

ADMINISTRATIVE PANEL DECISION

Jott Market & Distribution, SAS v. xue yu
Case No. D2022-3819

1. The Parties

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

The Respondent is xue yu, China.

2. The Domain Name and Registrar

The disputed domain name <jottsoldeparis.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 13, 2022, 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 on October 14, 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”).




In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on November 15, 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 French company in the apparel business.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	Registration No.	Jurisdiction	Date of Registration
	4860768	France	August 26, 2022
	4860769	France	August 26, 2022
JOTT	1486973	International Registration	March 22, 2019
	1488003	International Registration	March 22, 2019
JUST OVER THE TOP JOTT	1407616	International Registration	March 2, 2018
JUST OVER THE TOP	1154878	International Registration	January 29, 2013

The Complainant owns the domain name <justoverthetop.com>, registered on May 24, 2011, as well as <jott.fr>, <jott.paris>, <jott.ae>, <jott.mx>, <jott.co>, <jott.gr>, <jott.sg>, <jott.qa>, and <jott.pro>.

The Respondent registered the disputed domain name on October 10, 2022, and currently resolves to an inactive website. At the time of filing of the Complaint, the dispute domain name resolved to a website that copied the look and feel of the Complainant's website, and promoted down jackets, the key products offered by the Complainant.

5. Parties' Contentions

A. Complainant

I. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the JOTT trademark.

The disputed domain name does not distinguish itself from the Complainant's JUST OVER THE TOP trademark and its JOTT acronym. The added term "soldeparis" means "sales" and "Paris" in English. That said term does not distinguish the disputed domain name from the Complainant's trademark. That said additional term suggests that the disputed domain name is owned by the Complainant to sell stock at discount prices in Paris, where the Complainant has many stores.

The generic Top-Level Domain ("gTLD") ".com" is typically ignored when assessing confusing similarity according to previous UDRP decisions.

There is an obvious likelihood of confusion between the disputed domain name and the Complainant's trademark, trade name, and domain names.

II. Rights or Legitimate Interests

To the Complainant's knowledge, the Respondent is not commonly known under the disputed domain name, nor is the Respondent making a *bona fide* offering of products or services.

The Complainant has not authorized, licensed, permitted, or otherwise consented to the Respondent's use of the Complainant's trademark, and has no relationship with the Respondent.

The Respondent has deliberately created confusion with the Complainant's business by using the Complainant's identity, reproducing without any prior authorization the Complainant's trademark, and pretending to take ownership of the Complainant's activities.

III. Registered and Used in Bad Faith

The homepage of the website to which the disputed domain name resolves reproduces without authorization the Complainant's JOTT trademark.

When comparing the Complainant's website to the website to which the disputed domain name resolves, it is clear that the Respondent's website identically reproduces the look and feel of the Complainant's website. The Respondent has built a very confusing imitation of the Complainant's official website. The Respondent is deliberately using the identity of the Complainant to create confusion with the Complainant in order to give credibility to its scams and phishing operations.

Consequently, the Respondent has registered and used fraudulently and in bad faith the disputed domain name by reproducing the Complainant's prior rights with the intent to take advantage of the Complainant's trademark and credibility.

The Respondent has used the dispute domain name to resolve to a website that promoted the same products as those offered by the Complainant.

The Complainant manufactures and sells clothing and fashion accessories since 2010 under the JOTT and JUST OVER THE TOP trademarks in over 1,500 points of sale in France and abroad. The disputed domain name was registered in October 2022, after the Complainant registered its trademarks. The Respondent had knowledge of the Complainant and its trademarks at the time of registration of the disputed domain name. Therefore, the Respondent sought to make use of the reputation of the Complainant.

Considering the Respondent's reproduction of the Complainant's trademark on the website to which the disputed domain name resolves, it is apparent that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's trademark.

The Respondent's website contains no legal notices to differentiate it from that of the Complainant.

The purpose of the email address provided on the website to which the disputed domain name resolves, reproducing the Complainant's JOTT trademark, apparently is to receive emails from users.

The Respondent has intended to confuse the Complainant's actual or potential customers and suppliers into believing that the Respondent is the Complainant or is otherwise associated to or affiliated with the Complainant.

B. Respondent

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

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the trademark JOTT, as it entirely incorporates the said trademark, with the addition of the terms "solde", which is "sales" in French, and the geographical term "paris". The incorporation of the said terms does not prevent a finding of confusing similarity under the first element (see sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The addition of the gTLD ".com" to the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"), and therefore may be disregarded under the first element confusing similarity test (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

Therefore, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights to or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) 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.

