

DISPUTE RESOLUTION SERVICE

D00021909

Decision of Independent Expert

NG Brand

and

DUAN ZuoChun

1. The Parties:

Lead 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:

<nicolasghesquiere.co.uk>

3. Procedural History:

- 3.1 I have confirmed to Nominet that I am independent of each of the parties and that 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 a 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 this dispute is as follows:

30 September 2019 17:07 Dispute received
01 October 2019 11:40 Complaint validated
01 October 2019 11:44 Notification of complaint sent to parties
18 October 2019 02:30 Response reminder sent
23 October 2019 16:30 No Response Received
23 October 2019 16:31 Notification of no response sent to parties
30 October 2019 12:40 Expert decision payment received 25 September

4. Factual Background

- 4.1 The Complainant, NG Brand, operates in the field of design, manufacture and distribution of ready-to-wear goods for women as well as fashion accessories. NG Brand is described in the documents provided by the Complainant as a company established in Paris, incorporated under the laws of France from 31 May 2018.
- 4.2 The Complainant provides substantial evidence that the Trademark NICOLAS GHESQUIERE is owned by and registered extensively since 18 April 2018, in the name of the company NG Brand and are constituted in the name of fashion designer Nicolas Ghesquière, the Chairman of the company NG Brand. The Complainant provides extensive material to support its assertions that Nicholas Ghesquière, who was the Creative Director of French fashion house Balenciaga between 1997 and 2012 and has been the Creative Director of the fashion house Louis Vuitton since 2013, “*has been well known worldwide for many years*” and that “*the international renown of the trademark NICOLAS GHESQUIERE in the field of fashion is indisputable*”.
- 4.3 That the Complainant NICOLAS GHESQUIERE “*has been well known worldwide for many years*” in the field of fashion, is fully supported in the record by numerous media and fashion journal reports, including a 6 July 2001 article appearing in *Vogue* magazine. In the article, Tom Ford, the creative director of the Gucci Group and of the Gucci and Yves Saint Laurent labels, said: “*Cristobal Balenciaga was one of the masters of 20th-century fashion. The house he created was one of the most influential in fashion history. Under the design leadership of Nicolas Ghesquière, Balenciaga has regained this position and is poised to continue to influence fashion in the 21st Century.*” (Emphasis supplied).
- 4.4 There appears to have been no prior relationship between the Respondent, DUAN ZuoChun, and the Complainant. The Domain Name was first registered on 6 March 2016.

5. Parties’ Contentions

The Complaint

- 5.1 As noted above, the Complainant has provided extensive evidence to verify the trademark rights for NICOLAS GHESQUIERE, including Certificates of Registration of Trademarks, as well as copies of advertising and

promotional material.

- 5.2 The Complainant specifically observes in its Complaint, and such observations are supported by the Complainant's submissions, that the Respondent does not make any actual use of the Domain Name, but rather is offering the same for sale through a bidding system, on the SEDO website. The Complainant submits as Annex 5 to the Complaint, a Bailiff's report of 31 July 2019, written in the French language, which appears to this Expert to support the allegation.
- 5.3 The Complainant argues that the Domain Name in the hands of the Respondent is abusive in that the Complainant's trademark NICOLAS GHESQUIERE remains readily recognizable and distinctive within the disputed domain name since it is reproduced identically.

The Response

- 5.4 No Response has been filed.

6. Discussions and Findings

- 6.1 As no Response was filed in these proceedings, the Complainant could have sought a summary decision. However, as it was entitled to do, the Complainant has sought and paid for a full decision (paragraph 12.1 of Nominet's Dispute Resolution Service Policy).
- 6.2 To succeed under Nominet's Dispute Resolution Service Policy (the "Policy"), the Complainant must prove first, that it has Rights in respect of a "name or mark" that is identical or similar to the Domain Name (paragraph 2.1.1 of the Policy) and second, that the Domain Name is an Abusive Registration in the hands of the Respondent (paragraph 2.1.2 of the Policy). The Complainant must prove to the Expert that both elements are present on the balance of probabilities (paragraph 2.2 of the Policy), and this is so even if a Response has not been filed. The Expert may nonetheless draw appropriate inferences from the fact that the Respondent has failed to file a Response (paragraph 24.8 of the Policy).

