

DISPUTE RESOLUTION SERVICE

D00012614

Decision of Appeal Panel

Crazyinlove

and

Mrs Laura Reed

1. The Parties:

Complainant/Appellant: Crazyinlove
C/ San Juan, 86
Parets del Vallés
Barcelona
08150
Spain

Respondent: Mrs Laura Reed
29 Empire Wharf
London
E3 5NQ
United Kingdom

In this decision the nomenclature of the Expert's decision at first instance will be maintained with the Appellant being referred to as "the Complainant".

2. The Domain Name:

<crazyinlove.co.uk>

3. Procedural History

First Instance

The Complaint was first received by Nominet on 15 March, 2013 and notified to the Respondent. The Response was received and notified to the Complainant on 18 March, 2013. The Reply was received and notified to the Respondent on 25 March, 2013. Mediation ensued, but failed to result in settlement of the dispute. The Complainant having paid the appropriate fee, on 22 May, 2013 the Expert was appointed to provide a full decision. The decision was issued by the Expert and sent to the parties by Nominet on 17 June, 2013. The Expert found in favour of the Respondent and directed that no action be taken in respect of the Domain Name.

Complainant's Appeal

Nominet received the Complainant's Appeal Notice and notified the Respondent on 22 July, 2013. The Respondent's Appeal Response was received by Nominet and notified to the Complainant on 5 August, 2013.

On 8 August, 2013 Tony Willoughby, Claire Milne and David King (the undersigned, "the Panel") were appointed to the Appeal Panel, each having individually confirmed to the Nominet Dispute Resolution Service 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."

This is an Appeal against a Decision at first instance in favour of the Respondent. The Panel was appointed to provide a decision on or before 20 September, 2013. This process is governed by version 3 of the *Procedure for the conduct of proceedings under the Dispute Resolution Service* ("the Procedure") and the Decision is made in accordance with version 3 of the *Dispute Resolution Service Policy* ("the Policy"). Both of these documents are available for inspection on the Nominet website (<http://www.nominet.org.uk/disputes/drs>).

4. The Nature of This Appeal

The Policy §10a provides that: *“the appeal panel will consider appeals on the basis of a full review of the matter and may review procedural matters”*.

The Panel concludes that insofar as an appeal involves matters other than purely procedural complaints the appeal should proceed as a re-determination on the merits.

In addition to the decision under appeal, the Panel has read the Complaint (with annex), the Response, the Reply, the Appeal Notice and the Appeal Response.

5. Formal and Procedural Issues

There is one procedural issue which the Panel feels it must consider. As mentioned in paragraph 7 below, in their respective Appeal Notice and Appeal Response, the Complainant and the Respondent have made significantly longer submissions than they did at first instance and they have introduced new grounds and reasons in support of their respective positions.

By Article 18c of the Procedure an Appeal Notice should set out detailed grounds and reasons for the appeal but should contain no new evidence or annexes. Similarly by Article 18f of the Procedure an Appeal Response should set out detailed grounds and reasons why the appeal should be rejected but should contain no new evidence or annexes.

By Article 18h of the Procedure an Appeal Panel should not normally take into consideration any new evidence presented by the parties unless the Panel believes that it is in the interest of justice to do so.

In this case the parties' submissions at first instance were very short and rather unhelpful. The submissions made at the appeal stage have been of some assistance to the Panel albeit that there is a distinct lack of documentary evidence in support of them. In all the circumstances the Panel is satisfied that it is in the interest of justice to take the submissions into account.

6. The Facts

The Complainant is an online clothing store, which has been trading under the name “Crazyinlove” since 2009. The Complainant’s CEO is the registered proprietor of CTM No. 010727485 CRAZYINLOVE (word) dated 15 March, 2012 (registered 26 July, 2012) in class 35 for “retailing, wholesaling and sale via global telematic networks of ready-made clothing, footgear, headgear.”

The Domain Name was registered on 8 May, 2012. On 15 August 2013 it resolved to a parking website managed by 123-reg.

7. The Parties' Contentions

The Complaint

The Complaint is very short. The only exhibit is an OHIM certificate confirming ownership of the CTM referred to in section 6 above.

The Complainant states that it has been trading online since 2009 and using the domain names, <crazyinlove.es>, <crazyinlove.it>, <crazyinlove.fr> and <crazylove.pt> for that purpose. The Claimant further states that its sales for 2012 were in the region of EUR100,000.

