

DISPUTE RESOLUTION SERVICE

DRS 07703

Decision of Independent Expert

Christopher Guy Harrison, Style Forum Inc and Interio Limited

and

Juliette Thomas, Juliette's Interiors Limited and Larrytech Ltd

1. The Parties:

Complainant: Christopher Guy Harrison
Address: 2670 World Plaza Lane, Building 62, Suite 2
Fort Myers
Florida
Postcode 33907
Country: US

Complainant: Style Forum Inc
Address: 2670 World Plaza Lane, Building 62, Suite 2
Fort Myers
Florida
Postcode 33907
Country: US

Complainant: Interio Limited
Address: 7 Wessex Trade Centre, Ringwood Road
Parkstone
Poole
Dorset
Postcode BH123PF
Country: UK

Respondent: Juliette Thomas
Address: 3 Jackson's Orchard
Long Marston
Stratford Upon Avon
Warwickshire

Postcode: CV37 8RU
Country: UK

Respondent: Juliette's Interiors Limited
Address: 3 Jackson's Orchard
Long Marston
Stratford Upon Avon
Warwickshire

Postcode: CV37 8RU
Country: UK

Respondent: Larrytech Ltd
Address: Domain Name Administration
PO Box 85
Tunbridge Wells
Kent

Postcode: TN2 9GH
Country: UK

2. The Domain Name(s):

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

3. Procedural History:

The Complaint was filed on 4 September 2009. The Response was due on 29 September 2009. No Response was filed.

On 13 October 2009 I, Adam Taylor, the undersigned, 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 further confirmed that I knew of no matters that ought to be drawn to the attention of the parties which might appear to call into question my independence and/or impartiality.

4. Factual Background

The First Complainant, Christopher Guy Harrison, an individual based in the US and/or Singapore, has since the early 1990s operated a business designing and selling luxury hand-crafted furniture under the name “Christopher Guy”. The First Complainant’s main website is at christopherguy.com, which was registered on 27 October 2005.

The Second Complainant is a US company, wholly owned by the First Complainant. The Second Complainant owns Community Trade Mark number 4697215 dated 2 November 2005 for the words CHRISTOPHER GUY in classes 20, 35 and 42.

The Third Complainant is an exclusive distributor of “Christopher Guy” products in the UK and Ireland.

The Domain Name was registered in the name of the Third Respondent on 23 April 2008.

The First Respondent is the sole shareholder and director of the Second Respondent, which is a UK-based company supplying luxury furniture.

5. Parties’ Contentions

Complaint

As to rights, the Complainants rely on the Community Trade Mark, referred to above.

The Complainants further rely on the fact that the Domain Name is derived from the personal name of the First Complainant and also upon goodwill which has accrued in the name “Christopher Guy” as a result of the activities, in particular, of the First and Third Complainants. There are showrooms throughout North America, Europe, Asia and the Middle East. The Complainants’ furniture has been selected by leading designers and retailers and is used in well-known hotels and stores in London and worldwide. The furniture has featured in hundreds of film sets.

These rights existed before registration of the Domain Name.

As to abusive registration, the Domain Name was registered with a view to any or all of the following:

- (a) to stop the Complainants making legitimate use of it;
- (b) to disrupting the Complainants’ legitimate business;
- (c) to promote the First/Second Respondents’ own business notwithstanding their lack of legitimate rights therein; and
- (d) for retention as a bargaining chip in the wider dispute between the parties.

The First and Second Respondents have a track record of inserting sponsored links on Google referring to “Christopher Guy” and “Harrison & Gil”, a further brand developed and part-owned by Christopher Guy Harrison. The First and Second Respondents are not authorised to sell any of these products, nor do they in fact do so. Web users will visit their site in the belief that they are authorised to sell genuine “Christopher Guy” or “Harrison and Gil” products, when they are not. This is passing off.

The First and Second Respondents have historically made references to “Christopher Guy”, “Interio” and “Harrison and Gil” on their own website. These references were withdrawn following a complaint by the Third Complainant.

