

DISPUTE RESOLUTION SERVICE

D00017925

Decision of Independent Expert

Evergreens (UK) Limited

and

Mr Gary McIntosh

1. The Parties:

Complainant: Evergreens (UK) Limited
Exton Block Ironstone Lane,
Market Overton,
Oakham,
Rutland
Leicester
Leicestershire
LE15 7TP
United Kingdom

Respondent: Mr Gary McIntosh
41 Coniston Avenue
Whitefield
MANCHESTER
Lancashire
M45 6ED
United Kingdom

2. The Domain Name:

layzeelawns.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 into question my independence in the eyes of one or both of the parties.

06 September 2016	14:36	Dispute received
06 September 2016	14:41	Complaint validated
06 September 2016	14:46	Notification of complaint sent to parties
23 September 2016	02:30	Response reminder sent
28 September 2016	10:28	Response received
28 September 2016	10:28	Notification of response sent to parties
03 October 2016	02:30	Reply reminder sent
05 October 2016	10:55	Reply received
05 October 2016	10:56	Notification of reply sent to parties
05 October 2016	10:56	Mediator appointed
10 October 2016	11:40	Mediation started
01 November 2016	15:18	Mediation failed
01 November 2016	15:18	Close of mediation documents sent
11 November 2016	01:30	Complainant full fee reminder sent
14 November 2016	10:48	Expert decision payment received

4. Factual Background

I have taken the following summary of the factual background from the parties' submissions:

- The Complainant has an established business supplying artificial grass under the name LAZYLAWN, having traded for over 30 years. Its website address is www.lazylawn.co.uk. It has a number of registered trade marks comprising its trading name in both word and stylised form and one for LAZY on its own. The earliest of those trade marks was registered with effect from 24 March 2003. Its products have been supplied to a number of well-known companies and featured on a number of well-known television programmes.
- The Respondent is an individual and part of a family owned competing business selling artificial grass via a company called Layzeelawns Limited. The business was set up in May 2015 and the Domain Name was registered by the Respondent at the same time. It has been used to resolve to the website operated by Layzeelawns Limited.
- The Complainant first became aware of Layzeelawns Limited and the Respondent's registration and use of the Domain Name when a customer contacted it about an advertisement for Layzeelawns Limited having been confused by the advertisement, assuming it to have come from the Complainant or be connected with it.

- The Respondent denies having had any knowledge of the Complainant when registering the Domain Name and setting up the Layzeelawns business. The Respondent also denies that consumers will be confused by the two businesses as he believes their respective websites and logos are very different.

5. Parties' Contentions

Complainant's Complaint

In summary, in its complaint, which was supported by various exhibits, the Complainant stated as follows:

- The Complainant has rights in respect of a name or mark which is identical or similar to the Domain Name; and the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- The Respondent is using the Domain Name in a manner which has confused or is likely to confuse people or businesses into believing the Domain Name is registered to, operated or authorized by, or otherwise connected with the Complainant.
- The Domain Name in the hands of the Respondent is an Abusive Registration as the Respondent has registered or otherwise acquired the Domain Name for the purposes of unfairly disrupting the business of the Complainant and unfairly taking advantage of the Complainant's reputation.
- The Complainant is the proprietor of the following registered trade marks and domain name (the 'Registered Rights'):
 - UK no. 2566146 LAZY registered in Classes 27, 35, 37, 42 and 44.
 - UK no. 2327365A LAZYLAWN (Series) in Class 27.
 - UK no. 2327365B LAZY LAWN (Stylised) in Class 27.
 - Community no. 4151271 LAZYLAWN registered in Class 27 & 37.
 - Community no. 6086185 LAZYLAWN (Stylised) registered in Class 27 & 37.
 - Registrant of lazylawn.co.uk under its trading name Lazy Lawn.
- The Domain Name is highly similar to the marks covered by the Registered Rights. Phonetically, the Domain Name is highly similar if not identical to the LAZYLAWN and LAZY LAWN marks above (differing only as it is in the plural form). Conceptually, the Domain Name is identical to those marks as both contain the elements 'lazy' (or a slight variation thereof) and 'lawn'. Visually, all the letters in the marks covered by the Registered Rights are contained within the Domain Name and 6 out of 8 of these letters have the same character placement in the Domain Name. Likewise, despite the different spelling of "LAYZEE" compared to "LAZY", the clear phonetic and conceptual similarity increases their visual similarity. The marks are therefore visually highly similar. The fact that the Domain Name is effectively a plural form of the Complainant's Registered Rights

