

Clifford Chance  
200 Aldersgate Street  
London  
EC1A 4JJ

**Please reply to:**  
128 Knollmead  
Tolworth  
Surrey  
KT5 9QW  
27<sup>th</sup> January 2003

Dear Sir,

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

1. I refer to your letter of January 22 informing me of your intention to proceed with your clients' claim to the [www.gap-online.co.uk](http://www.gap-online.co.uk) domain.
2. I have to say that I am surprised at your decision to pursue this matter given that all of your declared concerns were dealt with in my previous letter and that despite presenting me with a 14 day deadline in your initial letter you have chosen to take nearly two months to respond to my reply and the actions which I have taken to ensure that those concerns of your clients which are legitimate are met.
3. I am disappointed that you have apparently chosen to ignore the contents of my letter of 23 November 2002. You simply say that your client does not agree with my analysis but you do not say what points they disagree with nor do you provide a reason for this point of view. In the circumstances I should probably extend the same discourtesy but I won't.
4. I am further disappointed that you have chosen to take this matter direct to Nominet without taking up my offer to resolve any difficulties through discussion.
5. Your letter contains a number of inaccuracies which you may wish to correct before presenting a case before Nominet. These are

- a) You assert, without offering any evidence, that the domain "gap-online.co.uk" is one which visitors looking for your clients' site would be bound to try. I am unsure what you mean by this as most web users looking for a site for the first time do not type potential URL's randomly into their browser bar but use search engines to find the sites of companies with whom they wish to trade. After that they use their favourites list, memory or return to the search engine. That aside, were this the case had your clients held this view they could have purchased this domain name at any time prior to April 2000. Have visitors only been bound to visit it since your legal department became aware of my site?

Frankly I would have thought that the domain [www.gap.co.uk](http://www.gap.co.uk) would be more likely to be assumed by the public to be the UK site of your clients. This site is also not owned by your clients.

- b) You say I am directing potential customers of your clients to third party websites. I would utterly refute this claim. Your clients have chosen not to operate an online shopping service for their UK customers. There is therefore no point in me re-directing visitors to my site to your clients' site as they would only be frustrated to find that they cannot make the online purchases they are seeking to make. Your clients have no online customers in the UK for me to re-direct in any event. That said I have now added a link to the [buyclothes.htm](#) page which seeks to direct visitors from the US and Canada to your clients' site at [www.gap.com](http://www.gap.com). I don't get many visitors from those countries as your clients will see when the number of hits they receive from this link is known to them.
- c) I have removed the banners which were similar to your clients' logos from my site and given an assurance that they will not return. Any alleged infringement of trade marks has therefore already been corrected. I have apologised for this in my previous letter and explained why I wrongly believed your clients would not object to this. If you are alleging that the use of the letters "g", "a" and "p" in my sites' URL is itself a breach of your clients copyright then I would refer you to the list of URLs in my previous letter, all of whom use these letters and none of which are associated with your clients. The use of initials in URL's is well established web practice. There are numerous examples of companies and organisations which use their initials in their URLs such as the British Broadcasting Corporation, the Automobile Association, the Hong Kong and Shanghai Banking Corporation and indeed Nominet ([www.nic.uk](http://www.nic.uk)).
- d) Your letter also gives the impression that I would have known prior to registering the domain name that it would attract visitors looking for your clients' site. This is not true, nor could it possibly be true. Prior to a site going live it is never known whether the site will attract any visitors, where they will come from or what they will be looking for. You can only hope that the search engines list you correctly and that your visitors are interested in your content. If I had been seeking to confuse potential Gap Inc customers then the site would have been set up to direct visitors to a page similar to the [buyclothes.htm](#) page but without the statements clarifying the ownership of the page. It was not until 2001 that I became aware that a number of our visitors were coming as a result of searches, mostly on Google, for your clients' products and it was only in 2002 that I created the [buyclothes.htm](#) page to assist these visitors. This occurred only after your clients had twice rejected applications to join their affiliate program.

