

DISPUTE RESOLUTION SERVICE

D00022925

Decision of Appeal Panel

Dr. Ing. h.c. F. Porsche Aktiengesellschaft

and

Drakesphere Ltd

1. The Parties:

Lead Complainant: Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1
Stuttgart
70435
Germany

Respondent: Drakesphere Ltd
Block 2 Unit 4
Shenstone Trading Estate, Bromsgrove Road
Halesowen
West Midlands
B63 3XB
United Kingdom

2. The Domain Name(s):

porscheshop.co.uk

3. Procedural History

This is an appeal by the Respondent against the full decision of Russell Richardson (the “Expert”) issued on 20 December 2020 in favour of the Complainant, the

original Complaint having been filed on 14 August 2020. The Respondent paid an appeal deposit on 31 December 2020, and the Appeal Notice was filed on 18 January 2021, with the balance of the appeal fee being paid on 5 February 2021.

Claire Milne, David King and Philip Roberts (together, the “Panel”) were appointed to decide this appeal on 22 March 2021. Each has made a statement to the Nominet Dispute Resolution Service in the following terms:

“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.”

Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy (as in effect from 1 October 2016) (the "Policy") unless the context or use indicates otherwise.

4. The Nature of This Appeal

Paragraph 20.8. of the Policy provides that: “The appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters. The appeal panel should not normally take into consideration any new evidence presented in an appeal notice or appeal response, unless they believe that it is in the interests of justice to do so”.

The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits.

As it is the original Respondent who has appealed, in this decision the positions of the parties are reversed. For clarity, the terms Complainant and Respondent still refer to the same parties as before.

5. Formal and Procedural Issues

The Expert commented on the extensiveness of the evidence submitted by both parties in this case, some of it in his view (especially that from the Respondent) having questionable relevance.

The Panel draws attention to the following provisions of the Policy, which apply equally to the Complaint (paragraphs 4.3.1-2) and the Response: (paragraphs 7.3.1-2):

“The complaint / response shall:

- not exceed 5000 words (not including the text set out in annexes);

- submit annexes (with clear and descriptive file names) purely for the purposes of submitting evidence to support the arguments raised in the response. Annexes must not be used to circumvent the word limit set out ... above;”

Similarly, paragraph 20 of the Policy limits both appeal notices and appeal responses to 1000 words.

In this instance, the Complaint has 5,086 words¹ and is accompanied by 10 attachments which jointly take up around 130 pages. The Complainant’s Reply adds a further 4 attachments and 29 pages. The body of the Complainant’s Appeal Response contains 995 words, with a further 306 words in footnotes.

The Respondent’s Response is as extensive as it is unorthodox. It consists of:

- A series of four emails combined in a single document titled “Response - 22925 porscheshope.co.uk” [sic], of 317 words, describing the format of the Response.
- A document titled “Second Witness Statement of Aaron Newell - Response” of 4,994 words, accompanied by six annexes, one of which has six parts.
- A further set of 23 sub-annexes to “Witness Statement of Ian James Heward – Annex 1 to Witness Statement of Aaron Newell”.

In all, the Response consists of 36 separate documents and around 230 pages.

As far as the Panel can discern, the intention appears to have been that the second witness statement of Mr Newell should itself constitute the 'Response' (within the meaning of paragraph 7 of the Policy). The Panel has also been supplied with the third and fourth witness statements of Mr Newell (both dated 23 November 2020). Presumably there was also a first statement, but the Panel have not been supplied with it.

For the record, the Panel regards a witness statement (a format borrowed from civil litigation) as an unhelpful vehicle for the presentation of a Response, not least because it elides the role of submissions and evidence: under the scheme of paragraph 7 of the Policy, the Response should contain submissions and argument (verified by the declaration at paragraph 7.3.6) and the Annexes thereto should contain the evidence in support of those arguments. A document entitled 'witness statement' but principally containing argument and concluding with a reworded version of the paragraph 7.3.6 declaration (which is materially different from the statement of truth required under the English Civil Procedure Rules) is at best an unnecessary formality. On the other hand annexes to Responses which comply with paragraph 7.3.2 of the Policy (namely containing evidence to support the arguments raised in the Response and which are not used to circumvent the 5000 word limit)

¹ The Complaint was submitted as an unformatted text document which included headings and questions from Nominet’s original online complaints form. If the Complainant had submitted a formatted version of the Complaint, it might have omitted these headings and thereby have kept within the 5,000 word limit.

can be, but are not required to be, in the form of witness statements compliant with the procedural rules of the courts of England and Wales.