is a minor difference, which would go unnoticed by the average consumer. In this regard reference is made to decision D00015521 which discusses the use of a contested domain name registered in the plural form of the Complainant's trade marks – in that case those of Pet Plan Limited.

- The goods and services offered under the website to which the Domain Name resolves are identical to those protected under the Registered Rights.
- The Complainant has accrued significant goodwill and reputation in the marks subject of their Registered Rights. The Complainant operates a licensee programme to meet the demand of its consumers. The licensee network ensures a quality level of service and workmanship with qualified and accredited installers. The local installers are authorised to use the Complainant's Registered Rights when providing services in relation to the goods. The Respondent is not an authorised installer or in any way officially associated with the Complainant.
- The Complainant has been supplying products and services in excess of 30 years, and is regarded as a pioneer in the field of artificial grass and associated services. Although by no means an exhaustive list of its customers, the Complainant has supplied its products under the marks covered by its Registered Rights to Audi, Asda, Alton Towers, Adidas, Vodafone, Selfridges & Co, Taylor Wimpey, Nike, LEGOLAND, Manchester United Football Club, Haven Holidays, Ford, England Rugby, Center Parcs, BBC, Barrett Homes and St Andrews Golf Club. The Complainant's products have also appeared prominently on television shows such as Big Brother, Celebrity Big Brother, DIY SOS, Top Gear, This Morning, The Alan Titchmarsh Show, Love Your Garden and The One Show.
- The Complainant's goods have also been used at Chelsea Flower Show, Hampton Court, The Big Brother House, Anita Roddick's (Body Shop Proprietor) house, London Garden, Heathrow Airport, Canary Wharf Public Areas, Bahrain F1 Race Track and Leicestershire Gardens, where the Complainant's trade marks were prominently shown.
- The Complainant has built up a reliable and trustworthy reputation and adheres to high standards of business ethics and practice, priding itself on quality and honesty. The Complainant has developed a UK wide network of friendly and experienced office and installation personnel, so they can provide the level of service and standards expected by its customers. A high level of technical support is also offered for installation and maintenance queries to ensure customers are completely satisfied with their purchase.
- Given the identical goods and services and the highly similar marks, as well as the manner in which the Domain Name is used, consumers and businesses are likely to be confused into seeing the Domain Name as registered, operated or in some way authorised by the Complainant to provide identical goods and services to those of the Complainant.
- In view of the Complainant's reputation and the similarity between the words comprised in the Domain Name and those covered by the Registered Rights, the Respondent is clearly minded to unfairly disrupt and take unfair advantage of the business of the Complainant to provide directly competing goods and services.

- The Respondent is clearly trying to demonstrate a link or association with the Complainant which is likely to cause confusion to people and businesses and take unfair advantage of or unfairly disrupt the Complainant's business.
- The issue first arose as a result of a consumer survey undertaken in the North Manchester area. A surveyed customer was confused by one of the Respondent's advertisements in their local free door to door magazine and believed the Respondent to be the Complainant or at the very least to be connected to the Complainant.
- The actions of the Respondent, and the evidence adduced, demonstrate the Respondent clearly holds an Abusive Registration which, without due, cause seeks to take unfair advantage of and disrupt the Complainant's business and seeks to cause confusion to Internet users.
- A letter was sent to the Respondent by the Complainant on 20 April 2016 notifying it of the complaint and the Complainant's Rights and requesting transfer of the Domain Name. On 24 June 2016, a further letter was sent to the Respondent by the Complainant's representatives. Numerous follow up letters were sent to the Respondent in June and July. The Complainant's representatives have received no response to the correspondence.
- A takedown request for the Respondent's Facebook page was submitted on 7 July 2016 on the grounds that the page infringes the Complainant's Registered Rights. The Facebook page was removed accordingly.

