

## **ADMINISTRATIVE PANEL DECISION**

Jacquemus SAS v. wendi bristole  
Case No. D2023-2665

### **1. The Parties**

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

The Respondent is wendi bristole, France.

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

The disputed domain name <jacquemus-outlet.org> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2023. On June 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 22, 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 June 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 July 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on August 17, 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**

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a French company manufacturing and selling clothing and fashion accessories under the trade mark JACQUEMUS, in fifty countries. The Complainant was established in 2013.

The Complainant is the owner of several trade marks for JACQUEMUS including the following:

- French trade mark JACQUEMUS registered from December 24, 2013 under No. 4057016 in classes 9, 18 and 25; and
- International trade mark JACQUEMUS registered from February 5, 2014 under No. 1211398 in classes 9, 18 and 25.

The Complainant is also the owner of domain names reflecting its trade mark including <jacquemus.com>.

Apart from the details of the Respondent as disclosed by the Registrar in the verification response disclosing registrant and contact information for the disputed domain name, the Panel notes that the Respondent has already been put on notice by the Complainant in relation to the infringement of the Complainant's rights in the context of a separate domain name and in this context, the Respondent responded to the Complainant on June 3, 2023, acknowledging that it was infringing the Complainant's rights and undertaking to cease infringing the Complainant's rights in the future.

The disputed domain name was registered on June 6, 2023.

The disputed domain name points to a website impersonating the Complainant and mimicking its trade mark and official website. The website to which the disputed domain name points contains a pop up window inviting users to enter their telephone number to register.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the JACQUEMUS trade mark in which the Complainant has rights as the disputed domain name incorporates the entire JACQUEMUS trade mark with the mere addition of the term "-outlet" which does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant represents that it has not granted any license or authorization to the Respondent to use its JACQUEMUS trade marks and that the fact that the disputed domain name points to a website which is a copycat of the Complainant's official website cannot be considered as a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that the Respondent registered the disputed domain name in bad faith as the JACQUEMUS trade mark has acquired extensive and worldwide reputation and should thus be considered as well-known. The Complainant adds that the fact that the Respondent uses the disputed domain name to point to a website mimicking the official website of the Complainant is indicative of bad faith use. The Complainant also points to previous communications relating to another domain name where the Respondent acknowledged that it was infringing the Complainant's rights.

## B. Respondent

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

## 6. Discussion and Findings

### 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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the JACQUEMUS trade mark is reproduced within the disputed domain name.

Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of another term here, "-outlet", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trade marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 disputed 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 name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Here there is no indication that the Respondent is known by the disputed domain name. In addition, the use of the disputed domain name and associated website to fraudulently impersonate the Complainant cannot qualify as either use of the disputed domain name (or demonstrable plans for such use) with a *bona fide* offering or a legitimate noncommercial fair use.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel finds that the Respondent, at the time of registration of the disputed domain name, would have been aware of the Complainant's trade mark JACQUEMUS fully reproduced in the disputed domain name given (i) the reputation of the JACQUEMUS trade mark, (ii) the addition to the Complainant's trade mark in the disputed domain name of the targeted term "outlet" which is relevant to the Complainant's business activity and (iii) the fact that the Respondent emailed the Complainant three days before registering the disputed domain name acknowledging that the Respondent was infringing the Complainant's rights in the context of another domain name.

As for use of the disputed domain name, the disputed domain name points to a website impersonating the Complainant, mimicking the Complainant's official website and containing a pop up window inviting users to enter their telephone number to register.

On this basis, the Panel finds that, as per paragraph 4(b)(iv) of the Policy, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's website or location.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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-outlet.org> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: August 31, 2023