

**DISPUTE RESOLUTION SERVICE**

**D00016000**

**Decision of Independent Expert**

**KONINKLIJKE GAZELLE N.V.**

**and**

**WOJCIECH POPIEL**

**The Parties**

Complainant: Koninklijke Gazelle N.V.

Wilhelminaweg 8, 6951 BP

Postbus 1, 69500 AA

Dieren

Netherlands

Respondent: Mr Wojciech Popiel

23 Elderwood Place

London

SE27 0HJ

United Kingdom

**The Domain Names**

gazelle-bikes.co.uk

gazellebicycles.co.uk

gazellebikes.co.uk

## **Procedural History**

1. I confirm 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.
2. The essential procedural steps taken by the parties and Nominet in this dispute have been as follows, -

29 May 2015 Complaint received and validated, notification of Complaint sent.

17 June 2015 Response reminder sent.

19 June 2015 Response received.

23 June 2015 Notification of Response sent.

26 June 2015 Reply reminder sent.

1 July 2015 Reply received.

3 July 2015 Mediator appointed.

6 July 2015 Mediation started.

17 August 2015 Mediation failed.

## **The Factual Background**

3. The Complainant is a bicycle manufacturer based in the Netherlands which has used the trade name "Gazelle" since 1902. The company sells and distributes its 'Gazelle' branded bicycles in the United Kingdom and elsewhere in Europe and the rest of the world. The Respondent is a distributor of bicycles of several brands. He was an authorised distributor of the Complainant's bicycles until February 2015 when the business relationship between the parties came to an end. Between 2010 and February 2015, the Respondent's bicycle retail business was carried on from a shop in Crystal Palace, south London. A WHOIS search shows that the Domain Names were first registered as follows, -

- gazellebikes.co.uk 5 December 2011.

- gazellebicycles.co.uk 14 July 2009.
- gazelle-bikes.co.uk 30 April 2014.

The Respondent has used two of the Domain Names as part of his bicycle retail business and proposes to use all three in the marketing of that business.

### **The Parties' Contentions**

4. The Complaint alleges as follows, -

- 4.1 The Complainant is the leading manufacturer of bicycles in the Netherlands. At all times relevant to the dispute, the Complainant has supplied its "Gazelle" branded bicycles to distributors in the UK.
- 4.2 The Complainant advertises in the UK and in 2014 spent over 25,000 Euros on promotional activities and advertising for the UK market.
- 4.3 As a result of its widespread trading activities in the UK, consumers seeing bicycles sold under the trade name 'Gazelle' take those bicycles to be those of the Complainant and of no-one else.
- 4.4 The Complainant also owns several Community trade marks incorporating the word 'Gazelle', including Community trade mark no: 000345140 for the word mark 'GAZELLE', registered as of 21 June 1999. The Complainant also owns the domain name [www.gazellebikes.com](http://www.gazellebikes.com).
- 4.5 Between 2009 and 2014 the Complainant supplied its branded bicycles to the Respondent under a 'buy-and-sell arrangement' but ceased all supplies to him on 3 November 2014 following his failure to pay monies due. The Complainant supplied to the Respondent 34 bicycles in 2013 and 17 bicycles in 2014.

- 4.6 Between April 2014 and early February 2015 negotiations took place for the sale of the Domain Names to the Complainant. On 3 June 2014 the Respondent sought a purchase price of between £280,000 - £300,000 for two of the Domain Names. That was far in excess of the price of 2,300 Euros which had been agreed between the parties for the transfer of <gazellebikes.co.uk>.
- 4.7 The Complainant emailed the Respondent on 11 July 2014 complaining of his registration of the third of the Domain Names, which registration had been previously unknown to the Complainant, and demanded that he transfer all three Domain Names.
- 4.8 The Respondent refused that request by email of 15 July 2014 and invited the Complainant to use Nominet's DRS procedure to resolve the dispute. Attached to the email was an unsigned letter dated 21 May 2014 purporting to be written by a Mr Cor de Jong, a disgruntled ex-employee of the Complainant, in which it was alleged that the Complainant had agreed that the Respondent could register 'the domain name' as a means of promoting the sale of the Complainant's bicycles. The letter is of no probative value and the Complainant never authorised any of the registrations.
- 4.9 Mr Gijs Spil, the Complainant's export manager, met with the Respondent in London on 9 February 2015, who told him that he had decided to discontinue his bicycle business and wished to end the distribution relationship with the Complainant. There were unsuccessful discussions at that meeting for the sale of what Mr Spil was told were seven 'gazelle' related registrations in all, one being a .london domain, the identity of the others being withheld from him. Subsequent investigations have revealed that two of the other domain names were also .london registrations.
- 4.10 At that meeting, Marta Popiel on behalf of the Respondent confirmed that the Respondent had not sought authorisation from the

