

Clifford Chance
200 Aldersgate Street
London
EC1A 4JJ

Please reply to:
128 Knollmead
Tolworth
Surrey
KT5 9QW
23rd November 2002

Dear Sirs,

**Your reference GEM/G1230/586/VGM
Global Affiliate Programs : The Gap Inc.**

1. We refer to your letter of November 19 conveying your clients' concerns regarding the domain name www.gap-online.co.uk and the content of our Internet site, 'Global Affiliate Programs' which resides at this address.
2. Global Affiliate Programs has been online at this domain for over two years and in that time has grown into possibly the largest directory of affiliate programs on the Internet. It has many frequent visitors and provides a very useful service for webmasters looking to add effective advertising to their web sites, as well as companies seeking to increase their online presence through banner advertising. It is linked to by numerous affiliate referral sites and achieves a high ranking in the popular search engines.
3. The "g", "a" and "p" in the web site address, or Uniform Resource Locator (URL), is an acronym for Global Affiliate Programs and in no way refers to your clients or any of their Internet web sites, nor indeed anyone else's. At the time the domain was registered it was not our intention to use the domain in any way which took unfair advantage of your clients' rights or was detrimental to your clients' rights. Nor would it be reasonable to say have we done so since. If your clients hold the opposite view, we would be grateful if you could inform us what action you believe we have taken which was detrimental to your client. The use of the acronym 'gap' is and was purely to make the URL shorter and easier for visitors to remember, as is common practise with URLs.

4. Our site clearly states the full name of the site and explains its purpose on its homepage, in letters 24 points high, with the words “Welcome to Global Affiliate Programs”. It is our view that anyone visiting our site in the mistaken belief that it had anything to do with your clients, or any other organisation, would instantly realise that it did not. Indeed, our site makes no attempt to mimic the design style or colours commonly used on your clients' sites for the very reason that it has never been our intention to confuse visitors to our site.
5. You suggest that in some way we are guilty of passing off our site as that of your clients'. We are very surprised that you could suggest this on your clients' behalf and dispute this completely. On further examination we would hope you would concede that this is not the case. We do not accept that any visitor to our site could reasonably hold the belief that they were visiting a Gap Inc. web site beyond the point where they are presented with the words “Welcome to Global Affiliate Programs” in large and prominent type. We concede that a visitor trying to find a site associated with your clients may be confused by the URL if they simply typed the address into their Internet browser or that it is possible that they may be disappointed or frustrated with the results of the search that brought them there, but this is not our intention nor have we sought to confuse any visitor to our web site. They surely cannot be confused that they have accessed one of your clients' sites once they have loaded our site.
6. You state that you are concerned that our web site could be construed as 'passing off' our activities as those of your clients. We refute this accusation unreservedly. As we understand it, 'passing off' is when a party gives the impression by action or omission that they are a second party. Further, this is done with the intent to defraud legitimate customers of the second party or to damage the reputation of that party. In the context of the Internet, were we to turn the gap-online.co.uk URL into an online clothes shop and use images and text which would give a visitor the impression that they were visiting a site owned, managed or maintained by or on behalf of Gap Inc. then we would indeed be guilty of 'passing-off'. That has not occurred in this instance. There has never been the intention for this to occur and we give you an assurance that it will not occur in the future, whilst we remain the owners of the URL.
7. Most of the visitors to our site come from the UK. We do get visitors from overseas, including the USA, but the vast majority are from the UK. As a result, it became clear to us from statistics produced by our site hosting company that many visitors to our site were actually looking for something other than affiliate programs and that a significant number were looking for a UK version of your clients' site. By way of example we enclose a printout from our host for this site, which shows referral details for the last week. The printout lists our pages in order of the page with the most referrals first and the latest referral to that page on the day in question. On the 20th November alone, hits were received as a result of searches on Google.com as diverse as “compact disk cabinets”, “disney movie club uk” and “speciality cake making uk only”. You can see that search results often bring visitors to our site whose search topics are wider than the web site's primary purpose. Whilst this is provided as an example of our host 'logs', an examination of these 'logs' over a long period of time has resulted in our assumption that not all of our visitors are looking for affiliate programs. We have highlighted those referrals in our example which

appear to relate to visitors looking for your clients' site. You can see that they represent a significant percentage of our overall number of visitors. It was therefore with the intention of assisting these visitors that the "buyclothes.htm" page was created.

