

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Jian Qiu
Case No. D2022-3214

1. The Parties

The Complainant is Jacquemus SAS, France, represented by DBK Law Firm, France.

The Respondent is Jian Qiu, China.

2. The Domain Name and Registrar

The disputed domain name <jacquemus-de.xyz> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 12, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 12, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a company with its registered seat in France. Since 2013, it is globally active in the field of manufacturing and selling clothing and fashion accessories (Annex 5 to the Complaint).

The Complainant is the owner of the JACQUEMUS trademark, which is registered in a significant number of jurisdictions. Among others, the Complainant is the owner of the French Trademark Registration No. 4057016, registered on December 24, 2013, and the International Trademark Registration No. 1211398, registered on February 5, 2014 (Annex 6 to the Complaint).

Furthermore, the Complainant holds and operates its official website as “www.jacquemus.com” (Annex 7 to the Complaint).

The disputed domain name was registered on June 1, 2022.

The Respondent is reportedly an individual from China.

As evidence by screenshots in the Complaint (Annex 8 to the Complaint), the disputed domain name resolved to a website in German language that prominently used the Complainant’s JACQUEMUS trademark and a large number of product pictures of the Complainant’s JACQUEMUS products to offer these products for sale to a price significantly lower than the usually applied prices by the Complainant.

At the time of the Decision, the disputed domain name does no longer resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant is of the opinion that the disputed domain name is confusingly similar to its JACQUEMUS trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

It is further noted that the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has trademark rights in the mark JACQUEMUS by virtue of various trademark registrations worldwide (Annex 6 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered JACQUEMUS trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms and signs would generally not prevent a finding of confusing similarity. The mere addition of "-de" (which probably shall indicate a reference to Germany) does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's JACQUEMUS trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's JACQUEMUS trademark in a confusingly similar way within the disputed domain name. There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

Quite the opposite, it is evidenced by the Complainant that the Respondent uses the disputed domain name to offer products under the trademark JACQUEMUS, which are likely counterfeits since the offered price was very low (Annex 8 to the Complaint). In line with section 2.13 of the [WIPO Overview 3.0](#), the Panel is of the opinion that the sale of counterfeit goods can under no circumstances confer any rights or legitimate interests on the Respondent.

In addition, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel has no doubt that the Respondent has registered the disputed domain name in bad faith. At the date of registration, the Complainant's JACQUEMUS trademark was already registered and widely used for many years.

As to use of the disputed domain name in bad faith, the disputed domain name resolved to a website that prominently used the JACQUEMUS trademark and official product pictures of the Complainant for the promotion of likely counterfeit JACQUEMUS products (Annex 8 to the Complaint). Taking into account that there have been no business relations between the Parties so far, the Panel is convinced that content and design of the website associated to the disputed domain name clearly indicates the Respondent's bad faith in freeriding the Complainant's JACQUEMUS trademark and underlying reputation to attract Internet users for the Respondent's illegitimate commercial gain.

This assessment is further supported by the fact that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant.

Furthermore, the Panel notes that the Respondent failed to submit any response to the Complainant's contentions or to at least rebut any of the Complainant's contentions. The Panel assesses this as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have substantially responded and substantiated any alleged right.

The fact that the disputed domain name does not currently resolve to an active website anymore does not change the Panel's findings in this respect. See section 3.3 of the [WIPO Overview 3.0](#).

Taking all facts of the case into consideration, the Panel has no difficulty in assessing the present case as a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <jacquemus-de.xyz> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: October 26, 2022