

.nz Dispute Resolution Service

DRS Reference: 745

Motor Technologies Limited trading as CEG-BROOK EI v CEG (NZ) Limited

Key words -

Registered mark - unregistered mark

Unfair use – likely to confuse, mislead or deceive – prior relationships between the parties – unfairly disrupting the business of the complainant – blocking registration - pattern of registration

Evidence – admissibility – relevance – materiality – weight – false evidence – remedies – transfer

1. Parties

First Complainant:

Rotating Machinery Supplies Limited
6 Devon Road
Hamilton
New Zealand

Represented by: Mr Ben Cain, James & Wells, Intellectual Property, Auckland

Second Complainant:

Motor Technologies Ltd
62 Sir William Avenue
East Tamaki
Auckland
New Zealand

Represented by: Mr Ben Cain, James & Wells, Intellectual Property, Auckland

Respondent:

CEG (NZ) Limited
76 - 86 Cuba Street
Palmerston North
New Zealand

Represented by: Mr Jeremy Hunter, Hunter & Co, Wellington

2. Domain Name/s

cegbrook.co.nz
ceg-brook.co.nz ("the Domain Names")

3. Procedural history

The Complaint was lodged on 28/12/2011 and Domain Name Commission (DNC), notified the Respondent of the validated Complaint on 12/01/2012. The domain/s were locked on 6/12/2011, preventing any changes to the record until the conclusion of these proceedings.

The Respondent filed a Response to the Complaint on 25/01/2012 and the DNC so informed the Complainant on 30/01/2012. The Complainant filed a Reply to the Response on 16/02/2012. The DNC informed the parties on 9/03/2012 that informal mediation had failed to achieve a resolution to the dispute.

The Complainant paid Domain Name Commission Limited the appropriate fee on 26/03/2012 for a decision of an Expert, pursuant to Paragraph 9 of the .nz Dispute Resolution Service Policy ("the Policy").

4. Factual background

According to WHOis the Domain Names were both registered on 20 August 2010.

5. Parties' contentions

a. Complainant

The Complainants assert that they and the following associated companies comprise the CEG group of companies in New Zealand ("the CEG Group"):

- (a) Rotating Machinery Supplies Limited ("the First Complainant"), being a New Zealand company incorporated on 18 June 1982, with David Kenyon as its director;
- (b) Keith R Norling Limited ("KRNL"), being a New Zealand company incorporated on 24 May 1971, with Keith Norling as its director; and
- (c) Motor Technologies Limited ("the Second Complainant"), being a New Zealand company incorporated on 13 May 1991. The Second Complainant was incorporated as a joint venture trading partnership between the First Complainant and KRNL and its two directors are David Kenyon of the First Complainant and Keith Norling of KRNL.

When not referred to separately, the First and Second Complainants are hereafter collectively referred to as "the Complainants".

The Complainants assert that prior to May 1998, the companies comprising the CEG Group traded as separate identities. The Complainants state that the CEG Group registered the CEG trade mark on 5 June 1998, in class 35 for wholesale and retail services for selling electric motors and equipment incorporating electric motors (“the CEG Trade Mark”).

The Complainants assert that the Second Complainant is the owner of New Zealand Trade Mark Application No. 845438 CEG-BROOK/CEG BROOK (Series Mark), filed on 8 July 2011, in class 7 (for electric motors (other than for land vehicles); variable speed drives for machines) and class 35 (for wholesale and retail services; wholesale and retail of electric motors and equipment incorporating electric motors; the foregoing services provided online) (“the CEG BROOK Trade Mark”).

The Complainants advise that the CEG BROOK Trade Mark application is currently in abeyance, pending the outcome of opposition proceedings in respect of New Zealand Trade Mark Application No. 831053 CEG ELECTRIC MOTORS AND PUMPS (Device) filed by the Respondent on 27 September 2010.

The Complainants state that in May 2009 the Second Complainant (under its previous trading name, Motor Technologies Limited) purchased Brook Crompton, an established electric motor business in New Zealand. The Complainants go on to state that the member companies of the CEG Group decided that “new” combined company of Motor Technologies Limited and Brook Crompton should trade using the CEG BROOK Trade Mark.

