

DISPUTE RESOLUTION SERVICE

D00017018

Decision of Independent Expert

Renault S.A.S.

and

Mr Daniel Lewis

1. The Parties:

Lead Complainant: Renault S.A.S.
13-15, Quai Alphonse Le Gallo
Boulogne Billancourt
92100
France

Respondent: Mr Daniel Lewis
24 Haddonian Road
Market Harborough
LEC
LE16 9GD
United Kingdom

2. The Domain Name:

renaultsportracing.co.uk

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

28 January 2016 01:45 Dispute received

28 January 2016 10:53 Complaint validated
28 January 2016 11:06 Notification of complaint sent to parties
01 February 2016 11:50 Response received
01 February 2016 11:50 Notification of response sent to parties
04 February 2016 01:30 Reply reminder sent
08 February 2016 13:40 Reply received
08 February 2016 13:41 Notification of reply sent to parties
08 February 2016 13:41 Mediator appointed
11 February 2016 10:48 Mediation started
02 March 2016 16:55 Mediation failed
02 March 2016 17:08 Close of mediation documents sent
04 March 2016 10:31 Expert decision payment received

4. Factual Background

This is a dispute between the well known and long established vehicle manufacturer, which trades under the brand name Renault, and a private individual with a passion for racing a Renault Megane Sport car.

Renault Sport Technologies is the motorsport, performance and special vehicles division of Renault. It trades under the brand Renault Sport.

The Respondent registered the Domain Name on 20 December 2012. He also registered the .com version of the same domain name <renaultsportracing.com>. The Respondent registered the domain name <renaultsportshop.co.uk> on 3 December 2012 and he also registered the .com version of that domain name.

5. Parties' Contentions

5.1 Complainant

Preliminary observations

Before summarising the Complaint, the Expert wishes to record two preliminary observations.

- This decision falls to be determined under the DRS Policy. The Complaint contains numerous contentions that are only relevant to the Uniform Domain-Name Dispute-Resolution Policy (the "UDRP").
- The Complaint as filed was in relation to two disputed domain names but one of those has since been transferred by the Respondent to the Complainant. This decision is therefore limited to a finding in relation to the Domain Name. The registration of the other disputed domain name is of relevance when it comes to considering the Respondent's motivation for registering the Domain Name.

The First Observation

The DRS Procedure makes it clear that the Complainant is obliged to describe, in accordance with the DRS Policy, the grounds on which the Complaint is made. Whilst some sections of the Complaint comply with that obligation, there are large sections that are focused on the grounds for a complaint under the UDRP. There are references in the Complaint to the concepts of “bad faith” and “confusingly similar”, which are concepts taken from the UDRP, as well as numerous citations to expert decisions made under the UDRP. The annexes to the Complaint include copies of eight decisions made under the UDRP as well as a copy of the UDRP policy document itself.

The Expert is required to determine this dispute under the DRS Policy and Procedure. The summary of the Complaint that appears below does not include any contentions that are not relevant to the issues to be determined under the DRS Policy. The Expert has disregarded any such contentions in arriving at his decision.

The Second Observation

The Complaint was filed in relation to two domain names: <renaultsportracing.co.uk> (the Domain Name) and <renaultsportshop.co.uk> (the other disputed domain name). The Respondent subsequently agreed to transfer the other disputed domain name to the Complainant so this decision makes a finding in relation to the Domain Name only. However, the circumstances surrounding the registration of the other disputed domain name are relevant to this decision. References in this decision to the Disputed Domain Names are to the Domain Name and the other disputed domain name <renaultsportshop.co.uk> taken together.

The Complaint, so far as is material, is summarised below.

5.1.1 Rights

Registered Rights

The Complainant is the owner of a number of registered trade marks which incorporate the mark RENAULT, including:

- Community Trade Mark RENAULT No.011658374 registered on 8 August 2013 covering goods in class 12;
- UK Trade Mark RENAULT No. 00000695493 registered on 23 January 1951 covering goods in class 12;
- Community Trade Mark RENAULT SPORT WAY No. 003459351 registered on 19 May 2005, covering goods in classes 2, 12 and 24; and
- Community Trade Mark RENAULTSHOP filed on 9 December 2009 and registered on 2 June 2010 covering goods in class 12.