8. The Global Affiliate Program web site is a collection of links to other web sites who provide services or sell goods via the Internet, with the intention of providing information concerning such services to other webmasters (employees or individuals who maintain web sites). For an affiliate program to be added to the Global Affiliate Programs listings, in the first instance we apply to join the program provided by that company in the same manner as any other webmaster. This allows us to accurately assess that company's application procedure. On application, the company providing the affiliate program would normally review the web site where any link would reside if approved, and decide if they wished to be affiliated with the Global Affiliate Programs web site. There are many reasons for this check; the most common being to ensure that companies with reputations to maintain do not inadvertently give permission for their banners to be displayed on sites of a pornographic nature or which advocate violence or hate. Whether they do or do not wish to be affiliated with the site in question, they would inform us accordingly. We laboriously undertake this process on a company-by-company basis, so that any programs with unduly complicated or slow affiliate procedures are not recommended by us to other webmasters. In this way the Global Affiliate Programs web site acts as 'a filter' for our intended audience and provides a valuable resource. It also provides the basis of the second-tier affiliate income for our site.
9. The "buyclothes.htm" page was conceived and created approximately six months ago only after repeated applications to join your clients' affiliate program, administered by Befree.com, had been rejected. (We currently list over 50 affiliate programs administered by Befree.com and have done so for over two years.) We believe the grounds for the rejection by your clients were as a result of our inability to provide a postal address in the United States, which is a stated condition of your clients' affiliate program. It had been our intention to add a suitable link to your clients' site on our web site's homepage to permit the easy redirection of any visitors who had come to our site in error looking for your clients' operations. We reiterate that the necessary approval to do this was refused by your clients. Only after these actions on our part, together with your clients' rejections of our approaches, and in the knowledge that your clients did not permit visitors from the UK to purchase goods online from their sites, we decided to create the "buyclothes.htm" to redirect visitors seeking to buy clothes to suitable alternative online retailers willing to deliver to UK consumers. Global Affiliate Programs does not sell clothes, or indeed anything else.
10. We therefore also dispute your statement that our site has "very recently come to our clients' attention". We actively brought our site to your clients' attention some time ago, and on more than one occasion, by applying to join their affiliate program. Being aware of the law concerning 'passing off', it would have been against our interests to do so if it had been our intention to deceive or attempt to pass our activities off as those of your client.

11. Further, we dispute your view that the presence of your clients logo would constitute an attempt to “reinforce the mistaken belief amongst visitors.... that it is our clients site”. The subject matter of our site is online advertising. Your clients’ logo was placed in a column which contained the linking logos of recommend-it.com, allfromspain.com, splut.com and others. On the opposing column is a link to otherlandtoys.co.uk, addme.com, 101cd.com and more. Other pages contain banners, logos or identifiable graphics for other familiar names such as Marks and Spencer, Woolworths, Dixons, Comet, Tesco, and Thomas Pink. Following the argument you present on your clients’ behalf it would be reasonable to believe visitors could confuse our site with these operations as well. Is that your serious contention? In fact it might be possible that every page on our site contains an advertising button or banner of some description. Indeed, given that this is the subject of the site, it would not be surprising if this were the case.
12. That understood, we apologise unreservedly for the unauthorised use of images similar to your clients’ logos. However, given the number and diversity of web sites who also publish images similar to your clients’ trademarked logos, we reasonably assumed that our actions would not be controversial. There are numerous web sites in existence which use such images, some of whom do so to advertise concerns about the alleged business practices of your clients. For instance, there is the clear and prominent use of an image on the homepage of the web site 'Behind the Label' (www.behindthelabel.org), which leads to pages advocating a boycott of your clients’ products because of the alleged use of 'sweatshop' labour. You may wish to know that the following domains make use of your clients’ logo or images in a similar style.

Site address	Use of logo or purpose of Site
www.behindthelabel.org (as mentioned above)	Campaigns against your clients’ alleged business practices.
www.subvertise.org	Gallery of artwork with an anti-corporate theme, links your clients to sweatshop practices in the third world by manipulating their advertising.
www.agitart.org	Links your clients’ images to claims concerning child poverty.
logo.nino.ru	Reproduces logos in easy to manipulate formats.
adbusters.org	Uses your clients’ logo on an image of Adolf Hitler.
sheffieldmayday.ukf.net	Uses a graphic which turns the letters of your clients’ logo into mechanic vices crushing babies.

Powerlink.net	Alters the logo to show the word "GAG", associates your clients with clearcutting, pesticides and logging, claims "The Gap is notorious for its exploitation of workers in Third World countries" and links to gapsucks.org.
robertnewmancorp.fsnet.co.uk	Displays logo on fake job advert which alleges bad working conditions in your clients' third world factories. The site also has a pop-up which displays your clients logo above the words "Hitler wore khakis"
hep.umn.edu/~jenny/	Displays logo with the words "everybody in sweatshops". Links to sweatshopwatch.org
gapsucks.org	Alleges environmental damage and use of sweatshops by your clients, is organising an "International Day of Action" against your clients, urges visitors to boycott your clients stores and sells t-shirts with the logo changed to read "CRAP".

