

## **ADMINISTRATIVE PANEL DECISION**

Strellson AG v. Qibao Chen

Case No. D2023-0347

### **1. The Parties**

The Complainant is Strellson AG, Switzerland, represented by Leo Schmidt-Hollburg Witte & Frank, Germany.

The Respondent is Qibao Chen, China.

### **2. The Domain Name and Registrar**

The disputed domain name <fashionjoop.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2023. On January 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 2023, 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 January 31, 2023, 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 in English on February 2, 2023.

On January 31, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on February 2, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on March 7, 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, Strellson AG, is a fashion and lifestyle company that markets its products under the trade mark JOOP. The Complainant promotes its business at “www.joop.com”.

The Complainant has an extensive global portfolio of JOOP trade marks, including the following:

- European Union Trade Mark Registration No. 013083852 for JOOP in Classes 4, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 27, 34, 35 and 42, registered on February 3, 2015;
- European Union Trade Mark Registration No. 007550007 for JOOP! STORE in Classes 18, 25 and 35, registered on September 15, 2009; and
- European Union Trade Mark Registration No. 009222142 for JOOP! in Classes 4, 9, 11, 14, 16, 18, 20, 21, 24, 25, 27, 34 and 42, registered on December 10, 2010.

At the time of filing of the Complaint, the disputed domain name resolved to an online store displaying the Complainant’s trade marks and seemingly offered for sale the Complainant’s products, possibly with the purpose of obtaining credit card and contact information from unsuspecting Internet users. At the time of this decision, the disputed domain name no longer resolves to an active website.

#### **5. Parties’ Contentions**

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

The Complainant asserts that it has prior rights in the JOOP trade marks and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain name registered by the Respondent is confusingly similar to the Complainant’s JOOP trade marks.

Furthermore, the Complainant argues that the addition of the completely descriptive and indistinctive term “fashion” is insufficient to distinguish the disputed domain name from the Complainant’s JOOP trade marks.

The Complainant asserts that it has not authorized the Respondent to use any of its JOOP or JOOP-composite marks, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant presents evidence suggesting that the disputed domain name was used to operate an online shop that seems to have been created with the purpose of fishing for credit card information, and claims that it is implausible that the Respondent registered the disputed domain name in good faith, and as such, any use of the disputed domain name must be in bad faith.

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

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

## 6. Discussion and Findings

### 6.1. Preliminary Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that “[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting *inter alia* that:

- the disputed domain name consists of Latin letters and resolved to an English website, which suggests that the Respondent can understand English;
- the Complainant is not familiar with the Chinese language; and
- to proceed in Chinese, the Complainant would have to retain the services of a translator which would result in costs that would probably be higher than the overall costs of the proceeding, and would unnecessarily delay the proceeding.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

Considering the circumstances of this case, the Panel has determined that the language of the proceeding shall be English, and as such the Panel has issued this decision in English. The Panel further finds that such determination should not cause any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

### 6.2. Substantive Issues: Three Elements

#### A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the JOOP trade mark.

Disregarding the generic Top-Level Domain (“gTLD”) “.com”, the disputed domain name incorporates the Complainant’s trade mark JOOP in its entirety.

According to the Cambridge Dictionary, the word “fashion” means “a style that is popular at a particular time, especially in clothes, hair, make-up, etc.” Regardless of the nature, the additional word does not prevent a finding of confusing similarity pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the JOOP trade mark and in showing that the disputed domain name is confusingly similar to its mark.

#### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been made out, the respondent bears the burden of producing evidence in support of its 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.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, the Respondent has not shown that prior to the notice of the dispute, he or she has used or has demonstrated his or her preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence showing that the Respondent has been commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Furthermore, given the composition of the disputed domain name, which combines the Complainant's trade mark with the term "fashion" descriptive of its retail services, the disputed domain name carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark 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) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the JOOP trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name and ultimately, given the use of the disputed domain name, it is clear the Respondent was aware of the Complainant and intentionally targeted the Complainant when registering the disputed domain name.

In light of the foregoing facts, there are no plausible good faith reasons for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances. The Panel considers that the prior use of the disputed domain name for a website displaying the Complainant's trade marks and purportedly offering for sale the Complainant's products, possibly with the purpose of obtaining credit card and contact information from unsuspecting Internet users, constitutes bad faith under paragraph 4(b)(iv) of the Policy. But while the disputed domain name no longer resolves to an active website, the doctrine of passive holding provides that the non-use of a domain name does not necessarily prevent a finding of bad faith. Accordingly, given the prior bad faith use of the disputed domain name and the implausibility of any good faith use of the disputed domain name, the current passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith.

## **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 <fashionjoop.com> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: March 21, 2023