

Dispute Resolution Service

DRS14609

Decision of Independent Expert

Budget Rent A Car System, Inc.

and

David Thurston

1. Parties

Complainant : Budget Rent A Car System, Inc.
6 Sylvan Way
Parsippany
New Jersey
07054
United States

Respondent : David Thurston
136 Sunnyside Gardens
Upminster
Essex
RM14 3DR
United Kingdom

2. Domain Name

budgetcarhire.co.uk (the "Domain Name")

3. Procedural Background

On 4th August 2014 the Complaint was lodged with Nominet UK Limited (“Nominet”) and on 5th August 2014 it was validated. On 5th August 2014 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint, and giving him 15 business days within which to lodge a Response on or before 27th August 2014.

On 15th August 2104 the Respondent responded. On 15th August 2014 Nominet informed the Complainant that the Response was available to be viewed via the Complainant’s online services account, and inviting it to Reply to the Response on or before 22nd August 2014. On 21st August 2014 the Complainant replied and Nominet informed the Respondent that the Reply was available to be viewed via the Respondent’s online services account. Mediation documents were generated for the Complaint, and mediation commenced on 28th August 2014. Mediation was unsuccessful and concluded on 18th September 2014.

On 2nd October 2014 the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 7th October 2014 Mr. Niall Lawless (“the Expert”) was selected and was formally appointed to act as Expert in this dispute, having confirmed that he knew of no reason why he could not properly accept the appointment, and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence. He is required to give his Decision by 31st October 2014.

4. Outstanding Formal -/- Procedural Issues

There are no outstanding formal or procedural issues.

5. Factual background

The Complainant, Budget Rent A Car System, Inc. is a Delaware corporation with its principal place of business in New Jersey, USA. The Complainant offers vehicle rental and other related services. It is and has long been a leading player in the car hire market in the UK. It is the proprietor of a number of UK trademark registrations for the word BUDGET, the earliest being Number 1417224

dated 9th March 1990. The Respondent is Mr. David Thurston. The Respondent registered the Domain Name on 18th July 2014. The Domain Name connects to the Respondent's website, which aims to provide low cost car hire.

6. The Parties' contentions

The Complainant

The Complainant seeks transfer of the Domain Name. The Complainant says that the Respondent is not an authorized franchisee or licensee, and does not have any affiliation with the Complainant or its related companies. The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because:-

- The Respondent's use of the Domain Name will cause confusion because existing or prospective customers of the Complainant and its licensees may use the Domain Name expecting to find an official "BUDGET" website, but are diverted to the Respondent's website.
- The Respondent has intentionally registered and used the Domain Name in bad faith based on Nominet policy, using it to offer vehicle rental services provided by the Complainant's competitors.
- The Respondent's use of the Domain Name is an infringement and misuse of the Complainant's trademark rights.

The Respondent

The Respondent says that the Domain Name is not an Abusive Registration because:-

- There is no evidence that the Complainant owns the rights to the words "Budget Car Hire".
- There is no evidence that the Respondent had knowledge that the Complainant had registered trademarks that contain the word "BUDGET" in the UK, the USA and elsewhere.
- There is no evidence that the Respondent had knowledge that the Complainant used the trademark "BUDGET" in connection with vehicle rentals and related services for years prior to the domain registration.
- There is no evidence that the Domain Name or the website it resolves to is an infringement and misuse of Complainant's trademark rights.
- It is wrong to say that the "Respondent's registration of the domain name "budgetcarhire.co.uk" consists of nothing more than the BUDGET Mark in its entirety immediately followed by the generic words "car" and "hire"."

7. Discussions and Findings

7.1 General

Nominet's DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert 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.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

The Complainant is required to prove to the Expert that the Complainant has Rights in respect of a name or mark identical or similar to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration; both elements must be present.

