

Nominet UK Dispute Resolution Service

DRS 00311

ROSET (UK) LIMITED and LIGNE ROSET

Decision of Independent Expert

1. Parties:

Complainant: ROSET (UK) LIMITED

Address: 95 High Street
Great Missenden
BUCKS

Postcode: HP16 0AL

Country: GB

Respondent: LIGNE ROSET

Address: 418-422 Chiswick High Road
London

Postcode: W4 5TF

Country: GB

2. Domain Name:

ligneroseatlondon.co.uk (“the Domain Name”).

3. Procedural Background:

- i. The Complaint was received in full by Nominet on 20 March 2002 and validated. Nominet wrote to inform the Respondent of the Complaint on 22 March 2002, stating that a Response was due within 15 working days.
- ii. Nominet’s attempts to contact the Respondent were unsuccessful, and by 18 April 2002, no Response had been received. Mediation was not therefore possible. Nominet informed the Complainant, and on 22 April 2002 the Complaint requested that this matter be referred to an Expert for a decision and paid the relevant fees.
- iii. On 24 April 2002, I, Richard Kemp (“the Expert”), confirmed to Nominet that I knew of no reason why I could not properly accept the invitation to act as expert in this case and that I knew of no matters which ought to be drawn to the attention of the parties which might appear to call into question my independence and/or impartiality. My appointment date as Expert is 29 April 2002, and the deadline for the decision is set at 14 May 2002.

4. Outstanding Formal/Procedural Issues (if any):

- i. Since all attempts to contact the Respondent have failed, the procedural issue of whether the Respondent can be deemed to have submitted to these dispute resolution proceedings needs to be addressed.
- ii. Nominet sent a letter dated 22 March 2002 to the Respondent at its address on file. This was returned to sender as an “Undeliverable Item”. Nominet also attempted to email the Respondent at the address postmaster@ligneroseatlondon.co.uk, but the

email bounced back. No further attempts by Nominet to contact the Respondent were recorded on the file provided to me by Nominet.

- iii. Nominet did not use the email addresses supplied by the Respondent in its registration details, these appear to be addresses of the service provider, YELLOW PAGES, rather than of the Respondent itself. Nominet also did not use all the contact routes suggested by the Complainant in the Complaint.
- iv. I note that under Paragraph 2.3 of Nominet's Terms and Conditions (the "Terms and Conditions"), the Respondent has a positive duty to inform Nominet of all changes in its contact details. The fact that Nominet's letters to the Respondent were returned as undeliverable suggests that the Respondent has failed to comply with this duty, thereby breaching the Terms and Conditions.
- v. I further note that under Paragraph 2(a) of the DRS Procedure (the "Procedure"), Nominet has an absolute discretion as to which of the specified means of communication it adopts to communicate with the parties. Both post and email to *postmaster@<the Domain Name in dispute* are listed as acceptable means of communication. The Procedure does not oblige Nominet to exhaustively attempt all methods of communication listed in Paragraph 2(a).
- vi. In light of the above, my view is that Nominet has done everything that it is obliged to do under the Procedure to bring the Complaint to the Respondent's attention.
- vii. Paragraph 2(e) of the Procedure provides that:

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

i if sent by facsimile, on the date transmitted; or

ii if sent by first class post, on the second Day after posting; or

iii if sent via the Internet, on the date that the communication was transmitted; and

iv where communications are received by more than one method, at the earliest date received:

and, unless otherwise provided in this Procedure, the time periods provided for under the Policy and this Procedure shall be calculated accordingly."