6. In reference to your complaint submitted to Nominet, as you know I have not yet received the full papers from Nominet but based on the copy enclosed with your letter, I would like to make the following points.
  - a) At point 16 you complain that the link did not direct visitors to your client's relevant website. Please tell me which site this would be as your client has no relevant site for shoppers in the UK.
  - b) At point 17 you claim the buyclothes.htm page and you clients homepage are similar. I refute this entirely and explained why in my previous letter. Your clients make use of large red capitalised text. The buyclothes.htm page is entirely blue. The product categories are not similar at all. They may be spilt into mens', womens' and childrens' but it is likely that most multi-gender clothing web pages do the same. My page includes links to designer clothes, shoes, underwear and working clothes. None of which as far as I know feature in your clients' catalogue.
  - c) At point 19 you claim that the statement "This is not Gap" would not remove any confusion from visitors who thought they had visited your clients site. This banner has been changed to attempt to meet your concerns but would you kindly let me know how this clear unequivocal statement, in large type, could be improved.
  - d) At point 22 you say that the changes made to the site following your earlier letter were 'minor'. I am glad you think so as they removed all the banners similar to your clients' logos which you objected to and changed the banner on the buyclothes.htm page which you said would not resolve confusion. Given that all these changes are 'minor' I can assume that your original objections to them were equally diminutive.
  - e) At point 23 you object to the mention of your clients on my site. The only point on my site as it now stands where your client is mentioned is on the buyclothes.htm page and only in the context of explaining that the page has nothing to do with your clients and that online shoppers in the UK are not served by your clients. These statements are both true, so what is it you are objecting to?
7. The main business of the Global Affiliate Programs web site is the listing and categorising of hundreds of affiliate programs. Its main source of income is through the multi-tier programs listed on the site which offer a small percentage commission of the sales made by referred affiliates.
8. The site has existed in this form since 2000. As I say above in 5d at some point in 2001 I realised from hitbox reports that a significant number of visitors were coming to my site as a result of searches for your clients clothing products. After considering what I could do to assist these visitors, who had little interest in the main content of my site but were utilising its bandwidth, I investigated your clients' site and found that they ran an affiliate program of their own. At this point I applied to join that program, bringing my site to you clients' attention in the process. Your clients rejected my application.

9. It was only in 2002 that I hit on the idea of the buyclothes.htm page to direct visitors to other clothes retailers who conduct business with UK customers. If my intention had been to pass off my site as something to do with your client then surely I would have conceived this page from the start. There is a page on the site at <http://www.gap-online.co.uk/goshopping.htm> which is similar in structure to the buyclothes.htm page. It refers visitors to a number of UK High Street retail outlets which also have an online presence and will complete transactions online. It also refers visitors to price comparison services such as Kelkoo and Brandfind.
10. This page was created to assist a different group of visitors who came to my site having used a search engine to find one of the shops whose programs are listed on my site and where the search engine has picked up the description on the relevant affiliate listings page. I dare say all these companies have competitors too but I have had no complaints about referring customers to Boots, Mothercare, Tesco or B & Q.
11. It remains my view, that our site makes legitimate use of its initials and that the disclaimers in place are sufficient to resolve any confusion in the minds of visitors. I could remove the references to your client if you wish but I feel that this would only confuse people more. The site is first and foremost a directory of affiliate programs and the additional pages "buyclothes.htm" and "goshopping.htm" are merely ancillary services to assist misdirected visitors.
12. I have not attempted to mislead visitors into believing that at any point on my site they were on a site of your clients. I have not solicited visitors by advertising my site as a clothes shop or any other type of retail outlet.
13. In short, I believe that this complaint is just an attempt by your client to bully a smaller company into submission in an attempt to obtain a web domain for nothing rather than make an offer which recognises the value of our business. By your own admission your clients have a turnover of £400M per annum in the UK alone. From that I assume that the presence of my site is not hurting their business, nor is it intended to.
14. I am unwilling to surrender the domain to your clients for the reasons stated in our previous letter.

I look forward to meeting you in person at the mediation meeting at Nominet.

Yours Faithfully

Mr George Forsyth  
Company Secretary  
Cybernet Ventures Limited