

Nominet Dispute Resolution Service

DRS 00310

**Roset (UK) Limited -v- Worthy Consultants**

Decision of Independent Expert

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**1. The Parties**

*The Complainant*

The Complainant is Roset (UK) Limited, of 95 High Street, Great Missenden, Bucks, HP16 0AL

*The Respondent*

The Respondent is Worthy Consultants. According to the contact details provided by the Respondent to Nominet UK, its address (recorded as "Admin Contact") is: Mr S Forrest, Rhodes House, St Leonard's Gate, Lancaster, Lancs, LA1 1NN .

**2. The Domain Name**

The domain name in dispute is LIGNE-ROSET-LONDON.CO.UK ("the Domain Name")

**3. Procedural Background**

The Complaint entered Nominet's system on 19<sup>th</sup> March 2002 and was validated on 26<sup>th</sup> March 2002. On that date, Nominet wrote to the Respondent allowing 15 working days, ie until 19<sup>th</sup> April 2002 for a Response. No Response having been received and the Complainant having paid the relevant fee, the Complaint was referred to me on 25<sup>th</sup> April 2002 for a Decision. On that date I confirmed that I was not aware of any reason why I could not act as Expert in this case nor of any matters which ought to be drawn to the attention of the parties which might appear to call my independence or impartiality into question.

On reviewing the file, I was not satisfied that all proper steps had been taken to bring the Complaint to the attention of the Respondent. In particular, Nominet's letter of 26<sup>th</sup> March 2002 to the Respondent was addressed to, only:

Mr Abdul Baqi Qayoumi  
418-422 Chiswick High Road

London W4 5TF

The above name and address were provided to Nominet by the Complainant's solicitors as being the most probable contact details for the party currently having effective control of the Domain Name. In addition, the address was an address connected with an active web page to which the Domain Name resolved. For these reasons, it was perfectly proper for Nominet to seek to write to the Respondent at this address, pursuant to paragraph 2(a) of the Nominet Dispute Resolution Service Procedure ("the Procedure"). However, in my view, it was incumbent upon Nominet also to write to the Respondent at the address which it had itself provided at the time of registering the Domain Name (or any amended address which it may subsequently have provided). As this had not been done, I directed on 26<sup>th</sup> April 2002 that Nominet write to the Respondent at that address. I also directed that Nominet write again to the Chiswick address referred to above, but that the letter be specifically addressed to the Respondent, Worthy Consultants. Finally, I directed that the timetable for a Response and further proceedings be amended accordingly.

Nominet wrote to the Respondent as directed on 30<sup>th</sup> April 2002, allowing a further 15 working days, ie until 24<sup>th</sup> May 2002 for a Response. The letters were sent to:

Worthy Consultants  
C/o Mr S Forrest  
Rhodes House  
St Leonard's Gate  
Lancaster, LA1 1NN

and to:

Worthy Consultants/Bellissimo Limited  
Mr Abdul Baqi Qayoumi  
418-422 Chiswick High Road  
London, W4 5TF

The significance of the company Bellissimo Limited ("Bellissimo") is explained below.

No Response again having been received, the Complaint was referred back to me for a Decision on 27<sup>th</sup> May 2002.

#### **4. Outstanding Formal/Procedural Issues**

In consequence of the above, the Respondent is deemed to have received the Complaint but has failed to file a Response. Under Paragraph 15(b) of the

Procedure I am required first to consider if there are any exceptional circumstances why I should not now proceed to a Decision. I am aware of no such circumstances. Under paragraph 15(c) of the Procedure I am required to draw such inferences from the Respondent's non-compliance as I consider appropriate. I draw no inferences from the Respondent's non-compliance that are material to my Decision.

The Nominet Dispute Resolution Service Policy ("the Policy") does not provide for a "default judgment" in the case of a Respondent's non-compliance and it is still necessary for the Complainant to prove its case. However, in the absence of a Response to the contentions advanced by a Complainant, it will generally be sufficient for a Complainant to establish a *prima facie* case on the merits.

