

DISPUTE RESOLUTION SERVICE**D00022378****Decision of Independent Expert**

Ladbrokes Betting & Gaming Ltd

and

Kevin Patel

1. The Parties:

Lead Complainant: Ladbrokes Betting & Gaming Ltd
3rd Floor One New Change
London
EC4M 9AF
United Kingdom

Respondent: Kevin Patel
49 Castle Street
Bolton
BL2 1AD
United Kingdom

2. The Domain Name: ladbrokescoralplc.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.

21 February 2020 12:22 Dispute received
21 February 2020 14:59 Complaint validated
21 February 2020 15:01 Notification of complaint sent to parties
11 March 2020 01:30 Response reminder sent
16 March 2020 10:40 Response received
16 March 2020 10:40 Notification of response sent to parties
19 March 2020 01:30 Reply reminder sent

24 March 2020 08:28 No reply received
27 March 2020 14:39 Mediator appointed
06 April 2020 12:57 Mediation started
20 April 2020 14:29 Mediation failed
20 April 2020 14:29 Close of mediation documents sent
29 April 2020 10:27 Expert decision payment received

4. Factual Background

The Complainant and its related entities, such as Ladbrokes Coral Group Plc are owners of the 'LADBROKES' and 'CORAL' brands representing two of the most widely known names in the betting and gaming industry, both in the United Kingdom and internationally.

The Respondent is a former betting account holder of the Complainant.

The Respondent set up the site to which the Domain Name directs following a dispute between him and the Complainant. Its aim is to publish critical commentary on the conduct of the Complainant in the course of this dispute. On February 13th 2020, the Respondent bought the Domain Name and put the Complainant on notice that he had done so. Five days later he informed the Complainant that the criticism website would launch on the following day, that word of this was being circulated on social media and that the Domain Name was available for sale to the Complainant for the sum of £350,000, being the amount of money the Respondent felt he was owed in the disputed matter.

5. Parties' Contentions

A summary of the Parties' submissions is set out below.

The Complainant

Complainant's Rights

The Complainant submits evidence of registered UK and European trademarks in the names LADBROKES and CORAL, and claims common law rights arising from their use in the course of business over many years. In support of these claims the Complainant refers to findings as to its rights in earlier DRS and WIPO Panel decisions, including findings in its favour in relation to the marks <LADBROKESCORAL> and <LADBROKES CORAL>.

Abusive Registration

The Complainant formally declares that the Respondent knew of the Complainant and its protected marks and that the Respondent has not received any permission or license of any kind for the use of the Complainant's marks.

The Complainant argues that the Domain Name is an abusive registration in the hands of the Respondent. Citing paragraph 5 of the DRS Policy, which sets out a non-exhaustive list of circumstances which may give rise to a finding of abusive registration, the Complainant asserts that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant for an amount in excess of his costs in acquiring it, (paragraph 5.1.1.1 of the DRS Policy).

The Complainant further states that the registration was made for the purpose of unfairly disrupting the business of the Complainant, (paragraph 5.1.1.3 of the Policy). Evidence is submitted, in the form of emails from the Respondent which, says the Complainant, makes clear his intention to publish critical material about the Complainant and to encourage its wider dissemination via social media.

Finally, referring to paragraph 5.1.2 of the Policy, the Complainant asserts 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 use of its protected marks in the Domain Name immediately suggests a connection to the Complainant, even if the content of the website, once accessed, indicates otherwise.

The Respondent

The Respondent sets out his account of the background dispute between the Parties and describes his reasons for registering the Domain Name. These are to make public his allegations against the Complainant, to give a full account of the effect upon him and his family of the Complainant's alleged behaviour and to encourage others in similar positions to his own to join him in concerted action against the Complainant.

The Respondent asserts that he gave the Complainant advanced notice of his intention to register the Domain Name and received no reply. He further argues that, as the Domain Name was available for purchase, it follows that the Complainant did not want it and that it now seeks the transfer of the Domain Name solely to silence the Respondent.

The Respondent challenges the Complainant's assertion that the Domain Name confuses or is likely to confuse the public. The content of the site is such that no visitor could be confused as to its authorship.

6. Discussions and Findings

Introduction

The subject matter of the dispute which has given rise to this Complaint is highly sensitive. The Parties' submissions, principally those of the Respondent, include much that falls outside the scope of the DRS proceedings; references to named individuals and their personal circumstances risk being extremely prejudicial to the persons concerned and are irrelevant to my task as the designated Nominet Expert.

Mindful of my own and Nominet's responsibilities under both the DRS Policy and the law, I refrain from discussing or offering any opinion whatsoever on the dispute which lies behind this Complaint, save where mention of it is strictly necessary for the purpose of applying the provisions of the DRS Policy to the submissions of the Parties.

