

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Jucaibangxinxikejiyouxiangongsi
Case No. D2023-1164

1. The Parties

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

The Respondent is Jucaibangxinxikejiyouxiangongsi, China.

2. The Domain Name and Registrar

The disputed domain name <jacquemus.top> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2023. On March 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 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, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 20, 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 amended Complaint on March 22, 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 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on May 1, 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 the year 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 February 6, 2023. According to the Complaint, the disputed domain name initially lead to a website on which were sold jewels and after the sending of a cease and desist letter on February 22, 2023, the Respondent changed the available content and then it was an adult-oriented and sexual-themed website that offers to sell commercial sexual dolls (as evidenced in annex 9 of the Complaint). The disputed domain name is currently not in use.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its trademarks.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the 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 such domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4. To the contrary, the disputed domain name has been associated with commercial use, initially being used to allegedly offer for sale jewelry and now adult-oriented content and sex toys. Lastly, the current non-use of the disputed domain name clearly does not represent any *bona fide* offering.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Complainant is known worldwide in the fashion industry, and its designer Simon Porte Jacquemus, has won several accolades, including being named Finalist of the 2014, LVMH Prize and winning the 2015 Special Jury LVMH Prize and the 2017 Fashion Director's Choice Award at the Elle Style Awards (*JACQUEMUS SAS v. Contact Privacy Inc. Customer 0155835558 / Rimk Le Boss Binks, Jacquemus Ventes Privees*, WIPO Case No. [D2019-2765](#)).

The disputed domain name was registered after Complainant's trademarks had been registered.

According to the Complaint, the disputed domain name initially lead to a website on which were sold jewels. However, further to the cease and desist letter sent on February 22, 2023, the Registrant changed the available content and then it was an adult-oriented and sexual-themed website that offers to sell commercial sexual dolls.

Respondent therefore knew Complainant, and had registered the disputed domain name, which entirely reproduces the JACQUEMUS trademark, to create a likelihood of confusion with Complainant's trademarks and thus as to the source of the website.

Panels have held that the use of the complainant's mark as part of domain name offering pornographic goods and services tarnishes mark and is evidence of bad faith (*America Online, Inc. v. Viper*, WIPO Case No. [D2000-1198](#)).

Therefore the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In addition, the disputed domain name is currently not in use. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

Lastly, the Panel notes that not only does the Respondent appear to have engaged in the use of privacy service to mask its details on the publicly-available WhoIs, but the details later disclosed by the Registrar are clearly fictitious, with the courier being unable to deliver the Center's written communication.

Based on the available record, the Panel finds the third element of the Policy 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, <jacquemus.top>, be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: May 15, 2023.