## **5. The Facts**

The Complainant is a wholly owned subsidiary of Roset SA of France, which is a designer and manufacturer of furnishing and household items under the brand name "Ligne Roset". Roset SA is also the proprietor of UK and Community Trade Marks LIGNE ROSET in various classes. The Complainant is the owner of the domain name LIGNE-ROSET.CO.UK registered in May 1997 and of the domain names LIGNE-ROSET-CHISWICK.CO.UK, LIGNE-ROSET-CITY.CO.UK and LIGNE-ROSET-WESTEND.CO.UK, all registered in June 2000.

The Domain Name was registered by the Respondent, Worthy Consultants, on 20<sup>th</sup> September 1999. The Complainant asserts that neither the Complainant nor Roset SA has any knowledge of or connection with the Respondent. The Complainant has also investigated a UK registered company named Worthy Consultants Limited but the Complainant asserts that neither it nor Roset SA has any knowledge of or connection with that company, its directors or shareholders.

The Domain Name resolves to a website at [www.ligne-roset-london.co.uk](http://www.ligne-roset-london.co.uk) which purports to be operated by a business trading as "Ligne Roset" from premises at 418-422 Chiswick High Road, London W4 5TF and at 62-82 Commercial Road, London E1 1NN. The home page bears a "Ligne Roset" logo and commences with the words "Welcome to Ligne Roset London". The site refers extensively to "Ligne Roset" and no other company or business name is featured. It is stated on another page that: "Our sales staff are fully trained by Ligne Roset in France, and can help with any questions or special requirements you may have". The contact e-mail address is [info@ligne-roset-london.co.uk](mailto:info@ligne-roset-london.co.uk).

The Complainant states that in January 1999 it entered into a contract with Bellissimo as a retail distributor of its goods. It also states that Bellissimo

operated from the Chiswick and Commercial Road addresses referred to above "using the trading name Ligne Roset". I infer from this that Bellissimo used the trading name "Ligne Roset" with the consent of the Complainant.

The Complainant asserts that the Domain Name was "registered without the knowledge or consent of the Complainant or the parent company". However, I have not been provided with the original agreement between the Complainant and Bellissimo and I do not therefore know the extent to which, if at all, the issue of internet domain names was expressly dealt with in that agreement.

The Complainant has provided copies of correspondence between itself and Bellissimo (or solicitors for those parties) between January 2000 and March 2002. The following facts are apparent from that correspondence:

- (a) In January 2000 the Complainant was expecting to have an ongoing and indeed increasing commercial relationship with Bellissimo, with the prospect of Bellissimo operating additional "Ligne Roset" stores.
- (b) By July 2000 the parties had been in discussions regarding the use of the Domain Name. A memorandum signed on 3<sup>rd</sup> August 2000 records the fact that "Bellissimo would continue to use [www.ligne-roset-london.co.uk](http://www.ligne-roset-london.co.uk) but that Roset would not be able to show the -london suffix in national advertising, or in the Company's own web site". It was also agreed that "for as long as a distribution agreement between the two companies remains operational" the Complainant would show in its own stockist list, for Bellissimo's two stores, two further web addresses which the Complainant owned, namely [www.ligne-roset-chiswick.co.uk](http://www.ligne-roset-chiswick.co.uk) and [www.ligne-roset-city.co.uk](http://www.ligne-roset-city.co.uk). Further, the Complainant would create hyperlinks between these sites and Bellissimo's own sites, which in the case of Chiswick would be the site at [www.ligne-roset-london.co.uk](http://www.ligne-roset-london.co.uk).
- (c) On 13<sup>th</sup> November 2001 the Complainant purported to terminate its contract with Bellissimo on commercial grounds. While Bellissimo did not initially accept the termination, it subsequently acknowledged, in a letter to the Complainant faxed on 21<sup>st</sup> November 2001, that the contract had been terminated.
- (d) On 6<sup>th</sup> December 2001 the Complainant formally objected, through solicitors, to Bellissimo's use of the Domain Name, asserting that any continuing use of the name following the termination of the contract would constitute trade mark infringement. Bellissimo was invited to agree to transfer the Domain Name to the Complainant. Requests were also made for the transfer of a "related" web site at [www.lien-roset.co.uk](http://www.lien-roset.co.uk) (sic) and a further domain name, LIGNEROSETWESTEND.CO.UK.