Complainant before registering any of the Domain Names. She told Mr Spil, “We just registered the domain names as they were up for grabs.” She also said that if no agreement were reached on the sale of the Domain Names, the Respondent intended to continue to use them by offering services related to them.

- 4.11 On 18 February 2015 the Complainant wrote to the Respondent accepting the Respondent’s termination of the relationship and stated that irrespective of whether the Respondent had been entitled to register or use the Domain Names in the past, he would no longer be at liberty to do so now that the relationship between the parties had come to an end.
- 4.12 The Respondent has used two of the Domain Names. The Domain Name <gazellebikes.co.uk> links directly to the Respondent’s website at [www.popiel.co.uk](http://www.popiel.co.uk), which has offered for sale not only the Complainant’s “Gazelle” branded bikes but also those of its competitors.
- 4.13 The website at <gazellebicycles.co.uk> displays a list of the Complainant’s bicycle models (some of which the Complainant no longer sells) in the form of hyperlinks linked to [www.popiel.co.uk](http://www.popiel.co.uk). Most of those links display the error message, “Page not Available”. The third of the Domain Names is not in use and the Complainant is not aware that it has ever been used.
- 4.14 There have already been a number of instances of actual confusion. The Complainant’s advertisement for a UK manager on a third party website was met by enquiries directed to the Respondent, who informed the Complainant that he had been receiving calls from potential applicants in response to the advertisement.

- 4.15 In any event, consumers are likely to assume that the websites associated with the Domain Names are either official websites of the Complainant or are endorsed by it.
- 4.16 The redirection of consumers to the Respondent's website selling competing brands of bicycle is a particular cause for concern. The Complainant has received complaints from its own UK dealers about this. The dealers have expressed the concern that consumers will assume that the Complainant operates only one point of sale in the UK (i.e. from the Respondent's website), whereas there are 40 points of sale in the UK.
- 4.17 Therefore, the registrations are abusive because they have caused and are likely to continue to cause confusion within paragraph 3a. ii. of the DRS Policy ("the Policy").
- 4.18 In the circumstances, the conditions specified in paragraphs 3a. i. of the Policy are also met and further, paragraph 3a. iii. is satisfied because the Respondent has been engaged in a pattern of registrations which correspond to well-known names or marks in which he has no apparent rights, namely the .london registrations and others containing the names of other bicycle brands.

5. The Response alleges as follows, -

- 5.1 The Respondent began promoting Gazelle Bikes in the UK in 2009 when he opened a bike hire business in London. In 2010 he opened a retail shop in Crystal Palace. He was the second most successful dealer of Gazelle bikes in terms of sales and was the only dealer to sell Gazelle bike parts online. He was appointed to provide Gazelle E-bikes for over 100 Dutch VIPs attending the 2012 Olympic Games in London. For over three years the Respondent stocked only Gazelle bikes and only after that did he begin to sell and represent other Dutch bike brands.

- 5.2 The Complainant was well aware that the Respondent registered the Domain Names at the times when each was registered and made no objection. The Respondent “is in possession of a letter written and signed by the Complainant’s former Export director” (Mr de Jong) confirming the Respondent’s position on these registrations. Mr de Jong was told by the Respondent that he intended to use those registrations for proper commercial purposes. Contrary to what the Complainant says, that letter is of probative value, particularly as the events in question took place before the take-over of the Complainant’s business in 2012 and those in charge of the company now will have been unaware of those matters.
- 5.3 It was only in 2014 that the Complainant began to object to the registrations, finally threatening him in November 2014 that the business arrangements between them would be terminated if he did not transfer the Domain Names. The Complainant’s position in 2014 was bluntly, “We want those domain names”. The Respondent did agree a price for one of the Domain Names but the draft agreement that was provided did not match what had been agreed and the Respondent declined to sign it as a result. The Complainant’s original refusal to challenge the issue of registration through the Nominet DRS procedure is evidence that its intention from the outset was to terminate the dealership agreement.
- 5.4 The price of between £280,000 and £300,000 (for all seven domain names) reflected a valuation provided by a suitably qualified expert and the Respondent always made it clear that the valuation was open to negotiation. The valuation was more to discourage the Complainant from pursuing the domain names than for any other reason.
- 5.5 The Complaint also makes incorrect assertions about what was said at the meeting on 9 February 2015 and the termination of the relationship. It is the Complainant who decided to terminate the dealership

