

DISPUTE RESOLUTION SERVICE

DRS 16497

Decision of Independent Expert

Outdoor365 Limited

and

R&M Distribution Ltd

1. The Parties:

Complainant: Outdoor365 Limited
Formal House
60 St Georges Place
Cheltenham
Gloucestershire
GL50 3PN
United Kingdom

Respondent: R&M Distribution Ltd
6 Michael Nairn Grove
Kirkcaldy
Fife
KY2 6PG
United Kingdom

2. The Domain Name:

<outdoors365.co.uk>

3. Procedural History:

The Complaint was filed with Nominet on 10 September 2015. The next day Nominet notified the Respondent by post and by email, stating that the Response had to be received on or before 2 October 2015. The Response was filed on 16 September 2015. Nominet notified the Complainant that a Reply had to be received on or before 23 September 2015

and the Reply was filed on 18 September 2015. The mediator was appointed on the same day.

The Informal Mediation procedure failed to produce an acceptable solution for the parties and so on 6 October 2015 Nominet informed the Complainant that it had until 20 October 2015 to pay the fee for the decision of an Expert pursuant to paragraph 7 of the Nominet Dispute Resolution Service Policy ("the Policy"). On 12 October 2015 the Complainant paid Nominet the required fee.

On 19 October 2015, the undersigned, David Taylor ("the Expert"), confirmed to Nominet that he was independent of each of the parties and that, to the best of his 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 such a nature as to call in to question his independence in the eyes of one or both of the parties.

4. Factual Background

The Complainant is a private limited company based in the United Kingdom that was incorporated in 2008. The Complainant is an online retailer of outdoor products manufactured by third parties, including multi-tools, knives, torches and other high end outdoor equipment, and its website is available at www.outdoor365.co.uk. The Complainant registered the domain name <outdoor365.co.uk> on 17 February 2010 and shortly thereafter, on 14 April 2010, changed its registered company name from Survival Gear Limited to its current company name, Outdoor365 Limited.

The Complainant is the owner of United Kingdom Trade mark Registration Number 00003061442 (figurative) "OUTDOOR 365 PREPARING YOU FOR ADVENTURE", registered as of 25 June 2014, for goods and services in classes 4, 6, 8, 9, 11, 20, 21, 22 and 34.

The Respondent is a registered company also based in the United Kingdom that was incorporated in 1986. Its main website is available at <http://www.rmdist.com/>. The Respondent has been a supplier of electrical materials and products for almost 30 years and since 2007, it has expanded its range of products to outdoor products.

The Respondent registered the Domain Name on 20 March 2014 and since then has been trading under the name "outdoors365.co.uk". The Domain Name is pointing to a website offering a variety of outdoor products (manufactured by third parties) for sale.

5. Parties' Contentions

The Complainant

The Complainant asserts that it commenced trading in 2008 as Survival Gear Limited and then on 14 April 2010 changed its registered name to its current name, Outdoor365 Limited. As evidence, the Complainant attached its Certificate of Incorporation (Company No. 6601597) and Certificate of Incorporation on Change of Name dated 14th April 2010.

The Complainant asserts that on 17 February 2010, an officer of the Complainant (Barnaby Foster) registered the domain name <outdoor365.co.uk> for the benefit of and use by the Complainant. The Complainant has submitted a copy of the WHOIS record of the domain name <outdoor365.co.uk>. The Complainant further states that since then, it has traded through the website www.outdoor365.co.uk, selling a variety of outdoor products including multi-tools (for instance, Leatherman), torches (for instance, LED Lenser) and other outdoor equipment.

The Complainant asserts that it has traded for a not insignificant period of over five years using the name OUTDOOR365 and to a not insignificant degree, with recent turnover of over £1 million/annum. The Complainant submitted as evidence a copy of its financial statements for the year ended 31 May 2015.

The Complainant asserts that the name OUTDOOR365 is recognised by the public as a source indicator of the goods and services of the Complainant and has been consistently recognized as such since February 2010. As evidence, the Complainant has provided a screen capture of the website associated with the domain name <outdoor365.co.uk> from the Internet Archive dated August 2011, which displays the Complainant's trade mark and logo.

The Complainant further asserts that it has over recent years built a not insignificant reputation for its OUTDOOR365 brand, as illustrated by the 18,795 "likes" on its Facebook page.

