

DISPUTE RESOLUTION SERVICE

D00021692

Decision of Independent Expert

NG Brand

and

DUAN ZuoChun

1. The Parties:

Lead Complainant: NG Brand

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(s):

nicolasghesquiere.uk

3. Procedural History:

- 3.1. 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.
- 3.2. The procedural chronology of the dispute is as follows:

30 September 2019 16:56: Dispute received
01 October 2019 11:53: Complaint validated
01 October 2019 11:58: Notification of complaint sent to parties
18 October 2019 02:30: Response reminder sent
23 October 2019 12:13: No Response Received
23 October 2019 12:14: Notification of no response sent to parties
30 October 2019 12:41: Expert decision payment received

- 3.3. When registering a .uk domain name with Nominet the applicant agrees to be bound by Nominet's Terms and Conditions. Clause 9 of the Terms and Conditions states:-

*“9. The dispute resolution service
9.1 You agree to be bound by the DRS policy.”*

- 3.4. The DRS policy states, relevantly, at paragraph 3:

“3. Communication

3.1 We will send a complaint (see paragraph 4) to the Respondent by using, in our discretion, any of the following means:

3.1.1 sending the complaint by post or email to the Respondent at the contact details shown as the registrant or other contacts in our domain name register database entry for the Domain Name;

3.1.2 sending the complaint in electronic form (including attachments to the extent available in that form) by email to;

3.1.2.1 postmaster@<the Domain Name>; or

...

3.5 Except as otherwise provided in this Policy, or as otherwise decided by us or if appointed, the Expert, all communications provided for under this Policy shall be deemed to have been received:

3.5.1 if sent by post on the second Day after posting; or

3.5.2 if sent via email, on the date that the communication was transmitted;

3.5.3 and, unless otherwise provided in this Policy, the time periods shall be calculated accordingly.”

- 3.5. In this dispute Nominet sent communications to the Respondent by email to the registered contact email address “netnames@foxmail.com”, cc’d to “postmaster@nicolasghesquiere.uk” and by post to the registered address set out under section 1 above.
- 3.6. The emails to postmaster@nicolasghesquiere.uk were returned as undeliverable. The communication by post was also returned as undeliverable. However, Nominet did not receive any notification that messages sent to the registered contact address were not delivered.
- 3.7. Accordingly, I consider that the communications to the Respondent are deemed to have been received by the Respondent in accordance with paragraph 3.5.2 of the DRS Policy at netnames@foxmail.com on the date that such emails were sent.

4. Factual Background

- 4.1. The following facts are derived from the Complaint and its Annexes, and the Nominet records for the Domain Name. These facts are uncontested by the Respondent, who did not send a Response.
- 4.2. The Domain was registered on 3 May 2019.
- 4.3. The Complainant, NG Brand, operates in the field of the design, manufacture and distribution of ready to wear goods for women as well as fashion accessories. It is incorporated in France and located at the address in Paris under section 1 above. It is recorded as the registered owner of the following 3 registered trade marks:

| Mark | No. | Jurisdiction | Classes | Registration date |
|--------------------|----------|---|---|-------------------|
| NICOLAS GHESQUIÈRE | 4447083 | FRANCE | 3, 4, 9, 14, 16, 18, 21, 24, 25, 26, 35 | 18/4/18 |
| NICOLAS GHESQUIÈRE | 17969592 | EU | 3, 4, 9, 14, 16, 18, 21, 24, 25, 26, 35 | 21/3/19 |
| NICOLAS GHESQUIÈRE | 1460858 | International Trade Mark designating 19 countries, including China, Japan, Indonesia, Republic of Korea, Singapore and Thailand | 3, 4, 9, 14, 16, 18, 21, 24, 25, 26, 35 | 17/10/18 |

- 4.4. The Chairman of the Complainant is Nicolas Ghesquière, a fashion designer of some repute, who was the Creative Director of the famous French fashion house, Balenciaga (1997 – 2012) and since 2013 has been the Creative Director of the famous French fashion house, Louis Vuitton. Mr Ghesquière applied for the earliest trade mark in the table above on behalf of the Complainant, which was in the process of being incorporated at that time, and was incorporated on 31 May 2018.
- 4.5. The Complainant has supplied substantial evidence in the form of press reports from 2001 onwards mentioning Nicolas Ghesquière to support its claims of the public recognition of the name NICOLAS GHESQUIÈRE in relation to the fashion business.
- 4.6. There is no apparent connection between the Respondent and either the Complainant or Mr Ghesquière.

