

## **DISPUTE RESOLUTION SERVICE**

**D00026235**

**Decision of Independent Expert**

**Driver Hire Group Services Limited**

and

**Neil Radford**

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

Complainant: Driver Hire Group Services Limited  
7 Bradford Business Park, Kings Gate  
Bradford  
West Yorkshire  
BD1 4SJ  
United Kingdom

Respondent: Neil Radford  
United Kingdom

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

burtondriverhire.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.

05 December 2023 10:31 Dispute received  
05 December 2023 22:30 Complaint validated  
05 December 2023 22:32 Notification of complaint sent to parties  
11 December 2023 15:53 Response received  
11 December 2023 16:05 Notification of response sent to parties  
14 December 2023 01:30 Reply reminder sent  
18 December 2023 16:01 Reply received  
18 December 2023 16:01 Notification of reply sent to parties  
18 December 2023 16:04 Mediator appointed  
27 December 2023 13:32 Mediation started  
21 February 2024 10:38 Mediation failed  
21 February 2024 10:39 Close of mediation documents sent  
04 March 2024 01:30 Complainant full fee reminder sent  
05 March 2024 13:46 Expert decision payment received

### 4. Factual Background

Founded in 1983 in West Yorkshire, England, the Complainant, Driver Hire Group Services Limited, describes itself as the largest specialist logistics recruiter in the United Kingdom. The Complainant grew rapidly during the 1990s by growing its network of franchised offices and, by 2002, the Complainant had over 100 offices throughout the United Kingdom.

The Complainant operates a number of websites at <driverhire.co.uk>, <driverhirefranchise.co.uk>, <driverhiretraining.co.uk>, <https://www.driverhire.com.au/> and <https://www.driverhire.com>.

The Complainant is the proprietor of *inter alia* Trade Mark Registrations Nos. UK00001294570 DRIVER HIRE Logo in Class 39; UK00909384355 DRIVER HIRE Logo in Classes 16, 35, 39 and 41; and UK00003556889 DRIVER HIRE in Classes 35 and 39 (the “**Registrations**”).

Trade Mark Registration No. UK00003556889 DRIVER HIRE was registered with the statement: “The trade mark was inherently non-distinctive, but evidence was submitted to show that, by the date of application, the mark has in fact acquired a distinctive character as a result of the use made of it”. This demonstrates that the Complainant was able to satisfy the Intellectual Property Office (“**IPO**”) that in relation to employment agency services, staff recruitment services, provision of motor vehicle drivers and driving services, the relevant consumers recognise that the

sign DRIVER HIRE indicates exclusively the services of the Complainant in the United Kingdom.

## 5. Parties' Contentions

The Complainant contends the Domain Name is an Abusive Registration.

The disputed domain name the subject of this Complaint, <burtondriverhire.co.uk> (the "**Domain Name**"), was registered on 5 September 2023. It does not resolve to a website.

The Domain Name is similar to the Complainant's DRIVER HIRE trade mark (the "**Mark**"). This is because the second level domain within the Domain Name wholly subsumes the DRIVER HIRE element of the Mark and is preceded by the word "burton" which refers to the Staffordshire town Burton upon Trent which is commonly known as Burton.

The Complainant sent a letter to the Respondent informing it of its rights in the Mark and its DRIVER HIRE brand.

The Complainant's Registrations and goodwill pre-date the registration of the Domain Name. Moreover, the Respondent is not, and never has been, permitted to use the Mark for the registration of domain names or the use thereof. There is no relationship between the Complainant and the Respondent.

It is submitted that the Domain Name was both registered in a manner which is unfairly detrimental to the Complainant's rights and its use would take unfair advantage of the Complainant's rights, as per Section 1(i) and (ii) of the Nominet DRS Policy (the "**Policy**").

The use of the Domain Name would be likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by the Complainant or its franchisee in Burton.

Generally, when an individual conducts a search of the Internet, they will use search engines and use relevant key words or guess the URL. Accordingly, where an individual is searching for driving work or a business is seeking drivers in the Burton area, there is a real risk that the search engine will produce the Domain Name high up in the list of results. In turn, the user is likely to select the Domain Name with the expectation that the services being offered from any website at it derive from the Complainant. This initial interest confusion has the potential to be severely detrimental to the Complainant's business and that of its franchisee, as the user of the website may decide to engage in the services of the Respondent on the erroneous belief that the services derive from the Complainant or its franchisee. Consequently, it is submitted that the Domain Name has been registered for the purpose of unfairly disrupting the business of the Complainant.