The Complainant has asserted that there is no relationship or affiliation between the Complainant and the Respondent, that it has not granted any license, permission, authorization, or consent to the Respondent to use its trademarks, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#); and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The Complainant has proved that the website to which the disputed domain name previously resolved predominantly displayed the Complainant's JOTT trademark, offered down jackets, the key products of the Complainant, and used the slogans related to the Complainant's JOTT trademark. This shows that the Respondent has attempted to impersonate the Complainant, since Internet users looking for the Complainant who came across the website to which the disputed domain name resolved might have thought that the said website was affiliated to or sponsored by the Complainant, which cannot be deemed as a *bona fide* offering of goods and services.

Thus, taking into account that the Respondent has intended to confuse Internet users into believing that the website to which the disputed domain name resolved was related to the Complainant, this Panel considers that the Respondent has attempted to impersonate the Complainant. The consensus view among panels appointed under the Policy is that the use of a domain name for illegal activity, such as impersonation, or passing off, cannot confer rights to, or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#), "The consensus view of prior panels is that impersonation of the complainant is neither a use in connection with a *bona fide* offering of products or services under Policy paragraph 4(c)(i), nor a fair or legitimate noncommercial use without intent for commercial gain misleadingly to divert consumers, pursuant to Policy paragraph 4(c)(iii)." *SVB Financial Group v. WhoisGuard Protected, WhoisGuard, Inc. / Citizen Global Cargo*, WIPO Case No. [D2018-0398](#); and *Haas Food Equipment GmbH c. Usman ABD, Usmandel*, WIPO Case No. [D2015-0285](#)).

In sum, the Complainant made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant's assertions.

Moreover, the nature of the disputed domain name is inherently misleading and 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](#)).

In light of the above, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 its 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 its website or location.

The fact that the Respondent chose to register the disputed domain name, which resolved to a website that

displayed the Complainant's trademark, and through which similar products were apparently sold, suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name. Therefore, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

These facts also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain name resolved, by creating the impression among Internet users that the said website was related to, associated with, or endorsed by the Complainant, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#); and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

According to the evidence submitted by the Complainant and not contested by the Respondent, the Respondent has used the disputed domain name in an attempt to impersonate the Complainant for commercial gain, which also constitutes bad faith under the Policy (see also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#): "This Panel considers that, in appropriate circumstances, a failure to pass the impersonation test may properly lead to a finding of registration and use in bad faith because of the fact that, at its heart, such a domain name has been selected and used with the intention of unfairly deceiving Internet users, notably those who are (actual or potential) consumers of the trademark owner."; *Philip Morris Products S.A. v. Domain Administrator, Registrant of iqosatismaganiz.com (apiname com) / Anl Girgin, Teknoloji Sarayi*, WIPO Case No. [D2019-0466](#); *Self-Portrait IP Limited v. Franklin Kelly, supra; Friedman and Soliman Enterprises, LLC v. Gary Selesko, M&B Relocation and Referral, LLC*, WIPO Case No. [D2016-0800](#)).

As to the current use of the disputed domain name, notwithstanding that it is now inactive, the consensus view amongst panels appointed under the Policy is that the fact that a domain name is not active does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#), "from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding"; see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#): "The significance of the distinction is that the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith.", and "*Dr. Martens International Trading GmbH and Dr. Maertens Marketing GmbH v. Godaddy.com, Inc.*", WIPO Case No. [D2017-0246](#)).

In the present case, the following facts have been found:

- that the JOTT trademark refers directly and specifically to the Complainant, which company has over 1,500 points of sale in France and abroad, and to the products it sells.
- that the disputed domain name incorporates the Complainant's trademark in its entirety.
- that the Respondent has been engaged in an impersonation conduct.
- that the Respondent has not filed any evidence or information to explain why he registered the disputed domain name and why he made it resolve to a website that reproduced the Complainant's trademark and offered for sale products similar to those sold by the Complainant.

In light of the above, it is not possible to conceive of any plausible actual or contemplated good-faith use of the disputed domain name by the Respondent that would not be illegitimate under the Policy (see *Telstra Corporation Limited v. Nuclear Marshmallows, supra*, and *CBS Broadcasting Inc. v. Dennis Toeppen*, WIPO Case No. [D2000-0400](#)).

Therefore, the third element of the Policy has been met.

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 <jottsoldeparis.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: November 29, 2022