The parties and their legal representatives have been corresponding for two years relating to a complaint by the Third Complainant concerning the promotion and sale of “copycat” designs by the First and Second Respondents. Whilst that issue is not directly relevant here, the following points are relevant:

- (a) Whilst the First/Second Respondents may have been promoting and selling legitimate “Christopher Guy” products in or around July 2007, they have subsequently been selling only illegitimate copies obtained from abroad. The Complainants have never agreed to supply them with the Complainants’ own genuine products.
- (b) The Third Complainant’s solicitors first wrote to the First/Second Respondents on 27 August 2008 demanding the removal of the sponsored link on Google.
- (c) The Third Complainant’s solicitors wrote to the First/Second Respondents on 3 November 2008 and 10 July 2009 demanding the transfer of the Domain Name.
- (d) The letter of 3 November 2008 also complained about the First/Second Respondents’ claim to have supplied furniture to certain prestigious hotels which furniture had in fact been supplied on behalf of the First Complainant. That wording has since been removed.
- (e) On or around 19 November 2008 the Complainants’ solicitors were led to believe – following a conversation with the First/Second Respondents’ solicitors – that the Domain Name would be transferred to the Complainants. However, subsequent to that conversation and on or around January 2009 at the Interiors Show at the NEC in Birmingham the First Respondent verbally advised Mr Colacicco of the Third Complainant that she had been advised “to hang onto the Domain Name as a bargaining chip”.
- (f) A letter dated 25 November 2008 from the First/Second Respondents’ solicitors stated that “...the domain name you referred to is no longer being used”. Whilst this does not confirm the verbal agreement to transfer the Domain Name, it is at the very least a clear admission that the First/Second Respondents have no right to register or use the Domain Name.

The designs promoted and sold by the First/Second Respondents are not genuine “Christopher Guy” products designed or authorised by the First Complainant or on his behalf and therefore the First/Second Respondents can have no legitimate claim to the Domain Name.

Response

No response has been filed.

6. Discussions and Findings

General

To succeed, the Complainants has to prove in accordance with paragraph 2 of the DRS Policy on the balance of probabilities, first, that they have rights (as defined in paragraph 1 of the DRS Policy) in respect of a name or mark identical or similar to the Domain Name and, second, that the Domain Name, in the hands of the

Respondents, is an abusive registration (as defined in paragraph 1 of the DRS Policy).

Complainant's Rights

The Second Complainant's Community Trade Mark for "Christopher Guy" (referred to above) is sufficient to generate rights in that name. I make no finding concerning unregistered rights as the Complainants have provided barely any evidence as to their extent of use of the mark or its degree of public recognition.

Aside the from the domain suffix, the trade mark "Christopher Guy" is identical to the Domain Name.

I conclude that the Second Complainant has established rights in a name or mark which is similar to the Domain Name.

Abusive registration - introduction

Is the Domain Name an abusive registration in the hands of the Respondents? Paragraph 1 of the DRS 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

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

Relationship between the Respondents

The starting point is to consider the relationship between the three Respondents.

The Complainants say that the Third Respondent is a website design / hosting company acting as a nominee for the First and Second Respondents and that the First and Second Respondents have been included in this action because the definition of "Respondent" in the DRS Policy includes any person "on whose behalf a Domain Name is registered".

The Complainants have produced an extract from the Third Respondent's website showing that it is indeed a web design and hosting company.

While there is currently no website at the Domain Name, a section of the DomainTools whois printout for the Domain Name headed "Front Page Information" includes the following: "Website Title: Juliettes Interiors Renaissance Chair Microsite Landing Page". This suggests that there was formerly a website at the Domain Name connected with the First and/or Second Respondents.

Furthermore, the Complainants have exhibited extensive correspondence between themselves and the First and Second Respondents dating back to 19 July 2007. Much of this correspondence relates to an assertion by the Complainants that the First and Second Respondents distributed copycat versions of the Complainants' products. It is not necessary to consider this correspondence in detail for the

purposes of this case. However, there are references to the Domain Name which are relevant.

The first mention of the Domain Name is in a letter dated 3 November 2008 from the Complainant's solicitors to the solicitors for the Second Respondent, where they express concern that the latter's client had "registered" the Domain Name and demand transfer to the Complainants.

The Complainants' solicitors say that the solicitors for the Second Respondent told them by telephone on or about 19 November 2008 that the Domain Name would be transferred to the Complainants. The exhibits to the Complaint include an extract of an email from the Complainants' solicitors to their client confirming this version of the conversation.

In a letter dated 25 November 2008, the solicitors for the Second Respondent stated that "the domain name you referred to is no longer being used".

The Complainants claim that, in January 2009, the First Respondent told a representative of the Complainants at a trade show that she had been advised "to hang onto the Domain Name as a bargaining chip".