The use of the Domain Name would not constitute legitimate, non-commercial or fair use. Nor can it constitute a genuine offering of goods or services as it involves taking unfair advantage of the rights of the Complainant.

By virtue of its Mark and acquired goodwill and reputation, the Complainant enjoys enforceable rights against the Respondent. The Domain Name is highly similar to the Mark. Further, the Domain Name is an abusive registration, as defined by the Policy, as at the time of registration it took unfair advantage of or was unfairly detrimental to the rights of the Complainant and its use would take unfair advantage of or be unfairly detrimental to the rights of the Complainant.

The Complainant notes, based upon its own search of the relevant public records, that the Respondent is a director and shareholder of A38 Burton Driver Hire Ltd. and that the SIC Code for A38 Burton Driver Hire Ltd is "78200 - Temporary employment agency activities", which is the same SIC Code as that of the Complainant. This shows that A38 Burton Driver Hire Ltd intends to operate in the same commercial sector as the Complainant.

The Respondent is also a director of N K RADFORD TRAINING & CONSULTANCY LTD who has worked in the field of transportation for 38 years. Against this background, the Complainant alleges, it is incredible to suggest that the Respondent is not familiar with the Complainant. Given that the Complainant operates a franchise in the town of Burton Upon Trent, a town of 76,270 where the Respondent is based, the Respondent must have been aware of the Complainant's business and its DRIVER HIRE Mark.

The trade mark DRIVER HIRE has been registered with the Intellectual Property Office in the United Kingdom on the basis that the term has acquired distinctiveness as a result of its continuous use for over 40 years. Other domain name panels have found that the term DRIVER HIRE is a trade mark of the Complainant.

The Respondent avers that the Domain Name was logically chosen as a short, simple, and memorable version of its company name, A38 Burton Driver Hire Ltd., without any ill intent. 'Burton' represents the Respondent's operating base in Burton Upon Trent, and 'driver hire' is a generic term widely used in our industry and within the Respondent's company name.

The Respondent notes that other companies such as A&C Driver Hire, A&J Driver Hire, AB Driver Hire, Able Driver Hire, AC Driver Hire, Ace Driver Hire, ADL Driver Hire, AH Driver Hire, AJB Driver Hire, AJC Driver Hire, Alan Rooney Driver Hire, to name but a very short few are using the term "driver hire" within their company name.

As a company, the Respondent alleges, expenses have already been incurred as it has instructed a website builder who has built a site based for this domain, which site hasn't gone live.

The Respondent concludes that the Complainant's approach in this dispute seems “overly aggressive, focusing more on asserting dominance than presenting a fair case”.

## 6. Discussion and Findings

The Respondent, Neil Radford, a director of N K RADFORD TRAINING & CONSULTANCY LTD who has worked in the field of transportation for 38 years, incorporated “A38 Burton Driver Hire Ltd.” to engage in temporary employment agency activities (the same business sector as the Complainant occupies) on 28 October 2022. Thereafter, on 5 September 2023, he registered the Domain Name <burtondriverhire.co.uk>.

The Respondent's company, N K RADFORD TRAINING & CONSULTANCY LTD., employs the tag line “Training Today for a Safer Tomorrow” and describes itself as: “... [] a beacon of excellence in the haulage and driver training sector. Headed by the renowned industry veteran, Neil Radford, our legacy is built upon a steadfast commitment to safety, innovation, and unparalleled service”. Its logo includes a lorry tire graphic. The Expert finds the Respondent's N K RADFORD TRAINING & CONSULTANCY LTD promotional materials virtually indistinguishable from those of the Complainant, whose logo incorporates the wheels, cab, driver and other elements of a lorry.