arrangements with the Respondent and not the other way round. The reason why the Complainant did so was because the Respondent refused to transfer the Domain Names. The Respondent had no choice other than to accept that the relationship was at an end.

5.6 At the meeting of 9 February 2015 Marta Popiel did not withhold the identity of the seven domain names, she simply answered the questions she was asked and said that there were seven domains in all. She said that it was ‘plausible’ that the retail shop might be closed but the Respondent would continue to operate a bicycle business

5.7 The Respondent decided not to renew his lease of the shop in Crystal Palace and that decision was partly influenced by the Complainant’s unfair treatment of him. However, his business has continued online and he is still an active dealer of other Dutch brands of bicycle, such as KOGA and still has a remaining stock of Gazelle bikes for sale ‘worth over 9,000 Euros’. In view of its refusal to supply the Respondent with Gazelle bikes, the Complainant has forced the Respondent to find other business channels to buy and sell parts and second-hand Gazelle bikes to service his customers.

5.8 The websites associated with the Domain Names or linked to them have always presented the Complainant’s bikes in a positive light and the Respondent is “an excellent ambassador of the brand” as one customer has stated. The website content relating to Gazelle products is fully compatible with the Complainant’s standards and his trading activities are in line with all relevant standards and training. In fact, the Respondent’s online presence has generated better customer service than the Complainant has been able to provide.

5.9 The Respondent has never pretended to be the Complainant. The Domain Names he has used show clearly that he is and/or was a dealer for the Claimant’s brand and for other Dutch bike brands. The



Respondent has been constantly updating his websites and all the relevant websites are being rebuilt or revamped at considerable cost.

5.10 Other dealers in Europe have used domain names containing the words 'gazelle bikes' without even directing the consumer to their own brand names. There is nothing wrong in directing those domain names to the Respondent's own website as a dealer of Dutch bikes. As for the registration of the domain names incorporating the names of other Dutch bike companies, those companies are aware of the registrations and there is nothing unlawful about them.

5.11 The Respondent believes that it is lawful to sell or lease a domain name if there is no abusive use of the domain name, and no bad faith. The Respondent invested over £20,000 of his own money to market and sell the Complainant's bikes from 2009, in circumstances where the Complainant was not keen to promote its bikes in the UK during that period. The Respondent's exceptional knowledge of digital matters and the marketing activities he undertook substantially increased the market for the Complainant's bikes both in the UK and elsewhere.

5.12 The Domain Names are in any event significantly different to the Complainant's domains and there are many available domain names which the Complainant can buy to market its products in the UK. The Respondent's use of the Domain Names has not disrupted the Complainant's business, as shown by the fact that the Complainant has increased its UK dealer network since 2014.

5.13 The Respondent has at all times been motivated by good faith in his registration and use of the Domain Names, as shown by a range of activities including the fact that he has recently been appointed as the main dealer for London of BOSCH, a major manufacturer of motors for E-bikes. Each of the Domain Names will have a 'marketing task' to perform in the Respondent's newly restructured business. He has

joined forces with a business partner, Blue Door Bicycle, an independent bicycle retailer and its Managing Director and owner, Mr David Hibbs.

5.14 Therefore, the registrations are not abusive.

6. In the Reply the Complainant alleges, -

6.1 The Reply addresses only those matters relevant to the dispute.

6.2 The relationship with the Respondent was terminated for non-payment of monies due. Supplies of KOGA bicycles to the Respondent have also ceased as a result of the Respondent's failure to pay money due to KOGA, as shown by an exchange of emails between the Complainant and KOGA.

