

DISPUTE RESOLUTION SERVICE

D00015294

Decision of Independent Expert

Ferring B.V.

and

Mr Andrew Mclean

1. The Parties:

Lead Complainant: Ferring B.V.
Polaris Avenue 144
2132 JX Hoofddorp
Haarlemmermeer
Netherlands

Respondent: Mr Andrew Mclean
6217 Berando Ct
Lawrence, KS
66049
United States

2. The Domain Name: ferring.me.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 in to question my independence in the eyes of one or both of the parties.

19 January 2015 20:26 Dispute received
20 January 2015 12:48 Complaint validated
20 January 2015 12:52 Notification of complaint sent to parties
06 February 2015 01:30 Response reminder sent
11 February 2015 08:45 No Response Received
13 February 2015 12:13 Notification of no response sent to parties
13 February 2015 12:13 Expert decision payment received

4. Factual Background

This summary of the factual background to this Complaint is based upon information supplied by the Complainant, a Swedish registered company selling pharmaceutical and other products. The company was founded in 1950 as Nordiska Hormon Laboratoriet, in Malmo, Sweden and changed its name to Ferring in 1954.

The Complainant has used the FERRING trademark to market and sell pharmaceutical products and related goods and services since at least 1976. These products are available in 110 countries and subsidiaries operate in 60 countries. In 2013, the revenue was 1.4 billion Euros.

The Complainant's FERRING trademark is protected by registrations covering 70 countries. A Community Trademark registration No. 004030193 includes the United Kingdom. The Complainant is the owner of more than 50 domain names incorporating the FERRING mark.

The Domain Name was registered on December 21, 2014 and does not resolve to an active website.

5. Parties' Contentions

5.1 Complainant

5.1.1 Complainant's Rights

The Complainant claims rights in the name or mark FERRING based upon registered trademark rights and common law rights arising from goodwill acquired in the course of its business over a long period.

The Complainant asserts that the name or mark in which it has rights is identical to the Domain Name. The suffix .me.uk being discounted for this purpose.

5.1.2 Abusive Registration

The Complainant alleges that the Domain Name has been acquired with fraudulent intent and is being used in a way that has confused or is likely to confuse people into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant.

The Complainant first learned of the Respondent's registration and use of the Domain Name when it received an email from "andrew.mclean@ferring.me.uk" seeking information about a contact person to make travel arrangements, including payment. An email address also using the Domain Name was used to contact Ferring's travel agency in Egypt, Travco Group Holding S.A.E., to attempt to secure travel arrangements. The Domain Name is also being used to send emails from an "Andrew McLean."

An individual with the name Andrew McLean is employed as a Divisional Manager in one of the Complainant's subsidiaries. This person is not the Respondent or the

registrant of the Domain Name. He attests that he did not send the emails from andrew.mclean@ferring.me.uk and has never made or attempted to make reservations through Travco.

The Complainant alleges that the Respondent is using the Domain Name to obtain personal information, including credit card information, by tricking people into believing that it is registered to, operated or authorized by, or otherwise connected with the Complainant. The Respondent is using a domain name that is confusingly similar to Complainant's FERRING trademark has used the Domain Name to adopt an email address and identity in the name of an employee of Complainant to obtain personal information and make travel arrangements at Complainant's expense. The Respondent's conduct is intentional and amounts to at least identity theft and abusive registration of the Domain Name.

5.2 Respondent

No Response has been received

6. Discussions and Findings

6.1 Introduction

The Respondent has not contested the Complainant's assertions. It is nevertheless my responsibility to apply the tests in the DRS Policy to the facts and the Complainant's submissions as they have been presented in the Complaint. I am required to decide whether the Complainant has made its case on the balance of probabilities.

The Complainant asserts that the Respondent has used of the name of one of its employees with an intention to mislead. From this fact it must be inferred that the Respondent is incorrectly named in the Complaint. Nominet has correctly used the registrant information provided in the registration and, as nothing of substance turns on this uncertainty, I will proceed to a decision on the basis of the names provided. Allegations of fraudulent or otherwise criminal behaviour have been made against the Respondent in the Complaint, which fall outside the consideration of this Decision.

6.2 DRS Policy

Paragraph 2 of the DRS Policy requires that the Complainant must make its case that:

2.a.i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.a.ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Under Paragraph 2.b of the Policy, the Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

Paragraph 1 of the DRS Policy defines Rights as:

“rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning;”

Elsewhere in Paragraph 1 of the Policy, “Abusive Registration” is defined as 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

6.3 Complainant’s Rights

The Complainant has submitted evidence of registered trademark rights in the name FERRING. I accept this evidence and do not need to consider further the claim to unregistered rights arising from goodwill acquired by the Complainant in the course of trade.

The mark in which the Complainant has Rights is self-evidently identical to the Domain Name, discounting as is customary the .me.uk suffix.

I therefore find that the Complainant has the necessary Rights for the purpose of bringing this Complaint.

6.4 Abusive Registration

Paragraph 3a of the DRS Policy sets out a non-exclusive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:

- i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:
 - 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;
 - B. as a blocking registration against a name or mark in which the Complainant has Rights; or
 - C. for the purpose of unfairly disrupting the business of the Complainant;
- 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;

Two provisions of the Policy are relevant in this case: paragraph 3.a.i.C addresses the

Respondent's motives for registering the Domain Name and paragraph and 3.a.ii considers the actions of the Respondent in making use of the Domain Name. It is evident that the Respondent's actions, as evidenced by the copy emails submitted in support of the Complaint, amount to an unfair disruption of the Complainant's business and that the Respondent had such disruption in mind when making the registration. It is also an inescapable conclusion from the evidence, that the Respondent's intention in sending emails from an address which makes use of the Domain Name is, at the very least, to create confusion on the part the Complainant's employees and its outside contractor for travel services. On both of these grounds, therefore, I find that the Registration is an Abusive registration in the hands of the Respondent.

6. Decision

The Complainant has rights in a name or mark which is identical or similar to the Domain Name. The Domain Name is an Abusive Registration in the hands of the Respondent and I direct that it be transferred to the Complainant.

Signed Peter Davies

Dated 4 March, 2015