

DISPUTE RESOLUTION SERVICE

D00016231

Decision of Independent Expert

WeTek Electronics Limited

and

Mr Antony Holyoak

1. The Parties:

Complainant:

WeTek Electronics Limited
Dunajska Cesta 159
Ljubljana
SI
1000
Slovenia

Respondent:

Mr Antony Holyoak
Unit 3C, Westbridge Industrial Park
Duns Lane
Leicester
Leicestershire
LE3 5LX
United Kingdom

2. The Domain Name(s):

wetek.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 a such a nature as to call in to question my independence in the eyes of one or both of the parties.

09 July 2015 Dispute received
10 July 2015 Complaint validated
10 July 2015 Notification of complaint sent to parties
13 July 2015 Response received
13 July 2015 Notification of response sent to parties
15 July 2015 Reply received
21 July 2015 Notification of reply sent to parties
21 July 2015 Mediator appointed
24 July 2015 Mediation started
19 August 2015 Mediation failed
19 August 2015 Close of mediation documents sent
01 September 2015 Complainant full fee reminder sent
03 September 2015 Expert decision payment received

4. Factual Background

The Nominet records show that the Domain Name was registered on 1 March 2015.

Based on the parties' submissions (see section 5 below) and a review of the materials annexed to the Complaint, set out below are the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant owns a European trade mark (CTM) registration for WETEK, which dates from 15 May 2014 and therefore predates the registration of the Domain Name.
- b. The Respondent has put content on the www.wetek.co.uk website which is disparaging about the Complainant's main product and which offers a competitive product.

5. Parties' Contentions

Complaint

The Complainant's submissions are set out below:

The Complainant has rights in respect of a name and mark which is identical or similar to the Domain Name:

(1) The Complainant owns a European trade mark (CTM) registration for WETEK, number 013453493, which dates from 15 May 2014.

The Domain Name, in the hands of the Respondent, is an abusive registration:

(1) After the Respondent's company was not chosen to be the UK distributor for the Complainant's products, he set up a website at www.wetek.co.uk with abusive content relating to the Complainant's products (WeTek Play), where he offers other products which are similar to products offered by the Complainant.

(2) The Complainant strongly believes that this content and the Respondent's actions are causing huge damage to the company and its brand.

Response

A summary of the Respondent's submissions is set out below:

(1) The Respondent's company, Lavatronics Limited, had a written agreement with the Complainant for Lavatronics Limited to become the sole UK and Ireland distributor of Wetek products, dating back to some months ago.

(2) The position was reached whereby the Respondent had not only registered the Domain Name all at its own cost, but had also agreed the terms of the partnership and set in place marketing strategies for both [wetek.co.uk](http://www.wetek.co.uk) and various other web based forums and domains, and had also requested the first proforma invoice.

(3) At this point the silence from the Complainant began, and despite over a week's worth of every conceivable form of contact, the Respondent received no response from the Complainant until one of its contacts informed the Respondent that there had been a major disagreement within Wetek, that he personally had 'quit' and that the Complainant no longer wished to work with Lavatronics Limited despite all the agreements we had in place.

(4) The Complainant does not have any claim over a .co.uk domain name which was registered long before any 'Wetek' presence in the United Kingdom and was purchased by Lavatronics Limited for use by Lavatronics Limited.

(5) The Respondent does not consider that a recycling program (the website content to which the Complainant refers) is in any way abusive. Whilst it may not be what the Complainant would like to see at www.wetek.co.uk, it is not abusive but simply a service which the Respondent's company is providing to its own customers while in every respect ensuring it is not misrepresenting what product(s) and brand(s) are on offer.

Reply

The Complainant's submissions in reply are set out below:

(1) The Complainant never reached a final agreement with the Respondent's company nor did it sign any kind of contract with Lavatronics Limited which would grant and guarantee them distribution of any WeTek products in UK. The Complainant's standard procedure is that all its distributors are appointed under written contracts signed and fully executed/verified by both parties.