The Respondent concedes that 'Burton' is a geographic descriptor representing the Respondent's “operating base in Burton Upon Trent”. As the Complainant has a network of franchised offices across the United Kingdom, including in Burton Upon Trent, the inclusion of “burton” in the Domain Name does nothing to distinguish the Domain Name from the Complainant's registered Mark, but rather increases the likelihood of confusion between the Respondent's logistics and driver employment agency business with the Complainant's franchise there.

The Respondent argues that the Complainant's registered Mark DRIVER HIRE is a generic term widely used in our industry and within its company name. For reasons that will follow, this argument is misplaced.

Paragraph 2 of Nominet's DRS Policy (the “**Policy**”) requires that the Complainant prove on the balance of probabilities it has Rights in respect of a name or mark which is identical or similar to the Domain Name, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.

“Rights” as defined in the Policy includes rights in descriptive terms, such as DRIVER HIRE, which have acquired a secondary meaning so as to distinguish it from the generalised, ordinary use of such terms.

Here, the Complainant adduced substantial evidence, including a “Hearing Report” in connection with an objection to the Complainant's registration with the IPO of its

DRIVER HIRE Mark in registration number 3556889. The Report explains that the IPO found, as of 4 February 2022, that the Complainant's DRIVER HIRE Mark "has acquired a distinctive character as a result of the use made of it by the Complainant".

Noting at the outset of the IPO proceedings that the sign DRIVER HIRE "is wholly descriptive and toward the lower end of the scale in terms of distinctiveness" and that the burden on the evidence (running against the Complainant) "is quite high", the IPO ultimately decided nonetheless that the Complainant had succeeded in proving that DRIVER HIRE has become recognised as indicating the trade origin of the services and "would therefore be understood as referring solely to use of the mark for the purposes of identification, by the relevant class of persons, of the product or service as originating from a given undertaking".

In all the circumstances, the Expert is satisfied that the Complainant has the necessary Rights under the Policy.

Turning to the issue of Abusive Registration, while it must be understood that the present domain name proceeding is to be decided under the Policy, not the law of trade mark, it is appropriate that the DRS Policy and the law not be "too far apart". See, *Dispute Resolution Service – Expert's Overview*.

The issue for decision is whether the Respondent's registration of the Domain Name was an Abusive Registration within the purview and meaning of the Policy? The onus is on the Complainant to adduce evidence that the likelihood of Abusive Registration was greater than not.

The Respondent observes that other companies such as A&C Driver Hire, A&J Driver Hire, AB Driver Hire, Able Driver Hire, AC Driver Hire, Ace Driver Hire, ADL Driver Hire, AH Driver Hire, AJB Driver Hire, AJC Driver Hire, Alan Rooney Driver Hire, are using the term "driver hire" within their company name. That is, the Respondent recognises that simply adding distinguishing letters or words to a domain name built around the generic sign DRIVER HIRE may be sufficient to distinguish a domain from the Complainant's Mark and avoid a finding of Abusive Registration under the Policy.

The Respondent could have, for example, registered its full proper company name as the domain <a38burtondriverhire.co.uk> to distinguish its domain from the Complainant's Mark and avoid creating a likelihood of confusion. Tellingly, the Respondent elected not to do so. The Respondent elected instead to add only the geographic designation "burton", the location of its own "operating base" and one of the Complainant's franchised offices, to the sign DRIVER HIRE – which does nothing to lessen the likelihood of confusion, but in fact increases it.

On its own case, had the Respondent truly wished to distinguish the Domain Name from the Complainant's market-leading DRIVER HIRE brand, perhaps all that was needed was for the Respondent to include in its domain registration its full company name, by simply adding "A38".

Moreover, as a self-proclaimed “renowned industry veteran” with some 38 years’ experience in the haulage and driver training sector, it is inconceivable that the Respondent was unaware of the Complainant’s market-leading brand in this relatively specialised sector in which their respective businesses compete.

Applying the greater weight of the evidence test, this Expert finds that it is “more likely than not” that the Respondent registered the Domain Name intending at time of registration to take unfair advantage of the Complainant’s Rights; market-leading position; and hard-won business goodwill in the Mark.

## **7. Decision**

The Expert finds 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. The Expert, therefore, directs that the Domain Name is transferred to the Complainant.

**Signed**

A handwritten signature in blue ink, appearing to be 'Mark Wood', written over a horizontal line.

**Dated**

12 March 2024