

DISPUTE RESOLUTION SERVICE

D00022429

Decision of Independent Expert (Summary Decision)

Extractor Corporation

and

Richard Cox

1. The Parties:

Complainant: Extractor Corporation
685 Martin Dr.
South Elgin
Illinois
60177-1171
United States

Respondent: Richard Cox
Merrylees Ind
Leaside
Leicestershire
LE9 9FS
United Kingdom

2. The Domain Name:

suitmate.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 section 3 and 6 of the Policy.

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 suitmate.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 case involves two parties involved in a previous distributor agreement. As there has been no response, the Expert has no need to dispute the material facts provided by the Complainant. Based on the Complaint, the Complainant terminated its relationship with the Respondent nearly eight years ago.

The question at the heart of this dispute is whether it is fair for the respondent, as a former distributor of Complainant's products, to retain a domain name following the termination of his agreement. In answer to that question, the Complainant relies on the appeal case of Toshiba Corporation v Power Battery Inc., DRS 07991 which discussed the following principles:

- It is not automatically unfair for a reseller to incorporate a trade mark into a domain name and the question of abusive registration will depend on the facts of each particular case.

- A registration will be abusive if the effect of the respondent's use of the domain name is falsely to imply a commercial connection with the complainant.
- Such an implication may be the result of "initial interest confusion" and is not dictated only by the content of the website.
- Whether or not a commercial connection is implied, there may be other reasons why the reseller's incorporation of the domain name is unfair. One such reason is the offering of competitive goods on the respondent's website.

The Expert is inclined to consider these factors in line with the principle held in *Bristan Group Limited v. Michael Gallagher*, DRS 7460 where the expert stated:

"Where it is clear that an Appeal Panel has considered in depth a difficult issue under the Policy, a single expert should be reluctant to depart from that decision, even if he might have decided the case in a different manner. Due weight needs to be paid to the fact that experts should aim at consistency between expert decisions".

Despite the material distinctions that exist between this and *Toshiba* (for one, there is no evidence that the Domain Name has been used to sell competing products before or after the termination of the distributor agreement), the Expert does not believe it would be considered fair for the Respondent to maintain the Disputed Domain in these circumstances.

In accordance with the Policy, the Expert finds that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

8. Decision

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the domain name will therefore be transferred to the Complainant.

Signed: Micah Ogilvie

Dated: 09 April 2020