

**DISPUTE RESOLUTION SERVICE**

**D00015913**

**Decision of Independent Expert**

**Hamilton Beach Brands, Inc.**

and

**Hanrow Ltd**

**1. The Parties:**

Lead Complainant: Hamilton Beach Brands, Inc.  
4421 Waterfront Drive  
Richmond  
23060  
United States

Respondent: Hanrow Ltd  
B5 Pegasus Court  
Ardglen Rd  
Whitchurch RG28 7BP  
Hampshire  
United Kingdom

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

08 May 2015 23:01 Dispute received

11 May 2015 11:40 Complaint validated

11 May 2015 11:51 Notification of complaint sent to parties

29 May 2015 02:30 Response reminder sent

03 June 2015 08:40 No Response Received

03 June 2015 08:41 Notification of no response sent to parties

05 June 2015 12:02 Expert decision payment received

#### **4. Factual Background**

In the absence of a Response from the Respondent, the factual background to this matter derives from information provided by the Complainant.

The Complainant is a manufacturer and distributor of kitchen appliances.

The Respondent registered the Domain Name on October 21, 1999 and last renewed it on October 7, 2013. It currently resolves to a site carrying information about kitchen appliances made by a Swedish company, Halde, and distributed by the Respondent.

An exchange of correspondence took place between the Parties between the 25<sup>th</sup> and 29<sup>th</sup> January 2015 in which the Complainant sought an undertaking from the Respondent that it would cease and desist from any further use of the Domain Name and arrange for its transfer to the Complainant. No action has been taken arising from this correspondence.

#### **5. Parties' Contentions**

##### **5.1 Complainant**

###### Rights

The Complainant states that it is a manufacturer and distributor of kitchen appliances, founded in 1904. It employs 550 people globally and sells over 33 million kitchen appliances every year. Its division, Hamilton Beach Commercial, provides appliances to the hospitality industries as well as commercial feed service equipment.

The Complainant submits evidence of ownership of UK and Community trade mark registrations as follows:

HAMILTON BEACH (UK Reg. No. 00000575137) (filed and registered February 13, 1937)

HAMILTON BEACH (CTM Reg. No. 009616831) (filed December 21, 2010 and registered June 16, 2011)

in addition to numerous registrations in the United States.

The Complainant states that it owns 88 "Hamilton Beach" derivative domain names, including <www.hamiltonbeach.com> and <www.hamiltonbeachcommercial.com>. The websites located at these URLs feature use of the Complainant's Mark in connection with the manufacture and distribution of kitchen appliances.

The Complainant points out that it began using its HAMILTON BEACH mark at least as early as 1910 and has been using it exclusively and continuously for over one hundred years. The Complainant's Marks are internationally known in the field of

kitchen appliance manufacturing and distribution.

The Complainant states that, discounting the.co.uk suffix, The Domain Name is identical to Complainant's HAMILTON BEACH marks.

### Abusive Registration

The Complainant alleges that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the Complainant's business, including 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 the Domain Name is registered to or operated or authorised by, or otherwise connected to, the Complainant.

The Complainant maintains that the Respondent's intention in registering the Domain Name was to attract Internet users to the Domain Name website for commercial gain, by creating a likelihood of confusion with the Complainant's Marks. The Respondent is the UK distributor of Halde kitchen appliances. The Respondent uses the Domain Name to divert consumers to a website featuring photographs, descriptions, and sales information for directly competing goods.

The Complainant states that the Respondent did not obtain rights to its mark or to distribute its products, so the Domain Name site was directed to the display of competing Halde products. The Complainant submits evidence of an exchange of correspondence with the Respondent in January 2015, in which the Respondent confirmed, in response to the Complainant's cease and desist request, that it purchased the Domain Name many years ago intending to supply products in the UK. Despite the Respondent's agreement to transfer the Domain Name to the Complainant, this has not been done. The Complainant argues that the Respondent's knowledge of the Complainant and its mark and its intention to trade on the Complainant's brand is apparent from the Respondent's use of the Complainant's Marks to sell competing products.

The Complainant contends that the Domain Name incorporates its mark to suggest the Complainant's co-creation or sponsorship of the Domain Name website. The Respondent seeks to use the Domain Name to drive sales by creating a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the website. To engage in this practice, the Respondent clearly knew of the Complainant, its line of business and its trade marks at the time of registration and subsequent renewal.

The Complainant argues that no plausible explanation exists for the Respondent's choice of HAMILTON BEACH as part of the Domain Name, except to trade on the goodwill of the Complainant.

### **5.2 Respondent**

No Response has been received.

## **6. Discussions and Findings**

## **6.1 Introduction**

The Respondent has not submitted a response and the Complainant's assertions have therefore gone uncontested. It is nevertheless my responsibility to apply the tests in the DRS Policy to the facts and to the Complainant's submissions. I am required to decide whether the Complainant has made its case on the balance of probabilities.

## **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 UK and Community trade mark rights in the name HAMILTON BEACH. 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 .co.uk suffix.

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

## **6.4 Abusive Registration**

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

In cases where no Response has been received, a balance is needed between the requirement on the one hand that a complainant make out its case fully and the expectation on the other hand that statements by a complainant which are not contested by a respondent should be taken at face value. The Complainant in this matter relies principally upon paragraphs 3.a.i.C and 3.a.ii. of the DRS Policy quoted above, arguing that there is confusion, or the risk of it, arising from the Respondent's use of the Domain Name and that this confusion advances the Respondent's goal of unfairly disrupting of the Complainant's business. No evidence, (in the form of customer testimony for example), is offered to support this argument. It nevertheless seems clear that where a user goes to a site whose Domain Name incorporates the Complainant's unadorned mark and finds competing goods displayed at that site, confusion detrimental to the Complainant's rights is a likely outcome.

From the exchange of correspondence between the Complainant and the Respondent it might reasonably be inferred that the Domain Name was originally registered by the Respondent in good faith and that failure to transfer the Domain Name to the Complainant upon request is a matter of administrative failure rather than cynical profiteering by one party at the expense of the other. It nevertheless appears that the Domain Name website is still functioning and still displaying goods clearly in competition with those of the Complainant. In any event, for the reasons stated above I am persuaded that there is a likelihood of confusion arising from the Domain Name remaining in the Respondent's hands sufficient to justify a finding of an Abusive registration as defined in the DRS Policy.

Paragraph 4 of the DRS Policy sets out a non-exhaustive list of circumstances which may assist a respondent by showing that the Domain Name registration is not abusive. For the sake of completeness, I should note that I do not believe that there are any grounds under this paragraph 4 upon which the Respondent may rely.

**7. Decision**

For the reasons stated above, I find that The Domain Name in the hands of the Respondent is an Abusive Registration as defined by the DRS Policy. Accordingly I direct that the Domain Name be transferred to the Complainant.

**Signed [Peter Davies]**

**Dated 22 June, 2015**