

# **DISPUTE RESOLUTION SERVICE**

**D00019023**

**Decision of Independent Expert  
(Summary Decision)**

The North Face Apparel Corp.

and

Laura Rossi

## **1. The Parties**

Complainant: The North Face Apparel Corp.  
3411 Silverside Road  
Suite 200 Hanby Building  
Wilmington  
Delaware  
19810  
United States

Respondent: Laura Rossi  
Praviolo, 44  
Sondrio  
23010  
Italy

## **2. The Domain Name**

abbottclarkeifa.co.uk ('the Domain Name')

### 3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the complaint to the Respondent in accordance with paragraphs 3 and 6 of the Policy.

Yes  No

### 4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in respect of a name or mark which is identical or similar to the Domain Name.

Yes  No

### 5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the Domain Name is an abusive registration.

Yes  No

### 6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances.

Yes  No

### 7. Comments

A respondent must submit to proceedings under the Dispute Resolution Service ('DRS') if a complainant asserts (section 2 of the DRS Policy) that:

- the complainant has rights in respect of a name or mark which is identical or similar to the domain name; and
- the domain name, in the hands of the respondent, is an abusive registration.

The complainant is required to prove to the expert that both elements are present on the balance of probabilities.

Here, the name in which the Complainant has rights is THE NORTH FACE. Ignoring the .co.uk suffix, the Domain Name is <abbottclarkeifa>. In my judgement, the name in which the Complainant has rights is neither identical nor similar to the Domain Name.

From the content of the web pages at the Domain Name, I accept that the way in which the Domain Name has been used could very easily lead people to be confused into thinking that the Domain Name is connected with the Complainant. That is one of the factors that the Policy (paragraph 5.1.2) identifies as potentially being evidence that a domain name is an abusive registration. But that is relevant to the question of the character of the registration and, in my view, the complaint here does not get that far because the Complainant has not got over the threshold of establishing that it has rights in respect of a name or mark which is identical or similar to the Domain Name.

An abusive registration is defined by the Policy as a domain name that was registered or has been used in a way that has taken unfair advantage of or been unfairly detrimental to the complainant's rights. It may well be that unfair advantage has been taken of the Complainant's rights in THE NORTH FACE. But the DRS Policy is only designed to deal with that kind of situation if the name in which the complainant has rights is identical or similar to the domain name.

As relevant rights have not been established, the question of the nature of the registration does not fall to be addressed here and the complaint must fail.

## **8. Decision**

I refuse the Complainant's application for a summary decision. The Domain Name will therefore remain with the Respondent.

Mark de Brunner

17 July 2017