

ADMINISTRATIVE PANEL DECISION

Jott Market & Distribution v. Brigitte Bellamy
Case No. D2022-4059

1. The Parties

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

The Respondent is Brigitte Bellamy, France.

2. The Domain Name and Registrar

The disputed domain name <jottsoldeparis.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 October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 31, 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 November 3, 2022

The Center verified that the Complaint and 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 November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2022.

The Center appointed Fabrice Bircker as the sole panelist in this matter on December 8, 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, Jott Market & Distribution (formerly named Haik), is a French company which manufactures and sells, since 2010, fashion articles, and particularly down jackets.

It is not disputed that the Complainant's products are marketed through more than 1,500 points of sale located in France and abroad.

The Complainant's products are notably protected through the following trademarks:

JOTT French trademark registered under No. 4860768 on August 26, 2022, in classes 3, 9, 14, 16, 18, 25, 28 and 35;

JOTT international trademark No. 1486973 registered on March 22, 2019, in classes 18, 25 and 35, notably protected in the European Union, Mexico, Russian Federation, Japan, and in the United States of America.

The Complainant has also an online presence, in particular through the <jott.fr> domain name, which was registered on May 23, 2011, and which is used to resolve to a retailing website dedicated to the Complainant's products.

Very little is known about the Respondent, except that it is apparently located in France, based on the information disclosed by the Registrar.

The disputed domain name was registered on October 14, 2022.

At the time of the filing of the Complaint, the disputed domain name was redirecting to a website purported to offer for sale at discounted prices down jackets bearing the JOTT trademark. Besides, this website ostensibly displayed the semi-figurative JOTT trademark and reproduced pictures from the Complainant's website.

When drafting the present decision, the disputed domain name redirects toward a slightly different website: this website is still purported to offer for sale at discounted prices down jackets, but apparently no longer under the JOTT trademark. This being said, the JOTT trademark still appears on this website and the latter is entitled "Doudounes [French word for down jackets] JOTT Outlet".

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name, and its main arguments can be summarized as follows.

The Complainant contends that the disputed domain name is confusingly similar to its JOTT trademark because it incorporates said trademark in its entirety and the latter remains recognizable within it.

The Complainant argues that the Respondent is not commonly known under the disputed domain name.

The Complainant adds that it has not authorized, licensed, permitted or otherwise consented to the

Respondent's use of the trademark JOTT in the disputed domain name and that it has no relationship with the Respondent.

Then the Complainant contends that the Respondent is deliberately creating confusion with its business by i) using its identity, ii) reproducing without any authorization its trademark and iii) by taking ownership of its activities.

The Complainant contends that the disputed domain name was registered and is being used in bad faith because it redirects toward a website only selling down jackets and reproducing the Complainant's trademarks and the architecture of its website.

The Complainant also puts forward that the Respondent is deliberately using its identity and aims to create confusion with it 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

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of 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; 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.

Besides, paragraph 15(a) of the Rules provides that "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraphs 10(b) and 10(d) of the Rules also provide that "[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case" and that "[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence".

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain names is identical or confusingly similar to its trademark.

The Panel finds that the Complainant is the owner of trademark registrations for JOTT, such as those detailed in section 4 above.

Besides, there is no difficulty in finding that the disputed domain name, <jottsoldeparis.shop>, is confusingly similar to the JOTT trademark.

Indeed, the disputed domain name reproduces the Complainant's trademark, and it is of constant practice among the UDRP panels that:

- generic Top-Level Domains ("gTLDs") may be ignored for the purpose of assessing the confusing similarity, because they only play a technical function;
- the addition of other terms does not prevent a finding of confusing similarity under the first element when the complainant's trademark remains clearly recognizable (see [WIPO Overview 3.0](#), section 1.8), what is the case here, precisely because the Complainant trademark is reproduced in its entirety and because the elements "solde" and "paris" do not prevent the trademark from being recognizable within the disputed domain name.

Consequently, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain names. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy ([WIPO Overview 3.0](#), section 2.1; or for instance *Applied Materials, Inc. v. John Warren*, WIPO Case No. [D2020-0950](#)).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its JOTT trademark in a domain name registration or in any other manner.

In addition, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Besides, the Respondent is using the disputed domain name to operate a website:

- purporting to offer for sale, at discounted prices, products of the same nature than those protected by the Complainant's trademark,
- displaying the JOTT trademark,
- entitled "Doudounes JOTT Outlet" ("doudounes" being the French word for down jackets).

Besides, this website previously pretended offering for sale down jackets bearing the Complainant's trademark, and reproduced some pictures from the Complainant's website.

It is of constant case-law that a respondent's use of a complainant's trademark to redirect Internet users to a competing site does not support a claim to rights or legitimate interests when the website is misleading as to source or sponsorship ([WIPO Overview 3.0](#), section 2.5.3).

Besides, for sake of completeness, the Panel adds that even assuming the Respondent was previously actually offering for sale genuine JOTT goods, this would not challenge the above finding.

Indeed, there is a consensus view (see [WIPO Overview 3.0](#), section 2.8) that a reseller using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods makes a *bona fide* offering of goods and thus has a legitimate interest in the domain name if the following cumulative requirements are met:

- the respondent must actually be offering the goods or services at issue;
- the respondent must use the site to sell only the trademarked goods or services;
- the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and

- the respondent must not try to “corner the market” in domain names that reflect the trademark.

Here, the Panel notably finds that the Respondent’s previous website did not disclose its (lack of) relationship with the Complainant.

Rather, the Respondent sought to create an impression of association with the Complainant, by running a website looking close to the Complainant’s official website.

In these conditions, even assuming that the Respondent would have been offering for sale genuine JOTT clothes, it would not have been in a position to claim any legitimate fair use of the disputed domain name.

Taken all the above into consideration, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has had the opportunity to rebut the Complainant’s contentions but has not done so.

Consequently, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and accordingly that the second element in paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel finds that:

- the disputed domain name is confusingly similar with the Complainant’s JOTT trademark which i) predates it, ii) is intrinsically distinctive and iii) is globally protected,
- the “solde” and “paris” elements of the disputed domain name relate to the Complainant (which is located in France) and to its business (“solde” is a French word designating a product sold at a discounted price),
- the disputed domain name resolves to a website i) which title directly refers to the Complainant (*i.e.* “Doudounes JOTT Outlet”: down jackets JOTT Outlet), ii) displaying the Complainant’ JOTT trademark on the homepage, iii) and directly competing with the Complainant as it pretends offering for sale clothes, including down jackets,
- before being modified, the website to which the disputed domain name resolved was impersonating the Complainant’s official website (it reproduced the Complainant’s logo, and pictures from its official website, and offered for sale down jacketed bearing the JOTT trademark),
- the Respondent appears to be located in the country where the Complainant originates and has its headquarters,
- the Respondent, while invited to defend its case, has remained silent in this procedure.

It necessarily results from the above findings that the Respondent registered the disputed domain name being fully aware of the Complainant’s rights, and that it intentionally used the disputed domain name for commercial gain by creating a likelihood of confusion with the Complainant’s JOTT trademark as to the source, sponsorship, affiliation, or endorsement of its website and of the products offered for sale therein, in the meaning of paragraph 4(b)(iv) of the Policy.

As a conclusion of the above, the Panel finds that the disputed domain name was registered and is being used in bad faith, within the meaning of 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, <jottsoldeparis.shop> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: December 22, 2022