6.3 The Domain Name <gazellebikes.co.uk> still links to the Respondent's website at [www.popiel.co.uk](http://www.popiel.co.uk) but now that website states that it is in "maintenance mode". The Domain Name <gazelle-bikes.co.uk> remains unused and the website at <gazellebicycles.co.uk> has been updated since the Complaint was filed, with some basic information about Gazelle bikes, though not in line with the Complainant's house style. It is unlikely that the Respondent is actually selling Gazelle bikes through this site.

6.4 The Respondent's restructured business will involve use of the Domain Names to market and sell brands of bicycle that compete with the Complainant, in circumstances where it is unlikely that the Registrant will be selling Gazelle bikes or parts at all.

6.5 The Respondent has painted an inaccurate picture of the negotiations between the parties for the transfer of the Domain Names, which is contradicted by the contemporaneous documents. The Respondent initiated the discussions for the sale in April 2014 and was actively

seeking to maximise the return for the Domain Names, as evidenced by the terms of its offer to sell for up to £300,000.

6.6 Mr de Jong is a disgruntled ex-employee of the Complainant who is involved in employment law dispute with the Complainant. The alleged authority he is said to have granted is not credible. In any event, it is clear that since February 2015 at the latest, any authority that was granted has been revoked.

6.7 The documents annexed to the Response show another instance of actual confusion. An email exchange in June 2015 between the Respondent and a customer, who bought one of the Complainant's bicycles from a shop in York, shows that on 19 June 2015 the customer emailed the Respondent through the contact portal on the website at <gazellebicycles.co.uk> to obtain an English language version of the instruction booklet supplied to him, which had been in Dutch. In his email of 22 June 2015 the customer refers to the "Gazelle main site", so indicating his mistaken belief that the website at <gazellebicycles.co.uk> was a related official website of the Complainant.

### **Documents under Paragraph 13 of the DRS Procedure**

7. On 24 August 2015 Nominet issued a request of the Respondent pursuant to paragraph 13a of the DRS Procedure ("the Procedure") at my instigation. The request sought a copy of the "letter written and signed by" Mr de Jong referred to in paragraph 3 of the Response. Exhibited to the Response was a letter expressed to be from Mr de Jong dated 21 May 2014 (in the same or substantially the same terms as the copy letter sent to the Complainant by the Respondent by email in July 2014) but it was not signed. On 26 August 2015 the Respondent responded, stating that (among other things) he had been unable to get Mr de Jong to sign the letter, that the request had been made at very short notice and the Respondent was reluctant to ask him to assist him further because it might add to Mr de Jong's difficulties at the suit of the

Complainant when he was already involved in legal proceedings against his former employer. The Complainant responded to this position in a paragraph 13b statement that I agreed to consider in full on 27 August 2015, asserting that no credence should be given to the contents of the unsigned letter for various reasons.

8. On the same date I agreed to consider in full a statement supplied by the Respondent pursuant to paragraph 13b of the Procedure. This invited me to accept the evidence contained in the unsigned letter in view of the fact that, so it was said, the letter had been demonstrably sent by Mr de Jong as an attachment to an email from him with an electronic signature. The submission did not attach that email (and attachment), but offered to make the email available to me but not to the Complainant in view of matters that might prejudice Mr de Jong in his dispute. The Complainant objected to that course in a further paragraph 13b statement, stating that it would be procedurally unfair for the Expert to see material which the Complainant could not.
  
9. On 1 September 2015 I was notified of a fresh paragraph 13b statement made by the Respondent, the explanatory paragraph of which invited me to consider fresh evidence in rebuttal of the reasons given by the Complainant as to why no credence should be given to the unsigned letter relied on by the Respondent. I decided not to consider the full statement. It would not be appropriate for me as the Expert to consider material on which one party has had no opportunity to comment and for the reasons set out below it has in any event been unnecessary to determine the issue of the authenticity of the letter or truth of the matters alleged in it.

### **Discussion and Findings**

10. A Complainant is required under subparagraphs 2a. and 2b. of the Policy to prove on the balance of probabilities that: -
  - 10.1 he has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

10.2 the Domain Name, in the hands of the Respondent, is an Abusive Registration.

I have limited the findings in this Decision to those necessary to dispose of the dispute in accordance with the Policy and accordingly it is not necessary to resolve all the issues raised by the parties.

11. I refer to the matters set out in paragraph 3 above and adopt them as findings of fact.

### Rights

12. By paragraph 1 of the Policy, -

*“Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.”*

The Complainant has established that it owns Community trade mark no: 000345140 for the word mark “GAZELLE” in respect of bicycles in class 12.