The Complainants assert that the BROOK brand was (and remains) well-recognised in the relevant market in New Zealand so the CEG Group believed a combination of the brand names was a good idea. The Complainants advise that with this in mind the CEG Group sought and obtained permission from the vendors of Brook Crompton to use the CEG BROOK Trade Mark as a trading name and to use the same style/font branding as the BROOK logo.

The Complainants assert therefore that since at least 2009, the Second Complainant’s business has been trading under and by reference to the CEG BROOK Trade Mark, which is also sometimes written as CEG-BROOK, and the CEG BROOK Trade Mark has appeared on product catalogues, stationery and corporate gifts.

The Complainants contend that the Second Complainant has extensively used and promoted the CEG BROOK Trade Mark as a trade mark in New Zealand in connection with the supply of, inter alia, electric motors since at least 2009, and as a result of its activities the Second Complainant has developed substantial reputation and goodwill in the CEG BROOK Trade Mark in New Zealand such that it is exclusively

associated with the Second Complainant in the minds of the relevant New Zealand purchasers.

The Complainants assert that the Second Complainant is the owner of the domain names <www.cebbrooknz.co.nz> and <www.cebbrooknz.com>, having registered <www.cebbrooknz.co.nz> on 12 May 2011 and <www.cebbrooknz.com> on 13 April 2011. The Complainants contend that the Second Complainant registered these domain names as positive registrations to promote its business in Auckland and those of the First Complainant and KRNL as members of the CEG Group; and as defensive registrations because the Respondent was unlawfully diverting Internet visitors away from the website formerly operated by KRNL, under the domain name <ceb.co.nz>, to a website operated by the Respondent under its domain name <ceb.co.nz>.

The Complainants assert that the Domain Names are identical to names in which the Complainants have rights and they are not terms which are wholly descriptive of the Complainants' business activities.

The Complainants contend that the Respondent is a New Zealand company based in Palmerston North, incorporated on 18 May 2010, with one of its directors being Keith Norling, the aforesaid director of KRNL, together with his son, Tyrone Norling, as the other director.

The Complainants assert that the Respondent has no statutory or Common Law rights to the name CEG or the CEG BROOK Trade Mark in New Zealand and that Tyrone Norling is not an officer or shareholder of any company which has statutory or Common Law rights in the name CEG and/or the CEG BROOK Trade Mark in New Zealand.

The Complainants contend that in or around early October 2010, while searching the Companies Register in New Zealand, the Second Complainant became aware of CEG (NZ) limited as being registered on the 18th May 2010. Around the same time the Second Complainant also conducted a domain name registration search using freeparking.co.nz and discovered the Respondent's registrations for the Domain Names.

The Complainants further contend that neither the First nor the Second Complainant have ever consented to, or authorised the Respondent to use the name CEG or the CEG BROOK Trade Mark in the Respondent's Domain Names or on its website.

The Complainants state that they have made several "friendly" attempts since October 2010 to have the Domain Names featuring the name CEG and the CEG BROOK Trade Mark transferred to the Second Complainant and the Respondent has refused each attempt.

The Complainants note that at the time of filing this Complaint, the Respondent had placed a forwarding instruction on the Domain Names to resolve to the Second Complainant's website hosted under the

domain name <cegbrooknz.co.nz>, however the Complainants assert that this is insufficient to resolving the legitimate ownership of the Domain Name registrations hence why they have filed this Complaint.

The Complainants contend that the registration of the Domain Names by the Respondent are unfair registrations, which, at the time when the registrations took place, took unfair advantage of, or were unfairly detrimental to the Complainants' rights which were well-established in the name CEG and the CEG BROOK Trade Mark.

The Complainants claim that at the time the Respondent registered the Domain Names, the Respondent knew or ought to have known that it did not have any rights in the name CEG and the CEG BROOK Trade Mark and therefore no rights in the Domain Names, and that it registered the Domain Names without the Complainants' consent or authorisation.

The Complainants contend that the Respondent has complete control over the use of the Domain Names, and consequently can use the Domain Names without the consent or authorisation of the Complainants, and such use is preventing the Second Complainant's registration and use of those same domain names in which both the First and Second Complainants have rights.

The Complainants submit that the Domain Names were registered by the Respondent for the purpose of unfairly disrupting the businesses of the Complainants, and as a direct consequence of the Respondent's registrations, the Complainants' businesses have been significantly, unfairly and unnecessarily disrupted. The Complainants further submit that the Respondent is using the Domain Names in a way that is likely to confuse, mislead or deceive consumers or businesses into believing that the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainants.