- viii. I am therefore entitled to assume that Nominet's communications to the Respondent are deemed received in accordance with paragraph 2(e) of the Procedure.
- ix. The Respondent is required to submit a response under Paragraph 15 of the Procedure. Its failure to do so puts it in default of Paragraph 15 of the Procedure. Paragraph 15c of the Procedure provides that:

"If, in the absence of exceptional circumstances, a Party does not comply with any provision in the Policy or this Procedure or any request by us or the Expert, the Expert will draw such inferences from the Party's non compliance as he or she considers appropriate."
- x. In my opinion, the failure of attempts to contact the Respondent are not "*exceptional circumstances*", but simply arose as a result of the Respondent's non-compliance with the Terms and Conditions and failure to provide Nominet with current contact details. I may therefore draw any inferences that I consider appropriate in making a Decision.

However, it remains for the Complainant to prove its Complaint on the balance of probabilities in accordance Paragraph 2(b) of the DRS Policy (the “Policy”), despite the Respondent’s failure to respond.

5. The Facts:

- i. The Complainant is a wholly owned subsidiary of Roset SA (France), a company incorporated in France (“Roset”). Roset is the designer and manufacturer of a collection of furnishing and household accessories under the Ligne Roset brand name. The Complainant is the British distribution arm for Roset’s goods.
- ii. The Respondent registered the Domain Name on 20 January 2000. A WHOIS search report provided by Nominet confirms that the registration was made via the YELLOW PAGES service provider. This Domain Name displays a page stating that this is a “Reserved Site” for Lombok Ltd of 418 – 422 Chiswick High Road, London W4 5TF, Telephone no. 020 8995 7722. The site is linked to yell.com, the Yellow Pages site.

6. The Parties’ Contentions:

Complainant:

The Complainant’s contentions are summarised as follows:-

- i. The Complainant’s parent company Roset is the registered proprietor of the following trademarks :
 - a. LIGNE ROSET (Community Trade Mark No. E516666, registered 9 April 1997) in respect of Lighting and Heating Equipment and Furniture;
 - b. LIGNE ROSET (Madrid System Registration No. M714891, registered in Great Britain on 29 April 1999) in respect of Household Goods and Carpets; and
 - c. Ligne Roset (UK Registration No. 14598, registered 10 March 1999) in respect of Furniture.
- ii. The Complainant holds several domain name registrations incorporating “Ligne Roset”. These are
 - a. ligne-roset.co.uk (registered 15 May 1997);
 - b. ligne-roset-chiswick.co.uk (registered 13 June 2000),
 - c. ligne-roset-city.co.uk (registered 13 June 2000); and
 - d. ligne-roset-westend.co.uk (registered 23 June 2000).
- iii. The Domain Name was registered without the knowledge or consent of the Complainant or its parent company Roset.
- iv. The Complainant believes that the Respondent, LIGNE ROSET, is the former trading name of Bellissimo Ltd of 418-422 Chiswick High Road, London W4 5TF (the “Chiswick Address”), with whom the Complainant had a contractual trading relationship.

