

DISPUTE RESOLUTION SERVICE

D00021911

Decision of Independent Expert

NG Brand

and

Duan ZuoChun

1. The Parties:

Complainant: NG Brand
1, Quai Voltaire
Paris
75007
France

Respondent: Duan ZuoChun
19 - 20 Great Sutton Street
London
EC1V 0NB
United Kingdom

2. The Domain Name:

nicolas-ghesquiere.co.uk

3. Procedural History:

- 3.1 I 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.

- 3.2 30 September 2019 17:18 Dispute received
01 October 2019 11:45 Complaint validated
01 October 2019 11:49 Notification of complaint sent to parties
18 October 2019 02:30 Response reminder sent
23 October 2019 16:33 No Response Received
23 October 2019 16:33 Notification of no response sent to parties
30 October 2019 12:41 Expert decision payment received

4. Factual Background

- 4.1 The Complainant, NG Brand, is the owner of several registered trademarks in respect of the name Nicolas Ghesquière, a renowned French fashion designer who is also the chairperson of the company NG Brand. These comprise France trade mark number 4447083 registered on 24 August 2018 and International trademark number 1460858 registered on 17 October 2018, both in respect of the stylised word mark NICOLAS GHESQUIÈRE, and European Trademark number 17969592 NICOLAS GHESQUIÈRE registered on 12 March 2019.
- 4.2 The Complainant asserts that the name Nicolas Ghesquière is internationally renowned within the field of fashion design.
- 4.3 The Domain Name was registered on 3 May 2019. It resolves to a Sedo parking page of various links to web pages comprising hyperlinks to third party websites including a number relating to clothing and fashion. The parking page also indicates that the Domain Name may be for sale.

5. Parties' Contentions

- 5.1 The Complainant's contentions are that;
- the Complainant has both registered and unregistered trademark rights in the Domain Name;
 - the Domain Name reproduces the trademarked name in its entirety, representing an infringement of this trademark;
 - the Respondent has no right or permission to use such trademarks; and
 - the Respondent is not making any legitimate use of the trademark in relation to a business, and has merely registered the Domain Name in order to turn a profit through its sale.

- 5.2 On this basis, the Complainant requests that the Domain Name in question be transferred to them.
- 5.3 The Respondent has not filed any response to the Complaint.

6. Discussions and Findings

Rights

- 6.1 Under paragraph 2 of the Nominet Dispute Resolution Service Policy (the “DRS Policy”), a Complainant must prove to the satisfaction of the relevant expert that they have Rights in respect of a name or mark that is identical or similar to the Domain Name, before then showing that the registration itself is an Abusive Registration.
- 6.2 Rights, as defined by the DRS Policy, “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”.
- 6.3 In this case, the Complainant has registered trademarks in France, the European Union and internationally in respect of NICOLAS GHESQUIÈRE.
- 6.4 In addition, the Complainant has provided evidence, in the form of three extensive press files, showing the prominence of the name Nicolas Ghesquière within the field of fashion design.
- 6.5 Under UK common law, a trader might enforce an unregistered trademark right to prevent a competitor from taking advantage of established goodwill or reputation within a market (known as “passing off”). In light of the evidence as to the reputation of the name, I also consider that the Complainant has unregistered trademark rights in the name Nicolas Ghesquière.
- 6.7 It is clear to me, therefore, that the Complainant does have Rights as set out in the DRS Policy in the name NICOLAS GHESQUIÈRE.
- 6.8 In terms of assessing whether the Domain Name is identical or similar to the name in which the Complainant has rights, I refer to the Nominet Dispute Resolution Service Experts’ Overview section 2.3, where it states that “a name or mark will ordinarily be regarded as identical to the domain name if, at the third level, and ignoring the presence of hyphens and the absence of spaces and ampersands, they are the same”.
- 6.9 In this case, ignoring the hyphen and the lack of spaces as indicated, and ignoring the “.co.uk” ccTLD suffix, the name Nicholas Ghesquière is identical

to the Domain Name. I therefore find that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name, as required under the DRS Policy.

Abusive Registration

- 6.11 An Abusive Registration, as set out in the DRS Policy, 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;
- 6.12 The DRS Policy sets out a number of factors which may be evidence that a Domain Name is an Abusive Registration, which I consider to be relevant in this particular case. However, as the Complainant has highlighted that the Respondent has no viable interest in the name, and has merely registered the Domain Name to seek a profit from the rights holder in selling on that Domain Name, I will focus on that particular element.
- 6.12 Under paragraph 5.1.1 of the DRS Policy, one factor that may be evidence that a Domain Name is an Abusive Registration is where there are "Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:
- 5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for the valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name"
- 6.13 The Complainant has made the argument, in their submissions to me, that the Respondent has no interest in using the Domain Name and makes no use of it except to offer the Domain Name for sale.
- 6.14 The Complainant has exhibited a report by an investigator instructed by the Complainant showing a screenshot of the website located at the Domain Name shortly before the Complainant was prepared. . Here it clearly states that the website is for sale and invites offers to purchase the Domain Name. In the absence of any evidence or argument indicating otherwise from the Respondent, I am only able to conclude that the primary purpose of the Respondents' acquisition of the Domain Name in question was for its sale. Therefore, unless the sale is to be for a figure matching the out-of-pocket

costs incurred by the Respondent in acquiring or using the Domain Name or less, the registration will be an Abusive Registration as set out in the DRS Policy.

- 6.15 Since the website indicated that the Domain Name was for sale via an auction, and a visitor to the website is able to specify which figure they wish to bid for the Domain Name, the sales figure is undetermined. There is therefore no feasible way that the Respondent would, upon its sale, receive valuable consideration for the Domain Name in accordance with their own out-of-pocket costs in acquiring or using the Domain Name, except by pure chance.
- 6.16 Further to this, the Respondent has not provided any evidence or response to me which might indicate the costs incurred by them in acquisition of the site, or its day-to-day running. Without this figure, reinforced with evidence, I would not be able to assess the validity of any specific sale price. As a result, I am only able to conclude that this registration is an Abusive Registration, as set out in the DRS Policy.
- 6.17 For clarity, other factors I could have considered in coming to a decision, but have not on this occasion, are:
- It is independently verified that the Respondent has given false contact details to us;
 - The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name.

7. Decision

- 7.1 I find that the Complainant has Rights in a name, which is identical to the Domain Name, and that the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- 7.2 Therefore I direct that the Domain Name be transferred to the Complainant.

Signed Nial Vivian

Dated 19 November 2019