The Complainant contends that the CTM is identical to the Domain Name and that the Domain Name is an Abusive Registration. The latter contention is based upon the claims that the Respondent has registered the Domain Name under the 'fake name' *Crazy in Love* rather than under her personal name, that the Domain Name is not being used, that the Respondent registered it primarily as a blocking registration and that the Respondent registered the Domain Name with a view to selling it to the Complainant at an inflated price.

The Response

The Response is also very short. It features no exhibits.

The Respondent states that she had never heard of the Complainant prior to receipt of the Complaint. She states that she is a TV and events co-ordinator who got married last year (10 April, 2012) and registered the Domain Name (8 May, 2012) for a business that she proposes to set up, planning weddings.

She states that she has already planned one wedding and is currently working on another three. She has not yet had the chance to set up her website because she has a full-time job and is working towards the new business in her spare time, with a view to being able to run it from home "once the children come along".

The Respondent observes that she is operating in a very different field from the Complainant and does not understand the relevance of the Complainant's CTM for the online sale of clothing. She points out that, as indicated on the certificate annexed to the Complaint, the CTM was registered over two months after she had acquired the Domain Name.

Reply

The Complainant points out that the relevant date for the Complainant's trade

mark rights under the CTM commence with the filing date (15 March, 2012) not the registration date. The filing date precedes the date of registration of the Domain Name.

The Complainant reiterates that there has been no activity in relation to the Domain Name since it was registered and the Respondent has not produced any evidence to substantiate the existence of any business in respect of the Domain Name.

Appeal Notice

The Appeal Notice is very much more extensive than both the Complaint and the Reply combined.

The Complainant elaborates on the internationalization of its business. It commenced in Spain in 2009, moved into Portugal in July 2011, and France in October 2011. It states that “*the domain was registered*” in Italy in November 2011 and in Belgium in April 2012. The Complainant states that this progression was necessary before moving into Britain and Germany.

The Complainant states that virtually all these steps took place in advance of the registration of the Domain Name and contends that it would not take an expert to anticipate that the next domain name registration would be likely to be a ‘.co.uk’ registration.

The Complainant introduces new evidence (unsupported by any exhibits), not put before the Expert at first instance, namely:

1. The Complainant has been trading with the UK since 2011.
2. The Complainant has been visiting the London Edge Fashion Show every 6 months.
3. The London Edge Fashion Show is “*the largest event in gothic fashion in Europe*” and event managers (amongst others) “*meet there in order to discover new business and trade with existing stocks*”.
4. The Complainant is not only an online retailer, but also sells its “*Crazyinlove*” branded product to its distributors at the London Edge Fashion Show. Some of its product is “*designed for wedding purposes*”.
5. The Complainant has a UK bank account for the purpose of dealing with its UK customers.

The Complainant contends that a wedding planning expert, such as the Respondent, must have attended the London Edge Fashion Show, must have seen the Complainant’s gothic wedding apparel there and must therefore have been aware of the existence of the Complainant when registering the Domain Name.

The Complainant reiterates its contentions as set out in the original Complaint (with the additional allegation that the Respondent registered the Domain Name

to disrupt the business of the Complainant, but omitting any reference to its original allegations that the Respondent registered the Domain Name under a fake name and that the Domain Name was registered for the purpose of sale) and challenges the Respondent to come forward with some proof of the existence of a legitimate business.

The Complainant contends that the British market is one of the largest in Europe and constitutes a key element of its business plan. It states that its turnover for the last year was EUR 800,000 and that this year it is expected to exceed EUR 1 million. It anticipates that in the medium term the British market will constitute 30 % of its business. It needs the Domain Name to permit it to recover its investment in this market.

Appeal Response

Unsurprisingly, the Appeal Response is also significantly longer than the original Response.

The Respondent reiterates her denial of the Complainant's allegations against her and in particular she insists that she was not aware of the existence of the Complainant until receipt of the Complaint.

In answer to the points raised in the Appeal Notice the Respondent states:

1. She has a full time job in TV and Events production and has never claimed to be a “*wedding planner expert*” as asserted by the Complainant. She plans to use her transferable skills in planning weddings, and is currently building these skills by helping with friends' weddings at no charge.
2. She has never been to the London Edge Fashion Show. The only trade shows that she has visited have been wedding shows.
3. She has no interest in and has no knowledge of “gothic fashion” and has never set foot in a gothic shop. It is a completely different world from the world that she is looking to serve.
4. She has discovered that the Complainant currently has a website connected to the domain name, <crazyinlove.uk.com>, but when she searched the site using the word “wedding” nothing materialized.
5. She adopted the Domain Name because it was apt for her business plans.
6. In addition to reiterating her denials of the Complainant's allegations as to her motives, she adds that the Complainant knows that she did not register the Domain Name “for gain” because it offered her money for the Domain Name on 7 May, 2013 and she turned the offer down.
7. Search engines throw up the Beyoncé song in response to searches for “Crazy In Love”.