The Complainant further states that it has and continues to invest in promotional activities to produce sales from its website www.outdoor365.co.uk and to build brand recognition of its name and trade mark, and has submitted evidence consisting of advertisements, displays, brochures and emails. The Complainant further asserts that it subsequently registered its trade mark with the United Kingdom Intellectual Property Office and has submitted a copy of its trade mark registration.

The Complainant highlights that the Respondent registered the Domain Name in 2014, four years after the Complainant had registered its company name, started trading using the name "Outdoor365" and registered the domain name <outdoor365.co.uk>.

The Complainant asserts that the Domain Name is almost identical to the Complainant's company name, trade name and domain name. In addition, the Complainant asserts that the Respondent has adopted a "get-up" and appearance which is very similar to the Complainant's, including a stylised mountain range. The Complainant also argues that the products and brands sold on the Respondent's website are very similar or identical to those being sold by the Complainant. The Complainant asserts that suppliers and customers and members of the public have informed the Complainant that they have been confused about whether they are dealing with the Complainant or the Respondent.

On 14 August 2015, the Complainant wrote to the Respondent asking them to stop using the Domain Name and the Respondent replied on 18 August 2015 saying that they would not.

The Complainant states that the Domain Name in the hands of the Respondent is abusive because it is being used by the Respondent in a way which has and is continuing to

confuse customers and other people and businesses into believing that the Domain Name is registered to, operated or authorised by or otherwise connected with the Complainant.

The Complainant further argues that the choice of the Domain Name and the "get-up" and appearance adopted is almost identical to the Complainant's company name and domain name to the extent that the Respondent is passing off.

The Complainant also argues that given that the Respondent is using the Domain Name to sell identical or similar products and that the Domain Name is almost identical and indistinguishable from the Complainant's name and trade mark and that they have adopted a similar "get-up" to the Complainant, it is reasonable to conclude the Respondent's actions were deliberate.

The Complainant believes that the Respondent specifically chose to register the Domain Name to take unfair advantage of, and was unfairly detrimental to, the Complainant's rights.

The Complainant states that it has no relationship whatsoever with the Respondent and has never authorised or licensed the Respondent to register or to use the Domain Name.

The Complainant therefore requests the transfer of the Domain Name.

The Respondent

The Respondent asserts that it was incorporated on 25 June 1986 (Company registration number SC099757) and has been selling outdoor products, namely LED Lenser flashlights and headlamps products, since September 2007 and since then, it has increased the range of outdoor products it offers.

The Respondent asserts that there is no evidence to show that a "Barnaby Foster", the registrant of <outdoor365.co.uk>, is an officer of the Complainant.

The Respondent asserts that throughout the over 29 years it has been trading, it has seen the decline and introduction of many products in the market place over that time and it is incumbent upon its employees to explore new products and other avenues of business opportunities in order to ensure continuation of the business.

The Respondent states that the Complainant does not have exclusive rights to sell outdoor products and that the creation of a website for its outdoor products was a natural progression of expanding and marketing its offer to its customers.

The Respondent also asserts that the goods sold on the website www.outdoors365.co.uk are associated with outdoor activities such as fieldsports, climbing, walking, cycling, camping, orienteering, etc and are rightfully sold under a Domain Name associated with those activities. It states that the public will use the internet to search for outdoor pursuits and are as likely to find the Complainant as they are to find the Respondent.

The Respondent argues that "outdoor" and "outdoors" are generic search keywords and that when conducting a Google search using these terms neither the Complainant nor the Respondent are found. The Respondent has submitted a screen capture of the website www.outdoors365.net which belongs to a third party.

The Respondent asserts that the Complainant does not have a brand but a company name, logo and website that sells branded goods manufactured by third parties to the general public in the same way that the Respondent sells branded products, manufactured by others to the general public through the website www.outdoors365.co.uk. The Respondent states that it also has Facebook and Twitter accounts that indicate that people are interested in its products, although they are not necessarily indicative of the Respondent's level of sales.

The Respondent asserts that it does not claim to be a brand nor does it claim that the Domain Name is a brand. It asserts that the website www.outdoors365.co.uk is a means of selling branded products and not a brand and refers to examples of companies with similar names offering similar services.

