

DISPUTE RESOLUTION SERVICE

D00014903

Decision of Independent Expert

Beaver Log Cabins Ltd

and

Log Cabin Life Ltd

1. The Parties:

1.1 Lead Complainant: Beaver Log Cabins Ltd
10 Stoneypath
Derry City
Derry
BT47 2AF
United Kingdom

1.2 Respondent: Log Cabin Life Ltd
Unit 5 Heron Court
Northwich
Cheshire
CW10 9LF
United Kingdom

2. The Domain Name(s):

2.1 <beaverlogcabins.co.uk> (the "Domain Name")

3. Procedural History:

3.1 The procedural history of this matter is as follows:

16 October 2014 17:06 Dispute received
17 October 2014 13:39 Complaint validated

06 November 2014 13:01 Notification of complaint sent to parties
07 November 2014 10:43 Response received
07 November 2014 10:44 Notification of response sent to parties
12 November 2014 01:30 Reply reminder sent
12 November 2014 11:52 Reply received
12 November 2014 12:02 Notification of reply sent to parties
12 November 2014 12:21 Mediator appointed
17 November 2014 10:00 Mediation started
03 December 2014 12:33 Mediation failed
03 December 2014 12:33 Close of mediation documents sent
08 December 2014 13:45 Expert decision payment received

3.2 I have confirmed to Nominet that I am independent of each of the parties. I have also confirmed that to the best of my knowledge and belief, there were no facts or circumstances, past or present, or that could arise in the foreseeable future, that needed to be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

3.3 On or about 11 December 2014 the Respondent filed a non-standard supplemental submission. The reasons given by the Respondent in this respect included the following statement:

“The reason for our request is that we firmly believe that the Complainant’s complaint amounts to an abuse of the DRS procedure. We had hoped that in view of the evidence we had supplied by way of Response, this matter would have been resolved at the Mediation stage. This not having happened and the matter now having been referred to an Expert, we feel compelled to submit further submissions and evidence which we hope will provide clarification for the Expert when he reviews the complaint file. Our further submissions and evidence include a letter which sets out the background to this matter and our relationship with the Complainant which has not been considered in any submissions thus far.”

3.4 I was notified of this additional submission on 15 December 2014. That same day I asked for the full submission be forwarded to me, albeit without prejudice to any subsequent decision as to whether that submission was admissible in these proceedings.

4. Factual Background

4.1 The Complainant is a company incorporated in Northern Ireland on 18 February 2011 with company number NI606228. There also appears to a connected company with the same name registered in the Republic of Ireland on 28 February 2011 with company number 495524.

- 4.2 “Log Cabin Life Ltd” is the name of a company registered incorporated in England and Wales on 25 May 2010 with company no 07264352. According to records available at Companies House, the company went into Voluntary Creditors Liquidation on 2 May 2014. According to the Statement of Affairs lodged at Companies House by the liquidator of the company that same day, the company had debts of approximately £67,000 and the only assets were “intellectual property” valued at £6,151.72.
- 4.3 However, the company registration number recorded for the registrant of the Domain Name on the Whols register is 8833341. This is the company registration number for a different company called Specialist Log Cabins Limited, which was incorporated in England and Wales on 6 January 2014.
- 4.4 According to records at the United Kingdom Intellectual Property Office, Specialist Log Cabins Limited is the current registered owner of UK trade mark registration 2588844, which comprises a series of two trade marks the colour version of which takes the following form:



- 4.5 This trade mark is recorded on the trade mark register as having been applied for by Log Cabin Life Ltd on 21 July 2011 and having been assigned to Specialist Log Cabins Limited on the 2 May 2014.

5. Parties' Contentions

The Complaint

- 5.1 The Complaint appears to have been filed by the “owner and director” of the Complainant and the company of the same name registered in the Republic of Ireland.
- 5.2 The Complaint attaches evidence of the use (presumably by it and/or the company registered in the Republic of Ireland) of the name Beaver Log Cabins in Ireland, including as part of the domain name <beaverlogcabins.ie>. That evidence also includes material which suggests that there has been and continues to be use in Ireland of a mark and device that is identical to the UK registered trade mark

currently owned by Specialist Log Cabins Limited and shown at 4.4 above.

5.3 Attached to the Complaint is a print out of an invoice summary for the period 13 October 2013 to November 2014, by “Beaver Log Cabins Ltd”. This purports to show total sales in that period of over a £1 million.

5.4 In the Complaint is also to be found the following statement:

“As the company log cabin life as went into administration using beaverlogcabins.co.uk this is impersonating my business and also drawing a lot of business away from my company.”

5.5 In this respect the Complaint attached a copy of the search results returned when conducting a Google search for the term “Beaver Log Cabin UK”. This appears to show links to websites operating both from the Domain Name and from the domain name <beaverlogcabins.ie>.