The Appeal Response concludes: *“I'm deeply offended at the accusations that I am 'operating illegally', questioning whether I am 'paying for the taxes' or that it is 'a sham'. I'm working very hard, for free, building up my experience and have received*

excellent feedback from the friends and colleague's weddings I have worked on to date. I take these comments very seriously and treat them as defamation of my character."

8. Discussion and Findings

General

To succeed in this Complaint the Complainant has to satisfy the Appeal Panel pursuant to paragraph 2 of the Policy on the balance of probabilities, first, that it has "Rights" (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name and, secondly, that the Domain Name, in the hands of the Respondent, is an "Abusive Registration" (as defined in paragraph 1 of the Policy).

First Element

For the purposes of assessing identity/similarity under this head of the Policy it is permissible for the Panel to ignore the '.co.uk' top level domain identifier. On that basis the Domain Name, the only other component of which is the Complainant's CRAZYINLOVE trade mark, is of course identical to the Complainant's trade mark.

In so finding, the Panel recognizes (as did the Expert at first instance) that strictly speaking the CTM is held in the name of the Complainant's CEO rather than the Complainant itself, but the Panel agrees with the Expert that it is appropriate in these circumstances and for this purpose to treat the Complainant and its CEO as one and the same.

The Complainant has succeeded under this Element of the Policy.

Second Element (Abusive Registration)

"Abusive Registration means 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 has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;" [Paragraph 1 of the Policy]

In the Expert's decision at first instance he accurately identifies the potentially relevant paragraphs of the Policy and it is unnecessary for the Panel to repeat them here.

The only changes of any substance are that in the Appeal Notice the Complainant makes no mention of the allegation that the Respondent registered the Domain Name for the purpose of sale to the Complainant at an inflated price; nor does it make any reference to the allegation that the Respondent used a fake name when registering the Domain Name¹.

At the heart of the Complaint is the allegation that when registering the Domain Name the Respondent (a) was aware of the Complainant's "Crazyinlove" brand and (b) intended to cause damage to the Complainant and/or its brand and/or otherwise exploit the value of the brand. The allegation is that the Respondent registered the Domain Name either for the purpose of preventing the Complainant registering the Domain Name or for the purpose of disrupting the Complainant's business.

The Complainant says that this is the conclusion to be drawn from the Respondent's failure to use the domain name. It states:

"In conclusion, taking into account the facts described is proven that Mrs Reed was aware of the existence of the brand, otherwise it would be clear that she is not developing wedding planner activity in a professional manner, understood as illegal or simply a sham deed, to blocking registration and unfairly disrupting the business of the complainant. In addition, the lack of activity, the absence of contact details shown on the Internet and contradiction from Mrs Reed's statements saying that she is starting a business but, one year after the registration, she has not done anything, prove that the domain registration is to blocking business expansion in the UK."

Accordingly, the Complainant's case depends on satisfying the Panel that the Respondent was aware of the Complainant's "Crazyinlove" brand when she registered the Domain Name. If, as she has repeatedly insisted, the Respondent was unaware of the existence of the Complainant when she registered the Domain Name, she cannot have had the Complainant's brand in mind when registering the Domain Name, whether to block the Complainant or disrupt the business of the Complainant or for any other purpose.

The Complainant has no positive evidence of any kind to support its allegation that the Respondent was aware of the Complainant's brand when registering the Domain Name. The 'evidence', such as it is, is entirely circumstantial, requiring the Panel to

¹ Even if the omission of these allegations was an oversight, the Panel agrees entirely with the manner in which the Expert dealt with them in his decision at first instance and would have come to the same conclusion.

draw inferences adverse to the Respondent.

First, the Complainant draws attention to the international fame of its brand citing turnover figures for the last two years of EUR 100,000 and EUR 800,000 respectively. But what was the state of the Complainant's sales as at 8 May, 2012 when the Domain Name was registered? The Panel has nothing before it save the figure of EUR 100,000, which is a modest figure in the context of international trade. The Panel surmises that although the Complainant has asserted that it has had UK customers since 2011 (no details are provided), most of the sales up to May 2012 are likely to have been in Spain, Portugal, Italy and France, the countries where it had established websites.