The Complainants assert that the Respondent's website hosted under the Domain Names, offers exactly the same and/or very similar goods and services to those traded and promoted by the Complainants but without the Complainants' consent or authorisation, and consequently, consumers or business are likely to be confused, misled or deceived into believing there is some connection in trade between the Respondent and the Complainants.

The Complainants assert that the Respondent has engaged in a pattern of registrations where it is the registrant of other domain names which correspond to the well known name CEG in which the Respondent has no rights, and the Domain Names are part of that pattern. By way of example the Complainant notes that the Respondent has registered the following domain names incorporating the name CEG:: <ceg.co.nz>, <cegbrook.com>, <ceg.co>, and <cegbrook.co>.

The Complainants claim that as well as the potential for lost sales, the Respondent's registration is preventing the Complainants from using the well-known name CEG for the legitimate promotion of the CEG Group. The Complainants submit that the Respondent's unfair registration and use of the Domain Names also amounts to a breach of the Fair Trading Act 1986 and passing off.

b. Respondent

The Respondent filed a joint Response covering Complaint nos. 744 and 745.

The Respondent replies to the complaints laid by the Complainants and claims that they essentially relate to rights in the trade mark CEG as between the parties and claims that they should be addressed together. The Respondent contends that the dispute between the parties is the subject of an opposition to Trade Mark application number 831053 for the mark (i.e. the "CEG" Trade Mark referred to above) before the Commissioner of Trade Marks. It suggests that that forum is the more appropriate to determine rights in a trade mark. It argues that the Domain Name Commissioner (DNC) should decline to consider the Complaint.

The Respondent advises that KRNL is a New Zealand company, incorporated on 24 May 1971, with Keith Norling being a director of KRNL. The Respondent also advises that CEG (NZ) Limited ("the Respondent") is a New Zealand company incorporated on 18 May 2010 and is a wholly owned subsidiary of KRNL. Keith Norling is one director and Tyrone Norling the other director.

The Respondent asserts that Keith Norling developed the mark CEG by reversing GEC (being the well known acronym for the then General Electric Company) for whom Keith Norling had been working with as a distributor, and that he wanted a three letter acronym because of the need to make branding of equipment easy and such acronyms were and remain the usual form of brand in the industry.

The Respondent states that KRNL has used the trade mark CEG continuously since 1997 and that, as KRNL was the first user of the name and has had more than 13 years of use of the trade mark CEG, allegations of misleading and deceptive conduct by KRNL or its wholly owned subsidiary cannot have a valid foundation.

The Respondent agrees that New Zealand Trade Mark Registration No. 293576 is owned by the three companies (Rotating Machinery Supplies Limited, Keith R Norling Limited (KRNL) and Motor Technologies Limited), but notes that whilst KRNL consented to the use and

registration of the triangle logo, including the words CEG, it did not transfer any rights in the trade mark CEG.

The Respondent disputes the allegation that there is a “CEG Group”, and asserts that use of the trade mark by the Complainants has always been with the consent of KRNL but there has never been a transfer of rights in the trade mark CEG to the Complainants.

The Respondent points out that there is an on-going dispute with the Complainants involving broader considerations than rights to the domains, and that informal mediation of those disputes has been proposed by the Complainants and agreed to by the Respondent for some date in March 2012. The Respondent states that it does not accept many of the alleged facts set out in support of the Complaint but asserts that it does not need to address them in the context of rights in the Domain Names.

The Respondent states that the domain name <ceg.co.nz> (the subject of complaint no. 744) was properly registered in the name of KRNL and notes that this has not been disputed by the Complainants.

The Respondent further states that the Complainants have no rights in KRNL and whether rights are held by KRNL or a wholly owned, subsidiary of KRNL, such as the Respondent, does not alter the Complainants’ position in relation to the rights held by KRNL in the trade mark or domains.

The Respondent suggests that the registration of the Domain Names by it is consistent with the rights held by KRNL in the CEG Trade Mark, and that registration of the Domain Names was connected with an internal decision associated with compartmentalisation of business activity that has since been altered. The Respondent claims that the rationale behind such decisions is commercially sensitive.