The Respondent asserts that it invests in promotional materials and website development. In 2014, it attended the Scottish Game Fair at Scone with a Trade Stand and visited the "Outdoor Trade Show" at Stoneleigh Park, Warwickshire. In 2015, the Respondent also attended the Outdoorshow at Freidrichshafen, Germany.

The Respondent further asserts that the Complainant registered its trade mark on 25 June 2014, 3 months after the Respondent had begun trading using the Domain Name, which was registered on 20 March 2014.

The Respondent admits that the Complainant's domain name and the Domain Name are similar and may or may not cause some confusion to a casual user. However, it argues that its logo is composed of artwork that is freely available on the internet and that it is distinctive and cannot be construed as being "very similar" to that of the Complainant's due to the design and black and white colouration.

The Respondent further states that the products it sells are freely available to any distributor or sales outlet that meets the stocking and sales criteria of the manufacturers and that, contractually, there are no exclusivity arrangements with the manufacturers and therefore in theory anyone meeting the criteria can sell the products.

The Respondent also asserts that the Complainant's claim that suppliers and customers and members of the public have been confused about whether they are dealing with the Complainant or the Respondent is a fabrication as most of the Respondent's sales are carried out via Amazon and therefore customers do not deal directly with www.outdoors365.co.uk and furthermore all suppliers trade with "R&M Distribution Limited" and may not be aware of the Respondent's website .

In response to the Complainant's claim that the Domain Name is an Abusive Registration the Respondent asserts that it had no intention to confuse suppliers or customers as to who they are dealing with as suppliers trade with the Respondent and the majority of customers buy through Amazon. It also states that it is difficult to believe that the majority of customers are so naive as to be utterly confused when purchasing products from any supplier.

The Respondent further asserts that it had no intention of "passing off" or being associated with the Complainant. It asserts that although the Domain Name is similar, the logo and the colour of the logo cannot be construed as being "almost identical".

The Respondent further argues that given that it began selling some of its outdoor products in September 2007, it cannot be construed that it had set out to deliberately undermine the Complainant and thus the Complainant's contention of a "deliberate action" is a conspiracy theory that is a blatant fabrication. The Respondent is of the view that the Complainant is attempting to stop the Respondent from going about its day to day legitimate business and developing future business through its online outlet www.outdoors365.co.uk.

Finally, the Respondent argues that at the time of registration of the Domain Name, the Respondent was unaware of any enterprise that was liable to feel aggrieved by the registering and setting up of a trading website by that name and selling the product range that it purchases. The Respondent states that when carrying out a general search for "outdoor" or "outdoors" neither the Complainant nor the Respondent can be found; therefore, how can a claim of "taking an unfair advantage" be claimed?

The Complainant's Reply

The Complainant states that its Certificate of Incorporation clearly shows that Mr Barnaby Foster, the registrant of its domain name <outdoor365.co.uk>, was the Director of the Complainant and therefore it is undisputed that the domain name <outdoor365.co.uk> was registered for the benefit of and use by the Complainant.

The Complainant asserts that it has never claimed to have any exclusive rights to outdoor products and does not dispute that the Respondent has been selling products since September 2007 under their own name, R&M Distribution. Neither does the Complainant dispute that the Respondent has been trading for 29 years under the name R&M Distribution.

The Complainant asserts that the Respondent is entitled to choose a name that is relevant to the products being sold. However, it states that while it could be argued that "outdoor" is a generic term, the use of "outdoor" (or a variation thereof) combined with a particular number, in this instance 365, is not generic. The Complainant argues that a Google search using www.google.co.uk of "outdoor 365" yields the Complainant's website as the first natural result and the Respondent's website at the Domain Name as the third natural search, and as such the casual user searching for the Complainant could assume it is the same company and click on the link to the Respondent's website. The Complainant has submitted as evidence a print-out of a Google search using the term "outdoor 365".

The Complainant argues that its company name, logo, website and registered trade mark are part of its brand, which is a retail brand and not a product brand.

The Complainant states that it does not have any issue with the Respondent attending trade shows or similar activity under their own name, R&M Distribution.

The Complainant argues that the basis of its complaint is that of passing off and that it has registered trade mark rights and its trade mark is unique and distinctive.

The Complainant further argues that it started trading as "Outdoor365" in 2010 four years before the Respondent registered the Domain Name.