Secondly, the Complainant majors on its six monthly visits to the London Edge Fashion Show, which appears to be a leading fashion show for themed clothing of the 'gothic' genre. The Complainant contends that attending this show would be a 'must' for any expert wedding planner as it features 'gothic' wedding apparel and themed clothing styles are 'in' for modern weddings. If the Respondent had a genuine business she would have visited the London Edge Fashion Show and would have been aware of the existence of the Complainant. The Panel notes that the Complainant gives no details of its visits to the Show. In particular, the Panel does not know whether the Complainant was exhibiting at the Show prior to May, 2012.

Thirdly, the Complainant draws attention to the fact that over a year after registration of the Domain Name the Respondent has done nothing to develop her wedding planner website and Internet searches provide no information on her or her business. The Complainant invites the Panel to infer from this that the Respondent has no proper business and that her explanation for the adoption of the Domain Name is a sham.

Fourthly, the Complainant points to the fact that the Respondent has produced no evidence to support her claim to having a wedding planner business and in the Appeal Notice challenged the Respondent to produce some evidence. In the Appeal Response the Respondent said that she was deeply offended by the Complainant's allegations, but nonetheless failed to produce any evidence in response to the challenge.

The Panel accepts that the Complainant's allegations could be true. In the absence of any evidence of any kind to substantiate the Respondent's claims to having an embryo business, such as letters of commendation or plans for the future, it has to be a possibility that the business and the plans are non-existent. If that is the case, it could be that the Respondent is just sitting back, biding her time with a view to targeting the Complainant in some way.

However, it is for the Complainant to prove its case, not for the Respondent to prove her defence. The Respondent denies all prior knowledge of the Complainant and, in the view of the Panel, that is a wholly plausible claim to make in relation to a brand, which in early 2012 was operating on a small scale, probably mainly directed to Spain and other markets on continental Europe. Moreover, it is a brand, which appears to be

of the 'gothic' genre. The Panel does not find it surprising that the Respondent should, as she claims, have no knowledge of nor interest in that genre. The Complainant characterizes her as an expert in the field of wedding planning, whereas the Respondent has consistently pointed out that she is not an expert in that field. She has a full-time job in the TV and event production fields and her business as a wedding planner is at an embryo stage and intended to be a business that she can operate from home when she has children. She explains that the delay in getting her website operational stems from the fact she has a full-time job and has to work on her new business in her spare time. To the Panel, her account sounds entirely plausible and consistent.

The one fact that has exercised the Panel is that despite a direct challenge and despite taking a deep offence at the nature of the Complainant's allegations, the Respondent has done absolutely nothing to substantiate her claims. She stated in her original Response that she had planned one wedding and had three others in the pipeline and had even had letters of commendation. It should have been very easy to produce something by way of documentary evidence in support of her claims. True, as observed in section 5 above, paragraph 18f precludes the inclusion of new evidence in an Appeal Response, but the Appeal Response did in fact contain some new evidence, albeit nothing in the way of documentary support for her claim to be operating a wedding planner business.

Given this lack of documentary evidence, the Panel cannot be certain of the veracity of the Respondent, but there could be a number of explanations for her reticence unrelated to the Complainant. Any doubts have to be resolved in her favour, because, as indicated above, it is for the Complainant to prove its case and not for the Respondent to prove her defence.

Furthermore, it is worth stressing the independent fame of the phrase *Crazy in Love*, as the title of a popular song released in 2003. The Respondent would have been aware of it, and she was entitled to register the Domain Name for any purposes of her own which did not infringe the rights of others. It is possible that she invented the purported wedding planning business on receipt of the Complaint, as an explanation for having registered the Domain Name. But even if this were the case (and the Panel is not suggesting that it is), this would not necessarily mean that her real intention had been to exploit the Complainant's rights. One can imagine many alternative uses for the Domain Name.

In summary, the Complainant has failed to prove to the satisfaction of the Panel that the Domain Name in the hands of the Respondent is an Abusive Registration.

In the result the Panel sees no reason to disturb the decision of the Expert and the Appeal fails. However, the Panel observes that if it should subsequently transpire that the Respondent has materially misled the Panel and/or that the Respondent subsequently uses the Domain Name in a manner which targets the Complainant, it will be open to the Complainant to file a new Complaint.

9. Decision

Appeal dismissed. Expert's decision upheld. No action.

Signed:

Tony Willoughby

Claire Milne

David King

Dated 15 August, 2013