

ADMINISTRATIVE PANEL DECISION

Koninklijke Douwe Egberts B.V. v. Jayson Westwick, JDCREATIVES
Case No. D2022-4108

1. The Parties

The Complainant is Koninklijke Douwe Egberts B.V., Netherlands, represented by Ploum, Netherlands.

The Respondent is Jayson Westwick, JDCREATIVES, Australia.

2. The Domain Name and Registrar

The disputed domain name <jdwcoffee.com> (the “Disputed Domain Name”) is registered with Tucows Domains Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2022. On November 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 1, 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 (Contact Privacy Inc. Customer 0164590304) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 2, 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 4, 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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 29, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on December 5, 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 is part of Jacobs Douwe Egberts, which is an international coffee and tea company, headquartered in the Netherlands that has processed and traded coffee, tea, and other foods since 1753. The JDE brand is an abbreviation of the name Jacobs Douwe Egberts and has been synonymous with quality products. The Complainant is a well-known brand in the Benelux, the European Union, as well as many other jurisdictions worldwide. The Complainant owns the following trademark registrations, including, but not limited to:

The Complainant owns numerous trademarks, including: JDE, Benelux Registration No. 970216, registered on April 22, 2015; and JDE, International Trademark Registration No.1248744, registered on April 16, 2022 (designating, *inter alia*, China, the European Union, the United States of America, and Australia (where the Respondent purportedly resides)). The Complainant also owns trademarks in Malaysia, Brazil, Chile, and the United Kingdom, among others.

The foregoing trademarks will hereinafter collectively be referred to as the “JDE Mark”.

The Complainant also owns domain names that incorporate the JDE Mark, and that resolve to the Complainant’s websites at “www.jdecoffee.com” and “www.jacobsdouweegberts.com”.

The Disputed Domain Name was registered on June 12, 2022 and resolves to an error landing page with no content.

Before filing the Complaint, the Complainant’s counsel sent a domain holder contact request to the Respondent via the concerned Registrar, but received no reply.

5. Parties’ Contentions

A. Complainant

The following are the Complainant’s contentions:

- the Disputed Domain Name is confusingly similar to the Complainant’s JDE Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry, a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the JDE Mark.

It is uncontroverted that the Complainant has established rights in the JDE Mark based on its fame as well as its registered trademarks for the JDE Mark in jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”. Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the JDE Mark.

The Disputed Domain Name consists of a misspelling of the JDE Mark, followed by the term “coffee”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. This misspelling is an example of typosquatting, a situation in which a domain name includes a deliberately misspelled registered trademark. Here, the use of the letter “w” in the Disputed Domain Name instead of the “e” in the JDE Mark does not operate to prevent a finding of confusing similarity between the JDE Mark and the Disputed Domain Name. See, e.g., *ALH Group Pty Ltd v. Naveen Mathur*, WIPO Case No. [D2015-2004](#); see also [WIPO Overview 3.0](#), section 1.9, which states that “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element [...]”. This is especially true in the present case where the letters “w” and “e” are adjacent to each other on a typical “qwerty” keyboard, meaning that if one were to use the fourth finger of one’s left hand, a single slip of the finger would result in an Internet user who intended to visit the Complainant’s website at “www.jdecoffee.com” arriving at the Respondent’s website instead. See *Sanofi v. Domains By Proxy, LLC / domain admin*, WIPO Case No. [D2013-0368](#).

The Disputed Domain Name is confusingly similar to the JDE Mark since the trademark is recognizable, though intentionally misspelled, in the Disputed Domain Name. Moreover, as stated in section 1.8 of [WIPO Overview 3.0](#), “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms [...] would not prevent a finding of confusing similarity under the first element”. For example, numerous UDRP decisions have reiterated that the addition of a term to a trademark does not prevent a finding of confusing similarity. See *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD, such as “.com”, in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#), and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant’s JDE Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the Complainant's JDE Mark.

There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name. In this regard, the Panel notes that the Respondent is listed in the registration details as "Jayson Westwick, JDCREATIVES". While some of the letters in the Respondent's name are included in the Disputed Domain Name, these details do not directly correspond to the Disputed Domain Name, notably omitting the term "coffee". Moreover, the Panel notes that respondents would typically be expected to produce concrete evidence that they are commonly known by a domain name. See [WIPO Overview 3.0](#), section 2.3. In any event, the Respondent has not participated in this proceeding and there is nothing in the record before the Panel to support a finding the Respondent is commonly known by the Disputed Domain Name or any name corresponding to the Disputed Domain Name. Rather, as discussed below, the clearly recognizable term "coffee", as well as the Complainant's fame in the coffee industry, tend to suggest an intent to take advantage of the Complainant's JDE Mark.

Moreover, the Complainant does not have any business relationship with the Respondent and based on the use made of the Disputed Domain Name to resolve to an inactive error page, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name.

Therefore, the Panel concludes that the Complainant has established an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, the Panel finds that the Respondent's registration and use of the Disputed Domain Name indicate that such registration and use has been done for the specific purpose of trading on the name and reputation of the Complainant and its JDE Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark").

Second, the Disputed Domain Name was registered after the Complainant first began using its JDE Mark. Therefore, the Panel finds that the Respondent had the Complainant's trademark in mind when registering the Disputed Domain Name, an indication of bad faith. The Respondent was seeking to drive traffic from the Complainant's website and disrupt the Complainant's business, also which is emblematic of bad faith.

Third, the Panel finds that the Respondent had actual knowledge of the Complainant's JDE Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. The Panel considers that the Disputed Domain Name would most likely be read by Internet users as two distinct terms, "jdw" (a single-letter variant of the Complainant's well-known JDE Mark) and "coffee" (a

descriptive term in the Complainant's area of business). Thus, considering the strong reputation of the Complainant in the coffee industry, the Panel finds that the Respondent must have been aware of the Complainant, the JDE Mark, the Complainant's official website at "www.jdecoffee.com", and the goods and services for which the JDE Mark is registered, namely coffee, when the Respondent registered the Disputed Domain Name incorporating a variation of the Complainant's JDE Mark and the term "coffee". Thus, the Respondent's knowledge of the foregoing demonstrates that the Disputed Domain Name was registered and is used in bad faith.

Fourth, inactive or passive holding of the Disputed Domain Name by the Respondent does not prevent a finding of bad faith use. See *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#); and *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. [D2005-1085](#). It has long been held in UDRP decisions that the passive holding of a domain name that incorporates a well-known trademark without a legitimate Internet purpose may indicate that the Disputed Domain Name is being used in bad faith under paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also [WIPO Overview 3.0](#), section 3.3 (non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding).

Finally, the Respondent's registration of the Disputed Domain Name, apparently containing an intentional misspelling of the JDE Mark, in an effort to take advantage of a typographical error further supports a finding of bad faith registration and use. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#).

Accordingly, in the absence of a Response or any evidence to the contrary, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <jdwcoffee.com> be transferred from the Respondent to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: December 19, 2022