

# **DISPUTE RESOLUTION SERVICE**

**D00018727**

## **Decision of Independent Expert**

**Repair Lab Leeds Ltd**

and

**Kevin Coisy**

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

Complainant:

Repair Lab Leeds Ltd  
12 Commercial Road  
Leeds  
West Yorkshire  
LS5 3AQ

Respondent:

Kevin Coisy  
Iberian House  
New Road Side  
Leeds  
LS18 4QD

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

*the-repair-lab.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 might be of such a

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

30 March 2017 Dispute received  
31 March 2017 Complaint validated  
31 March 2017 Notification of complaint sent to parties  
21 April 2017 Response reminder sent  
25 April 2017 Response received  
25 April 2017 Notification of response sent to parties  
25 April 2017 Reply received  
25 April 2017 Notification of reply sent to parties  
28 April 2017 Mediator appointed  
02 May 2017 Mediation started  
04 May 2017 Mediation failed  
04 May 2017 Close of mediation documents sent  
11 May 2017 Expert decision payment received

#### **4. Factual Background**

The Nominet records show that the Domain Name was registered on 7 October 2016.

Based on the parties' submissions (see section 5 below) and a review of the materials annexed to those submissions, I set out below the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant has carried on a business of repairing mobile phones, tablets and computers the Leeds area under the "Repair Lab" name since mid-2015, including operating a website at [www.repair-lab.co.uk](http://www.repair-lab.co.uk).
- b. The Complainant has used its logo, which is a stylised version of "REPAIR LAB", since the launch of its business, that logo appearing on its website and on its shop front.
- c. The Complainant uses the Repair Lab name for all of its advertising and has spent money promoting the name.
- d. The Domain Name was registered by the Respondent a year after the Complainant commenced business.
- e. The Respondent's business, which offers essentially the same services as those of the Complainant, is located in close proximity to that of the Complainant.
- f. The Respondent's website uses a stylised form of the name "THE REPAIR LAB", the font of which is very similar to that used by the Complainant for REPAIR LAB. In the same way as used by the Complainant, the Respondent also represents its name in white lettering on a black background; and against a black horizontal strip across the top of the home page.

I should add that there are some points made by the parties in their submissions which

I have not expressly mentioned in this decision. I have reviewed and fully considered all of the points made in both parties' submissions. The reason why I have not referred to some points is that I do not consider them central to the decision in this case, and none of them alter the conclusions which I have reached.

## **5. Parties' Contentions**

### Complaint

A summary of the Complainant's submissions is set out below:

#### **The Complainant has rights in respect of a name and mark which is identical or similar to the Domain Name:**

- (1) The Complainant was incorporated, and registered the domain name repair-lab.co.uk, in the summer of 2015. At the time there was no other company trading with this name in the local area (Leeds) or industry.
- (2) A logo for the Complainant was designed by its owner Jack Higgins and has been present on the company's website since its launch. The logo is also on the Complainant's shop front making it an integral part of its branding and a key determining factor in recognising the brand. The same logo has been used for nearly two years.
- (3) The Complainant uses the Repair Lab name for all advertising on Google AdWords, Facebook, Yelp and Yell in the Leeds area.
- (4) The Complainant has invested many thousands of pounds on advertising and promoting the Repair Lab brand in the Leeds area.
- (5) The Complainant's website is present within the search results on Google and on Google maps under the same name, Repair Lab, and this has been the case since the launch of the website.
- (6) The first Facebook post outlining the Complainant's intentions to utilise the Repair Lab brand was created on 3 October 2013.

#### **The Domain Name, in the hands of the Respondent, is an abusive registration:**

- (1) The Domain Name was primarily registered to unfairly disrupt the Complainant's business.
- (2) The Domain Name was registered on 8 October 2016 to an address located less than two miles from the Complainant's business premises. A website was then created and uploaded with the sole aim of copying the Complainant's logo/branding/menu structure in order to cause significant confusion in the eyes of the consumer. Many snippets of the Complainant's text have also been copied and slightly modified.

