



## **DISPUTE RESOLUTION SERVICE**

**D00018731**

### **Decision of Independent Expert**

Karro Food Group Limited

and

Di Escobar Inc

#### **1. The Parties:**

Complainant: Karro Food Group Limited  
Address: Hugden Way  
Norton Grove Industrial Estate  
Norton  
Malton  
North Yorkshire  
YO17 9HG  
United Kingdom

Respondent: Di Escobar Inc  
Address: County Hall  
Westminster Bridge Rd  
Lambeth  
London  
SE1 7PB  
United Kingdom

#### **2. The Domain Name:**

karro-food.co.uk (the "Domain Name")

#### **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 in to question my independence in the eyes of one or both of the parties.

Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy Version 4, October 2016 (the "Policy") unless the context or use indicates otherwise.

31 March 2017	Dispute received
3 April 2017	Complaint validated and notification of complaint sent to parties
24 April 2017	Response reminder sent
27 April 2017	No response received and notification of no response sent to parties
9 May 2017	Expert decision payment received

#### **4. Factual Background**

The Complainant is a UK meat processor with processing plants located across the country producing bacon, gammon, fresh pork, frozen sausage, ham and cooked meats and supplying meat products to retail, foodservice and manufacturing customers across the country.

The Complainant, located in Malton, North Yorkshire, employs around 3,000 people in its food production locations and has an annual turnover of around £450 million.

The Respondent did not reply to the Complaint and so there are no facts before me setting out the Respondent's business or otherwise.

The Respondent registered the Domain Name on 13 February 2017.

#### **5. Parties' Contentions**

##### **The Complaint**

##### ***Complainant's Rights***

The Complainant's assertions of rights in the name KARRO are:

1. The Complainant has a UK registered trade mark (registration number: UK00003027124) for the word only mark KARRO in respect of various goods including meat, meat extracts and agricultural products. The trade mark was registered on 11 April 2014.
2. The word KARRO has formed part of the Complainant's registered company name since 22 January 2013.

3. The Complainant is the registered proprietor of the domain name karro.co.uk.
4. The Complainant supplies pork products, including fresh pork, bacon, gammon, cooked meats and frozen sausages, under the name KARRO to customers in the UK on a business to business basis.
5. The Complainant says that it has used the name KARRO for a number of years to create a business with a turnover of over £450 million and provides evidence of the company's accounts to support this.
6. The Complaint also says that the name KARRO is recognised within the British pork industry as indicating the goods of the Complainant and provides examples of press attention in support of this assertion.

### ***Abusive Registration***

The Complainant's assertions of Abusive Registration are:

1. The website hosted by the Domain Name is an almost identical copy of the Complainant's website (hosted on karro.co.uk). The Complainant says that this has been done with the intention to mislead current and potential customers of the Complainant to believe that the Domain Name is controlled by or connected to the Complainant.
2. The Respondent's website specifically refers to the Complainant's registered address, its phone number and its registered company number. Furthermore, if the email address on the Respondent's website (info@karro-food.co.uk) is clicked, an email is generated containing the Complainant's email address (info@karro.co.uk). The Complainant evidences redacted copies of emails to demonstrate customer confusion.
3. The Complainant says that the Respondent has, through its use of its website, dishonestly misrepresented itself as being from, or associated with, the Complainant with the intention of deceiving the Complainant's customers to purchase products from, or wrongly divert money to, the Respondent instead of the Complainant. Further, the Complainant considers that this constitutes fraud under section 2(1) of the Fraud Act 2006 as evidenced by the emails provided by the Complainant.
4. The Complainant's Financial Director attempted to make a test purchase of products from the Respondent's website, and received an invoice with the Respondent's account

details. The Complainant asserts that this is a criminal offence which is a breach of clause 6.1.5 of Nominet's Terms and Conditions of Domain Name Registration (the "Terms").

5. The Complainant owns all copyright in the text, code and layout of the Complainant's website at karro.co.uk. Thus, the Complainant says that as the Respondent's website is a clear reproduction of the Complainant's website (identical in terms of, inter alia, text and layout), the Respondent is committing copyright infringement under section 17 of the Copyright Designs and Patents Act 1988 which is a breach of clause 6.1.3 of the Terms.
6. The Domain Name contains the word KARRO, which is identical to the Complainant's trade mark, and the Respondent's website relates to the promotion and supply of meat and agricultural products, goods which are identical to those in respect of which the trade mark is registered. Thus, says the Complainant, the Respondent is committing trade mark infringement under section 10(1) of the Trade Marks Act 1994 which is a breach of clause 6.1.3 of the Terms.
7. The Complainant says that the name "Di Escobar Inc" cannot be verified and as such is unreliable. Thus, under clause 10.1.1 of the Terms, the Domain Name should be cancelled.
8. The Complainant says that the Respondent has provided false address information to Nominet. The address provided is County Hall, Westminster Bridge, London, which is highly likely to be incorrect. This contravenes clauses 3.1.2 and 6.1.2 of the Terms and is a deliberate attempt to evade accountability.
9. On 21 March 2017, the Complainant sent a Letter Before Action to the Respondent, to which there has been no response.
10. The Respondent is offering for sale meat products via the Respondent's Website which constitutes a risk to public health.

