

## ADMINISTRATIVE PANEL DECISION

### Jott Market & Distribution, SAS v. Name Redacted Case No. D2022-4499

#### 1. The Parties

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

The Respondent is Name Redacted<sup>1</sup>, France.

#### 2. The Domain Name and Registrar

The Disputed Domain Name <jottoutlet-fr.shop> is registered with Dynadot, LLC (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 24, 2022. On November 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 28, 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 also on November 28, 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 on November 30, 2022.

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”).

---

<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).



In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. On December 5, 2022, the Center received an informal communication from a third party claiming identity theft. Accordingly, the Center notified the Commencement of Panel Appointment Process on December 27, 2022.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on January 5, 2023. 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 whose activities consists in the design and selling of ready-to-wear clothing for men, women and children and particularly down jackets.

The Complainant is the owner of several trademarks, in particular the following trademarks (the “JOTT Trademarks”):

- the French semfigurative trademark **JOTT**, No. 4860768, registered on April 12, 2022, for products and services in classes 3, 9, 14, 16, 18, 25, 28 and 35;
- the French  semfigurative trademark, No. 4860769, registered on April 12, 2022, in classes 3, 9, 14, 16 and 28;
- the International semfigurative trademark **JOTT** No. 1486973 filed on March 22, 2019, in classes 18, 25 and 35;
- the international  semfigurative trademark, No. 1488003 filed on March 22, 2019, in classes 18, 25 and 35.
- the international wordmark ‘JUST OVER THE TOP’, No. 1154878 filed on January 29, 2013, in class 25.

The Complainant has also registered several domain names containing the JOTT Trademarks including the following domain names <jott.fr> and <jott.paris>.

The Disputed Domain Name was registered by the Respondent on September 28, 2022, and at the time of the Complaint revolved to an e-commerce website enabling Internet users to buy what appears to be JOTT Trademarks apparel and imitating the Complainant’s own e-commerce website. At the time of the decision, the Disputed Domain Name revolves to an inactive website.

#### 5. Parties’ Contentions

##### A. Complainant

First, the Complainant stands that the Disputed Domain Name is confusingly similar to a trademark to which it has rights. The Complainant points out that it is the owner of several JOTT Trademarks and domain names. The Complainant considers that the mere addition of the word “outlet” and of the two letters “fr” with a hyphen to its JOTT Trademarks in the Disputed Domain Name does not distinguish the Disputed Domain Name to the Complainant’s JOTT Trademarks. Moreover, for the Complainant, the addition of the two letters “fr” enhances the likelihood of confusion since the Complainant is well-known in France.

Then, the Complainant explains that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant stands that to the best of its knowledge, the Respondent is not commonly known under the Disputed Domain Name and does not make use of a business name including the sign "jott". The Complainant states that it has never authorized, licensed, or permitted the Respondent to use its JOTT Trademarks. For the Complainant, the Respondent is using the JOTT Trademarks to confuse Internet users who are looking to buy JOTT apparel who will think they are on the Complainant's official website or an affiliated one.

Finally, the Complainant states that the Disputed Domain Name was registered and is being used in bad faith. The Complainant demonstrates that the Disputed Domain Name redirected to a website which reproduced the Complainant JOTT Trademarks and its website's architecture, look, photos, sentences and feel while reproducing the same model photographs and key products. For the Complainant, it is evidence that the Respondent is trying to catch the Complainant's renown and attractiveness since notably the website linked to the Disputed Domain Name is in French. The Complainant explains that the Respondent is deliberately using its identity and aims to create confusion with the Complainant in order to give credibility to its scams and phishing operations.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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**

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the JOTT Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the Disputed Domain Name is composed of:

- the JOTT Trademarks;
- the word “outlet”;
- a hyphen;
- the two letters “fr”; and
- the generic Top-Level Domain (“gTLD”) “.shop”.

According to prior UDRP panel decisions, it is sufficient that the domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing. The mere addition of a word to a mark does not prevent a finding of confusing similarity (see *Hoffmann-La Roche Inc., Roche Products Limited v. Vladimir Ulyanov*, WIPO Case No. [D2011-1474](#); *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#); *Swarovski Aktiengesellschaft v. mei xudong*, WIPO Case No. [D2013-0150](#); *RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#)).

The Panel considers that, in this case, the addition of the term “outlet” and of the two letters “fr” to the distinctive sign JOTT included in the Disputed Domain Name does not prevent a finding of confusing similarity between the latter and the JOTT Trademarks. Indeed, since the term “outlet” refers to the selling of products and the letters “fr” refer to France where the Complainant is established and conducts its business, this Panel finds that these elements do not prevent the JOTT Trademarks to be recognizable in the Disputed Domain Name.

Moreover, the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Therefore, the Panel holds that the Disputed Domain Name <jottoutlet-fr.shop> is confusingly similar to the JOTT Trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to

the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)). Indeed, while the overall burden of proof in a UDRP proceedings is on the complainant, UDRP 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 *prima facie* that a 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Indeed, it appears that the Complainant has not given any license or authorization of any kind to the Respondent to use the JOTT Trademarks. Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, at the time of the Complaint, the Disputed Domain Name reverted to an e-commerce website trying to pass off as the Complainant by repeatedly using the JOTT Trademarks and by fraudulently reproducing the Complainant’s own website and using photos from it.

In any case, the Respondent did not reply to the Complainant’s contentions, and consequently, did not rebut the Complainant’s *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name <jottoutlet-fr.shop>.

### **C. Registered and Used in Bad Faith**

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent’s bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.

First, the Panel considers that it is established that some of the Complainant’s JOTT Trademarks were registered and used before the registration of the Disputed Domain Name and that the Complainant is well

known by its trademarks. Therefore, there is a presumption of bad faith registration of the Disputed Domain Name given that it wholly reproduces the JOTT Trademarks.

Moreover, the Panel points out that the Disputed Domain Name revolves to an e-commerce website, trying to pass off as a reproduction of the Complainant's own website, and selling apparel while using the architecture and photos from the Complainant's own e-commerce website to illustrate the Respondent's products which are in fact those of the Complainant.

Accordingly, the Panel finds that the Complainant has provided evidence that the Disputed Domain Name was registered and used by the Respondent in an attempt to pass off as the Complainant or someone affiliated to the Complainant, for commercial gain.

Finally, the Respondent has not provided any formal response to the Complainant's contentions. A third party has moreover indicated that the Disputed Domain Name was registered by using their name and that this third party was a victim of an identity theft.

Considering all of the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the Disputed Domain Name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

## **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, <jottoutlet-fr.shop> be transferred to the Complainant.

*/Christiane Féral-Schuhl/*

**Christiane Féral-Schuhl**

Sole Panelist

Date: January 19, 2023