The Respondent contends that the Second Complainant does not have exclusive rights to registration in the name CEG either separately or in combination with the word BROOK and therefore registration of domain names incorporating CEG and/or BROOK is invalid. The Respondent further contends that the second Complainant’s claims to ownership are not consistent with the Complainants’ claims regarding ownership of the CEG Trade Mark.

The Respondent suggests that the Complaint is motivated by personality clashes. It rejects the allegation that KRNL holds rights in the CEG Trade Mark or the Domain Names on trust for the Complainants and notes that the Complainants have never paid for maintaining the <ceg.co.nz> domain name. The Respondent also advises that to the best of its knowledge, no email or other such communication have been diverted from the Complainants.

The Respondent contends that for the Domain Name to be used in an unfair manner, the Complainants would have to have rights to the name CEG and the Respondent would need to be taking action that would preclude the Complainants continued use of the Domain Names, which it says has not occurred.

Finally, the Respondent submits that there can be no prejudice to the Complainants because they do not have the rights claimed and there has been no change to the Complainants' use of the CEG Trade Mark. The Respondent therefore denies that registration of the Domain Names is unfair.

c. Complainant's further submissions

The Complainants assert that there is no evidence that the Respondent used or made demonstrable preparations to use the Domain Names in connection with a genuine offering of goods or services and contend that the Domain Names are being used without the Complainants' consent or authorisation and consequently the offering of identical and/or similar goods and services by the Respondent under the Domain Names is not genuine.

The Complainants also asserts that they, in conjunction with KRNL, have been collectively using the name CEG in connection with their goods since at least May 1998, which collective uses precedes the Respondent's use by at least 12 years.

The Complainants state that they have not entered into any written agreement with the Respondent, consented or otherwise authorised the Respondent to be able to use the name CEG in its company name, in the Domain Names or in any trading activities.

The Complainants deny the Respondent's assertion that the Complaint relate to rights in the CEG Trade Mark and say further that the Complaint relates to rights in the Domain Names which incorporates the CEG Trade Mark. The Complainants point out that they assert their rights in the CEG Trade Mark to demonstrate their rights in the Domain Names. The Complainants say that the Complaint does not relate to rights in the CEG Trade Mark per se.

The Complainants assert that the appropriate forum to decide the Complaint is the Commission, as the Commissioner of Trade Marks has no jurisdiction to determine disputes involving domain name registrations.

The Complainants points out that the Respondent is CEG (NZ) Limited, not KRNL and consequently, evidence of use by KRNL as set out in the Respondent's response is irrelevant to determination of the Complaint.

The Complainants also point out that the CEG Trade Mark cannot have been used continuously since 1997 by KRNL as submitted by the Respondent as it was not developed until in or about May 1998.

The Complainants deny the Respondent's submissions that KRNL was the first user of the name CEG and state that the Complainants and KRNL were jointly first users of the name in New Zealand. The Complainants suggest that evidence given in the Norling Declaration appears to be false and/or misleading as to the Respondent's use of the name CEG (as distinct from KRNL's use of the name CEG).

The Complainants accept that they have no rights in KRNL, and do not assert that they have rights in KRNL and say further that they do have rights, and assert those rights, in the name CEG. They say that they share these rights with KRNL, not the Respondent, which has no rights in the name CEG.

The Complainants contend that those rights are being abused unlawfully by the Respondent on its website hosted under <ceg.co.nz> and in its refusal to transfer ownership of the Domain Names to the Second Complainant.

The Complainants assert that the Complaint is motivated by genuine concerns in relation to ownership of their intellectual property to which the Respondent has no rights and consequently they do not accept the Respondent's allegation that the Complaint is motivated by personality clashes.

6. Decision

The dispute is governed by the Policy issued by the office of the Domain Name Commissioner on behalf of DNC. The relevant portions of the Policy for present purposes are as follows:

“3. Definitions ...