Complainant's Rights

- 6.3 The definition of Rights under the Policy includes, but is not limited to, rights enforceable under English Law. However, a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business.
- 6.4 Although the Complainant's registered trade mark rights protecting his name were not filed until 18 April 2018, Rights for the purposes of the Nominet DRS can comprise more than just registered trade mark rights. In view of Complainant's international renown in the field of fashion since at least as early as the mid-1990s, as is noted above, the Complainant is likely to have acquired common law "passing off" rights relating to his name, dating back at least that far. *See, Constance Briscoe and Jeroen Rodenberg*

(DRS 5718).

- 6.5 I find that the Complainant has both common law and registered Rights in the name NICOLAS GHESQUIERE, being a name or mark which is identical to the Domain Name, ignoring the .co.uk suffix.
- 6.6 The name NICOLAS GHESQUIERE is, indeed, identical to the Domain Name. The *Harmankardon* dispute (DRS 00193), concerned the domain name <harmankardon.co.uk>. The Expert observed in that case “*The complainant is the proprietor of registered trade mark rights in the mark HARMAN KARDON and its wholly owned subsidiary, Harman Kardon Inc owns UK trade mark rights in the mark HARMAN-KARDON. The Domain Name comprises the name or mark harman kardon and the suffix .co.uk. The Expert has determined that the suffix, .co.uk is of no relevance and can be ignored. The Expert therefore finds that the Complainant has rights in respect of a name or mark, which is identical to the Domain Name.*”
- 6.7 The Expert accepts that the Complainant has established that it has Rights in the trademark NICOLAS GHESQUIERE, which is identical to the Domain Name. The Complainant has thereby satisfied the requirements of paragraph 2.1.1 of the Policy.

Abusive Registration

- 6.8 Paragraph 1 of the Policy defines “Abusive Registration” as:- “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 used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights”.
- 6.9 The Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration in paragraph 5.1 of the Policy.
- 6.10 One such factor, identified at paragraph 5.1.1.1 of the Policy, is where the Respondent has registered or otherwise acquired the Domain Name primarily: “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”.
- 6.11 Another such factor, identified at paragraph 5.1.4 of the Policy, is where: “it is independently verified that the Respondent has given false contact details to us”.
- 6.12 A third such factor, identified at paragraph 5.1.6 of the Policy, is where: “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".

- 6.13 In my view this is a straightforward case and it is not necessary to examine these individual factors in any great detail.
- 6.14 It is sufficient simply to note that the Expert's reasoning in *Harmankardon* is in every measure as apt in the circumstances of the present case, as it was in that was in that dispute, where the Expert observed:

"The Expert should also add that, although there is no evidence to suggest the Respondent's purpose in registering the Domain Name, was one of the three purposes set out in paragraph 3(a)(i) of the Policy, the Expert concludes that there is no obvious reason why the Respondent could possibly be justified in registering the Domain Name for any legitimate purpose. The Domain Name comprises a distinctive made up name. It is identical to the Complainant's trade mark. There is no other UK company using the inventive word which comprises the Complainant's trade mark. In the hands of the Respondent the Domain Name constitutes a threat hanging over the head of the Complainant and there are many obvious and potentially damaging uses to which the Domain Name could be put." (Emphasis supplied).

- 6.15 By parity of reasoning in the absence of any alternative explanation put forward by the Respondent I am driven to the conclusion that the Domain Name was registered in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights. Accordingly, the Complainant has demonstrated that the Domain Name is an Abusive Registration in the hands of the Respondent and that it has thereby made out the requirements of paragraph 2.1.2 of the Policy.

7. Decision

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



Signed **David Kreider**

Dated **11 November 2019**