- v. The Complainant also believes that the Respondent may be connected to Lombok Ltd, which is referred to on the web page to which the Domain Name resolves. A company search on Lombok Ltd reveals that there is a charge on this company for the premises at the Chiswick Address.
- vi. The Chiswick Address is the registered address given to Nominet for the Respondent and the trading premises of Bellissimo Ltd.
- vii. The Complainant further believes that the Respondent may be connected to Mr Abdul Aziz Qayoumi and/or Mr Abdul Baqi Qayoumi, who are connected with Bellissimo Ltd.
- viii. The Complainant appointed Bellissimo as its first exclusive stockist and retailer of Ligne Roset goods for Roset in the UK in January 1999. Pursuant to this appointment Bellissimo opened two stores in London using the trading name LIGNE ROSET, including one at the Chiswick Address. The Complainant has annexed a letter agreement between Roset and Bellissimo to this effect. This letter refers to the "LIGNE ROSET store, 418-422 Chiswick High Road London" which is being operated by Bellissimo.
- ix. The Complainant terminated its relationship with Bellissimo on 13 November 2001 and exhibits some correspondence between the parties and their lawyers confirming termination, dealing with existing orders taken by Bellissimo for Ligne Roset products and in which the Complainant's solicitors request transfer of the Domain Name.
- x. The Complainant believes that the lease to the premises at the Chiswick Address has now been sold to a third party, but that Bellissimo is now operating from premises in the City.
- xi. The Complainant believes that the Domain Name is an abusive registration because
 - a. it was registered or otherwise acquired in a manner which, at the time when registration or acquisition took place, took advantage of or was unfairly detrimental to the Complainant's rights, in that the registration occurred without the Complainant's knowledge or consent, uses the Complainant's own Domain Name "Ligne-Roset.co.uk" with the addition of the word "London" and was registered in the trading name LIGNE ROSET; and
 - b. it is and was used in a manner which takes or took unfair advantage of or is or was unfairly detrimental to the Complainant's rights. The Complainant raised objections to Bellissimo's initial registration of the Domain Name, and after discussions the parties agreed that the Complainant would allow Bellissimo to use the Domain Name whilst the distribution contract between it and Bellissimo remained in force. Since this contract is now terminated, the continued use of the Domain Name is without the consent of the Complainant. Therefore
 - 1. either LIGNE ROSET or Lombok Ltd are not connected with the Complainant or Bellissimo Ltd and the registration of the Domain Name was not acquired for any legitimate reasons or purposes; or
 - 2. LIGNE ROSET and Lombok Ltd are connected with Bellissimo and the Domain Name was registered to enable Bellissimo to direct Ligne

Roset customers to its London stores and away from other London based stockists of Ligne Roset products.

- x. The Complainant exhibits
 - a. A letter from the Complainant to the Respondent dated 6 July 2000, the terms of which were agreed and accepted by the Respondent on 3 August 2000. In this letter the parties agree that “Rights in the Ligne Roset name, style, logo and collection remain the absolute property of the Roset group of France and their subsidiary company Roset (U.K.) Ltd”.
 - b. A letter from the Complainant’s solicitors Reed Smith Warner Cranston (“RSWC”) to Tehrani & Co, solicitors for Bellissimo Ltd dated 21 February 2002. In this letter the Complainant reiterates its request for Bellissimo Ltd to voluntarily transfer the Domain Name and the domain name ligneroset.co.uk to the Complainant, and seeks confirmation that the registrants of these domain names are connected to Bellissimo Ltd.
 - c. A letter dated 25 February from Tehrani & Co to RSWC stating its belief that Bellissimo is in the process of appointing new solicitors.
 - d. A letter dated 28 February 2002 from David Wineman, solicitors, responding to RSWC’s letter to Tehrani & Co. of 21 February 2002 and stating “*As regards the domain names our clients do not lay claim to these. They have incurred costs in establishing the domain names. Our clients would be prepared to assign these to your clients on payment of £250.00 on account of these costs.*” (Italics added)
- xi. In the Complainant’s view, the continued use of the Domain Name in question is motivated only for the purpose of unfairly disrupting the business of the Complainant and for the purpose of confusing people or businesses into believing that the Domain Name is registered to operate or is authorised by or is otherwise connected with the Complainant, which is not so.
- xii. The Complainant also states that it has no previous knowledge or trading relationship with Lombok Ltd nor does Lombok Ltd have any connection with the Complainant or its parent company.
- xiii. The Complainant therefore states that the registration of the Domain Name constitutes an abusive registration and requests that it be transferred.

Respondent:

The Respondent has not responded.

7. Discussion and Findings:

General

- i. Under paragraph 2 of the Nominet UK Dispute Resolution Service Policy (“the Policy”) the Respondent must submit to proceedings under the Dispute Resolution Service if the Complainant asserts that :-
 - a. the Complainant has Rights in respect of a name which is identical or similar to the Domain Name; and

- b. the Domain Name, in the hands of the Respondent, is an Abusive Registration.
- ii. “Rights” and “Abusive Registration” are defined in paragraph 1 of the Policy. The Complainant does make these assertions in the Complaint. The Expert therefore finds that the Respondent must submit to these proceedings.