It is also the owner of a number of other registered trade marks, for instance:

- International Trade Mark RENAULT BOUTIQUE + device No. 397376, registered on 22 March 1973, renewed and covering goods and services in

classes 2, 3, 8, 9, 12, 16, 18, 24, 25, 27, 28, 34, 37 and 39;

- International Trade Mark RENAULT SPORT WAY No. 758881 covering inter alia the UK, registered on 20 April 2001 and covering goods and services in class 12; and
- French Trade Mark RENAULT SPORT + device No. 02 3 177 247 of 30 July 2002 renewed covering goods in classes 9, 12, 14, 16, 18, 25, 27, 39 and 41.

Unregistered Rights

The Renault Group is an international company with a history going back over 115 years. RENAULT is the trading name of the Complainant. The brand RENAULT is widely known across the world and, in particular, in the UK where it has been used since the beginning of the previous century.

The Renault Group is a leading industrial group designing and manufacturing cars, vans, buses, tractors and trucks. The Group designs, manufactures and sells passenger and commercial vehicles under three brands: Renault, Dacia and Renault Samsung Motors.

The Renault Group is the 4th largest automaker in the world, thanks to its unique alliance with Nissan. It has a presence in 128 countries. More than 120,000 employees work for Renault worldwide.

Renault is a distinctive term

The word Renault is only known in respect to Complainant. It has no meaning in the English language.

Use as a domain name

The Complainant and its affiliates actively operate the following domain names, reflecting its trade mark, to promote its services:

<renault.com> registered on 22 November 1994.

<renault.co.uk> registered on 1 August 1996.

<renaultshop.com> registered on 9 November 2003.

<renaultsportf1.com> registered on 18 November 2010.

Use in connection with the word Sport

Through its subsidiary, Renault has always encouraged new motion racing talents. Renault Sport Technologies, commonly known as Renault Sport, is the motorsport, performance and special vehicles division of Renault. It organizes many Renault-backed one-make championships worldwide and is in charge of Renault Group's official involvement in motor racing, except for Formula One. Renault takes part in over 200 monotype circuit races across the world.

Various trophies have increased the level of public awareness of the long-term

involvement of the Renault Group in sport activities. Among other examples, the Megan trophy was created in 2005 and still existed in 2012. In 2012 Renault Sport obtained distinction recognising Renault Sport for its domination in the two-wheel drive category.

Renault has a long history in F1. Renault cars have competed in Grand Prix racing for over 35 years. Renault Sport was founded in 1976. Renault has collaborated with famous F1 drivers and developed partnerships with famous brands for racing.

Identical or similar to the Domain Name

The Domain Name differs from Complainant's trade mark RENAULT only by the addition of the descriptive words SPORT and RACING. These words increase the level of confusion as they correspond to the Complainant's field of activities.

The Domain Name differs from Complainant's trade mark RENAULT SPORT + device only by the omission of the device and the addition of the descriptive word RACING. It also differs from Complainant's trade mark RENAULT SPORT WAY only by the omission of the word WAY and the addition of the word RACING.

5.1.2 Abusive Registration

Correspondence with the Respondent

The Complainant first discovered the registration of the domain name <renaultsportracing.com> (the .com version) and obtained a bailiff's report on the direction of the .com version on 15 January 2016. At the time, the .com version of the domain name resolved to a web site with a logo Magento and it appeared to be an online store. In the "About Us" section of the web site, a message appeared in Latin with a last mention in English wishing, among other things, a happy ecommerce to Internet users and the signature John Doe appeared on the web page.

On 21 January 2016 the Complainant sent a cease and desist letter to the Respondent via email relying on its trade mark rights. The cease and desist letter asked the Respondent to transfer the .com version of the domain name to the Complainant. The Respondent was asked to certify that no other domain names existed which incorporated, partially or entirely, the trade mark RENAULT, to never register such a domain name and to cease any use of the denomination RENAULT or any similar term in any way. The Complainant also sent a copy of the UK trade mark registration for RENAULT by email to the Respondent.