The Appeal Notice ends with the note “(1,000 words)”. However, the body of the Notice contains 1,048 words and its footnotes contain a further 608 words.

It is clear that both parties have attempted to shoehorn as many words as permissible into their respective submissions. Moreover it appears that they have each attempted to circumvent the word limits – both by using footnotes in their Appeal submissions, and the Respondent also by using a series of nested Matryoshka doll annexes in its Response. As the Expert did not raise any objection, the Panel will not press this point. However, the Panel takes this opportunity to remind parties to Nominet disputes that they do their cases no good by submitting too much material, some of it repetitive or not relevant, and structured in a non-standard way. Overcooked submissions are no more palatable than undercooked submissions.

6. The Facts

The Complainant is a well-known German car manufacturer founded in 1931 that specialises in producing and selling high performance cars under its name PORSCHE, along with the spares and components for those cars, and branded accessories (such as clothing). The Complainant enjoys a global reputation.

The Complainant is the proprietor of various registrations for the trade mark PORSCHE and variations thereof, including logos and other elements, and in addition certain sub-brand names such as CARRERA and BOXSTER (in the UK e.g. 1308394 and EU e.g. 11737368) - covering a broad range of goods including cars, car parts and accessories. The Complainant holds the domain name registration for www.porsche.com, registered in 1996.

The Respondent was incorporated in 1993 and provides various Porsche related aftermarket services, such as the sale of parts and components for Porsche cars, servicing for Porsche cars, and related accessories and gifts (e.g. cufflinks). In addition, the Respondent has played an active role in the Porsche Club of GB.

The Respondent registered the Domain Name on 15 December 1998, since when it has been used in the above-mentioned business activities.

7. The Parties’ Contentions

The parties’ contentions at first instance were set out fully in the original Expert Decision, and are provided below only in a condensed form. The Appeal contentions are summarised below.

Complainant (in Complaint and Reply)

The Domain Name is so similar to the Complainant's mark (with the element "shop" doing nothing to mark the Respondent out as independent of the Complainant) that it suggests to internet users that the Respondent, if not identical with the Complainant, at least has some form of authorisation from the Complainant.

Poor reviews of the Respondent on Trustpilot, and counterfeit goods sold through the website at the Domain Name, both pose risks to the Complainant's reputation.

The Complainant has at no time given its approval to the Respondent's use of the Domain Name. Rather, it has objected to this use. It supplies copies of correspondence to support this claim, including items which the Respondent says were never received.

The Respondent's activities in connection with Porsche Club of GB, and membership of Porsche Trade Parts Programme and access to Partslink 24, with associated training, do not convey any special status or recognition for the Respondent – they are available to all traders in Porsche parts.

Respondent (in Response)

The Domain Name was chosen to indicate the nature of what is sold and has been used since 1998 for a genuine, well-established business. The Complainant has known throughout of the Respondent and its use of the Domain Name; the parties have had a good business relationship.

Previous discussions between the parties about use of the Domain Name have been inconclusive and there is no justification for now aiming to deprive the Respondent of it. This is a case of reverse domain name hijacking.

The Respondent has long supported the Complainant through voluntary contributions, in cash and in kind, to activities of Porsche Club of GB.

The Respondent never knowingly sells counterfeit items.

Respondent (in Appeal Notice)

The Decision was in error, with an unjust and disproportionate outcome, because:

- a) The Respondent registered and has used the Domain Name not to take unfair advantage of, far less to unfairly disrupt (Policy 5.1.1.3), the Complainant's Rights, but to run online a genuine business (Policy 8.1.1.1), which had already been operating offline for six years before the registration.
- b) The evidence demonstrates that the Complainant, or others speaking for the Complainant, have for more than two decades repeatedly recognised (whether

explicitly or implicitly) the parties' long-standing and mutually beneficial business relationship.