5. Parties' Contentions

The Complaint

- 5.1. The Complainant asserts that it owns the trade marks set out in the table in paragraph 4.3 above.
- 5.2. It asserts that the marks are the name of a fashion designer that enjoys a high reputation in the fashion industry and who has been well-known, worldwide for many years.
- 5.3. The Complainant asserts that the Domain Name is an abusive registration because:
 - 5.3.1. It reproduces, in their entirety and identically, the Complainant's trade marks;
 - 5.3.2. The trade marks remain readily recognisable within the Domain Name;
 - 5.3.3. The ".uk" extension can be ignored as it will be recognised as the part of the Domain Name which signifies the geographical targeting of the United Kingdom, which is covered by the trade marks;
 - 5.3.4. The Domain Name constitutes an infringement of the Complainant's earlier trade marks;
 - 5.3.5. The Respondent has no legitimate interest in appropriating the Domain Name because the Respondent does not own any rights in the trade marks reproduced in the Domain Name, which belong exclusively to the Complainant;
 - 5.3.6. The Respondent did not seek or obtain any authorisation to use the trade marks in the Domain Name and has no right to use them in any commercial activity;
 - 5.3.7. The Respondent is not known to the Complainant, deliberately concealed its identity and knowingly sought to monopolize the Domain Name, which is identical to the Complainant's trade marks;

- 5.3.8. The Domain Name is not being used and the Respondent has no legitimate interest in reserving the Domain Name for its use.
- 5.3.9. The Domain Name was registered in bad faith. The Complainant relies upon a Bailiff's Report (written in French), which includes images showing that the Domain Name is available for sale on the domain marketplace DAN.com, and bids are invited for its purchase.
- 5.4. The Complainant seeks the transfer of the Domain Name.

The Response

- 5.5. There was no Response to the Complaint by the Respondent and accordingly no Reply from the Complainant.

6. Discussion and Findings

- 6.1. The Complainant sought and paid for a full decision on this dispute.
- 6.2. To succeed under the Nominet DRS Policy the Complainant is required to demonstrate, on the balance of probabilities, that (1) it has Rights in respect of a name or mark which is identical or similar to the Domain Name (§2.1.1 of the DRS Policy), and (2) the Domain Name, in the hands of the Respondent, is an Abusive Registration (§2.1.2 of the DRS Policy).

The Complainant's Rights

- 6.3. In the present dispute, there is clear evidence that the Complainant owns rights in respect of the name NICOLAS GHESQUIÈRE, in the form of 3 registered trade marks. In addition, there is substantial evidence of the reputation and recognition of the name NICOLAS GHESQUIÈRE in the field of fashion and design.
- 6.4. Such evidence includes a press report recording that in 2006 the designer was named by TIME as one of the 2006 TIME 100, the "*list of 100 men and women whose power, talent or moral example is transforming our world*". Another report records that he was named International Designer of the Year at the British Fashion Awards 2014.
- 6.5. The terms in which Mr Ghesquière is described in the evidence amply support the Complainant's assertions as to the recognition of his name. For example, in relation to his debut collection for Louis Vuitton, one report stated:

"When one of fashion's most directional designers joins forces with one of the worlds' largest luxury brands you can expect a bang. Nicolas Ghesquière's debut for Louis Vuitton is a standout collection with everything you could dream of from a debut..."

...To say Nicolas Ghesquière's debut collection for Louis Vuitton was one of the most wildly anticipated debuts in recent history would be an understatement. The excitement amongst fashion editors was electrical, as the

industry geared up to welcome back one of the most important designers of our generation...

...A true visionary, it is little surprise that where Ghesquière leads other will follow, and today his influence is felt on catwalks around the world."