5.5 The Complaint also attached printouts of Facebook comments that appear to be critical of the work of “Beaver Log Cabins and Cheshire Sheds”. The complaints include one from a customer who faced difficulties when a business using that name went into liquidation. It included the following statement:

“BUT! This is the best bit! Because they have changed the parent company to another name- from Log cabin life ltd to Specialist log cabins ltd they can carry on trading and taking money from people and making profit under the same trading names of Beaver log cabins and Cheshire Sheds”

Response

5.6 The Response is extremely short. It attached an invoice from “JPS Assets Surveyors”, which is said to provide evidence that “that all assets from Log Cabin Life Ltd were purchase [sic] for by [sic] Specialist Log Cabins Limited.

5.7 It also attaches a copy of the second page of a print-out of the details for the UK trade mark registration 2588844 identified at 4.4 and 4.5 above.

Reply

5.8 In the Reply further complaints are made in relation to the use of the Domain Name. However, the Reply does not seek to address the limited assertions to be found in the Response.

6. Discussions and Findings

General

6.1 To succeed under the Policy, the Complainant must prove first, that it has Rights in respect of a "name or mark" that is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2(a)(ii) of the Policy). The Complainant must prove to the expert that both elements are present on the balance of probabilities (paragraph 2(b) of the Policy).

6.2 Abusive Registration is defined in paragraph 1 of the Policy in the following terms:

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

Complainant's Rights

6.3 The Complainant in this case does not rely upon any registered trade mark. Instead, it refers to business and sales using the term "Beaver Log Cabins" that are said to have taken place north and south of the Irish border.

6.4 Business activity within Ireland or one of the constituent jurisdictions of the United Kingdom can be sufficient to result in the existence of rights under the law of passing off in the relevant country and these are generally considered sufficient to constitute "Rights" in a name or mark for the purposes of the Policy.

6.5 Here matters are complicated by the fact that there is an entity (which for reasons described in greater detail below is probably the Respondent) that has a trade mark that incorporates that term and therefore a question arises as to whether the Complainant does have any such rights north of the border. There is also a further complication in that a search of the records filed at Companies House in respect of the Complainant, suggests that recently the Complainant was a dormant company.

6.6 Nevertheless, I will proceed on the assumption (without formally deciding the issue) that the Complainant has "unregistered rights"

(arising under the Irish law of passing off) in the Republic of Ireland in the term “Beaver Log Cabins” that are sufficient rights for the purposes of the Policy and that therefore the Complainant has rights in a term that is similar to the Domain Name.

Abusive Registration

- 6.7 It appeared to me from the limited documentation filed in these proceedings and the publicly available records at Companies House that there had been a company in the name of Log Cabin Life Ltd that had been using the term “Beaver Log Cabins” as a trading name for some time, that this company was the owner of a United Kingdom trade mark that incorporated that term and that this company had recently gone into liquidation.
- 6.8 The mismatch between the name of the entity and company number recorded on the Whols register for the Domain Name made it unclear who was the formal registrant and “Respondent” in this case. Nevertheless, regardless of who was the formal “Respondent”, it also appeared to be the case that the assets of Log Cabin Life Ltd, including the trade mark and the Domain Name had been sold or otherwise transferred to Specialist Log Cabins Limited.
- 6.9 Unfortunately, none of this was made clear in the Response filed in these proceedings. An explanation along these lines was subsequently offered in an unsolicited submission on 11 December 2015. However, the excuse offered by the “Respondent” as to why this had not been explained in the Response, is wholly inadequate. It is no excuse for the Respondent to say that it hoped on the basis of the very limited material in the Response that “this matter would have been resolved at the Mediation stage”. A respondent should always set out its position in full in its response. Accordingly, I conclude that none of the material filed by the Respondent in the supplemental submission is admissible.
- 6.10 However, the Complainant’s contentions in the initial Complaint were equally inadequate. There appears to be some sort of contention that the Complainant is solely entitled to use the name by reason of the fact that “Log Cabin Life” has gone into administration. But, why that is the case is not explained. Further, how the Complainant is able to use the term “Beaver Log Cabins” in Northern Ireland in circumstances where there exists a United Kingdom trade mark incorporating that term (albeit one that appears to post date the incorporation of the Complainant by a few months), cries out for an explanation. No such explanation is offered in either the Complaint or the Complainant’s Reply.
- 6.11 Ultimately, one is left with the impression that these proceedings form part of some broader dispute between the owner of the Complainant and the current owners of Log Cabin Life’s business as to who is

entitled to use the term “Beaver Log Cabins”. However, whether or not this is the case, it is clear that the circumstances surrounding the adoption of the term “Beaver Log Cabins” by different businesses in Great Britain and in the island of Ireland have not been properly explained by the Complainant.

- 6.12 In the circumstances, and bearing in mind that the Complainant bears the burden of proof in these proceedings, the Complainant has failed to show that either the registration or use of the Domain Name was abusive.

7. Decision

- 7.1 I, therefore, determine that the Complaint fails and that no order shall be made in respect of the Domain Name.
- 7.2 Nominet may separately wish to consider in light of the mismatch between the company name and company number disclosed in the current WhoIs details for the Domain Name (see paragraphs 4.2 and 4.3 of this decision above), whether it needs to take steps in this respect pursuant to paragraph 4.1 of its Terms and Conditions of Domain Name Registration.

Signed Matthew Harris

Dated: 16 December 2014