The Respondent replied and claimed that he did not accept any responsibility. He also informed the Complainant that he actually owned the following four domain names:

<renaultsportracing.com>
<renaultsportracing.co.uk>
<renaultsportshop.com>
<renaultsportshop.co.uk>

The Respondent did not transfer the domain names. He claimed he would have not used the domain names but had a project to use them to advertise himself racing in UK club sport in a Renault Megane Sport. However, he also added that if Complainant wished to make an offer for the domain names, he would be happy to review that offer.

The domain names <renaultsportshop.com> and <renaultsportshop.co.uk> point to a waiting page of the registrar. The domain name <renaultsportracing.co.uk> points to <renaultsportshop.com>. The web site that used to be linked to the domain name <renaultsportracing.com> is no longer accessible.

No connection to the Complainant

The Respondent is not known under the name RENAULT or any similar term. The Respondent is not affiliated with Complainant in any way. He has not been authorised by Complainant to use its trade mark or trade name or to register any domain names incorporating its trade mark or trade name.

Knowledge of the Complainant

The RENAULT trade marks predate the registration of the Domain Name by many years. It is implausible that the Respondent was unaware of Complainant when he registered the Domain Name, in light of the reputation of the Complainant's trade mark and its long trading history.

Non-use of Domain Name

The Domain Name resolves to an inactive web page. The Respondent has not used the Domain Name since it was registered. This state of inactivity does not mean that the Domain Name is being used in good faith. Indeed, it clearly shows bad faith on the part of the Respondent.

Offer for sale

It appears that the only reason the Respondent registered the Domain Name was for the purpose of selling it to Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name. This appears from the correspondence with the Respondent. This behaviour is a strong indication that the Respondent hoped to sell the Domain Name to the Complainant or to a competitor of Complainant.

Multiple domain names

The Respondent did not register just one domain name incorporating the mark RENAULT. He registered four domain names with that characteristic. The Domain Name resolves to an inactive page. The domain name <renaultsportshop.co.uk> re-directs towards the default page of the registrar. It should be noted that one of the .com domain names pointed to a web site having the appearance of an online store.

Non-legitimate use

In his correspondence with the Complainant, the Respondent pretended to have a project for the Disputed Domain Names. However, he has not made any use of the Disputed Domain Names nor has he presented any evidence of the project. The Respondent has instead attempted to justify the registration of the Disputed Domain Names by arguing that RENAULT can be a surname and he finally ended up admitting that the domain names are linked with Complainant. The inclusion of the descriptive terms “sport”, “racing” and “shop” to the domain names clearly shows that the Respondent is making direct reference to Complainant and its trade marks.

The Respondent has not made any reasonable and demonstrable preparations to use the Disputed Domain Names. Consequently, the Respondent has failed to show an intention of non-commercial or fair use of the Disputed Domain Names. The Respondent has no legitimate interest or rights in the Disputed Domain Names.

Likelihood of confusion

The speculative visitor to the registrant’s web site will be visiting it in the hope and expectation that the web site is operated or authorised by, or otherwise connected with, the Complainant. This is initial interest confusion and, as the Experts’ Overview points out, the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration. Even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant the visitor has been deceived.

Use of the Domain Name takes unfair advantage of the goodwill and brand recognition generated by the Complainant’s mark RENAULT but also RENAULT SPORT. The Domain Name is similar to Complainant’s mark and includes a generic term referring to Complainant’s business. It would also be detrimental to Complainant’s rights to deprive it from reflecting its trade marks in a domain name.

5.2 Respondent

The Response, so far as is material, is summarised below.

The Respondent purchased the Domain Name because he had entered his own Renault Megane car into a UK based race series which is something he continues to do. He has not tried to pretend, by having Renault in the Domain Name, that he is Renault in any way.

He has not yet linked the Domain Name to an uploaded web site but he has spent time and money creating this and preparing the car graphics for the new season to represent the Domain Name. The scheme of the car has changed completely for this year.

He did not think that he was causing an issue to Renault as a brand as he purchased the domain names over four years ago preparing himself for the time that he opened the web site. He has produced images of the car in action.

After purchase of the domain names, the Respondent found out that the legalities of using the <renaultsportshop.co.uk> domain name could be misconstrued so that was never progressed. This domain name would have been used to sell custom parts that he would have made for his Renault Megane. The Respondent did not buy the Domain Name to hold Renault to ransom.

