

# **DISPUTE RESOLUTION SERVICE**

**D00020692**

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

Moulin Rouge SA

and

Kemal Oz

### **1. The Parties:**

Complainant: Moulin Rouge SA  
97 Rue Royale  
1000 Bruxelles  
Brussels  
Belgium

Respondent: Kemal Oz  
141 Kirkstall Road  
Leeds  
West Yorkshire  
LS3 1JJ  
United Kingdom

### **2. The Domain Name:**

<moulinrougewinlaton.co.uk>

### **3. Notification of Complaint**

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

Yes

#### **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

#### **5. Abusive Registration**

The Complainant has, to my reasonable satisfaction, shown that the Domain Name <moulinrougewinlaton.co.uk> is an abusive registration

Yes

#### **6. Other Factors**

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

Yes

#### **7. Comments (optional)**

The Expert has not found this a straightforward case to resolve, hence these notes.

The Domain Name features the Complainant's trade mark, the name of a celebrated establishment in Paris and a film or films concerned with that establishment. It also features "Winlaton" the geographical location near Gateshead in the north of England where the Respondent operated his "Moulin Rouge Pizzeria" from 2016.

It is clear from the Respondent's webpages produced in evidence by the Complainant that the Respondent was seeking to associate his business with the famous Parisian establishment. Significant use is made of images of press cuttings and posters relating to that establishment and John Huston's 1952 film of that name.

The Expert very much doubts that when adopting the Domain Name the Respondent had considered whether or not the name "Moulin Rouge" was a registered trade mark and doubts very much that he had any idea that he was or might be infringing the rights of any third party. The images of the Respondent's online take-away

kebab, pizza and burger menus conjure up none of the ambience of the Complainant's establishment - quite the reverse.

The Expert very much doubts that anyone will visit the Respondent's website by way of the Domain Name expecting to visit a website of or associated with the Complainant.

Is it an Abusive Registration? The Expert has reviewed the Overview and the Policy and has found the following passages from the Overview instructive:

- (1) Extract from the Introduction: "Disputes are decided by reference to the terms of the Policy, not the law, so the fact that a domain name registration and/or the registrant's use of it may constitute trade mark infringement, for example, will not necessarily lead to a finding of Abusive Registration under the DRS Policy. Nonetheless, if the DRS Policy and the law are too far apart, the DRS Policy will inevitably lose some of its value."
- (2) Extract from paragraph 2.4: "A particular area of current debate among the panel of Experts is the extent to which the concepts of unfair advantage and unfair detriment as set out in the definition of Abusive Registration [paragraph 1 of the Policy] embrace a subjective element. The members of the Appeal panel in the *Verbatim* case took the view that for a registration to be labelled "Abusive" there had to be something morally reprehensible about the Respondent's behaviour, a view more recently adopted in DRS 07066 (whistleblower.co.uk). Others have expressed the view that what is or is not fair can be judged wholly objectively and that to gain or cause damage by way of trade mark infringement is necessarily unfair irrespective of the motives of the Respondent."
- (3) Paragraph 4.4: "**When is an offering of goods or services NOT "genuine".** When it is fictitious and/or 'created' to defeat the complaint and/or designed to take unfair advantage of or damage the Complainant's rights/business."

In line with the opening comments, the Expert is satisfied that the Respondent's service offering under the Domain Name is/was genuine on the basis that it was real, not fictitious, not created to defeat any complaint and was not designed (in the sense of 'intended') by the Respondent to take advantage of any rights of the Complainant, the Expert's view being that the Respondent was blissfully unaware that anyone had rights in the name "Moulin Rouge" sufficient to prevent him using it in the way that he has for a takeaway pizzeria in Gateshead.

On the other hand the Expert is aware that what the Respondent has done might, as the Complainant asserts, constitute trade mark infringement.

The passage from paragraph 2.4 of the Overview cites two cases in which this Expert sat on the Appeal panel. In *Verbatim* the Expert was party to the view that for

a domain name registration to be labelled 'Abusive', there had to be something morally reprehensible about the registrant's behaviour. In *Whistleblower* one of the principles laid out was that "ordinarily, some level of respondent knowledge of the complainant or its rights at time of registration (or commencement of the offending use) of the domain name is a necessary pre-requisite to getting a successful complaint off the ground."

While the Expert believes it to be unlikely that the Respondent gave any thought to the possibility of any relevant trade mark rights, the Respondent was clearly aware of the Complainant's establishment and the fame associated with it and was hoping that something of the fame of the "Moulin Rouge" would help distinguish his service offering from others in the neighbourhood.

The Expert is of the view that this level of knowledge (combined with the desire to derive commercial benefit from the adoption of the name, which he knew to be a famous commercial venue in Paris) is just sufficient to establish that the Respondent's adoption of the name was reckless and to that extent morally reprehensible, leading to a finding that the Domain Name registration is an Abusive Registration. In so finding, the Expert accepts that here a degree of objectivity is called for. The fact that the Respondent may have been unaware of the Complainant's trade mark rights (as opposed to the existence of the Complainant's establishment) is an insufficient basis on the facts of this case to lead to a finding in favour of the Respondent.

## **8. Decision**

I grant the Complainant's application for a summary decision. In accordance with section 12 of the Policy, the domain name will therefore be transferred to the Complainant.

Signed: TONY WILLOUGHBY

Dated: 22 November, 2018