Unfair 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) has been, or is likely to be used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

4. Dispute Resolution Service

4.1 This Policy and Procedure applies to Respondents when a Complainant asserts to the DNC according to the Procedure that:

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

4.1.1 The Domain Name, in the hands of the Respondent, is an Unfair Registration.

5. Evidence of Unfair Registration

- 5.1 A non-exhaustive list of factors which may be evidence that the Domain Name is an Unfair Registration is set out in paragraphs 5.1.1 - 5.1.5:
- 5.1.1 Circumstances indicating the Respondent has registered or otherwise acquired the Domain Name primarily:
- (a) 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;
 - (b) as a blocking registration against a name or mark in which the Complainant has rights; or
 - (c) for the purpose of unfairly disrupting the business of the Complainant; or
- 5.1.2 Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;
- 5.1.3 The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .nz or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;
- 5.1.4 The Complainant can demonstrate that the Respondent has knowingly given false contact details to a Registrar and/or to the DNC; or
- 5.1.5 The Domain Name was registered arising out of a relationship between the Complainant and the Respondent, and the circumstances indicate that it was intended by both the Complainant and the Respondent that the Complainant would be entered in the Register as the Registrant of the Domain Name;"

In order to support a complaint of this kind the Complainants must satisfy three elements:

- a. Rights in respect of a name or mark (para 4.1.1);
- b. Identity or similarity between that name or mark and the Domain Name (para 4.1.1); and
- c. Unfair registration in the hands of the Respondent (para 4.1.2).

Procedural Issues

Jurisdiction

For the same reasons as set out in the decision regarding complaint no. 744, it is necessary to first deal with a number of procedural issues.

The Dispute Resolution Service Policy issued by the Domain Name Commission provides the sole source of jurisdiction for determining this Complaint. The Expert is required to determine the admissibility, relevance, materiality and weight of the evidence (paragraph B11.2) and decide the Complaint on the basis of the parties' submissions, the Policy and the Procedure (paragraph B15.1).

Importantly, these powers must be exercised in accordance with the statement of purpose of the Dispute Resolution Service (“DRS”), namely “an alternative to the Courts in situations where two parties are in dispute over who the registrant of a .nz domain name should be” (paragraph 1.1).

The parties to this dispute have filed lengthy submissions and evidence, some of which is formally deposed in statutory declarations. Wide ranging allegations are made. A number of disputed facts arise. The parties allege that one or another has provided misleading or untrue evidence.

The parties and their associates have strongly differing views as to what commercial arrangements were made between them, what consent and authorisation was provided and who is at fault for the apparent breakdown in their relationship. Likewise, the parties seek inferences to be drawn as to the true motivation for the Complaint.

These issues are difficult to deal with, leave alone resolve, in a summary procedure such as this. It is difficult for the Expert to draw reliable conclusions from such heavily disputed evidence or to attempt to make any findings as to credibility. This is not the right venue for such determinations to be made. It is regrettable that the parties have seen fit to litigate a complex commercial dispute, involving a clear breakdown in both commercial and personal relationships, in a forum designed and expressly restricted to determining who the registrant of a .nz domain name should be.

Accordingly, the Expert is not in a position to address allegations as to the existence of a trust arrangement between certain parties, arrangements as to entitlement to and the manner of use of certain trade marks and other domain names, entitlement to register other domain names in other registries, albeit containing the “CEG” element, the wider commercial relationship between the parties and the reasons for the breakdown of that relationship, or indeed matters relating to the trade mark opposition proceedings before the Intellectual Property Office of New Zealand. In this Expert’s view, these are all outside the legitimate purview of the DRS.

All of these issues have been debated between the parties at considerable length and they have unduly complicated the process. Notwithstanding this, the Expert must determine whether there is in fact a dispute properly falling within the scope of the Policy and which is capable of resolution according to its Rules and Procedure.

There is a clear overlap between complaint nos. 744 and 745. There are also differences.

Discussion

The Expert is of the view that there is a basis to assess whether legal rights exist. Further, it is possible to assess whether the conduct of the parties is consistent with those legal rights and reliable evidence put forward. The decision is based solely on such evidence and submissions and in no way on the heavily disputed facts and competing contentions as to credit or fault.

In its decision regarding complaint no. 744 <ceg.co.nz> the Expert posed a series of questions. For consistency, the same broad approach is adopted here. In assessing whether relief should be granted pursuant to the Policy, in the Expert's view, the following questions should be asked:

(a) *Do the Complainants have rights in the CEG Trade Mark?*

Clearly they do, as joint registrants of trade mark registration number 293576. It is equally clear that the abbreviation or acronym CEG is the central and dominant part of that trade mark registration. The answer is therefore, yes.

