

DISPUTE RESOLUTION SERVICE

D00014114

Decision of Independent Expert

Lunar Caravans Ltd

and

Scope Enterprises Inc

1. The Parties:

Complainant: Lunar Caravans Ltd
Sherdley Road
Lostock Hall
Lancashire
PR5 5JF
United Kingdom

Respondent: Scope Enterprises Inc
Main Street, No 556
Charlestown
Saint Kitts and Nevis

2. The Domain Name:

lunarcaravans.co.uk

3. Procedural History:

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 as they might be of such a nature as to call into question my independence in the eyes of one or both of the parties.

25 April 2014 10:23 Dispute received
25 April 2014 12:19 Complaint validated
25 April 2014 12:26 Notification of complaint sent to parties
15 May 2014 02:30 Response reminder sent
20 May 2014 10:32 No Response received
20 May 2014 10:33 Notification of no Response sent to parties
22 May 2014 16:16 Expert decision payment received

4. Factual Background

The Complainant, Lunar Caravans Limited, manufactures trailer caravans, motor caravans and associated items under the brand names Lunar and Venus. The Complainant's company was incorporated under a different name in 1962 but the Complainant was inspired by the first moon landing to adopt the name Lunar in 1969. The Complainant's name was changed to Lunar Caravans Limited, England and Wales company number 729912, on December 31, 1979. About 99% of the Complainant's product is supplied to the United Kingdom domestic market.

The scale of the Complainant's business in the most recent year for which data have been provided, being 2003, is evidenced by a revenue of over £32,000,000 and an expenditure on marketing and advertising of over £500,000.

The Complainant owns the trademark LUNAR registered in its name at the United Kingdom Intellectual Property Office (IPO), registration number 2486717, filed on May 3, 2008 in class 12.

The Complainant owns and uses the domain name lunarcaravans.com.

Nothing is known about the Respondent except for the corporate name and address it provided in order to register the disputed Domain Name, which according to the Whois was registered on May 17, 2004. A letter and an email dated February 28, 2014 from the Complainant asking the Respondent to cease and desist from using the Domain Name and to transfer it to the Complainant, were not replied to.

5. Parties' Contentions

Complainant

Complainant's Rights

The Complainant contends that it has sold its products under the names Lunar and Lunar Caravans since 1969. It has provided sales figures relating to caravans, motorhomes and related products under those signs, and expenditure on advertising of products under those signs, in respect of the five years immediately preceding the registration of the Domain Name in 2004. It has also submitted evidence that the trademark Lunar was applied for on May 3, 2008 and accorded registration on November 28, 2008. The Complainant says it has Rights within the meaning of paragraph 1 of the Policy and that those Rights are in respect of a name or mark that is identical or similar to the Domain Name.

Abusive Registration

The Complainant contends that the Domain Name was an Abusive Registration at the time of its registration and is an Abusive Registration in the manner of its use.

The Complainant states and has produced evidence in the form of screen shots to the effect that the Domain Name resolves to a website pertaining to caravans, and says that the screen presents the visitor with links to other websites in the model of a pay-per-click operation. Internet users looking for the Complainant are likely to be led to the Respondent's website by typing the Domain Name or through the use of a search engine. The Complainant contends that these are circumstances amounting to passing off at the time of registration of the Domain Name and subsequently; and are circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way that 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. Confusion results from the similarity between the Domain Name and the Complainant's own Internet presence at

lunarcaravans.com, and from the goodwill and reputation embodied in the Complainant's signs Lunar and Lunar Caravans through sales and advertising. The Complainant asserts that the Respondent is unlikely to have any legitimate business with the Domain Name.

The Complainant requests the transfer to itself of the disputed Domain Name.

Respondent

The Respondent has not replied or made any contentions.

6. Discussions and Findings

Paragraph 2(a) of the Policy requires the Complainant to prove, on the balance of probabilities, 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."

Complainant's Rights

The Complainant manufactures caravans and styles its products Lunar. The trademark Lunar for caravans and associated items is shown in the IPO record to have been registered by the Complainant in 2008. Paragraph 2(a)(i) of the Policy is framed in the present tense and requires that the Complainant "has" the prescribed Rights in a name or mark. The Domain Name is inherently similar to the trademark in comprising the distinctive word Lunar and the descriptive word Caravans. The Complainant's registered trademark may appear, *prima facie*, to satisfy the requisite possession of Rights in order to proceed to a consideration of Abusive Registration under paragraph 2(a)(ii) of the Policy.