- c) The Domain Name registration took place well before the Respondent was aware of the Complainant's cause for complaint (Policy 8.1.1). Indeed, on occasions (in 2003, 2010 and 2012) correspondence between the parties referred to the Domain Name, but each time discussion petered out inconclusively, leading the Respondent to assume that the Complainant was happy with the status quo.
- d) Use of the Domain Name has not led to any demonstrable confusion (Policy 5.1.2). Porsche owners in general, and the Respondent's customers in particular, are sophisticated, knowledgeable and well aware of the Respondent's business activities and how they relate to those of the Complainant.
- e) Insofar as the Complainant's accusations of the website being used to sell counterfeit goods are true, any fault lies not with the Respondent but with third parties who provided goods that were not as ordered. The Expert accepted that the Respondent had innocent intentions.
- f) The Complainant has allowed 22 years to elapse since the Domain Name was registered without bringing a DRS case against the Respondent.
- g) The following DRS cases are cited in support, primarily as examples of how experts have dealt with delay in bringing complaints:
 - DRS 09187 <nutella.co.uk>
 - DRS 08634 <emirates.co.uk>
 - DRS 13009 <kerridgetraining.co.uk>
 - DRS 13281 <dailies.co.uk>
 - DRS 15788 <starwars.co.uk>

Complainant (in Appeal Response)

The Complainant regards the Decision as correct, its reasons including the following.

- a) The Policy specifies no time limits for bringing complaints.
- b) The Domain Name is of exactly the kind referred to in DRS 17102 <rgblandrovers.co.uk>, that is, without any distinguishing element such as "independent", which could serve to make clear that its registrant was not associated with the owner of the well-known mark incorporated into the name.
- c) The Complainant has never accepted the Respondent's use of the Domain Name. Within its evidence (Attachments 11 and 12) are copies of letters concluding the 2010 and 2012 correspondences which the Respondent claimed never to have received.

- d) What precipitated this complaint was the discovery of counterfeit goods on the Respondent's website, with the potential for damage to the Complainant's reputation. The Respondent has not denied the presence of the items concerned on the website.
- e) The following DRS cases are cited in support:
 - DRS 00248 <seiko-shop.co.uk>
 - DRS 03027 <epson-inkjet-cartridge.co.uk> (and other related names)
 - DRS 07991 <toshiba-laptop-battery.co.uk>
 - DRS 16416 <wwe-shop.co.uk>
 - DRS 17102 <rgblandrovers.co.uk>

8. Discussion and Findings

To succeed in Nominet's DRS proceedings, a Complainant must satisfy the Panel, on the balance of probabilities, on both of two tests, which are considered in turn below:

- i) The Complainant 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.

Rights

The Complainant has provided ample evidence of its registered rights in the trade mark PORSCHE which forms the distinctive part of the Domain Name, and the Respondent does not contest these rights. As in a series of other DRS Decisions (from DRS 00248 <seiko-shop.co.uk> to DRS 16416 <wwe-shop.co.uk>, an appeal decision which mentions other related cases), the Panel regards the "shop" element as neutral, in keeping with the commercial nature of the brand name, and thus not diluting similarity. The first of the tests has been satisfied.

Abusive Registration

In Nominet's DRS Policy, 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.

The Domain Name in dispute was registered in 1998, and no evidence has been provided by the Complainant relating to the circumstances of its registration. The contentions and evidence all relate to the manner in which the Domain Name has been used. Accordingly the Panel will consider only part ii) of this definition. It will look at the following main aspects of the case: acquiescence, confusion, damage to the Complainant's reputation and advantage derived from the Complainant's reputation.

Acquiescence

In essence, the Appeal is on the grounds that by acquiescing in the Respondent's use of the Domain Name for many years, during which the Complainant was fully aware, and indeed in many respects supportive, of the Respondent's business activities, the Complainant has effectively given consent to such continuing use. This contention is strengthened by the delay in making the Complaint.