Respondent's Response

In summary, in his response the Respondent stated as follows:

- The Complainant has a trade mark to the words 'Lazy' and 'Lawn'. The Respondent was not aware of this or the Complainant when he set up his business.
- These two individual words are not the same as Layzeelawns Ltd. The name and mark are both English dictionary words and are purely a generic and descriptive term.
- The Respondent's company is making fair use of its name, for a genuine offering of goods and services i.e. Layzeelawns' artificial maintenance-free grass. Reference is made to DRS04884, DRS10593 and DRS10075. No legal judgement has been made against Layzeelawns Ltd in regard to the mark or rights.
- The Respondent's company, Layzeelawns Ltd, is a legitimately registered company under company number 9585842, registered on 23 May 2015. The Domain Name was registered around about the same time as the business was being set up.
- Layzeelawns Ltd is a small family run business that operates within a 20 miles radius of the family's home. It has a 100% happy customer base and approximately 80% of its business is from recommendations.
- The Domain Name is being used mainly for email correspondence and to host a website which looks nothing like the website of the Complainant. Layzeelawns Ltd does not use any SEOs (Search Engine Optimisers).

- The Complainant has stated that Layzeelawns Ltd's Facebook page was shut down due to their actions. This is not the case, the Facebook page was temporarily shut down by Facebook due to an administrative error which occurred during registration with Facebook. The Facebook page is now up and running again and all issues with Facebook are resolved.
- The Complainant states that 6 out of 8 letters have the same character placement in the Domain Name. This is simply not true:

LAYZEELAWNS LTD
 LAZY LAWNS
 LAZYLAWNS

As can clearly be seen, only the first two characters L and A are in the same place.

- With regards to the Complainant saying the Respondent / Layzeelawns Ltd is trying to demonstrate a link or association with them via the logo, the two respective logos are nothing like each other.
- In order to reach Layzeelawns Ltd's website to which the Domain Name resolves, a visitor must enter the full web address, www.layzeelawns.co.uk, so only people actually looking for Layzeelawns Ltd would come to the website.

Complainant's Reply

In its reply, the Complainant stated as follows:

- The Respondent states that he was not aware of the Complainant's business activities under the mark when he first set up his business. First and foremost, ignorance is not a valid legal defence. Furthermore, the Complainant is well-known and respected in its field, its goods and services having been used on numerous television shows, as well as by customers such as LEGOLAND, Manchester United Football Club, England Rugby, Center Parcs and the Chelsea Flower Show, Hampton Court, to name but a few. As such, it is remarkably unusual that the Respondent had not previously heard of the Complainant's business.
- The Complainant wrote to the Respondent on two previous occasions notifying them of its legal rights in the LAZYLAWN name and requesting that the Respondent cease to use the LAYZEELAWNS mark. After the Respondent stated that he would not agree to the Complainant's requests and would continue to use the mark, the Complainant instructed legal representatives to pursue the matter to avoid further dilution and harm to the Complainant's business. Further correspondence was then sent to the Respondent by the Complainant's representatives ahead of issuing the current Nominet DRS complaint.
- The Respondent states that the Facebook page was temporarily shut down by Facebook "*due to an administrative error*". This is simply not the case. As illustrated in Exhibit 8, the Respondent's Facebook page was removed due to conflict with the Complainant's registered trade marks. The Respondent's page then reappeared but this time under the alternative username 'layzeelawnsltd', instead of the previous 'layzeelawns'. A further complaint was submitted to Facebook which has confirmed by email that the page

under this alternative username has now been taken down due to conflict with the Complainant's registered rights.