The Complainant highlights that the Respondent accepted that the Domain Name is similar to the Complainant's mark and may cause confusion and that it has not addressed the fact that the stylised mountain range used in the logo is very similar to the Complainant's logo.

The Complainant explains that it is not claiming that there should be any exclusivity, but rather that because the two businesses are selling the same and similar items that customers are likely to be confused.

The Complainant has submitted a screen capture of an Amazon sales page showing that the Respondent is using the trading name "outdoors365.co.uk" as its Amazon "seller" name.

Finally, the Complainant argues that the outdoor equipment retail market is a small market with a limited number of suppliers and a small number of online retailers and that it is unlikely that the Respondent came upon the name and with a similar stylised logo by chance and that it was not aware of the existence of the Complainant's OUTDOOR365 brand.

6. Discussions and Findings

General

Under paragraph 2(a) of the Policy, for the Expert to order a transfer of the Domain Name the Complainant is required to demonstrate, on the balance of probabilities, both of the following elements:

- "(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.*"

Complainant's Rights

The Policy defines Rights as "*rights enforceable by the Complainant, whether under English law or otherwise*".

The Complainant asserts Rights in the Domain Name based on the Complainant's company name, domain name and both registered and unregistered trade mark rights.

The Complainant has submitted evidence that it has relevant registered trade mark rights in the United Kingdom and so it is not necessary for the Expert to examine whether the Complainant's company name and domain name give rise to Rights for the purpose of the Policy. However, for the sake of completeness, the Expert notes that the consensus view of Nominet Experts is that "*the mere registration of a company name at the Companies Registry does not of itself give rise to any rights*" for the purpose of the Policy (see the Experts' Overview, paragraph 1.7). Likewise, a domain name registration in and of itself,

without evidence of unregistered (or common law) rights, is generally insufficient to confer Rights in accordance with the Policy.

The only issue raised by the Complainant's registered trade mark is that it post-dates the registration date of the Domain Name. However, the Policy does not require Rights predating the registration of the disputed domain name but simply that the Complainant has enforceable Rights and so the fact that the Complainant's trade mark postdates the registration date of the Domain Names does not prevent the Complainant from establishing Rights for the purpose of the Policy. Furthermore, although it is not necessary for the Complainant to prove prior Rights under the Policy, the Expert is of the view that, based on the evidence submitted by the Complainant (including financial statements, advertisements and correspondences, amongst others), the Complainant can lay claim to unregistered (or common law) trade mark rights in the term OUTDOOR365 since at least 2011 (as per paragraph 2.2 of the Experts' Overview) which clearly predate the registration date of the Domain Name. Furthermore, given that the objective of the first hurdle of the Policy is that the Complainant demonstrates a *bona fide* basis for filing a complaint (see paragraph 2.3 of the Experts' Overview), the Expert is satisfied that the Complainant's registered trade mark registration is relevant and sufficient to show that the Complainant has Rights for the purpose of the Policy.

Paragraph 2(a)(i) of the Policy also requires the Expert to examine whether the name or mark in which the Complainant has Rights is identical or similar to the Domain Name. If the name or mark in which the Complainant has Rights is a word mark, then the task for the Expert is reasonably straightforward. However, in this case the task is more difficult as the Complainant's registered trade mark is a figurative trade mark consisting of the image of a mountain range and the text OUTDOOR365 and below appears in smaller font the slogan "Preparing you for adventure". The Expert is of the view that the textual elements OUTDOOR365 are the dominant textual components of the Complainant's figurative trade mark and so the only difference between the Complainant's trade mark and the Domain Name is the presence of the letter "s" in the Domain Name. The Expert is of the view, however, that the addition of the letter "s" does not materially diminish the similarity between the Complainant's OUTDOOR365 trade mark and the Domain Name.

Furthermore, it is well-established that the .CO.UK suffix may be ignored for the purpose of assessing identity or similarity between a trade mark and a domain name, as it is a functional element, and so the Expert finds that the Complainant's trade mark and the Domain Name are similar.

The Expert therefore finds that the Complainant has Rights in respect of a mark which is similar to the Domain Name, in accordance with paragraph 2(a)(i) of the Policy.

Abusive Registration

Moving on to paragraph 2(a)(ii) of the Policy, "Abusive Registration" is defined in paragraph 1 of the Policy to mean a domain name which:

"(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."*

A complainant must prove one or both of these on the balance of probabilities.

