

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Alexandre Favon

Case No. D2023-1921

1. The Parties

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

The Respondent is Alexandre Favon, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <jacquemus-france.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 3, 2023 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 May 3, 2023.

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 May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on June 12, 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 French company which manufactures and markets since 2013 clothing and fashion accessories under the trademark JACQUEMUS. The Complainant's products are now sold in 50 different countries around the world.

The Complainant is the owner of numerous registrations for its JACQUEMUS trademark in various jurisdictions including for instance the International trademark registration No.1211398, registered on February 5, 2014.

The Complainant conducts its business also via its website "www.jacquemus.com", registered in 2010.

The disputed domain name was registered on April 17, 2023 and resolves to a website being merely copy of the Complainant's website in French, prominently featuring the Complainant's trademark, and offering for sale purportedly the Complainant's products. In the legal notice and the term of use, the Respondent used the Complainant's company corporate name, the identity of Simon Porte-Jacquemus and the mail address of the Complainant's customer service.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name consists of the Complainant's trademark in followed by the term "france" and by the generic Top-Level Domain ("gTLD") ".com". These additional elements do not prevent a finding of confusing similarity. On the contrary, the addition of the word "france" will certainly be understood by the internet users as new website dedicated to purchasing the Complainant' products in France or a new website referring to the nationality of Simon Porte-Jacquemus. The Complainant's trademark is recognizable within the disputed domain name. The addition of the gTLD ".com" will not be taken into account to assess the likelihood of confusion between the signs as it is technically required. This use of the Complainant's trademark in the disputed domain name leads the public to believe that it belongs to the Complainant.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to register and/or use any domain name incorporating the trademarks. The Complainant has not granted any license, nor any authorization to use the trademarks, included as a domain name or for setting up a website selling the Complainant's products. Moreover, the Respondent has not made a legitimate noncommercial or a fair use of the disputed domain name. Indeed, the disputed domain name pointed out to a website which is a "copycat" of the Complainant's official website and does not provide a disclaimer regarding the lack of affiliation with the Complainant. The fact the Respondent is benefiting, either directly or indirectly, from wrongly associating himself with the Complainant establishes that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent's use does not qualify as *bona fide* offer of goods and services.

The disputed domain name was registered and is being used in bad faith. The Complainant's trademark registrations pre-date the registration of the disputed domain name. The Complainant's trademark has acquired extensive and worldwide reputation and should thus be considered as well-known. The choice of the disputed domain name does not seem to be a mere coincidence, but on the contrary seems to have been done on purpose to generate a likelihood of confusion with the Complainant's trademark. The Complainant's trademark is well known, and it shall be deemed that the registration of the disputed domain name has been done *per se* in bad faith. The website linked to the disputed domain name is copying the Complainant's official website which constitutes bad faith. The disputed domain name has been used to take advantage of the reputation of the Complainant's trademark in order to sell products which origin and authenticity are questionable. In this context, the registration of the disputed domain name has been done in bad faith. The Respondent is using a "Whois protection service" showing the Respondent's willingness to

remain anonymous, which demonstrates his bad faith. The Respondent is a repeat offender who has already registered and used in bad faith the domain name <jacquemus-france.fr> that was confusingly similar to the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to 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 (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that the addition of "france" and a hyphen to the disputed domain name does not prevent finding it confusingly similar to the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The disputed domain name directs Internet users to a website with a logo similar to the Complainant's and designed similarly to the Complainant's website to make the Internet users believe that they actually access the Complainant's website. Past UDRP panels confirmed that such actions prove the respondent has no rights or legitimate interests in a disputed domain name (see *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. [D2000-0598](#), and *Houghton Mifflin Co. v. The Weatherman, Inc.*, WIPO Case No. [D2001-0211](#)).

According to section 2.8.1 of the [WIPO Overview 3.0](#), resellers, distributors using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. Outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (the "Oki Data Test"), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site to sell only the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant's relationship with trademark holder;
and
- (iv) the respondent must not try to "corner the market" in domain names reflecting trademark.

The Panel finds that the Respondent failed to satisfy at least the third above requirement and did not in any way disclose its actual relationship with the Complainant, and thus failed to pass the *Oki Data* Test. The Respondent's use of the disputed domain name misleads consumers into thinking that the website is operated by or affiliated with the Complainant. As such, the Respondent's use of the disputed domain name cannot be considered *bona fide*.

Furthermore, the composition of the disputed domain name, comprising the Complainant's trademark in its entirety and the geographical term "france" which is the Complainant's country of establishment and of its main activity, indicates an awareness of the Complainant and its trademark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent's use of the disputed domain name to purport to sell the Complainant's products shows that at the time of the registration of the disputed domain name the Respondent clearly knew and targeted the Complainant's prior registered and famous trademark, which confirms the bad faith (see, *e.g.*, *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location. In this case, the disputed domain name was resolving to a website featuring the Complainant's trademark and falsely pretended to be the official Complainant's local website to intentionally attract Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the website and its products. The Panel finds the above confirms the disputed domain name was registered and used in bad faith.

Moreover, the Respondent used a privacy service to register the disputed domain name. According to section 3.6 of the [WIPO Overview 3.0](#), the use of a privacy or proxy service merely to avoid being notified of a UDRP proceeding, may support an inference of bad faith; a respondent filing a response may refute such inference. However, no such response was provided by the Respondent. The Panel finds that such use of the privacy service here confirms registration of the disputed domain name in bad faith.

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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-france.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: June 22, 2023