The Respondent expresses disappointment that Renault has taken this stance and it has taken four years to even ask for the Domain Name which was not in use and was available to the general public for purchase. The Respondent has not pointed the Domain Name to anything that can attack the brand or offered to sell this Domain Name to a third party. The Respondent has had interest from other parties but he did not sell the two domain names that form the basis of the Complaint.

The Respondent believes that he is the rightful owner of the Domain Name. He did confirm that he would happily hand over the domain name <renaultsportshop.co.uk> to the Complainant.

5.3 Reply

The Reply, so far as is material, is summarised below.

The Complainant accepts the transfer of the other disputed domain name <renaultsportshop.co.uk>. The Respondent has no legitimate interest in the Domain Name as the Complainant did not give the Respondent permission to use the trade mark RENAULT. Moreover, the Complainant owns and operates the domain names <renaultsportf1.com> and <renaultsport.com>, which are very similar.

The Complainant duly notes that the Respondent owns a Renault Megane which he has entered into races in a UK series. However, that does not provide the Respondent with any right to register a domain name incorporating the trade mark RENAULT. The Respondent has no trade mark right in the name RENAULT and does not acquire such a right merely because he owns a product bearing that trade mark.

The Respondent should register a generic domain name without including the Complainant's trade mark.

The Respondent has not made any reasonable and demonstrable preparations to use the Disputed Domain Names for non-commercial or fair use.

The Respondent stated in the Response that he did not buy the Domain Name to hold Renault to ransom. However, in his last communication he suggested that Renault should make an offer to purchase the Disputed Domain Names.

6. Discussions and Findings

In order for the Complainant to succeed it must prove to the Expert, on the balance of probabilities, that:

“it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

the Domain Name, in the hands of the Respondent, is an Abusive Registration.”

The meaning of “Rights” is defined in the Policy in the following terms:

“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.”

An Abusive Registration is defined in the Policy as follows:

“Abusive Registration means a Domain Name which either:

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

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.”

As the Experts' Overview points out, the best guide as to what constitutes an Abusive Registration is to be found in clause 3(a) of the Policy and the best guide as to what does not constitute an Abusive Registration is to be found in clause 4 of the Policy. The Experts' Overview contains the following passage.

“Both of those ‘guides’ comprise non-exhaustive lists and it will be seen that Experts have a broad discretion when it comes to determining abusiveness. The question of whether a Domain Name is an Abusive Registration is a multi-factorial assessment which affords some flexibility to Experts, enabling them to keep pace with the fast moving world of the Internet.”

Complainant's Rights

The Complainant has clearly established that it has enforceable rights in the mark RENAULT. In support of its claim to have registered rights, the Complainant has produced copies of print-outs from the relevant registries.

The Complainant also seeks to rely upon unregistered rights in the mark RENAULT. The evidence demonstrates that the Complainant has used the mark RENAULT for a significant period and to a significant degree and that the mark is recognised as indicating the products and services of the Complainant. The evidence includes advertising and promotional material and third party editorial matter, such as

search engine results. There is no doubt that Renault is a very well known and distinctive mark.

The Complainant has also established, on the evidence, that it has registered rights in the mark RENAULT SPORT WAY. It also has unregistered rights in the brand name RENAULT SPORT which is the name under which the motorsport division trades. According to the promotional literature, the aim of the motorsport business is:

“to contribute towards the growth, profit and image of the Renault Group via the design and commercialisation of its sporting vehicles, the organisation of top-level motorsport competitions and the development of the Renault Sport brand.”

The Respondent does not seek to challenge the Complainant’s claims to rights in the marks RENAULT and RENAULT SPORT. He clearly had prior knowledge of the Complainant’s rights as, on his own case, he owned a Renault Megane car which he entered into races and he intended to advertise that fact through use of the Domain Name.

The Domain Name consists of the Complainant’s distinctive trade mark RENAULT and the descriptive words SPORT and RACING. The Domain Name is even closer to the brand name RENAULT SPORT as the only difference is the addition of the descriptive word RACING.