Some later difficulty might be anticipated, however, because the Domain Name was registered on May 17, 2004, some 4 years earlier than the trademark Lunar. Whilst the possession of a registered trademark that pre-dates the registration of a disputed domain name is always helpful, neither circumstance is essential under the Policy if a complainant's rights can be established alternatively. It may be productive, therefore, to examine the Complainant's possible Rights in the name Lunar Caravans prior to 2008 and particularly prior to 2004.

Documentary evidence has been produced in the form of copies of professional-looking brochure pages displaying colour photographs of the Complainant's caravans and the prominent name Lunar, imprinted with dates ranging from 1999 to 2003. The 1999 brochure proclaims under the prominent word Lunar: "30th Anniversary Year 1969-1999". The Complainant has explained that its adoption of the name Lunar was prompted by the landing on the moon in 1969 and that its registered name became Lunar Caravans Limited on December 31, 1979. The Complainant states that its revenue ranged from over £16,000,000 in 1999 to over £32,000,000 in 2003.

On the totality of the documentary evidence and the Complainant's undocumented but uncontested statements, the Expert is satisfied that since at least as early as December 31, 1979 when it became Lunar Caravans Limited, the Complainant has used the unregistered trademarks Lunar and Lunar Caravans in a substantial business venture and has demonstrably held Rights in those names adequate for the purposes of paragraph 2(a)(i) of the Policy.

Abusive Registration

Under paragraph 1 of the Policy, Abusive Registration means a Domain Name that 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.”

Paragraph 3 of the Policy sets out a non-exhaustive list of circumstances that may be evidence that the Domain Name is an Abusive Registration. Paragraph 3(a)(ii) of the Policy is pertinent in this instance:

- “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;”

According to the evidence and the Complainant's submissions, by 2003, before the date of registration of the Domain Name, the Complainant was an established manufacturer of caravans with a revenue that year of over £32,000,000, had been issuing promotional brochures for at least 5 years, had traded under the registered name Lunar Caravans Limited for 23 years, and had named its caravans Lunar for some 33 years. In the absence of any explanation by the Respondent, it may reasonably be concluded on balance that the Respondent knew or ought to have known at the time of registration of the Domain Name on May 17, 2004 that putting together the words Lunar and Caravans, thereby imitating the Complainant's name and unregistered trademark, took unfair advantage of the Complainant's rights within the meaning of paragraph 1(i) of the Policy.

In the alternative, the Complainant asserts that the website to which the Domain Name resolves is a pay-per-click operation whereby the Respondent intends that at least some visitors can be induced to visit external websites by deciding to click on the links provided. The screen shots of the Respondent's website produced in evidence are consistent with this model. A pay-per-click operation can be entirely legitimate, for example to defray costs associated with a public service, or as a remunerative business. It may reasonably be concluded that the Respondent's business is intended to be remunerative and is designed to lead visitors to the websites of advertisers who pay the Respondent a commission for such referrals.

In order for a pay-per-click business to be successful it is imperative to attract visitors in the expectation that some will visit the links offered. On the evidence, the Expert finds there is a likelihood that visitors seeking the Complainant, Lunar Caravans Limited, may be confused, at least initially, into thinking that the website having the Domain Name lunarcaravans.co.uk belongs to the Complainant. In fact visitors will be misled and will be taken to the website of the Respondent, who is thereby trading on the name and goodwill of the Complainant. By the use of another's name or trademark without authority as a means of attracting visitors, the Respondent's use of the Domain Name has no legitimacy. Such conduct is envisaged by paragraph 3(a)(ii) of the Policy and accordingly the Expert finds the Respondent's use of the Domain Name to constitute Abusive Registration in the terms of paragraph 1(ii) of the Policy.

Whilst it is for the Complainant to prove its case on the balance of probabilities, paragraph 4 of the Policy provides a non-exhaustive list of factors that may be taken into account as possible evidence that a Domain Name is not an Abusive Registration. The Respondent has not made any showing under paragraph 4 of the Policy and the Expert cannot readily conceive of any qualifying explanation on behalf of the Respondent.

The Expert finds both the initial registration and the subsequent use of the Domain Name by the Respondent to constitute Abusive Registration.

7. Decision

The Expert finds that the Complainant has Rights in respect of the name Lunar Caravans; that the disputed Domain Name lunarcaravans.co.uk is similar to the Complainant's name; and that the disputed Domain Name, in the hands of the Respondent, is an Abusive Registration. The Domain Name lunarcaravans.co.uk is ordered to be transferred to the Complainant.

Signed Clive Trotman

Dated June 3, 2014