(b) *Do the Complainants have rights in the CEG-BROOK/CEGBROOK Trade Mark or Name?*

There is uncontested evidence that the Second Complainant purchased the business Brook Crompton and has since 2009 used the CEG BROOK Trade Mark. This means that at least the Second Complainant has rights.

(c) *Does KRNL have rights in the CEG Trade Mark?*

The answer again is yes. KRNL is a joint registrant of trade mark registration no. 293576 and has also used the mark in the course of trade. It has rights broadly equivalent or similar to those of the Complainants but only in relation to the CEG element.

(d) *Does KRNL have rights in the CEG BROOK Trade Mark or name?*

The answer is no. Its only claim is to the CEG Trade Mark.

(e) *Does the CEG BROOK Trade Mark have sufficient identity or similarity with the Domain Names pursuant to paragraph 4.1.1 to the Policy?*

The answer is clearly yes. The Complainants, through the Second Complainant, have used the CEG BROOK Trade Mark

and Name in the course of trade. They thus have rights pursuant to paragraph 4.1.1 of the Policy.

- (f) *Does the Respondent have rights in, or some other legitimate entitlement to, the CEG BROOK Trade Mark or the Domain Names?*

In the Expert's view, the answer is no. The Respondent advances no reason why it is entitled to register or use a domain name which incorporates the word "BROOK".

- (g) *If that is the case, are the Complainants entitled to a transfer of the Domain Names?*

In the Expert's view, the answer is yes. The Domain Names in the hands of the Respondent are clearly Unfair Registrations pursuant to paragraph 4.1.2 of the Policy.

Unfair Registration

To expand on the above, as noted, this decision, while rendered separately, should be read in conjunction with the Expert's decision in relation to Complaint No. 744. There are however important differences between the facts and hence the outcome. The Expert does not accept the argument that because the Domain Name <ceg.co.nz> was properly registered in the name of KRNL, and that this has not been disputed by the Complainants, that that means the registration of the Domain Names the subject of this Complaint, is proper. The Respondent argues that registration of the Domain Names is entirely consistent with the rights held by KRNL in the CEG Trade Mark. There is no merit in this argument. The evidence indicates that the company Motor Technologies Ltd trades as CEG-Brook Ei. A tenable explanation is provided as to the acquisition of the rights in the BROOK name. There is also evidence of the use of the CEG BROOK names and Trade Marks by the Second Complainant. None of this is reliably challenged.

The Respondent alleges that some form of internal decision has been made to compartmentalise the business activity of either KRNL or the Respondent but that the rationale behind such decisions is commercially sensitive. In the Expert's view, this is largely irrelevant. Even if KRNL has rights in the CEG Trade Mark, that does not extend, on the current record, to the BROOK name or Trade Mark.

The Respondent argues that for the Domain Names to be used unfairly the Complainants would have to have rights to the name CEG and the Respondent would need to be taking action that would preclude the Complainants' continued use of the Domain Names.

However, the parties seem to disagree as to just what emails have been forwarded to the Complainants, the manner in which the Complainants' business ought to be presented on websites resolving to the Domain Names

and just who should have the ability to decide these issues. Given the finding above that the Respondent is not entitled to either registration or use of the CEG Trade Mark and/or the BROOK name or Trade Mark, it is difficult to see why it should be able to hold the Domain Names or to be able to dictate the manner in which the Domain Names are employed on the Internet.

Given what is clearly an intense dispute between the Complainants, KRNL and the Respondent, it is reasonable to infer that the Domain Names, in the hands of the Respondent, are likely to be evidence of unfair registration, namely paragraph 5.1(b) of the Policy; acting as a blocking registration; sub-paragraph (c) for the purpose of unfairly disrupting the business of the Complainant; and/or paragraph 5.1.2 of the Policy as being circumstances demonstrating that the Respondent is using the Domain Names in a way which is likely to confuse, mislead or deceive people (namely that there is some connection between the Complainants and the Respondent) when there is no such connection (other than perhaps indirectly through KRNL and Keith Norling).

For these reasons the Complainants have made out their case under the Policy and it is ordered that the Domain Names be transferred to the Complainants or their nominee, namely the Second Complainant.

Place of decision Auckland

Date 12th April 2012

Expert Name Mr Clive Elliott

Signature