The addition of the words SPORT and RACING to the Complainant’s highly distinctive brand name does nothing to distinguish the Domain Name as both of those words correspond with an aspect of the Complainant’s activities, i.e. the organisation of racing competitions through the Renault Sport brand name.

The Expert is satisfied that the Complainant has rights in a mark which is similar to the Domain Name.

Abusive Registration

The Complainant raises a number of grounds which it says show that the Domain Name is an Abusive Registration. Abuse can be shown both in terms of the Respondent’s motivation when he registered the Domain Name and though the subsequent use of the Domain Name. Dealing with those points in reverse order this decision considers first the case based on use and then the case based on motivation at the date of registration.

Use (or more accurately non-use)

It is common ground that the Respondent has not used the Domain Name. It appears from the evidence that, since it was registered on 20 December 2012, it has pointed to an inactive web page. The Complainant seeks to draw an inference from that non-use which it says shows bad faith on the part of the Respondent. The concept of bad faith has no place under the DRS Policy, save for the limited circumstances in which an Expert finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking.

It is clear from paragraph 3(a)vi of the DRS Policy that failure on the Respondent's part to use the Domain Name is not in itself evidence that the Domain Name is an Abusive Registration. The Experts' Overview explains the purpose behind this provision in the following terms:

“In certain circumstances, evidence of non-use of a '.uk' domain name may persuade an Expert that the domain name in issue is an Abusive Registration, but Nominet was concerned to ensure that non-use of a domain name should not automatically be regarded as indicative of abusive intent.”

The Expert does not accept the contention that non-use of the Domain Name of itself is enough to support a finding of abuse. It may, however, be relevant in seeking to understand the Respondent's motivation when he registered the Domain Name.

Motivation at the date of registration

Most of the Complaint is focused on the Respondent's motivation at the date of registration of the Domain Name. The Complainant's case is that the Respondent was aware of the Complainant when he registered the Domain Name and that the registration was abusive as it took unfair advantage of the Complainant's rights.

The Complainant points to a statement in an email from the Respondent inviting an offer from the Complainant for the four domain names that include the mark RENAULT.

The Complainant also contends that there is a likelihood of confusion given the close similarity between the marks RENAULT and RENAULT SPORT, in which it claims rights, and the Domain Name. Finally, the Complainant points out that the Respondent's case as to legitimate use (which was set out in a communication between the parties prior to the Complaint being filed) is not supported by any evidence and it has been made up simply to try and defeat the Complaint.

The evidence submitted by the Complainant is sufficient to support a prima facie case of abuse. The mark RENAULT is highly distinctive and very well known. The Respondent claims to be the owner of a Renault Megane Sport car which he had entered into motorsport races prior to registering the Domain Name. As already remarked, it is therefore clear that he was aware of the Complainant prior to registering the Domain Name.

Paragraph 3(a)(ii) of the Policy concerns confusing use of a domain name. The Experts' Overview explains the meaning of confusing use in the following terms:

“The 'confusion' referred to in this paragraph of the Policy is confusion as to the identity of the person/entity behind the domain name. Will an Internet user seeing the domain name or the site to which it is connected believe or be likely to believe that “the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant”?

The further away the domain name is from the Complainant's name or mark, the less likely a finding of Abusive Registration. However, the activities of typosquatters are generally condemned - see for example DRS 03806 (privalege.co.uk) - as are those people who attach as appendages to the Complainant's name or mark a word appropriate to the Complainant's field of activity. See for example the Appeal decisions in DRS 00248 (seiko-shop.co.uk) and DRS 07991 (toshiba-laptop-battery.co.uk)."

The addition of the word RACING, which is a word that is appropriate to the Complainant's field of motorsport, to the Complainant's brand RENAULT SPORT is not enough to avoid a risk of confusion as to the identity of the entity behind the Domain Name.

The fact that the Domain Name has not been used and therefore any confusion would have been dispelled upon arriving at the inactive web page does not necessarily avoid a finding of abuse. This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived.

There is therefore a compelling prima facie case of abuse and so it is necessary to consider whether there are any factors which might be evidence that the Domain Name is not an Abusive Registration.