(i) Abuse at the time of registration

As far as (i) is concerned, paragraph 3(a) of the Policy sets out a list of factors which may be evidence of abuse. However, such factors are non-exhaustive examples of what may or may not constitute abuse, and so the Expert is free to consider other factors that may indicate that the registration of the Domain Name was "abusive".

The Expert is of the view that in order to assess whether there was "abuse" at the time of registration it is necessary to determine whether the Respondent was aware of the existence of the Complainant or its Rights at that time (see DRS 4331 (<verbatim.co.uk>), where the Panel stated that *"the Complainant must satisfy the Panel, as an opener, that the Respondent was aware of the existence of the Complainant or its brand at the date of registration of the Domain Name or at commencement of an objectionable use of the Domain Name"*).

The Respondent appears to suggest in its Response that it was unaware of the Complainant's Rights at the time of registration of the Domain Name in 2014, and justifies its choice on the basis that the Domain Name is descriptive of the products sold on the associated website, namely outdoor products. The Respondent also argues that the Complainant does not have any exclusive rights to sell outdoor products and that its creation of a website was a natural progression of expanding and marketing its product offer.

However, the Expert is of the view that there are strong indications that it is more likely than not that the Respondent's choice of the Domain Name was not entirely coincidental and that it was chosen for its trade mark value as opposed to any descriptive value it may have. First, the Domain Name was registered four years after the Complainant started using its trade mark and at a time when, as shown by the evidence submitted by the Complainant, the mark in question had already built considerable goodwill and reputation in the outdoor equipment retail market in the United Kingdom, and so it is difficult for the Expert to accept that the Respondent, who operates in the same sector in the United Kingdom, would not have been aware of the Complainant's Rights at the time of registration (see DRS 01784 (<mortagage-point.co.uk>), where the Panel found that *"where names are identical or very similar, the likelihood of confusion of the public may be so high, that the choice of the Domain Name by a competitor in a similar geographic area may, on an objective basis, render an intention to disrupt more likely than not"*).

Secondly, the Respondent's subsequent use of the Domain Name is strongly indicative of its awareness of the Complainant and its Rights. A comparison between the Complainant's trade mark and logo and the Respondent's logo appearing on the website associated with the Domain Name shows that the similarities are such that it cannot be a coincidence: both contain a very similar mountain range placed at the left of the textual components (as shown in an earlier version of the Respondent's logo appearing on a screen capture submitted by the Complainant) and they both display very similar slogans (the Complainant's slogan is "preparing your adventure", whilst the Respondent's slogan is "fuel

your adventure"). Furthermore, the "look and feel" of the website associated with the Domain Name is also very similar to the "look and feel" of the Complainant's website, including a similar central dynamic image displaying identical products (for instance, a Leatherman stainless steel, multi-tool bracelet) and layout. The Expert is of the view that the fact that the parties sell the same branded products is also indicative that the Respondent was likely aware of the Complainant. The Respondent's argument that the Complainant does not have any exclusive rights to sell such products is, in the Expert's view, irrelevant.

Thus the Expert is of the opinion that there are strong indications that the Respondent was more likely than not aware of the Complainant's Rights at the time of registration of the Domain Name and that it likely registered the Domain Name to take unfair advantage of the Complainant's Rights.

The Expert is not persuaded by the Respondent's argument that the Domain Name is generic or descriptive. Whilst the term "outdoor" or "outdoors" may be generic, the combination with the number "365", adds a certain degree of distinctiveness. The Expert has also examined the evidence submitted by the Complainant which shows that a search on Google using the term "outdoor 365" yields the Complainant as the top result and the Respondent as the third result. The Expert is of the view that it is reasonable to conclude that the Respondent is likely obtaining high rankings on Google's natural search as a result of the Complainant and that the Respondent is likely taking advantage of the Complainant's Rights to increase its own business activity.

As a result, the Expert finds that the Complainant has succeeded in proving that the Domain Name was registered in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

(ii) Abusive use

As far as (ii) is concerned, paragraph 3(a) of the Policy sets out a non-exhaustive list of circumstances which may be evidence of Abusive Registration, including:

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".

The Expert is of the view that, on the balance of probabilities, the Respondent's use of the Domain Name also constitutes an Abusive Registration as it is using 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 accordance with paragraph 3(a)(ii) of the Policy.