Whatever in fact was said in the solicitors' telephone conversation of 19 November 2008 or at the trade show in January 2009, the comment by the solicitor for the Second Respondent in its letter of 25 November 2008 about the domain name no longer being used was clearly based on the assumption that the First / Second Respondents in fact controlled the Domain Name. Taking this, together with the evidence above concerning the former use of the Domain Name for a website connected with the business of the First / Second Respondents and the failure of any of the Respondents to file a Response denying the assertions in the Complaint, I am satisfied on the balance of probabilities that the Third Respondent did register the Domain Name on behalf of the First and/or Second Respondents.

I therefore propose to treat these three parties interchangeably when considering the issue of abusive registration.

Motive of the Respondents in registering the Domain Name

Why did the Respondents register the Domain Name? Unfortunately, there is no information about the content of the former website at the Domain Name. It is, however, telling that the letter from the solicitor for the Second Respondent dated 25 November 2008 does not attempt to justify the registration of the Domain Name but merely states that it is no longer being used. Moreover, the Respondents have failed to file a Response explaining their motive.

Reseller issue

The Complainants concede that the Respondents may have been promoting and selling legitimate "Christopher Guy" products in or around July 2007 and, putting the position at its best for the Respondents, it is, I suppose, conceivable that they registered the Domain Name solely to resell genuine versions of the Complainants' products. However, this seems unlikely given that, by the time of registration of the Domain Name in April 2008, the parties had been in dispute (since July 2007)

about the Respondents' alleged sale of copycat versions of the Complainants' products and the Complainants had previously vowed not to supply the Respondents with any of their products until that issue had been resolved.

In any case, such use by the Respondents of the Domain, comprising as it does the unadorned trade mark of the Complainants, would be bound to go beyond a representation to public simply that they were selling the Complainant's products and would instead suggest that they were themselves the Complainants, or connected with the Complainants. Such conduct would be likely to be considered as taking unfair advantage of, or causing unfair detriment to, the Complainants' mark. See, eg, the appeal panel decision in *seiko-shop.co.uk - DRS 248*.

Google sponsored advertisements

Furthermore, the Complainants have produced evidence that the following sponsored advertisement placed by the Respondents appeared in Google on 30 July 2009:

"Christopher Guy

Exquisite range French furniture.
Elegance & style with low prices.
www.JuliettesInteriors.co.uk"

The timing is important here. On 12 December 2008, the First Respondent had written to the Third Complainant regarding the "option" of supplying genuine Christopher Guy products. On 10 July 2009, the Third Complainant responded saying that it would not consider the matter further until the Domain Name had been transferred to the Complainants and, additionally, the Complainants' trade marks were removed from the Respondents' sponsored advertisements. (It appears that the Respondents did not reply to this letter.)

Yet a few weeks later, at a time when it is clear that the Respondents were not authorised to supply the Complainants' products, the Respondents placed Google advertisements branded with the Complainants' name. It is difficult to see this as other than an attempt by the Respondents to capitalise on the Complainants' mark for their own benefit.

Agreement to transfer Domain Name and use as a "bargaining chip"

As mentioned above, the Complainants solicitors say that the Second Respondent's solicitors agreed on or about 19 November 2008 that the Domain Name would be transferred to the Complainants. This is borne out by an extract of an email dated 19 November 2008 from the Complainants' solicitors to the Third Complainant: "Finally spoke to their lawyer who confirmed that the domain name is being transferred. You should receive something from Nominet on that."

The Respondents have not come forward to dispute this version of the conversation or to contest the Complainants' assertion that the First Respondent later stated orally to a representative of the Complainants that she had been advised to keep the Domain Name as a bargaining chip.

These circumstances indicate that the Respondents themselves considered that they did not have any legitimate reason to register or keep the Domain Name.

Abusive registration – conclusion

In light of the circumstances outlined above, I conclude that the Respondents did not register the Domain Name for any genuine purpose but rather that, in accordance with Paragraph 3aiC of the Policy, they did so primarily for the purpose of unfairly disrupting the business of the Complainants in some manner. (This is one of the non-exhaustive factors which may be evidence that a domain name is an abusive registration.) The Domain Name was registered in manner which, at the time of registration, took unfair advantage of or was unfairly detrimental to the Complainants' rights.

7. Decision

I find 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 decide that the domain name christopherguy.co.uk should be transferred to the Third Complainant (the entity nominated by the Complainants to take transfer of the Domain Name).

Signed: Adam Taylor

Dated 2 November 2009