

DISPUTE RESOLUTION SERVICE**D00017896****Decision of Independent Expert
(Summary Decision)**

Jaguar Land Rover Limited

and

parvez ali

1. The Parties:

Complainant: Jaguar Land Rover Limited
Abbey Road
Whitley
Coventry CV3 4LF
United Kingdom

Respondent: parvez ali
Unit 63
Hounslow TW5 9NB
United Kingdom

2. The Domain Name:

rangeroverchauffeur.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 paragraphs 2 and 4 of the Procedure.

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 rangeroverchauffeur.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)

Introduction

This is, under the terms of the DRS Procedure, a summary proceeding only, based originally upon an application from the Complainant with no answer forthcoming from the Respondent. On 8th October 2016 I reached a decision based upon the information in the Complaint and wrote a draft accompanying comment in the relevant section of the Decision Notice.

On October 12th 2016 I was notified of the Respondent's request to make a non-standard submission, addressing his failure to submit a Response to the Complaint within the DRS's time limit. I exercised my discretion to receive both the Respondent's non-standard submission and the Complainant's non-standard submission in reply.

I have read both of these non-standard submissions carefully; to the extent that they were of value in reaching a final decision, I have taken them into account in the discussion which follows.

Discussion

The Complainant argues that its mark forms part of the Domain Name and that confusion of users and disruption of its business follow directly from this fact. However, the Complainant offers no evidence that the use of its mark in the Domain Name disrupts its business or otherwise unfairly prejudices its rights. The Complaint describes the Domain Name as "confusingly similar" to the Complainant's protected mark. Similarity, and the possibility of confusion arising therefrom, are matters of fact to be evaluated on the balance of probabilities, based upon evidence in the Complaint. No evidence is offered of actual confusion arising from the Respondent's registration of the Domain Name, nor that the Respondent offers the Complainant's goods for sale, nor that the Respondent offers goods or services for sale which compete with those of the Complainant.

The Complaint quotes the Appeal Panel in *Toshiba Corp vs Power Battery Inc* (DRS 07991) to support its view that the Respondent's use of the Domain Name falsely implies a connection with the Complainant. The Complaint however quotes this disclaimer from the Respondent's website:

"We are an independent chauffeur service and are not connected with Land Rover or Range Rover. Click here to visit Land Rover's own site."

The Complainant nevertheless assumes that initial interest confusion is self-evidently likely. I do not agree. It seems very probable that companies offering chauffeur services involving prestige vehicles will draw the public's attention to specific brands of vehicles available, sometimes by incorporating brand names into domain names. As the Appeal Panel in the *Toshiba* case points out, "the question of abusive registration will depend on the facts of each particular case".

Paragraph 31 of the Complaint alleges that the Respondent's additional wording "chauffeur" in the Domain Name "reinforces a connection with Complainant's vehicles and causes confusion by creating the false impression that Respondent's website offers or leads to chauffeur services featuring Range Rover vehicles that are offered by Complainant". I do not accept this

analysis. How the word "chauffeur" causes confusion in these circumstances is unclear to me. Similarly, the Complainant's claim that "Respondent's website offers or leads to chauffeur services featuring Range Rover vehicles" is a statement of fact which I consider unexceptionable. On the balance of probabilities, I do not accept that customer confusion is inevitable in this case.

There is little or nothing in the Complaint to support an allegation that the Domain Name in the Respondent's hands disrupts the Complainant's business or unfairly prejudices its rights in any way. The Complainant (at paragraphs 35 and 36 of the Complaint) claims that "the Respondent Uses the Domain Name to Offer Competitive Goods and Services", but nothing in these two paragraphs addresses this assertion. Their content consists simply of unsupported allegations of deceitful behaviour on the Respondent's part.

For the reasons set out above I find that the Complainant's case for an Abusive Registration under the DRS Policy is not made out.

8. Decision

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

Signed: **Peter Davies** Dated: 19/10/2016