The approach of the DRS to such issues is now well established. In Appeal Decision DRS 17490 <cheltenham-festival.co.uk> the Panel conducted the following review of past decisions (set out below in *italics* with original **emphasis** and selection, but added [headings] to clarify nested quotation):

[Appeal Decision DRS 17490 <cheltenham-festival.co.uk>]

"The bigger question arising out of the 12 year delay between registration and complaint is whether the Jockey Club's action or inaction over that period has altered the position. The Appellant invokes a number of different legal doctrines: implied consent, acquiescence, estoppel, laches. None of these doctrines feature explicitly in the Policy, and no limitation period is provided for. However the relationship between these doctrines and the test for Abusive Registration under the DRS has been explored in a number of DRS decisions, most recently by the Appeal Panel in Lucasfilm Ltd., LLC -v- Abcissa.com Limited (DRS 15788), the relevant passages of which are excerpted below with emphasis added:

[Appeal Decision DRS 15788 <starwars.co.uk>]

"As a starting point in relation to this issue the Panel notes that the Policy itself says nothing about delay, nor does it contain any provisions requiring a Complaint to be brought within a specific time limit after the date of registration of a domain name. The Expert's Overview also contains no guidance on this issue. The Panel also notes that as a matter of English law delay per se would not prevent an action to restrain ongoing acts of trade mark infringement.

*... The circumstances in which delay and other related considerations may operate as a defence to litigation are considered further below. **Overall however the Panel considers that, where the use complained of is ongoing, then delay alone should not automatically preclude a complaint being brought.***

*It is nevertheless the case that the list of factors which may lead to a finding that a domain name is not an Abusive Registration, as set out in paragraph 4 of the Policy, is said to be non-exhaustive. **The Panel concludes that in principle, depending upon the relevant facts, this means that it is open to the Panel to reach a finding that whilst delay does not automatically bar an action, delay in a specific case might be such as to mean that an otherwise Abusive Registration is acceptable. Whether in the particular circumstances of a given case that is the position would depend upon individual facts.***

*This approach seems to the Panel consistent with that adopted in *Emirates v. Michael Toth (DRS 08634)*, an appeal decision concerning the Domain Name <emirates.co.uk>. In that case the Panel stated:*

[Appeal Decision DRS 08634 <emirates.co.uk>]

“The Panel accepts that there may be a case for delay or acquiescence amounting to a defence to a complaint under the Policy but is not at all satisfied that this is such a case. The delay is not such as to prejudice the proper consideration of the issues. Even if the Respondent could properly claim to have acted on the assumption that the Complainant had no objection to his registration and use of the Domain Name, we do not consider that he has suffered any unfair prejudice as a result of the delay. As we have found, he cannot be said to have developed a proper business under the Domain Name or a “genuine offering of goods or services” in the sense of paragraph 4aiA of the Policy. Rather, its use has been for click-through traffic and as a place holder for a valuable domain name. The Panel finds that the Respondent has not in reality developed a business under the Domain Name in the belief that the Complainant had no objection to his using it or with the encouragement of the Complainant.”

[Appeal Decision DRS 15788 <starwars.co.uk>]

... By way of ‘cross-check’, the Panel has considered whether the facts of the case would be such as to support a defence based on laches or acquiescence if a Court had found that the use of the 2003 Domain Names amounted to trade mark infringement or passing off, and was considering whether the delay and associated circumstances were such as to preclude the granting of an order requiring the Respondent to transfer the Domain Name.”

