

Using the words “Knockout Challenge” in connection
with the phrase “It’s A Knockout”

In January 2011, Mr Stephen Bate of the Chambers of Desmond Browne QC|Adrienne Page QC, London, was instructed, after a legal challenge, to look at the instance above using UK and EU Law as a guide. Below is a summary of the findings. A link for the full article quoted upon below is at the end of this document.

• ***ERights** 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.*

“Over a period of eighteen years Phil Pike, and thereafter Knockout Challenge Limited built the business and brand of Knockout Challenge in connection with the supply of ‘It’s A Knockout’ games to being one of the top providers of ‘It’s A Knockout’ entertainment in the UK today.”

That being so, I find it to be likely registration of Domain Names [of this description], are not because they are descriptive of the type of ‘Its a Knockout’ games provided because ‘Knockout Challenge’ is a phrase widely in use to refer to such games or their organisers, but because it is a name used by a rival.

I accept Knockout Challenge Limited’s case in the Reply that the words ‘Knockout Challenge’, used together in the context of ‘It’s A Knockout’ competitions, have been used solely in relation to Knockout Challenge Limited’s business, and comprise the goodwill that KCL, by Mr Pike, worked for over 10 years to create. The words ‘Knockout Challenge’ are therefore distinctive of services supplied by KCL and members of the public with knowledge of this phrase would associate them with KCL’s business of ‘Knockout Challenge’ and not with ‘It’s A Knockout’ games generally or particular organisers or in relation to types of sporting activity.

For all these reasons, I find that KCL has sufficient goodwill and reputation in the words ‘Knockout Challenge’, which are distinctive of its business, to support an action in passing off. Thus, KCL has Rights in name.

I also make the following findings. Persons visiting [“knockout Challenge” pages] would expect to find KCL’s online business and by re-directing them to the online presence of a competitor is seeking to lure KCL’s customers to its own site and is ‘fishing’ for KCL’s customers. It is not attempting to pick up traffic based on a descriptive use of ‘It’s A Knockout services, i.e. ‘generic’ traffic. This was conduct designed to confuse people into believing that [pages] were registered to, operated or authorised by, or otherwise connected to, KCL.

The clear inference from the evidence is that people typing the words of this Name, expect to go to a web site operated by or authorised by, or connected to, the person running ‘Knockout Challenge’, i.e. KCL

I also find that the inclusion of the words “It’s A” is unlikely to prevent confusion [i.e. ‘its a knockout challenge’] quite to the contrary.

The Complainant [KCL] has Rights in a name or mark, which is identical or similar to the Domain Names.

<http://www.nominet.org.uk/disputes/drs/decisions/decisionssearch/?searchText=knockout&x=25&y=0>