

DISPUTE RESOLUTION SERVICE

D00017625

**Decision of Independent Expert
(Summary Decision)**

Batsford Foundation

and

Mr J Miller

1. The Parties:

Complainant: Batsford Foundation
The Batsford Foundation,
Batsford Arboretum and Garden Centre,
Batsford
Moreton-in-Marsh
Gloucestershire
GL56 9QB
United Kingdom

Respondent: Mr J Miller
145 - 157 St John St,
London
London
EC1V 4PW
United Kingdom

2. The Domain Name:

batsford-arboretum.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes No

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the domain name.

Yes No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name batsford-arboretum.co.uk is an abusive registration

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes No

7. Comments (optional)

The Complainant has not produced any evidence of formal legal protection such as a trade mark, which could have been evidenced by a copy trade mark registration, and seems to rely solely on unregistered rights. However, some evidence is necessary before I can find "Rights" on that basis.

This is shown by reference to the Experts' Overview version 2 (a collection of answers to common questions distilled from Experts' decisions) which states at paragraph 2.2:

"Bare assertions will rarely suffice. The Expert needs to be persuaded on the balance of probabilities that relevant rights exist. ...

If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the

Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).”

While an Expert does not require to see the same level of evidence as might be submitted in, for example, a passing off action, there does need to be some such evidence as is outlined in the above extract from the Experts’ Overview so that an Expert could be satisfied to the requisite standard of proof.

8. Decision

I refuse the Complainant’s application for a summary decision. The domain name registration will therefore remain with the Respondent.

Signed: Richard Stephens

Dated: 23 July 2016