

Nominet UK Dispute Resolution Service

DRS 04158

Mulberry Company (Design) Ltd

v

Suchknecht

Decision of Independent Expert

1. PARTIES

Complainant: Mulberry Company (Design) Ltd

Address: The Rookery, Chilcompton, Bath, Somerset

Postcode: BA3 4EH

Country: UK

Respondent: Suchknecht

Address: Waldhofweg 17, Koppl, Salzburg

Postcode: 5321

Country: Austria

2. DOMAIN NAME

This complaint concerns the domain name mulberry england.co.uk (the "Domain Name"):

3. PROCEDURAL BACKGROUND

3.1 A Complaint in respect of the Domain Name under Nominet UK's Dispute Resolution Service Policy (the "Policy") was received from the Complainant on 27 November 2006. Nominet forwarded the Complaint to the Respondent. No Response was received.

3.2 The dispute was referred for a decision by an Independent Expert following payment by the Complainant of the required fee in accordance with paragraph 5d of Nominet's Procedure for the conduct of proceedings under the Dispute Resolution Service Procedure (the "Procedure") on 10 January 2007. I was appointed as Independent Expert on 10 January 2007 and confirmed to Nominet that I was independent of the parties and I knew of no other facts or

circumstances that might call into question my independence in the eyes of the parties.

4. OUTSTANDING FORMAL/PROCEDURAL ISSUES (IF ANY)

- 4.1 Under Paragraph 5a of the Procedure the Respondent was required to submit a Response to the Complaint to Nominet by 20 December 2006. The Respondent has failed to do so.
- 4.2 Paragraph 15b of the Procedure provides as follows: "If, in the absence of exceptional circumstances, a Party does not comply with any time period laid down in this Policy or Procedure, the Expert will proceed to a Decision on the Complaint".
- 4.3 It is the view of the Expert that there are no exceptional circumstances. The proceedings have been communicated to the Respondent and the Respondent has made no attempt to explain its lack of response and there is no evidence to suggest that anything exceptional has occurred.
- 4.4 The Expert is accordingly authorised under the Procedure to proceed to decide the Complaint. Under paragraph 16a of the Procedure the Expert should reach a decision based on the Parties' submissions (which consists of the Complaint and its Annexes in this case) and the Policy and Procedure. In the absence of any exceptional circumstances the Expert is also entitled to draw such inferences from the Respondent's non-compliance with the Policy or Procedure as he considers appropriate (paragraph 15c of the Procedure).

5. THE FACTS

- 5.1 The filed evidence establishes that the Complainant manufactures and sells a range of leather travel goods and associated items. It has traded under the name "Mulberry" and has spent many millions of pounds on advertising. It trades on the internet via a web site at www.mulberry.com. It has a number of registered trade marks in respect of the word "mulberry" in combination with a stylised tree logo (for example Community trade mark 1687201).
- 5.2 The Domain Name was originally owned by the Complainant, but it has in recent years switched its activities to the mulberry.com domain. As a result of an administrative oversight the Domain Name was not renewed when the Complainant's ownership lapsed. The day the Domain Name expired, it was registered by the Respondent.
- 5.3 The Respondent has subsequently offered to sell the domain name to the complainant for €250 (two hundred and fifty euros).
- 5.4 The precise identity and legal nature of the Respondent is unclear.

6. THE PARTIES' CONTENTIONS

Complainant

- 6.1 The Complaint's contention is short and simply says that the Domain Name in the hands of the Respondent is abusive because it was primarily registered for the purposes of selling, renting or otherwise transferring it to the Complainant for a price greater than it cost the Respondent to register it.

Respondent

- 6.2 As indicated above no Response has been filed.

7. DISCUSSION AND FINDINGS:

General

- 7.1 The Complainant is required under Clause 2b of the Policy to prove to the Expert on the balance of probabilities that:
- (a) the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
 - (b) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

Complainant's Rights

- 7.2 "Rights" are defined in the Policy and in the Procedure. Rights "includes, but is not limited to, rights enforceable under English law." The filed evidence established that the name "mulberry" has been widely promoted and is well known. The Complainant also has registered trade marks which include as part of the registration the word "mulberry". I am satisfied that the Complainant has Rights in the name "mulberry"
- 7.3 The Domain Name is in my view similar to the name in which the Complainant has rights. The addition of a non-specific geographical identifier in the form of the word "england" does not render the domain name dissimilar.
- 7.4 Accordingly I find that the Complainant does have Rights in respect of a name or mark which is identical or similar to the Domain Names.

Abusive Registration

- 7.5 Paragraph 1 of the Policy defines "Abusive Registration" as a Domain Name which either:

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

7.6 Paragraph 3 of the Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. These include "circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name" (paragraph 3aiA).

7.7 There is no evidence at all to suggest that the Respondent has any association with, or interest in, the word "mulberry". In the absence of any Response from the Respondent I infer from the timing of the registration that the Respondent is in all probability effecting the registration of lapsed domain names as soon as they are available. I infer it does so in the hope that in at least some cases (as here) the domain name will have been allowed to lapse by mistake and the previous owner will then pay to regain control of it.

7.8 No direct evidence has been filed of the cost to the Respondent of effecting the registration of the Domain Name, but I believe it is well known that such registrations can be effected for relatively modest sums in the order of a few pounds (or euros).

7.9 In all the circumstances it appears clear that the purpose of the Respondent's registration of the Domain Name was in the hope that it would be able to sell the Domain Name to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring the Domain Name. I accordingly find that this is evidence of an Abusive Registration.

8. DECISION

Accordingly, I find that the Complainant has Rights in respect of a name or mark which is similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. I therefore determine that the Domain Name should be transferred to the Complainant.

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Nick Gardner

30 November 2006