- The Respondent disputes the similarity of the marks concerned. In this regard:
 - conceptually, the marks LAZYLAWN and LAYZEELAWNS are identical;
 - phonetically, the marks LAZYLAWN and LAYZEELAWNS are highly similar, if not identical;
 - visually, the marks are highly similar: they contain the exact same consonants, the only difference being that the first two syllables of the mark are spelt differently in the Respondent's mark, namely 'LAYZEE' as opposed to 'LAZY' and that the Respondent's mark is in the plural form. Regardless of this alternative spelling, both 'LAYZEE' and 'LAZY' are phonetically identical.
- The Respondent also disputes the similarity of the logos. Whilst not identical, the Respondent has adopted a similar green and white colour scheme to the one used by the Complainant and both schemes are also reflected in the overall website content. As the Complainant is the registered proprietor of several word mark registrations for LAZY and LAZYLAWN any differences between the logos are irrelevant for the purposes of the DRS and certainly do not preclude any confusion or association between the names in question.
- The website layout and interface should not be considered determinative for the purposes of deciding the current DRS proceedings. The only directly relevant content from the website is that the Respondent operates in the same business sphere as the Complainant (providing identical goods and services) using a virtually identical trading name. Accordingly, the target consumer, purpose, nature, distribution channels and intended use of the mark and subject of the Domain Name registration are all identical to those of the Complainant.
- As a result of the high levels of similarity between the marks, the use by the Respondent of 'LAYZEELAWNS LTD' is also diluting the Complainant's exclusivity and reputation. The Complainant's mark enjoys a reputation for the quality of goods and services provided thereunder. The products and services of the Respondent are not provided under the Complainant's control and, given the marks are highly similar and that the implications of poor quality goods and services being provided could have a negative impact on consumers' views of the Complainant's trade mark, there is a real risk of damage to the Complainant's reputation for the quality of its goods and services.
- The Complainant has invested significantly in its brand over the years and the use by the Respondent would free-ride on this existing reputation and benefit from arousing an association in the mind of consumers with the Complainant's mark on the basis of the Complainant's investment in marketing and promoting its mark. The Respondent has not made the same level of investment in marketing its own mark and would unfairly take advantage of the repute of the Complainant's mark.
- As mentioned in the complaint, the issue first arose when an existing customer of the Complainant saw an advertisement in a local magazine for the Respondent's business and, as a result of the confusion, raised the matter with the Complainant out of concern.

- Whilst no legal proceedings have been issued at this stage, this is something that the Complainant has not ruled out.

6. Discussions and Findings

Before dealing with the detail of the matter I should note that Nominet amended its previous DRS Policy and DRS Procedure and combined them into one new DRS Policy with effect from 1 October 2016. However, as this complaint was filed on 6 September 2016, it remains to be dealt with in accordance with the previous version (version 3) of the DRS Policy and DRS Procedure.

General

In order to succeed the Complainant must prove, on the balance of probabilities, two matters, namely that:

1. the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
2. the Domain Name, in the hands of the Respondent, is an Abusive Registration.

These terms are defined in the Nominet DRS Policy as follows:

- **Rights** means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.
- **Abusive Registration** means 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

Complainant's Rights

The Respondent claims that "lazy lawns" is a purely generic descriptive term for artificial grass. However, the Respondent has provided no evidence to support that bald claim, such as examples of widespread third party use of it. Linguistically speaking the term is not purely descriptive: at best it is a transferred epithet, implying that this form of 'lawn' requires little maintenance, and would therefore suit a 'lazy' consumer. Thus whilst the term may allude to the nature of artificial grass, there is no substantiation of the allegation that it is a generic alternative name for it.

The Complainant on the other hand has provided evidence of its registered trade mark rights, including a UK series word mark dating from 24 March 2003 for LAZY LAWN,

LAZYLAWN, LazyLawn and Lazy Lawn. In addition, the Complainant has provided evidence of the established and widespread use of its LAZYLAWN trading name, including having been featured on a number of well-known television programmes.

In the circumstances, it is clear that the Complainant does have Rights in the LAZYLAWN name for the purposes of the Nominet DRS.

