

## **Dispute Resolution Service**

**DRS 19485**

**Decision of an Independent Expert**

**Stokke AS**

and

**C Bowler**

### **1. Parties**

Complainant: Stokke AS  
Parkgata 6  
Ålesund  
N-6003  
Norway

Respondent: C Bowler  
19 Culzean Road  
Maybole  
KA19 7DE  
United Kingdom

### **2. Domain Name**

flexibath.co.uk (the "Domain Name")

### **3. Procedural Background**

On 2<sup>nd</sup> November 2017 the Complaint was lodged with Nominet UK Limited (“Nominet”) and it was validated on 6<sup>th</sup> November 2017. On 6<sup>th</sup> November 2017 Nominet sent the notification of the complaint letter to the Respondent by e-mail and post, advising him to log into his account to view the details of the Complaint, and giving him 15 business days within which to lodge a Response on or before 27<sup>th</sup> November 2017. On 23<sup>rd</sup> November 2017 Nominet sent the Respondent a Response reminder. No Response was received by 27<sup>th</sup> November 2017. On 28<sup>th</sup> November 2017 Nominet sent the notification of no response to the parties. On 29<sup>th</sup> November 2017, the Complainant paid the appropriate fee for a Decision to be made by an Expert pursuant to paragraph 6 of Nominet’s DRS Policy (“the Policy”).

On 4<sup>th</sup> December 2017 Mr. Niall Lawless (“the Expert”) was appointed to act as Expert in this dispute. He is required to give his Decision by 27<sup>th</sup> December 2017. Mr. Lawless has confirmed that he knew of no reason why he could not properly accept the appointment, and knew of no matters which ought to be drawn to the attention of the parties which might appear to call in to question his impartiality and -/- or independence.

### **4. Outstanding Formal -/- Procedural Issues**

There are no outstanding formal or procedural issues.

### **5. Factual background**

The Complainant, Stokke AS was founded in Ålesund, Norway, in 1932. It provides the worldwide distribution of premium children’s furniture and equipment within the highchair, stroller, baby carrier, home textiles and nursery market segments. One of the Complainant’s products is “Flexi Bath” which is a foldable baby bath suitable for use by a child from birth to four years age. The Respondent registered the Domain Name on 17<sup>th</sup> December 2016.

### **6. The Parties’ contentions**

#### The Complainant

The Complainant seeks transfer of the Domain Name. The Complainant says that it has rights in respect of a name or mark which is identical or similar to the Domain Name. The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration because, in particular:-

- use of the Domain Name by the Respondent is likely to cause confusion on the part of internet users as they are likely to believe that they have been directed to a website which is connected/associated with the Complainant or which is authorised by the same, which is not the case.
- the Domain Name is being used by the Respondent to direct consumers to a website which is not connected to the Complainant but which provides identical/similar goods and services to those which the Complainant has registered trade mark protection for.
- the website the Domain Name resolves to states that the Domain Name is for sale and a potential buyer can place an offer to acquire the Domain Name. This further supports that the current owner has no legitimate interest in the Domain Name.
- the registration and use of the Domain Name not only blocks the Complainant from registering the Domain Name but also takes an unfair advantage of the Complainant's rights and is unfairly detrimental to those rights.
- the Respondent is involved in a pattern of abusive registrations

#### The Respondent

The Respondent has not responded.

## **7. Discussions and Findings**

### **7.1 General**

Nominet's DRS Policy requires that for a Complaint to succeed the Complainant must prove to the Expert on the balance of probabilities that:-

- 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.

Rights include, but are not limited to, rights enforceable under English Law.

In order to show that the Domain Name is an Abusive Registration, the Complainant must prove that the Domain Name either:-

- i. 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.

## 7.2 Complainant's Rights

The Complainant is the proprietor of the EU trade mark WE00000997200 "FLEXI BATH". The trademark has the international registration date 3<sup>rd</sup> March 2009, which predates the registration of the Domain Name. The Complainant has advertised and used the term "FLEXI BATH" in the United Kingdom and derived revenue from it. Because of this, I decide that the Complainant has Rights in respect of a name or mark, which is identical or similar to the Domain Name.

## 7.3 Abusive Registration

The Complainant says that the Domain Name controlled by the Respondent is an Abusive Registration under the Policy. Under paragraph 5 - Evidence of Abusive Registration - guidance is given as to what factors may be evidence that the Domain Name is an Abusive Registration.

"A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows :-

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."

### Likelihood of confusion

The Complainant says that the use of the Domain Name by the Respondent is likely to cause confusion on the part of internet users as they are likely to believe that when they use search engines or by guessing the relevant website address, they have been directed to a website which is connected/associated with the Complainant or which is authorised by the same, which is not the case.

The Complainant also says that the Domain Name is being used by the Respondent to direct consumers to a website which is not connected to the Complainant but which provides identical/similar goods and services to those which the Complainant has registered trade mark protection for.

The Respondent does not respond to the Abusive Registration factors claimed by the Complainant.

The test for abuse under paragraph 5.1.2 of the Policy is that there are 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 ...”

Confusion would arise where the Internet user incorrectly assumes that the website the Domain Names resolves to is authorised by or belongs to the Complainant.

Given that on 4<sup>th</sup> December 2017, the date of this Decision, the Domain Name resolved to a website which is advertising and selling the Complainant’s “Flexi Bath” products, as well as baby bath and travel bath products from other manufacturers, I consider that there is a real possibility that an internet user arriving at the website linked to the Domain Name would assume that it relates to goods provided by the Complainant and that it is a domain and site owned and provided by the Complainant.

Accordingly I conclude that the Respondent’s use of the Domain Name linking to the current website is confusingly similar such that it would be abusive under paragraph 5.1.2 of the Policy.

### 7.4 Conclusion

The Expert finds on the balance of probabilities that the Complainant has Rights in respect of a name identical or similar to the Domain Name and the Complainant has proved, on the balance of probabilities, that the Domain Name in the hands of the Respondent is an Abusive Registration.

**8. Decision**

For the reasons set out in detail above, having decided that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name be transferred to the Complainant.



**Niall Lawless, Nominet Expert**

**7<sup>th</sup> December 2017**