the previous relationship between the parties, and the respondent's apparent knowledge of the complainant's use of <lmco.com> at least for the purposes of e-mail, and given the evidence that the domain name was for sale in 2013, in my view it is reasonable to infer that the respondent registered or acquired the domain name in order either to sell it for profit, or as a blocking registration, or in order to disrupt the complainant's business.
- 6.20 In my view therefore, the respondent appears to have registered or acquired the domain name in a manner which, at the time when the registration or acquisition took place, took unfair advantage of the complainant's rights.
- 6.21 It is for the complainant to make good its case. However, for the reasons I have given the evidence before me establishes a prima facie case of abusive registration. The respondent has not denied any of the detailed facts alleged by the complainant, or provided any substantial response to its complaint.
- 6.22 In those circumstances therefore I am satisfied on the balance of probabilities that the domain name, in the hands of the respondent, is an abusive registration.
- 6.23 That being so, it's unnecessary for me to decide whether or not the complainant has shown that the respondent is engaged in a pattern of registrations corresponding to well known names in which he has no apparent rights, or whether the domain name is part of any such pattern.

7 Decision

- 7.1 I find that the complainant has rights in a name which is identical or similar to the domain name; and that the domain name, in the hands of the respondent, is an abusive registration.
- 7.2 The complaint is upheld. I direct that the domain name be transferred to the complainant.

Carl Gardner

6 August 2013