- (e) On 19<sup>th</sup> December 2001 Bellissimo's solicitors responded, stating: "As far as the web sites are concerned, you are aware that they are dormant and we can not see what damage has been suffered by your client". It was also denied that there had been any infringement of the Complainant's trade mark or other rights.
- (f) Bellissimo's solicitors pursued the correspondence on 21<sup>st</sup> February 2002. That letter is, however, somewhat confusing. First, it purported to record the fact that in the letter of 6<sup>th</sup> December 2001 the Complainant had formally sought the transfer to it of two domain names, LIGNEROSSET.CO.UK and LIGNEROSSETLONDON.CO.UK. In fact, neither of these were the domain names referred to in the 6<sup>th</sup> December 2001 letter. Secondly, the letter demanded the transfer of two separate domain names, both of which were identified as LIGNEROSSETLONDON.CO.UK, although one of these was clearly intended to be the Domain Name.
- (g) The Complainant's solicitors further alleged in the 21<sup>st</sup> February 2002 letter that Bellissimo and/or its directors or shadow directors controlled or directed the Respondent or Worthy Consultants Limited and that Bellissimo was directly connected with the registrant of the domain names referred to. Bellissimo was informed that complaints would be pursued through Nominet unless transfers were effected by 26<sup>th</sup> February 2002.
- (h) On 28<sup>th</sup> February 2002 Bellissimo's solicitors replied, 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."
- (i) The Complainant's solicitors responded on 7<sup>th</sup> March 2002 stating that the Complainant declined to pay the sum of £250, but would not issue proceedings for trade mark infringement providing the domain names were transferred, and certain other requirements complied with, within seven days.

## **6. The Parties' Contentions**

### *The Complainant*

The Complainant contends that the registration of the Domain Name is an abusive registration and advances a number of grounds in support of this contention. I believe these may be fairly summarised as follows:

- (a) That the registration occurred without the knowledge or consent of the Complainant and used both the Complainant's domain name, LIGNE-ROSET.CO.UK with the addition of the word "London" and the Complainant's trading name "Ligne Roset".
- (b) That either the Respondent has no connection with the Complainant or Bellissimo, in which case the registration has no legitimate purpose, or the Respondent does have a connection with Bellissimo, in which case 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.
- (c) That the Domain Name was therefore registered in a manner which, at the time the registration took place, took advantage of or was unfairly detrimental to the Complainant's rights.
- (d) That Bellissimo was authorised in July 2000 to use the Domain Name for as long as the distribution agreement between the Complainant and Bellissimo remained operational. Bellissimo has continued to use the Domain Name after termination of the agreement without the Complainant's consent.
- (e) That the continued use of the Domain Name is motivated only by the purposes of unfairly disrupting the business of the Complainant and confusing people or businesses into believing that the Domain Name is registered to, operated or authorised by, or is otherwise connected with the Complainant, which is not so.

The Complainant seeks a transfer of the Domain Name.

### *The Respondent*

No Response has been filed in this case and accordingly no contentions have been made on the Respondent's behalf.

## **7. Discussion and Findings**

As stated above, there is no mechanism under the Policy or Procedure for a "default judgment" and, in order to succeed, the Complainant must prove its case on the merits.

Under paragraph 2 of the Policy, the Complainant is required to prove, on the balance of probabilities, both that:

- (i) the Complainant has rights in respect of a name or mark which is identical or similar to the Domain Name; and

- (ii) the Domain Name, in the hands of the Respondent, is an Abusive Registration.

The term “Abusive Registration” is defined in paragraph 1 of the Policy as referring to 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.

Paragraph 3 of the policy sets out a non-exhaustive list of factors that may be evidence that a Domain Name is an abusive registration. Paragraph 4 sets out a non-exhaustive list of factors that may be evidence that it is not. However, all these factors are merely indicative of, and subject to, the overriding test of an Abusive Registration as set out above.

Dealing first with the issue of the Complainant’s rights, the Complainant’s parent company, Roset SA, is the owner of UK and Community Trade Marks LIGNE ROSET in various classes. Although it is not expressly stated, I infer that the Complainant, as a wholly owned subsidiary and the UK distribution arm of Roset SA, itself has rights to use those marks. The Complainant is also the proprietor of the domain name LIGNE-ROSET.CO.UK which appears (although again it is not expressly stated) to be actively associated with its own website. In the light of these matters, I find that the Complainant does have rights in a name and/or mark which is similar to the Domain Name. The first limb of the test under paragraph 2 of the Policy is therefore satisfied.

