

## ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. 飞航 傅

Case No. D2023-0189

### 1. The Parties

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

Respondent is 飞航 傅, China.

### 2. The Domain Name and Registrar

The disputed domain name <jacquemise.com> (“Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 7, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on February 10, 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**

Complainant is a French company which manufactures and markets clothing and fashion accessories since 2013 under the trademark JACQUEMUS. Complainant's products are sold in 50 different countries around the world. Complainant is the owner of JACQUEMUS trademarks around the world, including:

- The International Trademark Registration no. 1211398 JACQUEMUS (word), registered on February 5, 2014, for goods in international classes 9, 18 and 25, designating China;
- The International Trademark Registration no. 1513829 JACQUEMUS (word), registered on November 19 2019, for goods in international classes 14, 24 and 28, designating China; and
- The European Union Trademark Registration no. 018080381 JACQUEMUS (word), registered on October 18, 2019, for goods in international classes 14, 24 and 28.

Complainant is also the owner of the domain name <jacquemus.com>, registered in 2010.

The Domain Name was registered on December 31, 2021 and leads to a website ("the Website") purporting to offer for sale Complainant's products at a very low price.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name, and the prices at the Website are considerably lower, which leads Complainant to believe, per Complaint, that these are counterfeit products.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

##### **A. Identical or Confusingly Similar**

The Domain Name incorporates the dominant feature of Complainant's JACQUEMUS trademark. Therefore, the Panel finds that Complainant's trademark remains recognizable within the Domain Name. This is sufficient to establish confusing similarity.

Furthermore, the word "remise" which means sale in French, do not avoid a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8).

The generic Top-Level-Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to Complainant’s JACQUEMUS trademark.

Complainant has established Policy, paragraph 4(a)(i).

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name was used to host the Website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the Website originate from Complainant. Such use demonstrates neither a *bona fide* offering of goods nor a legitimate interest of Respondent.

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and (iv) respondent must not try to “corner the market” in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The Domain Name falsely suggests that the Website is an official site of Complainant or of an entity affiliated to or endorsed by Complainant. The Website extensively reproduces, without authorization by Complainant, Complainant’s trademark without any disclaimer of association (or lack thereof) with Complainant.

Furthermore, the use of a domain name for impersonation can never confer rights or legitimate interests on a respondent. See section 2.13.1 of the [WIPO Overview 3.0](#).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to 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) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

The content of the Website gives the impression that it originates from Complainant, prominently displaying the JACQUEMUS trademark, and purports to offer for sale products bearing Complainant’s trademark at much lower prices than the official ones, thereby giving the false impression that the Website emanates from Complainant and is a discounted / outlet version of Complainant. This clearly shows the registration and use in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry, and therefore registered the Domain Name in bad faith (*Safepay Malta Limited v. ICS Inc*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name is employed to host the Website which appeared falsely to be that of Complainant.

The Domain Name has been operated by intentionally creating a likelihood of confusion with Complainant’s trademark and business. This further supports the finding of bad faith use (*Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#) and [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

Under these circumstances and on this record, the Panel finds that Respondent registered and is using the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

## 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 Domain Name, <jacqueremise.com>, be transferred to Complainant.

*/Marina Perraki/*

**Marina Perraki**

Sole Panelist

Date: February 24, 2023