*Laches is an equitable doctrine under which delay can bar a claim for equitable relief, even where there has been a finding of liability. It was discussed in some detail by the House of Lords (the then highest court in the UK, subsequently replaced by the Supreme Court) in a celebrated case about an individual’s claim for a share of the musical copyright in the song “A Whiter Shade of Pale”, which was brought 38 years after the song was first released: *Fisher v Brooker and others* [2009] UKHL 41. Lord Neuberger, who*

gave the lead opinion (with which the other four judges agreed), stated the following at paragraph 64:

[Fisher v Brooker and others [2009] UKHL 41]

*“Although I would not suggest that it is an immutable requirement, **some sort of detrimental reliance is usually an essential ingredient of laches**, in my opinion. In *Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221, 239*, the Lord Chancellor, Lord Selborne, giving the opinion of the Board, said that laches applied where “it would be practically unjust to give a remedy”, and that, in every case where a defence “is founded upon mere delay ... the validity of that defence must be tried upon principles substantially equitable.” He went on to state that **what had to be considered were “the length of the delay and the nature of the acts done during the interval, which might affect either party, and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”***

[Appeal Decision DRS 15788 <starwars.co.uk>]

*... As in the case of laches, mere delay in exercising a right is not enough to establish a defence of acquiescence; an extra element is required. Essentially, **acquiescence on the part of a claimant seeking to exercise a legal right will not deprive them of the right unless it is of such a nature and in such circumstances that it would be unconscionable of the claimant to rely on it.***

*It can be seen that a court’s assessment of arguments based on laches and acquiescence in cases of delay brings into play the same kind of factors as were taken into account in *Emirates v Toth*, which have already been discussed above in relation to this case. **While the length of the delay plays a part, so do the activities and behaviour of each party, as well as the impact on both parties of the relief that is being sought.***

[Appeal Decision DRS 17490 <cheltenham-festival.co.uk>]

On the facts of that case, the Appeal Panel concluded that ten years of inactivity of the complainant did not deprive it of a remedy under the DRS. The same result was reached in the Toth case (quoted within the quote above), where the delay was of similar length and the respondent claimed that he had suffered prejudice as a result of the delay (through wasted expenditure on web development and his purchase of another domain name in reliance on the inaction of the complainant). In fact the Panel has been unable to find a DRS decision where delay or acquiescence alone prevented a finding of Abusive Registration.”

Reverting to the facts of the present dispute, the Panel has patiently reviewed the extensive evidence submitted by both parties in relation to the issue of acquiescence. It is clear that the Complainant has been aware of the Respondent's use of the designation 'porscheshop' for a very long time - sufficiently long that if this were a dispute about real property the Respondent would be well placed to claim adverse possession or easement by prescription. Over the years the Complainant has

complained repeatedly - sometimes about the use of the name per se and at other times about specifics - but it has never positively consented to the Respondent's usage of the name. In the parlance of trade mark law, the facts and circumstances do not demonstrate unequivocally a renunciation of rights by the trade mark proprietor. In layman's terms, the Respondent has been clearly told on several occasions that the Complainant was not happy.

From the prodigious volume of material adduced by the Respondent it is clear that the Complainant's delay in bringing the complaint has not hampered its ability to advance its case, nor has it prejudiced a proper consideration of the issues. Rather the pivotal questions which fall to be asked and answered, as per the <cheltenham-festival.co.uk> case, are whether the Complainant has implicitly represented that it did not or would not object to the use of the Domain Name and if so whether it was reasonable for the Respondent to rely upon this implicit representation.

On the evidence before it, the Panel has concluded that no such implicit representation was or has been made; and that any false sense of security on the part of the Respondent has not reasonably resulted from lulling by the Complainant. The position is well illustrated by a letter dated 23 April 2012 from the Complainant's lawyer to the Respondent, following a telephone conversation between them, which includes this passage:

'I explained to you that our client is most concerned with the domain name and the business name "porscheshop" that will always be regarded as an official website of our client.

Therefore, if we want to settle the matter amicably, it is crucial that we eventually agree on the transfer of the domain name and a change of the business name.

We are aware that basically you run a legitimate business and we do not wish to interfere with it. In order to facilitate an agreement we would be ready to grant a transitional period. Our goal is that in the end you use a URL and a business name that does not or at least not prominently and/or without distinguishing elements incorporate the name and trademark "Porsche".'