The Complainant has asserted that suppliers and customers and members of the public have informed the Complainant that they have been confused about whether they are dealing with the Complainant or the Respondent and although the Expert would have preferred evidence of the same, the Expert finds no reason to doubt the Complainant's claims in view of the nature of the Domain Name and of the content of the website to which it is pointing.

The Expert is of the view that the nature of the Domain Name in itself is likely to cause confusion amongst Internet users as it consists of the plural form of the Complainant's trade mark (and domain name), whether Internet users search for the Complainant by way of a search engine or by directly entering the URL. As discussed above, there is evidence that a search engine which is being asked for the Complainant will produce high up on its results the URL for the website associated with the Domain Name. In addition, there is also a risk that Internet users searching for the Complainant will enter the plural form of its trade mark and will find themselves at the Respondent's website (see paragraph 3.3. of the Experts' Overview).

The Expert is of the view that the confusion caused by the Domain Name itself is exacerbated by the Respondent's use of the Domain Name to resolve to a website that, as discussed above, has the same "look and feel" as the Complainant's website and displays a logo that is strikingly similar to the Complainant's (including a similar slogan). Whilst the Respondent's website displays at the bottom of the main page a copyright notice that indicates that it is the Respondent who is behind the website ("Copyright © 2015 | by R&M Distribution LTD"), in the Expert's opinion the presence of such notice is insufficient to dispel the confusion with the Complainant given its limited visibility. Thus in the Expert's opinion the Respondent is using the Domain Name in a way that 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. The Respondent's argument that most of the Respondent's sales are carried out via Amazon (and therefore customers do not deal directly with the website www.outdoors365.co.uk) and that furthermore all suppliers trade with "R&M Distribution Limited" and may not be aware of the Respondent's website is irrelevant. What is important is that the Respondent is using the Domain Name in such a way that may cause confusion amongst internet users as to the identity of the person or entity behind the Domain Name.

As a result, the Expert finds that the Complainant has succeeded in proving that the Respondent has used the Domain Name in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

Paragraph 4 of the Policy provides a non-exhaustive list of circumstances which may be evidence that the Domain Name is not an Abusive Registration, including where a respondent has used the Domain Name in connection with a genuine offering of goods or services (paragraph 4(a)(i)(A)), has been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name (paragraph 4(a)(i)(B)) and where the Domain Name is generic or descriptive and the Respondent is making fair use of it (paragraph 4(a)(ii)).

The Expert is of the view that none of the circumstances which would appear to be relevant in the circumstances of this case seem to assist the Respondent. Whilst the Respondent appears to be using the Domain Name in connection with an offering of goods or services, the Respondent's offering cannot be considered *genuine* given that, as discussed above, it is more likely than not that the Respondent was aware of the Complainant's Rights at the time of registration and therefore it is likely that it registered and is using the Domain Name to take unfair advantage of the Complainant's Rights in order to increase its own business activity (see paragraph 4.4 of the Experts' Overview which provides that an offering is not genuine "when it is fictitious and/or 'created' to defeat the complaint and/or designed to

take unfair advantage of or damage the Complainant's rights/business"). For the sake of clarity, it is undisputed that the Respondent is entitled to sell the range of products it offers but not at a domain name that it is identical or similar to the Complainant's trade mark.

The Respondent does not appear to be commonly known by a name, nor is it legitimately connected with a mark, which is identical or similar to the Domain Name. On the contrary, the Respondent has admitted and has provided evidence indicating that it is commonly known as "R&M Distribution Limited" and that it deals with suppliers using such name.

The Expert also finds difficult to accept, as discussed above, the Respondent's argument that it registered the Domain Name because it seemed descriptive of the range of products it offered for sale. There are simply many strong indications that the Respondent was very much likely aware of the Complainant's Rights at the time of registration and that it registered the Domain Name to take unfair advantage of the Complainant's Rights.

In summary, the Expert has considered the admissibility, relevance, materiality and weight of the evidence as a whole and is satisfied that the Complainant has succeeded in proving, on balance of probabilities, that the Domain Name is an Abusive Registration in accordance with paragraph 2(a)(ii) of the Policy.

7. Decision

The Expert finds that the Complainant has Rights in a name which is similar to the Domain Name, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

The Domain Name should therefore be transferred to the Complainant.

Signed: David Taylor

Dated: 12 November 2015