

ADMINISTRATIVE PANEL DECISION

Jott Market & Distribution, SAS v. 胡燕 (Yan Hu)
Case No. D2022-3820

1. The Parties

The Complainant is Jott Market & Distribution, SAS, France, represented by Fidal, France.

The Respondent is 胡燕 (Yan Hu), China.

2. The Domain Name and Registrar

The disputed domain name <jottdoudounes.shop> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on October 12, 2022. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 October 14, 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 amendment to the Complaint in English on October 17, 2022.

On October 14, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On October 17, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 in English and Chinese of the Complaint, and the proceedings commenced on October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 10, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on November 17, 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, previously called HAIK, SAS, is a company in the business of selling clothing and fashion accessories under the trade marks JOTT and JUST OVER THE TOP. The Complainant is also the registrant of the following domain names: <jott.fr>, <jott.ae>, <jott.co>, <jott.gr>, <jott.mx>, <jott.sg>, <jott.qa>, <jott.paris>, and <jott.pro>.

The Complainant is also the owner of, amongst others, the following trade mark registrations:

| <u>Trade Mark</u> | <u>Trade Mark No.</u> | <u>Registration Date</u> | <u>Class</u> | <u>Jurisdiction</u> |
|---|-----------------------|--------------------------|----------------------------------|---------------------|
|  | 4860768 | August 26, 2022 | 3, 9, 14, 16, 18, 25, 28, and 35 | France |
|  | 4860769 | August 26, 2022 | 3, 9, 14, 16, and 28 | France |
| JOTT | 14213121 | April 28, 2015 | 25 | China |
| JOTT | 1486973 | March 22, 2019 | 18, 25, and 35 | International |
|  | 40464814 | May 14, 2020 | 25 | China |

The disputed domain name <jottdoudounes.shop> was registered on October 7, 2022. At the date the Complaint was filed, the disputed domain name resolved to a website which reproduced the look and feel of the Complainant's website at "www.justoverthetop.com" including featuring the Complainant's trade marks and products images. At the date of this decision, it resolved to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark JOTT. The disputed domain name is almost identical to the Complainant's JOTT trade mark along with the addition of the French word "doudounes" which translates into "down jackets" in English. The Complainant's main product line is down jackets. The use of the generic Top-Level Domain ("gTLD") ".shop" in the disputed domain name does not

eliminate the overall notion that the designation is connected to the trade mark and the likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Respondent has never been granted any authorization or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name; and

(c) The disputed domain name was registered and is being used in bad faith. The website under the disputed domain name reproduced the Complainant's trade mark and sells down jackets which is the Complainant's key product. The website also appears to have been used to steal the identity of customers and for phishing. The Respondent is seeking to confuse the Complainant's actual or potential customers and suppliers into believing that the Respondent is the Complainant, or is otherwise associated or affiliated with the Complainant. The Respondent is deliberately creating confusion with the Complainant in order to give credibility to its scams and phishing operations.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue – Language of the Proceeding

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language of the proceeding under the following grounds:

- (i) the Registrar's website is available in English;
- (ii) the decision of a previous UDRP case in which the same Registrar was involved was rendered in English; and
- (iii) translation of the Complaint and continuation of the proceedings in Chinese would cause extra costs to the Complainant in the proceeding.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraph 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding;
- the Respondent has not filed any response in either English or Chinese; and

- an order for the translation of the Complaint will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights to;
- (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.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <jottdoudounes.shop> is confusingly similar to the Complainant's trade mark. The disputed domain name reproduces the JOTT trade mark in its entirety along with the word "doudounes", which means "down jacket" in French. The addition of the word "doudounes" does not prevent a finding of confusing similarity. The gTLD ".shop" is generally disregarded when considering the first element. (See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent is not authorized nor licensed to use the Complainant's JOTT trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name or the name "Jott".

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

Moreover, the nature of the disputed domain name, which incorporates the Complainant's trade mark together with a term describing the Complainant's key product, carries a risk of an implied affiliation as it

effectively impersonates or suggests sponsorship or endorsement by the Complainant. (See section 2.5.1 of the [WIPO Overview 3.0](#)).

The Complainant has therefore satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the JOTT trade mark. The JOTT trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for its clothing products for over seven years. The use of “doudounes”, the French word for “down jackets” and the gTLD “.shop” in the disputed domain name is no mere coincidence as the Complainant sells down jackets, which is the Complainant’s key product. In addition, the website the disputed domain name resolved to reproduces the Complainant’s website home page including the Complainant’s trade mark and product images. The Panel is satisfied that the Respondent was aware of the Complainant and its JOTT trade mark when he or she registered the disputed domain name. It appears to the Panel that the Respondent has registered the disputed domain name to attract Internet users to the Respondent’s website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy.

Considering the Respondent’s appears to be seeking to imitate the Complainant, the Panel agrees with the Complainant’s assertions that the use of the disputed domain name is possibly for phishing and/or identity theft, which is a further indication of bad faith.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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, <jottdoudounes.shop>, be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: November 30, 2022