

DISPUTE RESOLUTION SERVICE

D00014067

Decision of Independent Expert

Dean House plc T/A Betta Living

and

Ahmad Fanani

1. The Parties:

Complainant: Dean House plc T/A Betta Living
Dean House
Suthers Street
Oldham
Manchester
OL9 7TH
United Kingdom

Respondent: Ahmad Fanani
Ds.Robayan Rt.14 Rw.03 Kalinyamatan
Jepara
Jawa Tengah
59467
Indonesia

2. The Domain Name(s):

bettalivingkitchenreviews.co.uk

3. Procedural History:

I 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, which need be disclosed as they might be of

such a nature as to call into question my independence in the eyes of one or both of the parties.

10 April 2014 14:39 Dispute received

10 April 2014 15:28 Complaint validated

10 April 2014 15:31 Notification of complaint sent to parties

02 May 2014 02:30 Response reminder sent

07 May 2014 11:02 No Response Received

07 May 2014 11:02 Notification of no response sent to parties

14 May 2014 11:40 Expert decision payment received

4. Factual Background

The Complainant Dean House plc, a company registered in England and Wales, trades as Betta Living. It has a registered UK trade mark in the form of a device mark, which includes the wording “Betta Living established 1966” in white against a blue and red background, in class 20 (Fitted bedroom furniture; fitted kitchen furniture; fitted bathroom furniture). The mark is registered with effect from 27 February 2012.

The Complainant’s domain name bettaliving.co.uk was registered on 16th December 2004.

The Domain Name bettalivingkitchenreviews.co.uk was registered on 18 February 2014, in the name of an individual who gives an address in Jakarta, Indonesia. It currently links to an active website which invites reviews “to help others who are thinking of buying a Betta Living kitchen”.

5. Parties’ Contentions

The Complainant

The Complaint is short. In addition to the information about registrations set out above, the Complainant (which does not explain what its business does), says that it has 23 showrooms nationwide, using the Betta Living brand. It says its website www.bettaliving.co.uk receives approximately 30,000 unique visitors a week.

The Respondent is not known to the Complainant, has never asked for permission to use its trade mark, its business name or any of its digital assets, and the Complainant would not have been granted him permission to do so if he had asked.

The registration of the Domain Name is a blatant infringement of the Complainant’s trade mark rights “by use of [the Complainant’s] name in the domain and imagery on the site showing our trade mark registered logo”. “It appears that someone externally to the UK without any interest in [the Complainant’s] business is doing their utmost to damage [its] reputation and business”

The Complainant seeks transfer of the Domain name to itself.

The Respondent

The Respondent has not responded to the Complaint.

6. Discussions and Findings

In order to succeed in its Complaint, in accordance with the DRS Policy, the Complainant needs to establish:

- “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.”*

The Complainant needs to establish both elements on the balance of probabilities.

The definition of Abusive Registration under the Policy is as follows:

“Abusive Registration means 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. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights”.*

The definition of Rights under the Policy is as follows:

“Rights means 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 Complainant has referred to its UK trade mark rights in the form of its registered logo, its 23 showrooms nationwide, and its use of the www.bettaliving.co.uk website. Although it does not give a clear idea of what it does by way of a business, or the extent of its brand recognition, the Respondent has not replied (so has not challenged the Complainant on this issue). Therefore, the Expert is prepared to accept that the Complainant has Rights in the Betta Living name or mark. That is not identical to the Domain Name, but it is, in the Expert's view, the primary element of the Domain Name, and the additional elements of “kitchenreviews” are secondary, or in the case of “kitchen” descriptive of part of the Complainant's business. The Expert is therefore prepared to accept that the name or mark is similar to the Domain Name, and that the Complainant has established that it has Rights which are sufficient for the purposes of the DRS Policy.

As to Abusive Registration, the Complainant appears to have paid no attention to the requirements of the DRS Policy, and the Guidance provided to Complainants by Nominet on its website. It has referred only to unauthorised use (and infringement) of its trade mark, with someone externally to the UK “doing their utmost to damage [its] reputation and business”, through the recently registered Domain Name. Infringement of a trade mark, if established, does not equate to Abusive Registration under the DRS Policy.

There is no attempt by the Complainant to put its concerns in the context of the Policy, nor to explain how there could be unfair advantage or detriment to its Rights. Nor is there any explanation of what use the Respondent is making of the website www.bettalivingkitchenreviews.co.uk. No screenshots are attached, and no attempt is made to explain the alleged potential (or actual) damage to reputation and business.

Although there has been no response in this case, the Expert has looked at the website in question, in order to try to understand the nature of the Complainant’s concerns. As might be expected from its name, it is a site which contains reviews of the Complainant’s business, which includes fitting kitchens. From what the Expert can see, that is its only content – mainly negative reviews. The site says reviews can be written on the site, and on the face of it those can be both positive and negative (“recommendations”, “rants” or “warnings”). The home page is headed by a picture of what appears to be one of the Complainant’s stores, with the store logo (Betta Living Bedrooms Kitchens Bathrooms). There is no obvious sign of any commercial activity on the site.

The Expert has not looked in any detail at the postings on the site. On a quick overview, they appear to be largely negative comments from disappointed customers of the Complainant, but the Expert has no way of establishing whether such grievances are genuine, or manipulated in some way by whoever is responsible for the site. It is not for the Expert to try to make out cases for parties which the parties do not advance, nor to undertake extensive research. The Expert has looked at the site in order to assess whether the site could be a site which is being used fairly by the Respondent, and “operated solely in tribute to or in criticism of a person or business”, within the wording of paragraph 4.b of the Policy (which might be evidence that the Domain Name is not an abusive registration). That appears to be the case – the use by the Respondent might be fair, as there is no obvious factor which would make the use clearly unfair (such as extensive commercial use, or the pretence of a connection with the Complainant, when none in fact exists). Having regard to the factors relating to tribute and criticism sites explained in paragraph 4.8 of the Experts’ Overview, and the need to look at the facts of each case, this case would therefore appear at first sight to fall on the right side of the line in terms of “fairness”.

It is possible to speculate about the true intentions behind the site (it is unlikely, for instance, that it is really intended just a forum for any information about the Complainant of any kind, whether good or bad, and the Expert suspects that it is probably aimed at the latter type of review). However, it would be just speculation, and this has not been put forward as part of the Complainant’s case. In any event, a site devoted to criticism, if done fairly, would not necessarily be an Abusive Registration.

The onus is on the Complainant to prove its case as to Abusive Registration on the balance of probabilities. Although the Respondent has not replied, that does not mean that the Complainant wins by default – it still needs to establish its own case. This has been made clear in a number of previous decisions under the DRS Policy (and its previous version), such as the decision in DRS 04635, martinyale.co.uk. The nature of the Domain Name itself suggests that it is intended to be used for reviews about the Complainant’s business, which is what it appears to contain. The Complainant has not begun to explain why a “review” site of this kind might be Abusive. In the absence of any such positive case on the Complainant’s behalf, the Expert is not able to find in the Complainant’s favour, as it has not established its case on the balance of probabilities. Therefore, although the Complainant has established that it has Rights under the Policy, it has not established that the registration of the Domain Name is an Abusive one.

7. Decision

The Complainant has established that it has Rights in a name or mark which is similar to the Domain Name, but has not established that the Domain Name, in the hands of the Respondent, is an Abusive Registration. The Expert therefore directs that no action be taken.

Signed Bob Elliott

Dated 27 May 2014