

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Mark Kean
Case No. D2022-4717

1. The Parties

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

The Respondent is Mark Kean, United States of America (the “United States”).

2. The Domain Name and Registrar

The disputed domain name <jacquemus-outlet.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 December 8, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 December 16, 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 December 19, 2022.

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 December 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on February 9, 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 clothing and fashion accessories under the trademark JACQUEMUS since 2013. The Complainant's products are sold in 50 countries worldwide. The Complainant is the owner of various JACQUEMUS trademarks registered worldwide, including the following:

- International registration No. 1211398, registered on February 5, 2014, for goods in classes 9, 18 and 25, designating, among others the United States;
- European Union registration No. 018080381, registered on October 18, 2019 for goods in classes 14, 24 and 28;
- International registration No. 1513829, registered on November 19, 2019 for goods in classes 14, 24 and 28, designating, among others, the United States.

The Complainant is also the owner of the domain name <jacquemus.com>, registered in 2010 and used to promote the Complainant's goods under its JACQUEMUS trademark.

The disputed domain name was registered on October 20, 2022 and resolves to a website offering for sale clothing and bags at reduced prices. Before filing its Complaint, the Complainant sent a cease and desist letter to the Registrar, which remained unanswered.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its JACQUEMUS trademark since it fully incorporates its trademark followed by the word "outlet", which cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name as the Complainant did not grant a license, nor authorization to use the JACQUEMUS trademark in a domain name or website. Furthermore, the Respondent's use of the disputed domain name does not qualify as a *bona fide* offering of goods and services.

As far as bad faith is concerned, the Complainant contends that the registration of a well-known trademark as a domain name is in itself a clear indication of bad faith. Furthermore, given the reputation of its JACQUEMUS trademark it is unlikely that the Respondent was unaware of this trademark when it registered the disputed domain name. According to the Complainant, the disputed domain name is used to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark. The website associated to the disputed domain name is used to promote the sale of products by creating a likelihood of confusion with the Complainant's trademark and the Complainant's activities. By doing so, the Respondent is taking advantage of the reputation and goodwill of the Complainant's trademark and image, in an effort to attract users to its website and generate profits.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has successfully shown to own rights on the trademark JACQUEMUS before the date of registration of the disputed domain name. The Panel finds that the disputed domain name is confusingly similar to the JACQUEMUS trademark as it incorporates this mark entirely followed by a hyphen and the term “outlet”. Where 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

In light of the above, the Panels is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. In the instant case, the Complainant did not license its trademark to the Respondent, nor authorized the Respondent to incorporate its trademark in a domain name. The Respondent is not affiliated with the Complainant, nor has a business or other kind of relationship with it. Nothing in the case file shows that the Respondent is commonly known by the disputed domain name.

The Panel further notes that the Respondent uses the disputed domain name to promote the sale of apparel and accessories, *i.e.*, goods in competition with those sold by the Complainant under its JACQUEMUS trademark. Although the Complainant’s trademark is not displayed on the website accessible through the disputed domain name, such website is in French, which is the language of the country of origin of the Complainant. This circumstance, along with the fact that the disputed domain name identically reproduces the Complainant’s trademark together with the term “outlet” which is a term that can be related to the Complainant’s business, are likely to mislead Internet consumers and induce them to believe that the disputed domain name is associated to the Complainant. Therefore, the Panel finds that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In view of the above, the Panel is satisfied that also the second condition under the Policy is met.

C. Registered and Used in Bad Faith

To succeed under the Policy, a complainant must show that a domain name has been both registered and is being used in bad faith.

In relation to registration in bad faith, the Panel finds that it is likely that that the Respondent was aware of the Complainant’s trademark and of its business when it registered the disputed domain name. As confirmed by previous UDRP decisions, the JACQUEMUS mark is highly distinctive and enjoys reputation in the clothing field (see *Jacquemus SAS v. Jian Qiu*, WIPO Case No. [D2022-3214](#) (<jacquemus-de.xyz>); *Jacquemus SAS v. Contact Privacy Inc. Customer 1245862480 / Jacob Inch*, WIPO Case No. [D2019-3144](#) (<jacquemusjewelry.com>). The disputed domain name leads to a website offering for sale goods in competition with those sold by the Complainant under the JACQUEMUS trademark. Furthermore, the Respondent’s website is in French, the language of the country of origin of the Complainant, despite the Respondent being from the United States. All these circumstances indicate that the Respondent was fully aware of the Complainant and of its JACQUEMUS trademark when it registered the disputed domain name

and that the Respondent registered the disputed domain name precisely because he was aware of the reputation and goodwill associated with this mark. In addition, UDRP panels have consistently found that the incorporation of a well-known trademark into a domain name by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

With respect to use in bad faith, the Panel notes that the disputed domain name is being used to resolve to a website offering for sale goods in competition with those sold by the Complainant under its JACQUEMUS trademark. The Respondent is therefore targeting the Complainant and its business by using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark.

In light of the above, the Panel finds that the Complainant has successfully proved that the disputed domain name was registered and is being used in bad faith. Accordingly, the third and last condition under the Policy is also 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, <jacquemus-outlet.com>, be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: February 23, 2023