

DISPUTE RESOLUTION SERVICE**D00017995****Decision of Independent Expert
(Summary Decision)**

9574565 Canada Inc

and

Music Ground

1. The Parties:

Complainant: 9574565 Canada Inc
40 Baltic Avenue
Toronto
Ontario
M4J 1S2
Canada

Respondent: Music Ground
Unit 1a
Holmeroyd Road
Adwick-Le-Street
Doncaster
DN6 7BH
United Kingdom

2. The Domain Name:

hiwatt.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 hiwatt.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)

My comments are set out in the Appendix to this summary decision.

8. Decision

I refuse the Complainant's application for a summary decision. The Domain Name registration will therefore remain with the Respondent.

Signed:

.....
.. Dated: 25th November 2016
Steve Ormand

DISPUTE RESOLUTION SERVICE

D00017995

Appendix to the Decision of the Independent Expert

Comments

I am not satisfied that the information that has been presented to me has provided a full picture of the background to this case. The Complainant relies upon an assignment of the HIWATT trade mark from a Mr Harrison and has provided a witness statement from Mr Harrison. As initially presented to me the case advanced by the Complainant appeared to be that the Domain Name was being used by an unconnected third party who was identified as:

" ... a UK individual called "Music Ground" whose address is Unit 1a, Holmeroyd Road, Adwick-Le-Street, Doncaster, South Yorkshire, DN6 7BH."

The Complainant asserted that the registration was abusive because of the content of the associated website, in particular because it was unauthorised by the Complainant and contained links to retailers of competing products. However, I was initially concerned that the Complainant's own website contained hyperlinks to the Respondent's website at the Domain Name.

Following my request for further information, the Complainant stated that:

*"Richard Harrison (who is currently 69 years old) thought he owned the Domain Name and was planning to transfer it to the Complainant with the licence. It has only recently come to light that he does not control the Domain Name. **The Domain Name and the website was at one point controlled by Richard Harrison.**" [emphasis added]*

I have checked publicly available records at Companies House and note that a company called Musicground Limited (company number 04025129) exists and is currently in liquidation. Mr Harrison was, according to Companies House records, a director and secretary of that company. That company was originally incorporated in June 2000 with a registered office address in Doncaster. The

Domain Name was first registered in March 2000. The website at the Domain Name, www.hiwatt.co.uk, appears to me to be one which may have been produced by or approved by Mr Harrison - in particular it contains the following sentence in the page entitled "About Hiwatt":

"Hiwatt's second coming arrived once new trademark owner Richard Harrison took control pursuing an aggressive marketing policy during the present century."

Further, the text of the website at the Domain Name indicates (in the copyright notice and elsewhere) that an entity described as "Hylight Electronics" operates the website. Searches at Companies House show that a company existed called Hylight Electronics (Hiwatt Amplification) Limited. It too has been in liquidation and is now struck off. Mr Harrison was also a director of this company.

Whilst some further information was provided by the Complainant, in response to the request that I issued, I still do not consider that all of the relevant background has been properly explained, and I note that no mention of any of this background was present in Mr Harrison's witness statement. Whilst I do not know all of the relevant facts it seems to me that this case may well raise issues that concern the liquidation of Musicground Limited and/or Hylight Electronics (Hiwatt Amplification) Limited.

In all the circumstances I do not consider that it is appropriate for a summary judgement to be made by me under the Nominet Dispute Resolution Service Procedure.