Turning now to the issue of abusive registration, I have first to consider whether it is necessary to go beyond the fact that the Respondent, Worthy Consultants, has not only failed to respond but has no apparent connection with the Domain Name. In my view, to decide the case on that ground alone would be to take an unduly technical approach. It appears from the Complainant’s own case that Bellissimo (or parties connected with it) is the “beneficial owner” of the Domain Name, and while I find that Worthy Consultants is the correct Respondent for technical purposes, it would be wrong to ignore the position of Bellissimo in these circumstances. Therefore, I will proceed on the assumption that the Respondent registered the Domain Name on behalf of Bellissimo.

I note in this regard that Bellissimo has also failed to respond to the Complaint, despite having been provided with due notice of it.

Proceeding on this basis, the Complainant's first contention is that the registration, which incorporated the Complainant's trading name and mark, was made without its knowledge or consent. However, it is accepted by the Complainant that, at least until 13<sup>th</sup> November 2001, and certainly at the date of registration of the Domain Name, Bellissimo was an authorised distributor of the Complainant's "Ligne Roset" products. Providing it acts in accordance with honest trade practices, there are circumstances in which a distributor may lawfully use a supplier's name or trade mark to identify goods as those of the supplier, and accordingly, the fact that the registration was made without the express consent of the Complainant is insufficient of itself to establish that the registration was abusive.

Furthermore, it is clear that from July or August 2000 the Complainant accepted that Bellissimo would continue to use the Domain Name. Contrary to what the Complainant contends, there was no express agreement (although one may well have been implied) to limit this use to the duration of any distributorship agreement between the parties: that limitation related to the Complainant's own domain names which the Complainant was permitting Bellissimo to use and to the hyperlinks between those names and Bellissimo's own sites.

The Complainant's next contention is that Bellissimo used the Domain Name to direct Ligne Roset customers to its London stores and away from other London based stockists of Ligne Roset products. However, the Complainant has provided no evidence to support this, nor any information regarding sales outlets in London other than Bellissimo, which it describes as "the first exclusive stockist and retailer of the goods". Accordingly, absent any evidence to support the contention made, I do not accept that the Complainant has made out an Abusive Registration on this ground.

Nor do I accept that the Respondent's (or Bellissimo's) continuing use of the Domain Name is motivated only by the purpose of unfairly disrupting the Complainant's business. Bellissimo has offered to transfer the Domain Name and another domain name to the Complainant for a total of £250, which was expressed to be Bellissimo's costs incurred in connection with the registrations. While I make no finding as to the reasonableness of this sum, I consider the fact of this offer (which the Complainant rejected) to be inconsistent with the Complainant's allegation.

This leaves the Complainant's contention that Bellissimo has continued to use the Domain Name without authorisation after the termination of the distributorship agreement between the parties, and that such use is motivated only by the purpose of confusing people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant. Any such use may be a specific indicator of an Abusive Registration under paragraph 3(a)(ii) of the Policy.



While I am not in a position to express any views as to Bellissimo's motivation, I do find that the Domain Name is continuing actively to be used and is not therefore "dormant" as contended by Bellissimo in December 2001. I further find that the Domain Name is being used to connect to a website the content of which clearly gives the impression that it is, currently, authorised by or connected with the Complainant. On the Complainant's evidence, which is uncontradicted, no such connection currently exists. I therefore find, for the purposes of paragraph 3(a)(ii) of the Policy, that such use is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or is otherwise connected with the Complainant. While the Complainant has provided no evidence of actual confusion, the content of the website is such that the likelihood of confusion is overwhelming. In my view, this is sufficient to establish that the Domain Name has been used in a manner which took unfair advantage of, or was unfairly detrimental to, the Complainant's rights and the second limb of the test under paragraph 2 of the Policy is therefore satisfied.

**8. Decision**

In the light of the above, I find on the balance of probabilities that the Complainant 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. I therefore direct that the Domain Name be transferred to the Complainant.

**Signed.....**

**Steven A. Maier**

**12<sup>th</sup> June 2002**