In their submissions, the Parties have differed over the degree of overlap in the number and placing of the letters that make up LAZYLAWN on the one hand and LAYZEELAWNS on the other. I do not need to deal with the minutia of that particular dispute as it is readily apparent that the two terms are similar. The Complainant has borrowed from the test applied in trade mark law and points out that i) conceptually the marks are identical; ii) phonetically the marks are at least highly similar, if not identical if one ignores the pluralisation; and iii) visually the marks are highly similar. I agree.

I find that the Complainant has Rights in respect of its trading name and mark LAZYLAWN and that it is similar to the Domain Name.

Abusive Registration

The Complainant relies upon two parts of Paragraph 3 of the DRS Policy which sets out a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration.

In particular, it relies on Paragraph 3(a)(i)C which states as follows:

“Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant”

The Respondent flatly denies this and says that he was totally unaware of the Complainant or its registered trade mark rights when he first registered the Domain Name in May 2015.

In my view, it is right to require a complainant to demonstrate, on the balance of probabilities, that a respondent at least had knowledge or awareness of the complainant in order to rely on Paragraph 3(a)(i)C. That is because it deals with the manner and purpose of the initial registration or acquisition of the relevant domain name by a respondent, and that necessarily requires some level of subjective knowledge or intent by the respondent at the time. An Expert should not reject a respondent's clear denial of knowledge very lightly.

The Complainant says the Respondent's claim is remarkable given the widespread use of its LAZYLAWN name over a period of more than 30 years and I note that the Complainant claims to be the UK's biggest supplier of artificial grass on its website. The Respondent on the other hand has not provided any details of the process he went through which led to his adoption of the LAYZEELAWNS name and the registration of the Domain Name in May 2015 when setting up a business in direct competition to the UK's biggest supplier of artificial grass which by then had been trading under its LAZYLAWN name for more than 30 years.

It may just about be possible that the Respondent and his family members involved in setting up their business took an ostrich like approach and made no general investigations into the established trade supplying artificial grass in the UK and, when looking at

appropriate names for their new business and registering the Domain Name, made no enquiries to see if there were any others already established in the same line of business using similar names. That might be possible, but it is not likely when even very basic Google searches would have revealed the existence of the Complainant and it would have been readily apparent that the two names are similar and could lead to consumer confusion. If anything the Respondent's adoption of the phonetic equivalent / minor alteration of the Complainant's longstanding brand rather supports the inference of awareness.

In the circumstances, on the balance of probabilities, I do not accept the Respondent's claim that he was totally unaware of the Complainant or its registered trade mark rights when he first registered the Domain Name in May 2015.

In any event, the Complainant also relies upon the subsequent use made of the Domain Name. The second limb of the definition of Abusive Registration concentrates on the effects of the subsequent use of the relevant domain name once it has been registered or acquired by a respondent. In my view, what is or is not fair can be judged wholly objectively and that to gain or cause damage by way of trade mark infringement is almost inevitably unfair irrespective of the knowledge or motives of the Respondent. But it does require the manner of the use of the relevant domain name to be unfair, by either taking unfair advantage or being unfairly detrimental to the Complainant's Rights. The requirement of unfairness in the manner of use brings into play an assessment of the particular circumstances of each case.

The Complainant points to paragraph 3(a)(ii) of the DRS Policy, which states as follows:

"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, or operated or authorised by, or otherwise connected with the Complainant."

The Complainant says that actual confusion has already arisen when a customer saw an advertisement for the Respondent's business and thought it was the Complainant's business or connected to it.

The Respondent claims that, in order to reach the Layzeelawns website to which the Domain Name resolves, a visitor must enter the full web address, www.layzeelawns.co.uk, so only people actually looking for Layzeelawns Ltd would come to the website. That simply cannot be correct given the widespread use of search engines and the way in which they work when responding to any particular search term entered by an Internet user.