13. As a result of its ownership of that trade mark, the Complainant has established that it owns Rights in the name or mark “GAZELLE”. It is not necessary to consider whether it also owns unregistered rights in passing off.

14. The Domain Names contain the word “gazelle” variously in connection with the words “bicycles”, “bikes” and “-bikes”, thereby identifying the bicycles or bikes by reference to the word mark and the source of origin it denotes. In those circumstances, I find that the Complainant has Rights in a name or mark, namely “GAZELLE”, which is similar to each of the Domain Names.

### Abusive Registration

15. By paragraph 1 of the Policy, -

*‘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.’*

By paragraph 3 of the Policy, -

***‘3. Evidence of Abusive Registration***

*a. A non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration is as follows:*

*i. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*A. 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;*

*B. as a blocking registration against a name or mark in which the Complainant has Rights; or*

*C. for the purpose of unfairly disrupting the business of the Complainant;*

*ii. Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;*

*iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern*

*b. Failure on the Respondent's part to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration ....”*

By paragraph 4 of the Policy, -

***‘4. How the Respondent may demonstrate in its response that the Domain Name is not an Abusive Registration***

*a. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is as follows:*

*i. Before being aware of the Complainant's cause for complaint (not necessarily the 'complaint' under the DRS), the Respondent has:*

- A. used or made demonstrable preparations to use the Domain Name or a domain name which is similar to the Domain Name in connection with a genuine offering of goods or services;*
  - B. been commonly known by the name or legitimately connected with a mark which is identical or similar to the Domain Name;*
  - C. made legitimate non-commercial or fair use of the Domain Name;*
- or*

*ii. The Domain Name is generic or descriptive and the Respondent is making fair use of it;*

*iii. ....*

*iv. In relation to paragraphs 3(a)(iii) and/or 3(c); that the Domain Name is not part of a wider pattern or series of registrations because the Domain Name is of a significantly different type or character to the other domain names registered by the Respondent.*

b. ....

c.....

d. *Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves lawful activities. The Expert will review each case on its merits.*

..... ”

16. Whereas paragraphs 3 and 4 of the Policy set out the circumstances that may indicate that a registration is abusive or not abusive, all such considerations are subject to the overriding definition of Abusive Registration: see paragraph 15 above. The question of unfair advantage from or unfair detriment to the Complainant’s rights is therefore key: see the decision of the DRS Appeal Panel in *DRS 07791 Toshiba Corp. v Power Battery Inc.*
17. It is convenient to consider and decide whether or not the Domain Names have been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights. If that is so, Abusive Registration within the first limb of the definition of Abusive Registration would be established and the Complaint succeeds. In those circumstances it would not be necessary to consider the Complainant’s case directed at the time of each registration, i.e. under the second limb of the definition.
18. The relationship of supplier and distributor that did exist between the parties came to an end in February 2015. The position is that, with the exception of the limited amount of stock that may still be in his possession, the Respondent will no longer be able to re-sell bicycles supplied to him by the Complainant and will have to source what he has described as ‘second hand’ Gazelle bikes for his customers and Gazelle bike parts through other business channels. He has sold and continues to sell bicycles made by other manufacturers and has become the authorised dealer for London for BOSCH, which manufactures motors for E-bikes.



The Respondent's restructured business will be carried on in association with another bike retailer, Blue Door Bicycle, which has its own website.

19. The Respondent has made clear that each of the Domain Names will play a part in the online marketing strategy for his restructured business, i.e. they are to play an active role in marketing that business. One of the Domain Names, namely <gazellebikes.co.uk>, was linked for some months (from 17 October 2014 until the date of the Complaint) to the Respondent's website, [www.popiel.co.uk](http://www.popiel.co.uk), which was also displaying bicycles made by manufacturers in competition with the Complainant. Although the content of the website hosted at [www.popiel.co.uk](http://www.popiel.co.uk) had changed by the date of the Reply to show that the site was in "maintenance mode", the likelihood is that one or more of the Domain Names will be linked to [www.popiel.co.uk](http://www.popiel.co.uk) and/or to one or more other websites from which the restructured business will be operated, offering for sale bikes that compete with those sold by the Complainant. The Respondent has also operated a website at <gazellebicycles.co.uk> displaying a list of bicycles in the form of hyperlinks to the Respondent's website, many of which have displayed the error message, "Page not available".
20. The redirection of consumers to the Respondent's website selling competing brands of bicycle has prompted complaints to the Complainant from its own UK dealers, who have been concerned that consumers will assume that the Complainant operates only one point of sale in the UK (i.e. from the Respondent's website), whereas there are 40 points of sale in the UK. That concern is, as I find, genuine and well-founded.
21. There have been several instances of actual confusion that have arisen from at least one of the Domain Names. An email exchange between the Respondent and a customer, who bought one of the Complainant's bicycles from a shop in York, shows that on 19 June 2015 the customer contacted the Respondent through the contact portal at the <gazellebicycles.co.uk> website to obtain an English language version of the instruction booklet in Dutch supplied to him. In his email of 22 June