- (3) The Respondent has inserted a Google AdWords advertisement in the same local area as being used by the Complainant's website [www.repair-lab.co.uk](http://www.repair-lab.co.uk). The Respondent has copied the Complainant's Google AdWords text word for word, forcing the company to regularly change the ad text.
- (4) The Respondent answers the telephone with the same company name as the Complainant, namely "Repair Lab".
- (5) The Complainant believes that negative reviews it has received are due to customers being confused as to which one is the correct Repair Lab.
- (6) The Complainant believes that this is a malicious attack on its business by a malicious competitor.

### Response

A summary of the Respondent's submissions is set out below:

- (1) The present dispute is nothing more than a proxy battle between the original director of Repair Lab Leeds, Araz Fazil, and his former employer, Naheem Latif. In fact the Respondent is run independently from Mr Latif.
- (2) The Complainant does not have a valid claim for trade mark infringement or passing off. The Complainant has not demonstrated that its business has any value and therefore a claim for passing off would fail. There is no trade mark or brand registration for "Repair Lab", nor could there be. The name "Repair Lab" has been used by many other businesses before 3 October 2013, and significantly earlier than the earliest date that the Complainant asserts that it could have used the name.
- (3) Companies House has approved the use of The Repair Lab for the Respondent company, registration number 09109684.
- (4) The fact that both the Complainant and the Respondent operate in Leeds does not assist the Complainant's case.
- (5) The website at [www.the-repair-lab.co.uk](http://www.the-repair-lab.co.uk) describes a business operated independently of the Complainant.
- (6) Reference to "snippets of text" being copied has no foundation. The fact that both businesses offer the same services does not mean that the Complainant has exclusivity in the UK to offer or use these services, words and terminology on its website which are, in the ordinary sense, not specific to the Complainant.
- (7) This claim is nothing more than an attempt by the Complainant to disrupt the Respondent's business.

- (8) The Complaint is nothing more than an attempt to sabotage a legitimate business offering services similar to those of the Complainant, and of many others in the UK.

### Reply

A summary of the Complainant's submissions in reply is set out below:

- (1) The Response further lends credence to the Complainant's previous assertions. The Complainant highlights the opening paragraph of the Response where the Respondent compares the abusive use of the Domain Name to being in a battle.
- (2) The owner of the Complainant does not conduct any business by way of proxy as has been insinuated. The Complainant does not have any personal thoughts or feelings with regards to the Respondent and has filed the Complaint purely as a means to prevent the Respondent's abusive use of the Domain Name.

## **6. Discussions and Findings**

### General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it 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 (as defined in paragraph 1 of the Policy).

### Complainant's Rights

The Complainant has carried on its mobile telephone and tablet/computer business in the Leeds area under the name "Repair Lab" since mid-2015, and has advertised and promoted itself under that name.

The words "Repair Lab" are not what one would call highly distinctive for the services which the Complainant provides. In fact the name refers in an obvious way to the nature of the services. Nevertheless, other than the Respondent itself, there is no evidence of any other similar business operating under the "Repair Lab" name in the vicinity of Leeds. None of the third party examples to which the Respondent refers in the Response is based in the Leeds vicinity. One is even based in the Netherlands. As a consequence, and in spite of the name not being particularly distinctive, the Complainant has operated under its name in the Leeds area for nearly two years and it is reasonable to conclude - and I do conclude - that, even though it is a relatively small business, the Complainant has established goodwill under the "Repair Lab" name for its services in its local area.

This in turn is sufficient to mean that the Complainant has Rights in the Repair Lab name, in the form of goodwill in the name in the locality of Leeds. Disregarding the generic .co.uk suffix, the only difference is the addition of "the" at the start of the Domain Name. The Domain Name is therefore very similar to the name in which the Complainant has Rights.

I therefore find that the first limb of paragraph 2 of the Policy is satisfied.

### Abusive Registration

Paragraph 1 of 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."

Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The factor under paragraph 3a which is most pertinent to this case is as follows:

*"ii. Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant"*

The Complainant and the Respondent provide identical, or at least very similar, services; and do so in close proximity to each other geographically, within a couple of miles. When combined with these factors, the fact that their trading names (including, in the case of the Respondent, the Domain Name) are extremely similar- the Respondent's name adding no more than the non-distinctive word "The" at the front- makes it inherently likely that confusion will arise as a consequence.

The fact that the name "Repair Lab" makes reference to the nature of the services in question, and is therefore not inherently significantly distinctive, does not mean that the Complainant has no rights in the name in the Leeds locality - I have found that it does have such rights - and, when it comes to the likelihood of confusion arising, it is outweighed by the factors referenced in the previous paragraph.

In addition, the similarities between the Respondent's website and the Complainant's, in particular the Respondent's use of a very similar stylised form of its name, increase

the likelihood of confusion arising. Someone familiar with the Complainant, but arriving in error at the Respondent's website, is reasonably likely to be misled by these similarities into thinking that the Respondent's website is the Complainant's or at least connected with it in some way.

The Respondent has not provided any explanation for how it came to represent its name in a very similar stylisation, and in the same colour scheme, as the Complainant. The close similarities make it very probable that the Respondent deliberately copied the Complainant's stylisation, and I find that it did so. The only reasonable explanation for copying the Complainant in this way is that the Respondent intended to confuse people into believing that its business was the Complainant's or connected with it. If someone has the intention to create such confusion, it is a reasonable inference that it will succeed in doing so.

I should add two things at this point. Firstly, although the Complainant has not provided any evidence of actual confusion having arisen to date, this does not mean that confusion has not occurred or, even if it has not done so yet, that it is not likely to occur in the future. Secondly, the Respondent seeks to rely on the fact that Companies House allowed his company to be registered under the "Repair Lab" name (in fact, Repair Labs (Yorkshire) Ltd). This point is not in fact a valid one. As the Companies House website makes clear, any company name remains subject to pre-existing trade mark rights of another party. In any case, this case relates to a domain name, not the Respondent's registered company name.

The fact that confusion is likely to arise is not in itself necessarily enough to mean that the Complaint should succeed. It is still necessary to prove that the Domain Name is an Abusive Registration. For that, the crux is whether the Respondent's registration and use of the Domain Name is unfair.

When assessing the issue of fairness, I find that the Respondent was aware of the Complainant's trading name and website address at the time when it registered the Domain Name. In reaching that finding, I take into account that the Respondent's business is based in very close proximity to that of the Complainant; that the Complainant had been active in that locality for more than 12 months prior to the Respondent registering the Domain Name, including in directories; and that there is no other credible explanation for the stylisation of the Respondent's trading name being so similar to that of the Complainant. My conclusion is reinforced by the Respondent not having stated in its Response that it was not aware of the Complainant's business and trading name.

By proceeding as the Respondent did, when (according to my finding) it was aware of the Complainant's trading name, and when plenty of other name options were available to it, my conclusion is that the Respondent acted unfairly and not in good faith. Since confusion with the pre-existing business of the Complainant (in terms of the Respondent's business and Domain Name/website being mistaken by some people as being the Complainant's business or connected with it) is inherently likely, it follows that the registration of the Domain Name and its use has taken unfair advantage of, and is unfairly detrimental to, the Complainant's Rights.

It is unfairly detrimental to the Complainant's Rights because, when inevitable confusion arises amongst at least some actual or potential customers, the Respondent's website will divert and/or distract people who are looking for the Complainant. The flip side of this is that the Respondent's registration and use of the Domain Name also takes unfair advantage of the Complainant's Rights by attracting customers to the Respondent's website- by use of the confusingly similar name , exacerbated by the use of the very similar form of stylisation of the name- then seeking to sell competitive services to them.

In other words, it follows that the Domain Name is an Abusive Registration.

## **7. Decision**

Having found that the Complainant has Rights in respect of a name which is similar to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *the-repair-lab.co.uk* be transferred to the Complainant.

**Signed .....**  
**Jason Rawkins**

**Dated: 6 June 2016**