13. In the context of this environment we did not consider that your clients would find our use of their logo objectionable when such flagrant abuse of their logo and reputation is widespread and apparently unchecked.
14. On receipt of your initial communication with us, informing us of your clients' objection to the use of their logos on our site, we immediately removed the graphics you identified, replacing them with text links which do not mention your clients in any way. The images in question no longer appear on any page on our site and you have our assurance that they will not return to our site without your clients' permission, whilst the domain is owned by Cybernet Ventures Limited.
15. May we point out that the links from the images in question referred visitors to the "buyclothes.htm" page which had a statement on it in very large writing saying "THIS IS NOT GAP". We acknowledge that the colouring and lettering may have been reminiscent of your clients' logo but maintain that the blue background, the lettering colour and the typeface used was not the same as that used by your clients (as used for instance on your clients' page at www.gap.com/html/affiliates/bf_home.asp). Our "THIS IS NOT GAP" image was not designed to deceive or confuse but to draw visitors' attention to it and to make the point that the page had nothing to do with your clients. We do not believe we could have used a statement less equivocal than "THIS IS NOT GAP" in large letters, and do not accept your view that this statement would not resolve any confusion in the minds of visitors. We believe if any visitors came directly to that page, perhaps as a result of a search for your clients' site, they would realise immediately that they were not at your clients' site. Further, the statement "THIS IS NOT GAP" should be taken in context as it was

on the same page as the text reproduced in paragraphs 1 and 4 of your letter. In fact, the full text on the page is and was:

"At Global Affiliate Programs we have noticed that a number of our visitors come to us as a result of searches for clothes, in particular GAP clothes in the UK. The similarity in our web addresses is thought to be the most likely cause of this search engine confusion.

Unfortunately, GAP do not operate an online shopping service in the UK, and although they run an affiliate program they only accept sites based in the US or Canada. To assist visitors we at Global Affiliate Programs have compiled some of the finest online fashion outlets which deliver in the UK."

The Global Affiliate Programs web site does not claim to be connected with your clients in any way on this page, and indeed explicitly states that it is not connected to your clients' site. None of the links from that page are to your clients' sites but to clearly identifiable and well-known web sites who deliver to UK consumers.

16. Nevertheless, it is not our intention to cause offence or confusion, and since your clients believe that the statement "THIS IS NOT GAP" is not sufficiently clear we have replaced it. The page now displays the statement "Global Affiliate Programs Not connected with The GAP Inc in any way" It is written in dark blue in a variation of the Arial font on a transparent background which enables the page background in blue to show through. We hope your clients will have no objection to this but if they do please do not hesitate to inform us.
17. We dispute entirely your suggestion that the "buyclothes.htm" page and your clients' site have a similar appearance. Your clients' sites' homepages make heavy use of large facial graphics, reproduce their brand names frequently, often do not use blue in any way and have links which are underlined. The section links at the top of your clients' web site are inversed and they appear as capitalised text which changes to a royal blue colour on lighter blue background when selected. The "buyclothes.htm" page on our site uses small thumbnail graphics, has clear uncapitalised text links which change colour when a mouse passes over them and has no links utilising the word "gap" or any of its derivatives. The fonts used are different from those usually used on your clients' web site (although we do both use web-friendly san-serif fonts which is standard practice on web sites and has no significance). In addition, your clients' logo (although interestingly not necessarily their web site pages) uses dark blue as its background. The "buyclothes.htm" page on our web site however uses a vignette of blue to white, from the top to the bottom of the graphic. We maintain therefore that the "buyclothes.htm" page is not even reminiscent of your clients' usual colours.
18. It is our view that there is no abusive registration here. We have at no time tried to benefit financially from the use of the URL www.gap-online.co.uk other than through its legitimate content. We have not offered to sell this URL to your clients or to any of their competitors. We have not used this URL to denigrate your clients, their products, staff or customers. We have no intention of doing any of these practices in the future. We bought this URL to host an affiliate directory and this we have done. We operate in a completely different market from your clients, both in terms

of industry sector and geography. You acknowledge that your clients do not operate an online ordering service for customers in the UK therefore the "buyclothes.htm" page is not re-directing any potential customers to their competitors. Were this situation to change, we would be happy to provide a link to your clients' site from our site if they so wished.

19. May we point out that the URL www.gap-online.co.uk was unused and un-owned when we registered it in early 2000. Had your clients wished to own it, they had the same opportunity to do so at any point prior to our legitimate registration application.

20. Your clients' objections can be summarised as:

- the unauthorised use of images which could be confused with the GAP logo;
- the use of a URL with the letters "g", "a" and "p" in it; and,
- the use of blue on the "buyclothes.htm" page.