7.2 Complainant's Rights

The Complainant is Budget Rent A Car System, Inc., which provides vehicle rental and related services under the BUDGET Mark through "company stores" in the UK and around the world. In January 2014, there were approximately 2,000 BUDGET locations in over 120 countries. The Complainant has provided evidence that it has trademark applications and registrations for "BUDGET" in many countries including the UK. The Complainant has used the "BUDGET" Marks in connection with the offering of vehicle rental services, including truck rentals, and related services since 1960. Among others, the Complainant operates the websites www.budget.com and www.budget.co.uk. It is clear that the Complainant has rights in the name "BUDGET".

Although the Domain Name includes the words “car” and “hire”, the dominant factor in the Domain Name is clearly the word "BUDGET" and the additional words simply describe the service offering that might be expected by using the Domain Name. The additional words fail to distinguish the Domain Name from the Complainant’s name.

Because of the above, I decide that the Complainant has Rights in respect of a name or mark that is similar to the Domain Name.

7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy, but it does not state under which part (s) of the Policy. Under Paragraph 3 - Evidence of Abusive Registration - guidance is given as to what factors may evidence that the Domain Name is an Abusive Registration.

“A non-exhaustive list of factors which may evidence that the Domain Name is an Abusive Registration is as follows :-

3(a)(i). Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily :-

3(a)(i)(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;

3(a)(i)(B). as a blocking registration against a name or mark in which the Complainant has Rights; or

3(a)(i)(C). for the purpose of unfairly disrupting the business of the Complainant;

3(a)(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 ...”

Using Domain Name to Confuse

The Complainant says that the Respondent's use of the Domain Name will cause confusion because existing or prospective customers of the Complainant and its licensees may use the Domain Name expecting to find an official "BUDGET" website, but are diverted to the Respondent's website.

The Respondent has not responded to the above.

The evidence before me establishes to my satisfaction that the "BUDGET" brand is well recognised and visible because of its UK "company stores" located in airports, train stations and other locations. Because of the Complainant's investment in advertising and promotion, the "BUDGET" brand has a considerable reputation in the UK.

The Complainant's UK website uses the domain name www.budget.co.uk. The website says, "*Budget is a globally recognised brand offering quality, reliability and value for money. Our promise is simply better value car rental - providing economy car rentals with the high level of service you expect when you hire a car for business or holidays. Find a low price for car rental or van hire (UK and worldwide) today*" and "*You'll find Budget Rent-A-Car in approximately 3,150 city and airport car hire locations in more than 120 countries.*"

At the time of making this Decision, the Domain Name is resolving to a website that compares car rental prices offered by leading car hire brands. The website says, "**Budget Car Hire** is aimed at providing low cost car hire, covering all major cities across the world, including hundreds of airport destinations" and "**Budget Car Hire** has access to over 8,000 locations in 175 countries worldwide."

The Respondent is using the Domain Name to "*compare prices with the leading car hire brands*" including Alamo, Hertz, HolidayAutos, Sixt, and Thrifty. Therefore, it is evident that the Respondent is active in the car hire marketplace. Because of that, it is highly unlikely that he would have been unaware that Budget offers similar services to the services offered by him through the Domain Name.

The Complainant has not provided any evidence of actual confusion.

However, the dominant part of the Domain Name is “BUDGET”, and because Respondent offers “*low cost car hire*” services which is similar to the “*economy car rentals*” services offered by the Complainant, it is likely that people or businesses will be confused into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

In addition, it is common for Internet users to find or visit websites by way of a search engine or by guessing the relevant URL. As the Domain Name incorporates the Complainant’s company name, its trading name “BUDGET” and the Complainant’s established website address (s), internet users are likely to believe that any webpage it resolves to is “operated or authorised by, or otherwise connected with the Complainant.”

This is known as “initial interest confusion” and is evidence of Abusive Registration, the vice being that even if it is immediately apparent to the internet user that the webpage is not in any way connected with the Complainant, the visitor has been deceived.

Because “initial interest confusion” arises from the Respondent’s choice of the Domain Name, I decide that the Domain Name is being used in a way which has confused and will confuse people or businesses and under the test in Nominet’s DRS Policy 3(a)(ii) in the control of the Respondent the Domain Name is an Abusive Registration.

In light of this finding, it is unnecessary for me to address the other contentions of the Complainant.

7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and that the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.

Niall Lawless, Nominet Expert

10th October 2014