I am bound solely to consider the two issues which are summarised in Paragraph 2.1 of the DRS Policy as follows:

2.1 A Respondent must submit to proceedings under the DRS if a Complainant asserts to us, according to the Policy, that:

2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration

Rights and Abusive Registration are defined in Paragraph 1 of the DRS Policy 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;

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. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;

Complainant's Rights

The Complainant has submitted evidence of its portfolio of registered UK and European trademarks in the names LADBROKES and CORAL, and claims common law rights arising from their use in the course of business over many years. I have no difficulty in accepting this evidence and find that the Complainant has the relevant rights in these names. The Domain Name conjoins these marks and adds the conventional abbreviation for a public limited company, <plc> to produce <ladbrokecoralplc.co.uk>, the Domain Name to which this decision refers. Following the accepted practice of discounting the <.co.uk> suffix, I conclude that neither the conjoining of the two names, nor the addition of the abbreviation <plc> suffice to differentiate the Domain Name from the Complainant's protected marks. I therefore find that the Complainant has the necessary rights to bring this Complaint.

Abusive Registration

The Complainant relies upon paragraphs 5.1.1.1, 5.1.1.3 and 5.1.2 of the DRS Policy. These paragraphs cover three situations where a domain registrant

- (a) acquires a domain name primarily for the purpose of selling it to a complainant or to a competitor of that complainant for a sum in excess of the cost of its purchase and registration,
- (b) seeks or threatens to use the domain name in a way which disrupts the Complainant's business or is unfairly detrimental to its interests, and
- (c) seeks to take unfair advantage of a name which uses a complainant's name and notoriety by confusing internet users, thus attracting attention and visitors to a site.

Taking these in turn, it is common ground between the Parties and clear from their submissions that the Respondent has indeed put a price on the Domain Name, should the Complainant wish to buy it. This price is equivalent to the sum the Respondent believes the Complainant owes him and far exceeds his out-of-pocket expenses in acquiring and registering the Domain Name. Whether this was the primary purpose of the Respondent in registering the Domain Name is perhaps open to debate, although it is certainly possible to infer that this was so from the Respondent's submission.

It is also, I think, clear from the Respondent's submission, that his aim is to publish information about the Complainant which, if widely disseminated and taken at face value, would be seriously detrimental to the Complainant. Again, there may be room to question whether the detriment suffered by the Complainant would be unfairly inflicted upon it, or deservedly so. This is a matter upon which I offer no opinion.

Finally, the Domain Name consists in its entirety of a conjoined form of two names in which that the Complainant has rights as defined in the DRS Policy. I must consider the likelihood that an Internet user, seeking the online presence of the Complainant, might come across this Domain Name and click on it in the expectation of reaching the Complainant. Such initial interest confusion is generally held by DRS experts to point to an abusive registration. The key fact in this case is that the Domain Name contains only the Complainant's names, without any indication of the website's true purpose. In my view, confusion is very likely to arise. The Respondent argues that a visitor to the site will instantly become aware of its nature and cease to be confused. This is perhaps correct, but it is not enough to avoid the initial confusion, whereby a user is led to the Respondent's site, as it were, under false pretences. The Respondent may or may not have intended to deceive or confuse the user, but his decision to use just the Complainant's names leads to this outcome and therefore to a finding that this is an Abusive Registration in the Respondent's hands.

The true purpose of the Domain Name is to point to a criticism site. Paragraph 8 of the DRS Policy sets out a non-exhaustive list of circumstances which may show that a registration is not abusive and includes a consideration of sites of this kind. The relevant wording, set out at sub-paragraph 8.2 states that

8.2 Fair use may include sites operated solely in tribute to or in criticism of a person or business.

The operative word is ‘may’, as the facts differ greatly from one case to another and Experts will consider the question of a fair use defence, taking the nature of the domain name and all the relevant circumstances into account. A number of such cases have been considered by DRS Experts and the accepted view is set out in Paragraph 4.9 of the DRS Expert Overview, a document, designed to assist parties in DRS disputes which can be consulted on the Nominet website. The relevant discussion of this topic, based upon an earlier DRS appeal decision, is set out below.

The appeal decision in DRS 06284 (rayden-engineering.co.uk) confirmed the consensus view among experts today that the nature of the domain name is crucial to the exercise. A criticism site linked to a domain name such as <IhateComplainant.co.uk> has a much better chance of being regarded as fair use of the domain name than one connected to <Complainant.co.uk>. The former flags up clearly what the visitor is likely to find at the site, whereas the latter is likely to be believed to be a domain name of or authorised by the Complainant.

The words quoted seem to me to apply straightforwardly to the facts of the present case. Following this reasoning, my view is that neither the fair use provisions nor any other provision of Paragraph 8 of the DRS Policy can assist the Respondent.

7. Decision

For the reasons set out above I find that the Complainant has Rights in a name which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. The Domain Name should be transferred to the Complainant.

Signed

Peter Davies

Dated: 5 May, 2020