



**NOMINET**

## **DISPUTE RESOLUTION SERVICE**

**D00017159**

### **Decision of Independent Expert**

**Sealskinz Limited**

and

**Aqua Sealz Ltd**

#### **1. The Parties:**

Lead Complainant:  
Sealskinz Limited  
36 Oldmedow Road, Hardwick Industrial Estate,  
Kings Lynn  
Norfolk  
PE30 4PP  
United Kingdom

Respondent:  
Aqua Sealz Ltd  
Unit 17A Unity Road  
Kirkby In Ashfield  
Notts  
Notts  
NG17 7LE  
United Kingdom

## **2. The Domain Name(s):**

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

29 February 2016 16:21 Dispute received

01 March 2016 11:42 Complaint validated

01 March 2016 11:47 Notification of complaint sent to parties

18 March 2016 01:30 Response reminder sent

21 March 2016 14:46 Response received

21 March 2016 14:47 Notification of response sent to parties

28 March 2016 02:30 Reply reminder sent

30 March 2016 13:37 Reply received

31 March 2016 10:25 Notification of reply sent to parties

31 March 2016 10:26 Mediator appointed

05 April 2016 16:25 Mediation started

29 April 2016 15:56 Mediation failed

29 April 2016 16:00 Close of mediation documents sent

11 May 2016 09:39 Expert decision payment received

## **4. Factual Background**

The Domain Name was registered on 11 March 2013, purportedly by 'Aqua Sealz Ltd'. On the same day an application was made to register the mark 'AQUASEALZ' as a UK trade mark in respect of clothing, footwear and headgear amongst other things, again purportedly by Aqua Sealz Ltd. That application proceeded to be granted such that Aqua Sealz Ltd became the proprietor of UK trade mark no 2655617.

The Respondent asserts that it manufactured and distributed gloves under the AQUASEALZ mark from 11 March 2013 for a period of nearly a year and provides evidence of sales via Amazon.

In fact, Aqua Sealz Ltd was not incorporated until 25 February 2014 and was subsequently dissolved on 17 November 2015.

The Complainant is the registered proprietor of Community Trade Mark No 012641486 for AQUASEALZ which was registered with effect from 26 February 2014 in respect of clothing, footwear and headgear amongst other things. There is no evidence of the Complainant having used that mark and the Respondent positively asserts that the Complainant has not used the mark.

On 1 April 2014, the Complainant applied to have the Respondent's UK trade mark registration declared invalid on the grounds that as at the date that the application for the mark was made, Aqua Sealz Ltd did not exist and the application was therefore made in bad faith. On 8 April 2015 the registration was declared invalid by the UKIPO hearing officer on the grounds that a non-existent company could not have had the requisite intention to use the mark and to claim otherwise in the application form was dishonest and the application was therefore made in bad faith.

## **5. Parties' Contentions**

The Complainant asserts that the Domain Name is an Abusive Registration, pursuant to paragraph 3(a)(iv) of the DRS Policy because the Respondent gave false contact details insofar as Aqua Sealz Ltd did not exist at the time of registration.

The Respondent denies that the Domain Name is Abusive. It asserts that it legitimately sold goods under the mark AQUASEALZ for a year after the registration of the Domain Name and that it has continued to use the Domain name for the purpose of contacting its customers. It denies that it has ever made claims that its products are related to those produced by the Complainant.

## **6. Discussions and Findings**

### **a. General**

To succeed in this Complaint, the Complainant must, in accordance with paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name; and
- (ii) the Domain Name in the hands of the Respondent is an Abusive Registration (as defined in paragraph 1 of the Policy).

b. Complainant's Rights

The DRS Policy defines Rights 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".*

In my view the Complainant has shown that it has Rights as a result of its trade mark registration. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which rights are claimed, one should ignore the .co.uk suffix. The mark and the Domain Name are identical and in my opinion the Complainant has therefore established that it has Rights in a mark identical to the disputed Domain Name.

c. Abusive Registration

I now go on to consider the extent to which the disputed Domain Name is an Abusive Registration.

The Complainant asserts that the Domain Name is an Abusive Registration for the reason identified above.

The Policy defines an Abusive Registration as -

"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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights"*

and goes on to set out a (non-exhaustive) list of factors which may be evidence that a domain name is an Abusive Registration. Providing false contact details is one such factor.

Both of the criteria above require there to be either the taking of unfair advantage or causing unfair detriment to the Complainant's Rights. At the time the Domain Name was registered, the Complainant had no Rights in the AQUASEALZ mark. By the time the Complainant had acquired Rights in that mark (26 February 2014), the Respondent had been incorporated (25 February 2014), albeit only one day previously. As such, at the time the Complainant had acquired Rights the Respondent's contact details could not be said to have been false, because they were the same details as recorded at Companies House for the Respondent and there is no evidence to suggest that these were not the true contact details of the Respondent. If it could be said that the Respondent had provided false 'contact' details prior

to 25 February 2014, that position seems to have been remedied upon the incorporation of Aqua Sealz Ltd. The position under the DRS Policy does not seem to me to be comparable at all to the UK IPO proceedings which led to the Respondent's trade mark registration being invalidated, where there was a requirement that the applicant/proprietor make a truthful declaration of its intent to use, which it could not have done as the stated applicant/proprietor did not exist at that time.

It seems to me that the subsequent dissolution of the Respondent does nothing to change the above position and does not turn the Domain Name into an Abusive Registration.

In the absence of any other grounds upon which the Complainant relies, I do not find that the Domain Name is an Abusive Registration.

## **7. Decision**

For the reasons set out above, I find that the Complainant does have Rights in respect of a name which is identical to the Domain Name <aquasealz.co.uk> but that the Domain Name in the hands of the Respondent is not an Abusive Registration. The Complaint therefore fails.

Signed: Simon Chapman

Dated: 1.06.16