### **The Response**

The Respondent did not reply to the Complaint.

## **6. Discussions and Findings**

### **General**

To succeed in this Complaint, the Complainant has to prove to the Expert on the balance of probabilities, pursuant to §2.1 and 2.2 of the Policy, both limbs of the test that:

*2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*

*2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration.*

### **Complainant's Rights**

Rights is defined in §1 of the Policy as *"rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning"*.

The wholly generic suffixes ".co.uk" and ".uk" may be discounted for the purposes of establishing whether a complainant has Rights in a name or mark which is identical or similar to a domain name.

The Complainant has evidenced registered and unregistered rights in the name KARRO.

The Domain Name comprises the distinctive name KARRO with the everyday dictionary word "food" linked by a hyphen. I consider that the word "food" fails to dispel the connection between the Domain Name and the trade mark KARRO and reinforces the link in that the word "food" denotes the Complainant's business.

For the purposes of the first limb of the test in §2.1.1 of the Policy, I find that the Complainant has Rights in the name KARRO which is similar the Domain Name.

### **Abusive Registration**

Abusive Registration is defined in §1 of the Policy 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. *is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

A non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration is set out in §5.1 of the Policy:

5.1.1 *Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

5.1.1.1 *for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*

5.1.1.2 *as a blocking registration against a name or mark in which the Complainant has Rights; or*

5.1.1.3 *for the purpose of unfairly disrupting the business of the Complainant;*

5.1.2 *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;*

5.1.3 *The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;*

5.1.4 *It is independently verified that the Respondent has given false contact details to us;*

5.1.5 *The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:*

5.1.5.1 *has been using the Domain Name registration exclusively; and*

*5.1.5.2 paid for the registration and/or renewal of the Domain Name registration;*

*5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name.*

The Complainant has submitted extracts from its own website at karro.co.uk and extracts from the Respondent's website at the Domain Name. The extracts are virtually identical, including use of the Complainant's brands, the Complainant's company number and registered address, photographs of the Complainant's directors and a photograph and details of the Complainant's head office.

The Complainant has also provided evidence that clicking on the email address on the Respondent's website (info@karro-food.co.uk) generates an email containing the Complainant's address (info@karro.co.uk). The Complainant has provided copies of emails from customers expressing concern that they had been contacted by a person holding himself out to be a sales manager for the Complainant and connected to the Respondent's website. One email explains that a customer attempted to place an order through the Respondent's website and was persuaded by the bogus sales manager to make a payment to a different account than the Complainant's.

Thus, says the Complainant, the Respondent's duplication of its own website has been carried out with the intention to mislead its customers into believing that the Domain Name is controlled by or connected to the Complainant. I agree; I cannot envisage any justification for the Respondent to have created such a website other than to mislead the Complainant's customers and potential customers into believing that they had accessed the Complainant's own website. Furthermore, I find that the email evidence in the papers before me demonstrates actual confusion resulting in one case in a customer attempting to purchase products from the Respondent believing it to be the Complainant, and in doing so was persuaded to pay money to a person falsely holding himself out to be employed by or representing the Complainant.

In following the link to the Respondent's website, as provided by Nominet in the Expert papers, I find that it now results in a message from Google that "the website www.karro-food.co.uk cannot be found". There is no evidence of when the Respondent's website was taken down, but I consider it likely to have occurred after receiving the Complainant's

letter before action dated 21 March 2017 or in response to this Complaint on 31 March 2017. The taking down of the Respondent's website does not excuse the Respondent's previous use of the Domain Name as evidenced in the papers before me.

Accordingly, I find that the Respondent's use of the Domain Name has taken unfair advantage of and has been unfairly detrimental to the Complainant's Rights, and is therefore an Abusive Registration.

There are other matters raised in the Complaint that I now address. The Nominet DRS is a forum for deciding whether the registration and/or use of a domain name is abusive by reference to the Policy. Such registration or use may also be a trade mark infringement under the Trade Marks Act 1994 or a copyright infringement under the Copyright Designs and Patents Act 1988 or constitute criminal fraud under the Fraud Act 2006, but the Nominet DRS is not a forum for deciding such matters nor can the Expert consider them as such.

Furthermore, whilst the Respondent's use of the Domain Name may well have breached one or more specific terms of Nominet's Terms and Conditions of Domain Name Registration as cited by the Complainant, the Nominet DRS is not a forum for deciding whether or not those contractual breaches are proven and in any case such breaches rely on proof of preceding infringements and/or unlawful activity which are, as discussed above, beyond the scope of the Nominet DRS.

Accordingly I make no findings in relation to the Complainant's assertions of infringement, fraud and/or breach of contract and I have not taken them into account in reaching my decision.

I also accept that the Respondent has probably provided false address information to Nominet. However, as this has not been independently verified I have not taken this into account in my decision.

## **7. Decision**

In light of the foregoing findings, namely 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, I direct that the Domain Name be transferred to the Complainant.

**Signed** .....

**Dated:** 12<sup>th</sup> June 2017



**Steve Ormand**