(2) Registration of the Domain Name was done by the Respondent without any prior written approval from the Complainant. The main point is that after the Respondent's company was not selected as the UK distributor of WeTek Electronics products, they started to use/abuse the Domain Name and to abuse our registered trade mark by selling and advertising on the wetek.co.uk website other directly related or similar products.

6. Discussions and Findings

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it 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 (as defined in paragraph 1 of the Policy).

Complainant's Rights

The Complainant has a registered trade mark for WETEK (which pre-dates the date when the Domain Name was registered) and therefore has Rights in the WETEK name. Disregarding the generic .co.uk suffix, the Domain Name is identical to the name and mark in which the Complainant has Rights.

I therefore find that the first limb of paragraph 2 of the Policy is satisfied.

Abusive Registration

Paragraph 1 of the Policy defines an "Abusive Registration" 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."

Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The factor under paragraph 3a on which the Complainant implicitly relies in this case is as follows:

- 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 assessing this factor, it is important to consider the recent use which the Respondent has made of the Domain Name under the website www.wetek.co.uk. The Complaint attaches two screenshots from the home page of the website, both dating from 7 September 2015. Both start with the following wording:

"Purchased the Wetek Play but now looking for a way out? Realised it's just not what you wanted or expected? Find it interesting but would prefer something which just works. We can offer you a way to get the equivalent"

The second screenshot continues:

"While replacing it with the world's ultimate Android DVB receiver!"

It is clear from this wording that, whatever may or may not have been previously agreed between the Complainant and the Respondent regarding the Respondent being appointed as the Complainant's UK distributor, the Respondent is no longer holding itself out in that capacity, in fact the opposite by denigrating the Wetek product and offering an alternative.

The reality of the situation is that there is obviously no longer any business relationship between the Respondent and the Claimant (even if there ever was one). For the purposes of this decision, which relates to the Domain Name and the use which has been made of it, it is therefore not relevant which party is correct regarding whether a distributor contract was ever previously concluded in a binding fashion.

The Complainant is Wetek and owns a trade mark registration for that name. The Domain Name consists solely of "wetek" (disregarding the generic *.co.uk* suffix), with no additional differentiating element(s). When a domain name is identical to the name or mark of a complainant, without any adornment, barring exceptional circumstances this is almost inevitably going to lead to people being confused into believing that the domain name is owned or authorised by the complainant. I find that this is the case here. In reality the website at www.wetek.co.uk is not operated or authorised by the Complainant. In fact, as already noted, the recent content of the website has denigrated the Complainant's products and offered an alternative.

Even if people arrive at the www.wetek.co.uk website and realise reasonably quickly that the website is not operated or authorised by the Complainant, there will still have been, and is likely to be in the future, what is known as "initial interest" confusion caused by the complete identity of the Domain Name to the name of the Complainant, i.e. people initially arriving at the website expecting it to be the Complainant's. Moreover, the recent content of the website has been to offer an alternative to the Complainant's product. This amounts to a classic attempt by the Respondent to "bait and switch" consumers- to bait them by use of a Domain Name which leads to an expectation of reaching the Complainant and its products then to try to switch them to an alternative.

The nature of the Respondent's use of the Domain Name is unfairly detrimental to the Complainant's Rights for reasonably obvious reasons. The content of the *wetek.co.uk* website not only diverts and/or distracts people who are looking for the Complainant, it is also directly disparaging about its main product. The Respondent's use also takes unfair advantage of the Complainant's Rights by attracting consumers to the website under the false pretence (created by use of the identical name) of being a website owned or authorised by the Complainant and then seeking to sell alternative products to them.

For these reasons, I find that the Domain Name is an Abusive Registration.

7. Decision

Having found that the Complainant has Rights in respect of a name and mark which is identical to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *wetek.co.uk* be transferred to the Complainant.

Signed: Jason Rawkins

Dated: 23 September 2015