21. We have apologised for the use of similar images to your clients' logos, explained why we felt their use would not be controversial and have given an assurance that this will not be repeated. We hope this satisfies you in this regard and can see no good reason why the surrendering of our legitimate domain name would result in any substantially different outcome for your clients' operations.

22. As to the view you appear to hold that your clients should have the right to every URL which contains the letters "g", "a" and "p", we have to disagree. As an acronym g.a.p. can have many meanings and in fact is used many times on the Internet.

23. In support of this fact, we draw your attention to some example URLs containing the word gap or the letters "g", "a" and "p" which are not associated with your clients:

www.gap-online.com	belongs to a German company.
www.gap-online.net	about Japanese cartoons, based in Switzerland
www.gap-online.info	not in use, but registered to Artur Sneider in Garmisch-Partenkirchen, Germany
www.gap-online.de	Citizen's Network Association in the County of Garmisch-Partenkirchen, Germany
www.gap.co.uk	Gardner Allingham Paton Ltd, London
www.gap.org.uk	GAP Activity Projects. Voluntary work placements, based in Reading.
www.gap.net	Government Advanced Procurement with Network Enhanced Technologies, New York
www.gap.fr	A BMW dealer in Paris
www.gap.ca	Great Adventure Person – Adventure holidays in Canada.
www.gap.us	Not used but registered by Netnames
www.gap.is	Sells sports and fitness equipment in the name of G A Petursson, Reykjavik
www.gap.it	Italian multimedia publishing company

www.gaps.com	Global Airline Planning Service, Calgary, Canada.
www.gapyouth.com	Gap Youth Training
www.gapsucks.com	Not in use but registered to Reinhart Elboeck of Florida.
www.thegap.org.uk	Drop-in centre for homeless and vulnerable people in Oxford.
www.the-gap.co.uk	Site refused access without loading. Registered to a Neil Cassels
www.the-gap.net	Registered to Razor's Edge in Mamaroneck, New York but site re-directs you to register.com. Appears to have been purchased with the intention of reselling.
www.thegaponline.com	Not in use but registered to Larry Durden of the Jesus Fan Ministries, Live Oak, Florida.
www.thegapgroup.com	Not in use but registered to BDD enterprises, San Jose, California
www.thegapgroup.net	Not in use but registered to Alison Christie in Selangor, Malaysia

24. It is our view, that our site is as legitimate in its use of the letters “g”, “a” and “p” as any of those listed above. Your client does not practice a policy of employing the appropriate domain name for each national top level domain in which they operate and therefore it would be unreasonable to expect us at the time the domain was registered or at any time after that, to assume that the domain gap-online.co.uk was one in which you client would express an interest.
25. Many web sites use the colour blue as a background and ours does not make use of the same shade of blue which your client uses, nor do we use it in same way. Where your clients’ use dark blue backgrounds, as far as we can ascertain, it is a continuous blue colour, whereas ours is a vignette of light blue to white.
26. The above being stated and understood, and in an effort to reach a mutually agreeable solution to your clients concerns, we have immediately, but without prejudice, acknowledging no liability and while refuting any and all of your claims as regards the use of the gap-online.co.uk domain, removed your clients’ logos from our site. We give you an assurance that they will not return to our site (or any images, logos etc which could reasonably be confused with your clients trademarks) without your clients’ express permission. We maintain that our swift actions in this matter, on receipt of your clients' concerns demonstrate our good intentions in this matter.
27. Therefore we would be grateful for your agreement that you:
- accept our apology for the use of logos similar to your clients and our undertaking that this will not re-occur;
 - acknowledge that we are the legitimate owners of the domain name www.gap-online.co.uk;

- acknowledge that there was no intention to pass off our web site as anything connected to your clients operations; and
- agree to take no further action in this matter.

28. We are unwilling to surrender the domain to your clients for the following reasons:

- we do not believe that they are entitled to it for the reasons given above;
- there are a great number of web sites which already have links pointing to our domain and these links would become 'dead links' or would point erroneously to your clients' site if we were to transfer the domain to your clients;
- the task of building and maintaining a large directory such as Global Affiliate Programs has legitimately resulted in its email address being on the records of hundreds of affiliate accounts managers; and
- Global Affiliates Programs represent a significant asset for us. In its current state it represents over two years work by our company. As well as its value as a piece of intellectual property, significant assets are held in the form of fees and commission due to us by affiliate programs listed on the site.

29. We believe that the actions already undertaken by us should satisfy your clients' objections and we look forward to your clients' agreement to this. Should your clients continue to have any concerns about our web site, we are sure they can be resolved to our mutual satisfaction without the need for litigation and are more than willing to discuss any such concerns either in writing or in person.

We look forward to your reply in due course.

Yours Faithfully

Mr George Forsyth
Company Secretary
Cybernet Ventures Limited