The case as to legitimate use

Before turning to examine the Respondent's case, it should be pointed out that it is not for the Respondent to prove anything as the burden of proof clearly rests on the Complainant. However, as the Experts' Overview states:

"if the Respondent does not respond to the Complainant's allegations and the Expert takes the view that the Complaint sets out a convincing prima facie case, the Complaint is likely to succeed. To put it another way, if the Complainant has satisfied the Expert that the Respondent has a case to answer, the Expert will be looking for an answer."

The Respondent's answer in this case is one of preparations for legitimate use. Paragraph 4(a)(i)A of the DRS Policy reads as follows:

"Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services."

The Respondent's case is set out in the Response but it is most clearly described in his email dated 25 January 2016, which contains the following passage:

“I own a Renault Megane and I have raced this in a series in the UK. I have not used this domain for that but that was the end purpose of it to advertise me racing in the UK club sport in a Renault Megane Sport. This would only have ties to Renault s.a.s as a brand nothing more. A disclaimer would have been put in place to state that it had nothing to do with Renault UL or Renault s.a.s.”

The Domain Name has not in fact been used by the Respondent to advertise the fact that he races in a Renault Megane Sport car. The case as to preparations for use for that purpose is put in the Response in the following way:

“I have not yet uploaded the website to this domain but I have spent time and money creating this and preparing the car graphics for the new season to represent the domain name.”

The Experts’ Overview poses the question “what is required in the way of evidence to demonstrate “preparations to use” in paragraph 4(a)(i)A of the Policy?” The answer in the Experts’ Overview to that question is contained in the following extracts:

“Most abusive registrants do not respond to complaints, but those who do will commonly assert the existence of plans, which are designed to defeat the complaint. Experts will generally view purported ‘plans’ which are totally unsupported by any contemporaneous evidence with a heavy measure of scepticism.”

“Accordingly, if the registrant has genuine plans for the domain name, arrived at wholly without reference to the rights of the Complainant, it makes sense for the registrant to produce evidence to show that they are genuine and were not dreamt up simply to defeat the complaint. The more straightforward the registrant’s case, the less that the Expert is likely to need in the way of supporting evidence. However, any evidence produced should sensibly include evidence pre-dating the registrant’s awareness of the Complainant’s rights. Failing that, the evidence may not be worth a lot, but a credible explanation for the absence of any such evidence may assist.”

“The usual evidence will comprise correspondence with third parties (banks, lawyers, partners etc) in which the plans are identified.”

The Respondent has failed to produce any contemporaneous evidence to demonstrate that he made any preparations to use the Domain Name in connection with a genuine offering of goods or services. He claims to have spent time and money but that remains a bare assertion.

The Respondent has produced in evidence two photographs of a Renault car. It appears from the photographs that the car in question is taking part in a “Time Attack” at Brands Hatch and Snetterton race circuits. This amounts to evidence that a Renault car took part in a race. It does not demonstrate that the Respondent owns and races that car. Even if one accepts that the car shown in the photographs is the Respondent’s car (which appears to be the Complainant’s

position) does that fact render the case as to preparations for use of the Domain Name probable?

Under paragraph 12(b) of the DRS Procedure it is for the Expert to determine the admissibility, relevance, materiality and weight of the evidence. The Expert concludes that the photographs are not of any weight when it comes to determining the Respondent's case as to legitimate use. One simply cannot safely draw any inferences from two photographs of a Renault sports car about the Respondent's motivation for registering the Domain Name. If the Respondent has spent time and money in preparing to use the Domain Name to advertise the fact that he races a Renault Megane sport car it would have been a simple matter to produce some evidence of those preparations, rather than photographs of the car itself.

In fact, the other evidence that is available in this case, to the extent that it is of probative value, tends to undermine the Respondent's case as to preparations for use. The Expert's analysis and findings based on that evidence are set out below.

Initial obfuscation

When challenged about his registration of the domain name <renaultsportracing.com> the Respondent initially decided to suggest that one explanation might be the own name defence. He said in his email dated 21 January 2016:

“Renault is a very popular surname in France as you are well aware how do you know that this domain isn't justification for someone named Renault that races in sport.”

He also pointed out that he registered the .com version of the domain name before the Complainant had registered its UK trade mark. The Complainant responded by pointing out that its registered rights dated back to 1951.