It is of no avail to the Respondent to point out, correctly, that the Complainant has recognised that the Respondent runs a legitimate business, in circumstances where the Complainant has in the same breath objected to the use of 'porscheshop' as the name of that business. In the circumstances of this dispute the Panel finds that the grounds of acquiescence and/or delay do not, of themselves, provide the Respondent with a basis for overturning the Expert's finding of abusive registration.

Confusion

The Respondent argued at first instance, and has reiterated in its Appeal Notice, that there is no evidence of actual confusion between the two parties, and that confusion is inherently unlikely given the sophistication of the Respondent's customers and products.

However, the Complainant has provided a copy of the Respondent's reviews on Trustpilot, including the following positive review to which it draws attention:

*******The best sportscars in the business**

Porsche has always made stylish cars that make others go "Wow" when they see one on the street. A great brand with some of the most top end cars.

This review appears to indicate customer confusion between the Respondent and the Complainant. While the Panel is well aware that Trustpilot reviews (both positive and negative) can be faked, it seems unlikely that a fake positive review of the Respondent would make an error of this kind. The Panel therefore takes this as genuine (if weak) evidence of customer confusion.

In addition, the Panel has looked at the Respondent's website at <porscheshop.co.uk> and the Complainant's website at <shop.porsche.com/gb/en>. Both websites clearly appeal not only to Porsche owners, but also to members of their family and social circles who may want to buy them gifts. In the Panel's opinion, this potentially less sophisticated clientele may well be confused by the similarity of the two domain names, together with the similarity of much of their content.

Damage to Complainant's reputation

The Complainant has made much of the presence on the Respondent's website of various items which it claims are counterfeit and therefore damaging to its mark and reputation. The Respondent denies most of these claims, and where it accepts a claim, disowns responsibility for it, instead putting it down to third party error.

On the materials before the Panel it is impossible to reach any definitive conclusions on these claims and counterclaims, particularly since the argument is about website advertisements rather than goods actually delivered. Some of the Trustpilot reviews do however refer to delivered goods not being genuine; in particular:

***Shocking company!**

Sent me FAKE Porsche centre caps but advertising as original Porsche! Same price as real one but FAKES!!!

Cheap rubbish and they expect me to think its real!

Terrible company associated with the Porsche brand!

***AVOID - SCAMMERS AND THIEVES**

I wish I had read these reviews before placing an order with this scam of a company. I will be taking things further with trading standards and they wont get away with it. I ordered a branded part from them and they sent me a cheap crappy aftermarket version from eBay which I could have ordered myself for a 3rd of the price.

**Avoid at all costs, you have been warned !!!*

Seriously, this bloke is a scammer and a time waster. Bought a Porsche badge for the rear of my car described as genuine OEM, guess what upon arrival it was cheap copy that he had charged top dollar for.

The Panel notes that the Respondent has not denied the negative reviews, instead stressing how few they were compared with overall sales volumes. So again, while recognising the potential for fake reviews, the Panel regards this as some evidence of counterfeit supplies, supporting the Complainant's contentions.

Most of the Trustpilot reviews in fact refer not to counterfeit goods but to poor service, and the Panel regards it as reasonable for the Complainant to object to its valuable mark being associated with such reviews. Even without confusion between the parties, this could damage the Complainant's reputation and take unfair advantage of the Complainant's Rights.

Taking unfair advantage

A striking feature of the Respondent's website to which neither party appears to have drawn particular attention² is the presence on its home page, under the heading "SHOP CATEGORIES", of a hyperlink to "Our Brands" (between hyperlinks to "Motorsport Parts" and "Performance Parts"). Clicking on "Our Brands" brings up a page displaying 49 brands and logos, only one of which (Porsche Performance Exhausts) is obviously associated with Porsche. Around half of them are labelled as "for Porsche cars" (or similar wording), but others, including several types of clothing, books, cleaning agents and lubricant, have no clear association with Porsche.

