

**Nominet UK Dispute Resolution Service**

**DRS 13357**

**Evergreens UK Limited**

and

**John Strain**

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**Decision of Independent Expert**

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**1 Parties**

Complainant: Evergreens UK Limited

Address: LazyLawn HQ  
Market Overton Ind Est  
Market Overton  
Oakham

Postcode: LE15 7TP

Country: United Kingdom

Respondent: John Strain

Address: 52 Blacksmiths Fold  
Huddersfield

Postcode: HD5 8XH

Country: United Kingdom

**2 Domain name**

<westyorkshirelazylawn.co.uk>

### **3 Procedural History**

- 3.1 On 1 October 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 2 October 2013. The respondent responded on 16 October 2013, and the complainant replied on the same day, 16 October 2013. The matter was not resolved in mediation. The complainant requested referral of the matter for expert decision under the Procedure, and on 13 November 2013 paid the applicable fee.
- 3.2 I was appointed as expert on 19 November 2013. I have made the necessary declaration of impartiality and independence.

### **4 Factual background**

- 4.1 The complainant markets artificial grass products. The respondent was until some time in 2013 licensed to install the complainant’s products in a defined area of West Yorkshire.
- 4.2 The domain name was registered by the respondent on 15 February 2013.

### **5 Parties’ Contentions**

#### *Complainant*

- 5.1 The complainant says it has a registered trade mark for the mark LAZYLAWN.
- 5.2 It says it maintains websites for its licensees at domains such as <lazylawnedinburgh.co.uk> and <lazylawnbristol.co.uk>, and that it built a website for the respondent’s use at <lazylawnwestyorkshire.co.uk>. But it denies building the website connected to the domain name.
- 5.3 It argues that the respondent’s use of the domain name takes advantage of its brand investment, and could damage its brand.

#### *Respondent*

- 5.4 The respondent says he was the complainant’s franchisee for 3 years, and registered the domain name legally and fairly.
- 5.5 He argues that the complainant built the website connected to the domain name, and that all the photographs that have been used on it show projects he carried out as its licensee. He says he uses email linked to the domain name for his business.
- 5.6 He says he has not transferred the domain name to the complainant because of what he says are its threatening and bullying tactics. He says this dispute involves a large company trying to pressure a very small competitor.

## 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 not produced direct documentary evidence from the Intellectual Property Office or from the Office for Harmonization in the Internal Market. But it has made reference in its complaint to the details of a trade mark registration for the mark LAZYLAWN. I accept that it does have such a UK or Community trade mark.

6.4 At the third level (i.e. disregarding "co.uk"), the domain name consists of the geographical words represented by the string "westyorkshire", followed by the complainant's trade mark.

6.5 While the complainant's mark makes up less than half of the domain name's characters, it is natural to read it as the conceptually dominant element of the domain name, with the string "westyorkshire" as qualifying it geographically.

6.6 In any event, the inclusion of the complainant's mark at the end of the domain name means that similarity to the mark is built in to it. The addition of the string "westyorkshire" does not make the domain name dissimilar to the mark.

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

### *Abusive Registration*

6.8 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.

- 6.9 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.
- 6.10 In my view the similarity between the complainant's mark and the domain name is likely to cause some initial interest confusion on the part of internet users.
- 6.11 The respondent argues that the complainant built the website at the domain name, and seems to imply that he has not changed the website since his relationships with the complainant ended. But I do not accept what he says about this. It seems to me unlikely that the complainant would have developed a website at a domain name which was registered by one of its licensees rather than by it, and in which the branding and geographical elements of the domain are reversed in comparison with what appears to be its usual marketing practice. I accept the complainant's version – that it built a website at <lazylawnwestyorkshire.co.uk> but not at the domain name.
- 6.12 In any event, the respondent admits in his response that he has used a <@westyorkshirelazylawn.co.uk> e-mail address for his business, and he implies that he continues to use it. In my view this admitted use of the domain name risks confusion with the complainant because of the similarity with its mark.
- 6.13 In those circumstances I am satisfied on the balance of probabilities that the domain name has been used in a manner which took unfair advantage of or was unfairly detrimental to the complainant's rights; and that the domain name, in the hands of the respondent, is an abusive registration.

## **7 Decision**

- 7.1 I find that the complainant has rights in a mark which is 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

10 December 2013