- 6.6. Only 1 of the 3 marks owned and relied upon by the Complainant covers the United Kingdom, but there is no geographical or jurisdictional limit in the DRS Policy to the Rights relied upon (see DRS 41924: inkjet.co.uk).
- 6.7. On the basis of the Complainant's evidence I am able to conclude that the name NICOLAS GHESQUIÈRE, which is the sign in all of the Complainant's registered trade marks set out above, is well known in the fashion industry as one of the pre-eminent designers of this generation. As a result, the Complainant's Marks have a reputation. The Complainant is the owner of the Complainant's Marks and has satisfied the requirement in §2.1.1. of the DRS Policy.

Abusive Registration

- 6.8. An Abusive Registration, as defined in paragraph 1 of the DRS Policy, is 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;*
- 6.9. The DRS Policy provides a non-exhaustive list of factors which may indicate that a Domain Name is an Abusive Registration.
- 6.10. These include the registration of a Domain Name for the purpose of selling to the Complainant or a competitor of the Complainant for valuable consideration in excess of the Respondent's expenses (§5.1.1.1 of the DRS Policy).
- 6.11. A second factor is where the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .UK or otherwise) which correspond to well-known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern (§5.1.3 of the DRS Policy).
- 6.12. Another such factor is where the Domain Name is an exact match for the marks in which the Complainant has Rights, where the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name (§5.1.6 of the DRS Policy).
- 6.13. The only evidence as to the purpose or use for which the Domain Name was registered is that it is not actively used, but that open offers are being sought for its purchase. No upper limit is apparently placed on the offers that can be made.
- 6.14. As set out above, the Complainant's Marks have a worldwide reputation, associated with fashion. The Domain Name is an exact match for that name and is entirely reproduced, with no other distracting letters or numbers (save for the entirely descriptive country domain suffix) within the Domain Name.

- 6.15. The country level suffix is not enough to distinguish the Domain Name from the Complainant's Marks, see DRS 02087 (*Starbucks Corporation v. James Leadbitter*).
- 6.16. The name is an unusual one, and it is clearly recognizable within the Domain Name. The opportunity for misuse of the Domain Name in the possession of the Respondent or any party to which it may be sold, other than the Complainant, is obvious. In the circumstances it is difficult to conceive of a reasonable justification for the adoption of the Domain Name which is comprised of a name identical to the Complainant's trade marks.
- 6.17. There has been no Response to the Complaint and, as a result, there is no explanation for the Respondent's choice of the Domain Name. I have considered whether there is any evidence which provides a reasonable justification for the registration of the Domain Name, but in the absence of any Response, I have found no evidence that the Respondent has any reasonable justification for having registered the Domain Name. The evidence from the Complainant is such that it calls for a justification to be provided and none has been provided.
- 6.18. I see from the available database of Nominet Decisions that there have been 2 decisions already this year in respect of registrations by the Respondent (DRS00021909 and DRS00021498) of other Domain Names. Both of these resulted in transfers of the domain names, which means that these were both determined to be Abusive Registrations. The most recent of these (DRS00021909) was a full decision which concerned the same Complainant as in the present case and a very similar domain name (nicolasghesquiere.co.uk), though some of the facts were different. I note that in DRS00021909, the Domain Name was also being offered for sale through a bidding system on a different platform.
- 6.19. The other decision (DRS00021498) was a summary decision which concerned the domain name eurosportshop.co.uk and the Complainant was another well-known French company, Eurosport.
- 6.20. These registrations and the decisions in relation to them suggest a pattern of abusive behaviour in relation to the registration of Domain Names in respect of well-known marks, related to businesses in France. However, there is no presumption of an Abusive Registration on these facts because the Complainant has not proved that the Respondent has been found to have made an Abusive Registration in 3 or more DRS cases in the 2 years before the Complaint was filed. Even though there is no presumption of an Abusive Registration, I find that this pattern adds weight to the conclusion that the Domain Name is an Abusive Registration.
- 6.21. Taking all these matters into account I am satisfied that, on the balance of probabilities, and in the absence of any explanation from the Respondent, the Domain Name was registered in a manner which, at the time when the registration took place, took unfair advantage of the Complainant's Rights. For the reasons set out above, the Domain Name is an Abusive Registration within §2.1.2 of the DRS Policy.

7. Decision

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

Signed

Dated