2015 the customer referred to the “Gazelle main site”, so indicating his mistaken belief that the website at <gazellebicycles.co.uk> was related to the official or authorised website of the Complainant.

22. The other instances of actual confusion occurred as a result of an advertisement placed by the Complainant for a UK manager on a third party website. The advertisement was met with enquiries directed to the Respondent, who informed the Complainant that he had been receiving calls from potential applicants in response to the advertisement.
23. The Domain Names were each chosen by the Respondent with the Complainant in mind, to market and sell bikes manufactured by the Complainant. As illustrated by the instances of actual confusion set out above and in view of the Domain Names themselves which inherently suggest a connection with Gazelle bicycles and the contents of the websites associated with and linked to the two Domain Names, a substantial number of customers or other persons who wish to deal with the Complainant are likely to conclude from each of the Domain Names and the websites associated with them that each is registered to, operated or authorised by, or otherwise connected with the Complainant. Whether or not the registrations were authorised by Mr de Jong on behalf of the Complainant matters not. Following termination of the commercial relationship between the parties and the Complainant’s revocation of any authority that may have been given to the Respondent to register and use the Domain Names in the course of his business, any suggestion of a continuing authorised connection between the parties is false and untrue.
24. Therefore, the continued operation by the Respondent of the websites associated with the Domain Names has confused and is likely to continue to confuse customers and others who wish to deal with the Complainant into believing that the websites operated at or linked to the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainant. Therefore, the ground under paragraph 3 a ii. of the Policy has been established by the Complainant.

25. Consumers are likely to assume that the websites associated with the Domain Names are either official websites of the Complainant or are endorsed by it. Previous decisions of the DRS have made clear that it is unfair for a registrant to take advantage of a complainant's Rights to draw in or "bait" its customers and offer them competing goods: see e.g. *Epson Europe BV v Cybercorp Enterprises* DRS 03027.
26. Such business as the Respondent may be able to continue to operate in the sale of bikes and bike parts made by the Complainant will be that of an independent, unauthorised retailer. Whereas that type of business may be perfectly proper, it does not permit the use of a domain name so as falsely to imply an existing commercial connection with the Complainant, particularly where the Domain Names have been and are likely to continue to be used to offer competing goods: see the decision of the DRS Appeal Panel in DRS 07791 *Toshiba Corp. v Power Battery Inc.*
27. The Respondent says that termination of the business relationship was unfairly or improperly brought about by the Complainant. I do not accept that case, for the reasons given by the Complainant, albeit that the Complainant did also wish to secure control of the Domain Names. However, even if the Respondent were right about the circumstances in which the commercial relationship ended, those matters would be relevant to such contractual rights, if any, as he might have against the Complainant arising out of the termination of that relationship. The matters relied on as regards termination of the relationship are therefore not relevant, or if relevant are of little weight, when compared to the actual and likely future uses of the Domain Names as I have found them to be.
28. In view of the findings set out above, I conclude that each of the Domain Names has been used in a manner which has taken unfair advantage and been unfairly detrimental to the Complainant's Rights.

## **Decision**

29. The Complainant has Rights in a name or mark, which is similar to each of the Domain Names, and each Domain Name in the hands of the Respondent is an Abusive Registration. Therefore, I determine that the domain names <gazelle-bikes.co.uk>, <gazellebicycles.co.uk> and <gazellebikes.co.uk> be transferred to the Complainant.

**Signed**

**STEPHEN BATE**

**Dated 06.09.15**