The Respondent also says that the two websites and logos are completely different so no one will be confused when visiting the websites. Both websites use a predominantly green and white colour scheme, but that is not surprising given the nature of the product being sold. Other than that, the look and layout of the websites are quite different. But that does not necessarily determine the issue of the likelihood of confusion.

The DRS Experts' Overview is published on the Nominet website to assist all participants or would-be participants in disputes under the DRS Policy by explaining commonly raised issues and how Experts, the members of Nominet's panel of independent adjudicators, have dealt with those issues to date and identifying any areas where Experts' views differ.

I have set out below what it says in section 3.3 of the Overview relating to ‘initial interest confusion’:

"Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name.

Findings of Abusive Registration in this context are most likely to be made where the domain name in issue is identical to the name or mark of the Complainant and without any adornment (other than the generic domain suffix). See for example DRS 00658 (chivasbrothers.co.uk).

The further away the domain name is from the Complainant's name or mark, the less likely a finding of Abusive Registration. However, the activities of typosquatters are generally condemned - see for example DRS 03806 (privalege.co.uk) - as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity. See for example the Appeal decision in DRS 00248 (seiko-shop.co.uk)."

The Overview merely says that where the names are identical and cannot sensibly refer to anyone other than the Complainant there is bound to be a severe risk that a search engine will return the URL for the website connected to the Domain Name. The Overview does not say that such a situation is the only time there will be a severe risk of initial interest confusion, just that such a risk is bound to happen in that situation. Clearly, there can be situations where the names are merely very similar and there will still be a real risk that when an Internet user searches for the Complainant's name, the search engine will also return the URL for the website connected to the Domain Name and that may lead a substantial proportion of such Internet users to become a victim of initial interest confusion. That is particularly so as search engines like Google are programmed to pick up search term misspellings. In this case, the Domain Name is not identical to the Complainant's name and mark, but it is very similar, merely being a phonetic misspelling of it. The risk of initial interest confusion is therefore a real one.

The Respondent also points to Paragraph 4(a)(i)A of the DRS Policy. Paragraph 4 of the DRS Policy sets out a non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration. Paragraph 4(a)(i)A states as follows:

“Before being aware of the Complainant’s cause for complaint (not necessarily the ‘complaint’ under the DRS), the Respondent has used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services.”

The DRS Experts’ Overview at sections 4.2 and 4.4 states as follows:

1.2 “What is meant by “before being aware of the Complainant’s cause for complaint” in paragraph 4(a)(i) of the Policy? The circumstances set out in paragraph 4(a)(i) of the Policy are only likely to constitute satisfactory answers to the Complaint if they commenced when the Respondent was unaware of the Complainant’s name or mark forming the basis for the Complaint. Matters which only arise after the Respondent has become aware of the Complainant’s name or mark forming the basis for the Complaint are more likely to have been contrived for the purpose of defending an apprehended Complaint or legal action.”

4.4 “When is an “offering of goods or services” NOT “genuine” [paragraph 4(a)(i)A of the Policy]? 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.”

As stated above, I do not accept that the Respondent was wholly unaware of the Complainant and its Rights when he first registered the Domain Name and began to use it to resolve to the website of his competing business. In those circumstances, the Respondent cannot rely on Paragraph 4(a)(i)A of the DRS Policy.

I am also mindful of the fact that the Complainant has produced evidence of actual confusion already having arisen on at least one occasion when a customer saw an advertisement for the Respondent’s business and thought it was the Complainant’s business or connected to it.

In the circumstances, I find on the balance of probabilities that the Respondent is using and threatening to use the Domain Name in a way which has confused and is likely to confuse people or businesses into believing that the Domain Name is registered to, or operated or authorised by, or otherwise connected with the Complainant. Such use takes unfair advantage of or is unfairly detrimental to the Complainant’s Rights. As such, the Domain Name, in the hands of the Respondent, is an Abusive Registration.

7. Decision

For the reasons outlined above I find that the Complainant has proved, on the balance of probabilities, that it has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

In the circumstances, I order that the Domain Name be transferred to the Complainant.

Signed C TULLEY

Dated 7 December 2016