

DISPUTE RESOLUTION SERVICE

D00022483

**Decision of Independent Expert
(Summary Decision)**

Grand Chauffeurs Ltd

and

Mr Andy Hayes

1. The Parties:

Complainant: Grand Chauffeurs Ltd
33 Main Street
Wardy Hill
Cambridgeshire
CB6 2DF
United Kingdom

Respondent: Mr Andy Hayes
40 Norwood
Beverley
East Yorkshire
HU17 9EY
United Kingdom

2. The Domain Name:

thegrandchauffeurs.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

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.

No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name thegrandchauffeurs.co.uk is an abusive registration

No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances

Yes

7. Comments (optional)

This Complaint is very brief and is not sufficiently detailed. The Complainant's representative who is a director of the Complainant company, claims that he is the owner of the trademark GRAND CHAUFFEURS whereas the Complainant has been brought by a limited company. It may well be the case that there is an informal arrangement between the Complainant and its representatives in relation to the ownership and use of the trademark. This would not be unusual in small businesses but it have to be explained before this Complaint could succeed.

More importantly however, the Complainant has not produced any evidence of its rights in the GRAND CHAUFFEURS trademark either through registration or use of the mark.

The Complaint is very brief, and the Complainant makes only bare assertions that is has rights in the GRAND CHAUFFEURS mark.

I would draw the Complainant's attention to the Nominet Dispute Resolution Service – Experts' Overview which sets out the views of how panellists approach Complaints.

Paragraph 2.2 states bare assertions are not enough and that the appointed expert needs to be persuaded on the balance of probabilities that relevant rights exist.

The document is to be found at <https://media.nominet.uk/wp-content/uploads/2018/09/24124932/expert-overview.pdf>. The relevant paragraphs are 2.1 and 2.2 as follows:

2. The Essential Elements to be proved in a Complaint

2.1 What is the required Standard of Proof?

Paragraph 2.1 of the Policy sets out what a Complainant needs to prove in a proceeding under the Policy. Paragraph 2.2 provides that the Complainant must prove that the requisite elements are present on the balance of probabilities. This is the normal standard of proof required in civil court proceedings and is also variously referred to as “more probable than not” and “on the preponderance of the evidence”. It is to be contrasted with the criminal standard of “beyond all reasonable doubt”.

However there are cases in which a party makes very serious allegations about the opposing party. The more serious the allegation, the more that the Expert will be looking for in the way of evidence to support the allegation. See DRS 07599 chiesi.co.uk in which the Complainant was effectively alleging fraud against the Respondent and the Expert was looking for clear evidence that the alleged fraud had been committed. He said that such an approach is entirely consistent with the standard of proof required by paragraph 2 of the Policy. It is simply a recognition of the fact that the more serious an allegation, the less likely it is that it occurred and accordingly the stronger the evidence required to prove it on the balance of probabilities: See e.g. per Lord Nicholls in re Hand and Others [1996] AC586”.

The standard of proof will always be the balance of probabilities, but the greater the severity of the allegation, the more cogent the evidence that the Expert will require.

2.2 What is required for a Complainant to prove that he/she/it “has rights” in paragraph 2.1.1 of the Policy?

*As indicated above, the relevant right has to be an enforceable right (i.e. a legally enforceable right). **Bare assertions will rarely suffice. The Expert needs to be persuaded on the balance of probabilities that relevant rights exist.** The Expert will not expect the same volume of evidence as might be required by a court to establish goodwill or reputation, but the less straightforward the claim, the more evidence the better (within reason – this is not an invitation to throw in the ‘kitchen sink’).*

If the right arises out of a trade mark or service mark registration, a copy of the registration certificate or print out from the registry database will suffice together with, in the case of a licensee, evidence of the licence. If the Complainant can demonstrate that it is a subsidiary or associated company of the registered proprietor, the relevant licence, if asserted, will ordinarily be assumed. [Appeal decision in DRS 00248 (seiko-shop.co.uk)].

If the right is an unregistered trade mark right, evidence needs to be put before the Expert to demonstrate the existence of the right. This will ordinarily include evidence to show that (a) the Complainant has used the name or mark in question for a not insignificant period and to a not insignificant degree (e.g. by way of sales figures, company accounts etc) and (b) the name or mark in question is recognised by the purchasing trade/public as indicating the goods or services of the Complainant (e.g. by way of advertisements and advertising and promotional expenditure, correspondence/orders/invoices from third parties and third party editorial matter such as press cuttings and search engine results).

If the right is a contractual right, the Expert will need to see evidence of the contract. [Emphasis has been added by Expert]

The Complainant is making very serious allegations and if it were to succeed in this application it would have very serious consequences for the owner of the disputed domain name. Even though the owner of the domain name has not responded to the allegations, the onus must rest on the Complainant to make out a prima facie case that it has the rights that it claims.

This decision is without prejudice to the Complainant bringing a new complaint.

8. Decision

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

Signed:
James Bridgeman SC

Dated: 23 April 2020