Four domain names – available for sale

It was at this point in the chronology that the Respondent first set out his case as to legitimate use. Having done so, he concluded his email dated 25 January 2016 with the following invitation:

“If Renault s.a.s wish to make an offer on the domains then I will be happy to review these. I actually own 4 which are all very similar.

RenaultSportRacing.co.uk &.com
RenaultSportShop.co.uk &.com.”

In the Response, the Respondent expresses his disappointment that the Complainant has taken “this stance” (which is presumably a reference to the fact that a Complaint was filed) and

“it's taken 4 years to even ask for the domain which wasn't in use and available to the general public for purchase.”

Explanation for the “shop” domain names

In relation to the .co.uk and .com versions of the <renaultsportshop> domain names, the Respondent says in the Response that he found out the legalities of using the “shop” domain names could have been misconstrued so his plans for those domain names were not progressed. He claims the “shop” domain names would have been used in order to sell custom parts he would have made for his Renault Megane. This is another assertion of preparations for use of a domain name without any supporting contemporaneous evidence.

Analysis of the evidence

On the one hand, we have an assertion by the Respondent of preparations for legitimate use. The only available evidence, in the form of two photographs of a Renault car on a race track, is of no evidential value in terms of determining the issue of abuse and the Expert affords it no weight for that purpose. At best, it can be said to demonstrate that the Respondent participates in motorsport events in a Renault car but no more than that. It simply does not help in determining what the Respondent’s motivation was when he registered the Domain Name.

On the other hand, what emerges from the evidence is that the Respondent clearly had knowledge of the Complainant when he registered four domain names which incorporate the Complainant’s well known mark. When initially challenged, he put forward a rather unusual variation of the own name defence, which was entirely hypothetical. The Respondent’s surname is Lewis. It is not Renault. There was no reason to register a domain name with the Complainant’s trade mark if the intention was simply to advertise the Respondent’s racing activities. If he had chosen to register the domain name <lewissportracing.co.uk> there could be no ground for complaint by the Complainant.

The Respondent invited an offer from the Complainant to buy the four “very similar” domain names. The Respondent’s own case is that the domain names were available to the general public for purchase. He says he has had interest from other parties but he did not sell the domain names. That may or may not be the case but the fact that they were available for sale to the general public tends to undermine his case that he registered them with the intention of making preparations for legitimate use.

Against that background, the statement by the Respondent that he was disappointed that the Complainant has taken this stance and that it had taken four years to even ask for the Disputed Domain Names is rather telling. Taken with the other evidence, it suggests that his motivation upon registration was to hold onto the domain names in the expectation that, at some point, the Complainant would make an approach and he would have an opportunity to sell the domain names.

The statement by the Respondent that it has taken “4 years to even ask for the domain [names]” does not support a finding that there has been an extended period of delay on the part of the Complainant in taking action once it became aware of the cause of complaint. The Complainant first became aware of a cause

for complaint in relation to the Respondent's activities on 15 January 2016. The Complainant sent a cease and desist letter in relation to the domain name <renaultsportracing.com> on 21 January 2016.

It was only when the Respondent stated, in his email dated 25 January 2016, that he was happy to consider an offer on four domain names that he listed that the Complainant became aware of the Domain Name. The Complaint was lodged with Nominet on 28 January 2016. It took a matter of a few days for the Complainant to take action having found out about the Domain Name.

The evidence, when taken as a whole, firmly supports a finding that this is a case of abuse. The Respondent has not done nearly enough to provide a credible answer to a compelling prima facie case of abuse. Indeed, the available evidence either is to be discounted as being of no evidential value (in the case of the two photographs) or lends weight to the case against him.

The Expert is satisfied, on the balance of probabilities, that the Domain Name is, in the hands of the Respondent, an Abusive Registration.

7. Decision

For the reasons set out above, the Expert is satisfied on the balance of probabilities that the Complainant has rights in a mark which is similar to the Domain Name and the Domain Name is, in the hands of the Respondent, an Abusive Registration. The Expert directs that the Domain Name is transferred to the Complainant.

Signed: Andrew Clinton

Dated: 5 April 2016