Burden of Proof

- i. The Complainant must prove both elements (i) and (ii) above on the balance of probabilities to succeed in its Complaint.

Complainant’s Rights

- i. “Rights”, for the purposes of the Policy, “includes, but is not limited to, rights enforceable under English law”. The Policy also provides that “a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant’s business”.
- ii. When assessing if the Complainant has Rights in a name identical or similar to the Domain Name, the first and second level suffixes of the Domain Name, being generic, should be discounted. The questions are therefore (a) whether the Complainant has Rights in the name “Ligne Roset London” or something similar, and (b) if so, whether the Complainant can rely on such Rights in these proceedings. In my opinion, the term “London” in the Domain name is descriptive of London city and it will suffice for the Complainant to demonstrate rights in the distinctive phrase “Ligne Roset”, rather than the whole “Ligne Roset London”.
- iii. “LIGNE ROSET” is not descriptive of Roset’s furniture business and is distinctive of Roset, as is evidenced by Roset’s trade mark registrations. Roset certainly has enforceable registered trade mark rights in the UK which are similar to the Domain Name. As is evident from the documents exhibited by the Complainant, as Roset’s wholly owned subsidiary and representative for the UK, the Complainant has an implied licence to use the mark and conduct these proceedings. The Complainant therefore has “Rights” in Ligne Roset, which is similar to the Domain Name and identical to the distinctive part of the Domain Name.
- iv. I therefore find that on the balance of probabilities the Complainant has Rights in a name similar to the Domain Name (discounting the first and second level suffixes), which may be relied upon in these proceedings.

Abusive Registration

- i. An “Abusive Registration”, for the purposes of this Policy, is “a Domain Name which either:-
 - a. 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
 - b. has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

- ii. The Policy provides non-exhaustive lists of factors which may be evidence that a domain name is an Abusive Registration (at paragraph 3 of the Policy) and factors which may be evidence that the Domain Name is not an Abusive Registration (at paragraph 4).
- iii. I find as follows:-
 - a. I accept that the Respondent is connected with Bellissimo Ltd, and used its trading name to register the Domain Name. This conclusion is based on the weight of correspondence exhibited by the Complainant, and in particular on the basis that Bellissimo's solicitors impliedly admitted that Bellissimo was responsible for registration of the Domain Name in its correspondence with the RSWC dated 28 February.
 - b. The parties' agreements make it clear that the all proprietary rights in and to "Ligne Roset" remained with Roset / the Complainant. It appears that the Respondent / Bellissimo originally acquired this registration to assist its marketing activities whilst it was an appointed distributor of Roset / the Complainant. Since this distribution relationship has now terminated, the Respondent / Bellissimo ceases to have any licence, whether express or implied, to use the "Ligne Roset" name.
 - c. I agree with the Complainant that since the parties' distribution relationship has terminated and the Respondent is no longer licensed to use "Ligne Roset" as a trading name, the Respondent's continued registration of the Domain Name cannot be for a legitimate purpose.
 - d. My opinion is that on the balance of probabilities the Respondent's continued registration of the Domain Name is for the purpose of causing unfair disruption to the Complainant's business or to cause confusion amongst internet users that the Respondent is still connected in an on-going business relationship with the Complainant and its parent company.
 - e. I also infer from the Respondent's failure to update its contact details with Nominet despite being aware that the Complainant was seeking to obtain transfer of the Domain Name, that the Respondent wished to be elusive and was not willing to participate in these dispute resolution proceedings.
 - f. I therefore find that the Domain Name in the hands of the Respondent is an Abusive Registration.

8. Decision:

The Expert finds that on the balance of probabilities, the Complainant has rights in a name which is similar to the Domain Name and that the Domain Name is, in the hands of the Registrant, an Abusive Registration. The Expert therefore grants the Complainant's requested remedy of transfer, and directs that the Domain Name be transferred to the Complainant.

Richard Kemp

Date