

ADMINISTRATIVE PANEL DECISION

J.C. Penney Corporation Inc. and J.C. Penney Purchasing Corporation v.
Nanci Nette
Case No. D2023-1032

1. The Parties

The Complainants are J.C. Penney Corporation Inc., United States of America (“United States”) and J.C. Penney Purchasing Corporation, United States, both represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Nanci Nette, United States.

2. The Domain Name and Registrar

The disputed domain name <jcpccloud2.net> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 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 (REDACTED FOR PRIVACY, Dynadot Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainants on April 9, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on March 13, 2023.

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 March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2023.

The Center appointed Kathryn Lee as the sole panelist in this matter on April 14, 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 Complainants are an apparel and home furnishing retailer in the United States founded in 1902. As of February 2020, the Complainants operate 846 departments stores under the name JCPENNEY in the United States and Puerto Rico. In 2019, the Complainants reported total net sales of USD 10,716 million. In addition to JCPENNEY, the Complainants use the JCP mark in connection with the retail business, including as a symbol in the New York Stock Exchange, on social media sites, and as a domain name, <jcp.com>. The Complainants own trademark registrations for the JCP mark in a number of jurisdictions including Reg. No. 006280722 in Brazil (registered on April 10, 1976) and Reg. No. 4913488 in the United States (registered on March 8, 2016).

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on June 27, 2018 and does not resolve to any website with any content.

5. Parties' Contentions

A. Complainant

The Complainants contend that the disputed domain name is confusingly similar to the JCP trademark in which the Complainants have rights. The Complainants explain that the disputed domain name incorporates the Complainants' trademark as a whole, and merely adds "cloud2" which is a generic term and does not negate the confusing similarity between the disputed domain name and the Complainants' trademark.

The Complainants also contend that the Respondent has no rights or legitimate interests in the disputed domain name and confirm that they have not authorized or licensed rights to the Respondent in any respect. The Complainants further contend that there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

Finally, the Complainants contend that the disputed domain name was registered and is used in bad faith. The Complainants argue that the disputed domain name is confusingly similar to the Complainants' famous mark and therefore is on its own a strong implication of bad faith. The Complainants also point out that the Respondent has at one point redirected visitors to the disputed domain name to the Complainants' website. The Complainants argue that this demonstrated the Respondent's knowledge and aware of the Complainants, as well as the Respondent's nefarious intent to capitalize on the fame and goodwill of the Complainants' trademark. The Complainants also argue that that there is the risk that the Respondent may at any time redirect the disputed domain name to another website that is not a website of, or associated with the Complainants. Further, the Complainants argue that although the disputed domain name currently does not resolve to any active site, passive holding does not prevent a finding of bad faith, and that the Respondent's current offer to sell the disputed domain name is further evidence of the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainants have demonstrated with supporting evidence that they have rights to the trademark JCP. As for the disputed domain name, it consists of “jcp” combined with the term “cloud2”. According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, a domain name is considered confusingly similar to a trademark if it “incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name.” In this regard, the Complainants’ mark is readily recognizable within the disputed domain name, and therefore, the disputed domain name is confusingly similar to the Complainants’ trademark. The additional term “cloud2” does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

For the reasons mentioned above, the Panel finds that the first element has been established.

B. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainants have made the required allegations to support a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been established, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. However, the Respondent in this case has chosen to file no Response to these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

D. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

First of all, the registration of the disputed domain name which is confusingly similar to the Complainants’ trademark JCP, by an entity which is not affiliated with the Complainants, creates a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4), and the Respondent at one point redirected the disputed domain name to the Complainants’ own website, which strongly suggests that the Respondent knew of the Complainants and its trademark at the time of the registration of the disputed domain name and that it was targeting the Complainants’ trademark. Not only that, UDRP Panels have found that redirecting a domain name to the complainant’s website can establish bad faith as the respondent retains control over the domain name and therefore creates a real or implied ongoing threat to the complainant (see [WIPO Overview 3.0](#), section 3.1.4).

The disputed domain name does not currently display any content, but from the inception of the UDRP, UDRP panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see [WIPO Overview 3.0](#), section 3.3).

Further, records show that the Respondent has been the respondent in a number of past UDRP cases, the vast majority of which decided that the Respondent registered and used the domain names in bad faith. This demonstrates the Respondent’s pattern of conduct of preventing a trademark holder from reflecting its mark in a domain name (e.g., *Volvo Trademark Holding Aktiebolag v. Nanci Nette*, WIPO Case No. [D2022-0299](#), *Montage Hostels & Resorts, LLC v. Nanci Nette*, WIPO Case No. [D2020-3145](#), *Majid Al Futaim Properties LLC c. Nanci Nette*, WIPO Case No. [D2022-4104](#), etc.) (see [WIPO Overview 3.0](#), section 3.1.2).

Therefore, with no explanation to the contrary from the Respondent, the Panel finds that the Respondent more likely than not registered the disputed domain name with knowledge of the Complainants and their

trademark in order to unfairly profit from the likelihood of association with the Complainants' trademark and the products using the trademark.

For the reasons given above, the Panel finds that the third element has been established.

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, <jcpcloud2.net> be transferred to the Complainants.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: April 28, 2023