At the foot of the home page, a hyperlink "About us" leads to a page which includes the following text:

Products & Brands

We are stockists of major brands including Brey Krause, Koni, Bilstein, Eibach, Mobil 1, BMC, Car Graphic, Dansk, Superchips, Sachs, Boge, Brembo, Richbrook, TechArt, Mille Miglia, RH Alurad, BBS, Speedline, Weltmeister, Sparco, Raid, Mahle, Cotton Green, Martini, Vosstek, VDO, Becker Azev, Sony, Kenwood, Momo, Gemballa, Recaro, Cobra, Webber, ATE, KS, Bosch, Blaupunkt, Goodridge, Dunlop sport, Bridgestone, Michelin, Falken, Continental, Pirelli Pzero, Yokohama, AutoGlym, Pagid, Jurid, Textar, Mintex, EBC GreenStuff, Car Craft, Beru, Ansa, SSI, Hella, SWF, Fag, Gates, SKF, Haynes, Bentley, MBI, Elring, Reinz, Zimmermann, Hirschmann, NGK, Behr, LUK, Fag and Monroe.

We also have some exciting new induction kits from True Flow, CDA and Powerflow, as well as a vast range of Stainless Steels performance exhaust systems.

² The Expert did comment on the presence of Adidas clothing on the Respondent's website.

Whatever your needs: From a Crested leather key ring to a Carbon fibre design 911 GT2 rear spoiler / wing, we can help – We can also supply Porsche related products to VW and Audi owners inc RS2 where applicable.

Click here for our brands page.

These pages contribute to the overall impression given by the website published under the Domain Name, which is that the allure of the Porsche name is being used to sell goods that may appeal to a Porsche-oriented (or perhaps Porsche-aspirational) clientele, but have nothing to do with Porsche.

Previous cases (including the appeal cases of DRS 02480 <seiko-shop.co.uk>, DRS 07991 <toshiba-laptop-battery.co.uk> and DRS 16416 <wwe-shop.co.uk>) have considered to what extent an unauthorised trader in the goods or services of another person may incorporate that other person's name or trade mark in its domain name without that domain name constituting an Abusive Registration.

In the present case the Panel's view is that a registration which incorporates the complainant's trade mark is likely to be abusive if the effect of the respondent's use of the domain name is falsely to imply a commercial connection with the complainant. In the wwe-shop case the appeal panel said *"that in any given case the exact point at which a given domain name can be considered to be unobjectionable will depend upon all the facts, including of course the modifying term used"*. In that case and the earlier seiko-shop case the appeal panels thought that *"shop' fell the wrong side of the line"*, thus suggesting that the disputed domain names might reasonably be thought to be those of the respective complainants.

In the present case, the Panel has already commented above on the evidence of confusion between the parties' respective websites. The Domain Name (disregarding the ".co.uk" suffix) comprises the Complainant's trade mark with the addition of the modifying term "shop".

The Panel also considers that, in this case, "shop" falls the wrong side of the line and that there is a strong indication that there is a commercial connection between the Complainant and the Respondent. That indication is not dispelled by the content of the Respondent's website, including the "Our Brands" and "About Us" pages noted above. On the contrary, the site appears to be capitalising on that perceived connection and basking in the reflected glory of the Porsche brand. Furthermore, as mentioned above, the Respondent is selling goods under and by reference to the term 'Porscheshop' that have nothing to do with Porsche. Accordingly the Respondent is taking unfair advantage of the reputation and the Rights of the Complainant by offering competitive and other goods on the Respondent's website. This is Abusive Registration.

The Panel finds, in the light of the arguments and evidence presented, that the Complainant has proven on the balance of probabilities that the Domain Name is

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

The Panel accordingly concludes that the Domain Name, in the hands of the Respondent, is an Abusive Registration. Accordingly, the question of reverse domain name hijacking does not arise.

9. Decision

The Panel finds both that the Complainant has Rights to a name similar to the Domain Name, and that the Registration is Abusive through having been used in ways that take unfair advantage of, and cause unfair detriment to, these Rights. Accordingly, it confirms the original Decision that the Domain Name should be transferred to the Complainant.

Signed ...Claire Milne...

Dated ...26 April 2021...

Signed ...Philip Roberts...

Dated ...26 April 2021...

Signed ...David King...

Dated ...26 April 2021...