

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Iara Yteu

Case No. D2023-2724

1. The Parties

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

The Respondent is Iara Yteu, France.

2. The Domain Name and Registrar

The disputed domain name <jacquemus.net> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details, and indicating that the language of the Registration Agreement is English.

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 the Respondent of the Complaint, and the proceedings commenced on July 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2023.

On July 5, 2023, the Registrar informed the Center that the language of the registration agreement is actually French. The Panel informed the Parties on July 12, 2023.

The Center appointed Elise Dufour as the sole panelist in this matter on August 8, 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 has manufactured and marketed clothing and fashion accessories under the trademark JACQUEMUS. Those products are known worldwide in the fashion industry, including for the quality and originality of its creations; and Simon Porte Jacquemus, its designer, is considered to be one of the most important designers in the fashion industry.

JACQUEMUS products are sold in 50 different countries around the world.

The Complainant is the proprietor of many registered trademarks around the world, including notably the following ones:

- French trademark No. 4057016 JACQUEMUS, registered on December 24, 2013, in classes 9; 18; 25 and duly renewed;
- International trademark No. 1211398 JACQUEMUS registered on February 5, 2014, in Classes 9,18, and 25,
- European Union trademark No. 018080381 JACQUEMUS registered on June 11, 2019, in classes 14, 24 and 28.

In addition, the Complainant owns various domain names that contain the trademark JACQUEMUS and notably the domain name <jacquemus.com> registered in 2010.

The disputed domain name was registered on June 14, 2023 and used to resolve to a website impersonating the Complainant's official website. It now resolves to a parked page of a web hosting provider.

5. Parties' Contentions

A. Complainant

The Complainant contends that (i) the disputed domain name is confusingly similar to the Complainant's trademarks; (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and (iii) the Respondent registered and is using the disputed domain name in bad faith.

- (i) For the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark. The disputed domain name differs from the Complainant's trademark only by the addition of the letter "s" in the middle of the trademark. For the Complainant, the addition of the letter "s" constitutes typosquatting and does not prevent a finding of confusing similarity. As per the addition of the generic Top-Level-Domain ("gTLD") ".net", the Complainant stresses that it should not be taken into account to assess the likelihood of confusion between the signs as it is technically required.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to register and/or use any domain name incorporating the trademarks. The Complainant has not granted any license, nor any authorization to use the trademarks, included as a domain name or for setting up a website selling the Complainant's products. Moreover, the Respondent has not made a legitimate noncommercial or a fair use of the disputed domain name. Indeed, the disputed domain name pointed out to a website which is a "copycat" of the Complainant's official website and does not provide a disclaimer regarding the lack of affiliation with the Complainant. The fact the Respondent is benefiting, either directly or indirectly, from wrongly associating himself with the Complainant establishes that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent's use does not qualify as *bona fide* offer of goods and services.

- (iii) For the Complainant, the disputed domain name was registered and is being used in bad faith. The Complainant's trademark registrations pre-date the registration of the disputed domain name. In addition, the Complainant stresses that the Complainant's trademark has acquired extensive and worldwide reputation and should thus be considered as well-known. Hence, the choice of the disputed domain name cannot be a mere coincidence, but on the contrary seems to have been done on purpose to generate a likelihood of confusion with the Complainant's trademark.

As per the use of the disputed domain name, the Complainant contends that the website linked to the disputed domain name is copying the Complainant's official website which constitutes bad faith. The disputed domain name has been used to take advantage of the reputation of the Complainant's trademark in order to sell products which origin and authenticity are questionable. In this context, the registration of the disputed domain name has been done in bad faith. In addition, the Complainant states that the Respondent is using a "Whois protection service" showing the Respondent's willingness to remain anonymous, which demonstrates his bad faith. Finally, the Complainant stresses that there is no address and no legal information regarding the company operating the website, which constitutes additional proof of use in bad faith, as the Respondent tries to hide his identity.

B. Respondent

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

6. Discussion and Findings

6.1 Language of proceedings

The language of the registration agreement for the disputed domain name is French.

Paragraph 11(a) of the Rules provide: "Unless otherwise agreed by the Parties or specified otherwise in the Registration Agreement, the language of the 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 proceedings."

On July 12, 2023, the Center notified the Respondent in English and in French and invited the Respondent to reply in either French or English to this request by July 23, 2023, and warning that should the Respondent fail to respond by that date, the Center would assume that the Respondent had no objection to proceeding in English and that the Center would conduct the proceeding in English and French, subject to the Panel's ultimate determination. The Respondent failed to respond or to object to the conduct of the proceedings in English.

Given that the Complaint has been made in the English language, and that the Respondent has failed to respond to any of the Center's communications (issued also in French) or to the Complaint, the Panel considers that the proceeding of this matter should be conducted in English in order to avoid delays in the processing of the case and additional costs to the Complainant.

6.2 Discussion and findings

In the absence of any response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- i) the disputed 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 the disputed domain name; and
- iii) the disputed domain name was registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the JACQUEMUS trademark. The Panel is satisfied that the Complainant has established its ownership of the trademark JACQUEMUS.

The disputed domain name incorporates the Complainant's trademark JACQUEMUS with a typo by adding the letter "s". The Respondent's addition of the letter "s" is an example of an intentional misspelling of a trademark that results in a domain name that is confusingly similar to the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.9; see also, e.g., *Credit Suisse Group v. John Alli*, WIPO Case No. [D2004-0637](#), (finding confusingly similar to the CREDIT SUISSE mark); and *ZipRecruiter, Inc. v. Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2019-2969](#) (finding confusing similar to the ZIPRECRUITER mark).

Finally, the applicable gTLD ".net" in the disputed domain name is considered a standard technical registration requirement and, as such, is generally disregarded under the first element confusing similarity test (see section 1.11.1, [WIPO Overview 3.0](#)).

Thus, the Panel finds that the disputed domain name is confusingly similar to the Complainant's JACQUEMUS trademark.

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

The burden of proof is on the Complainant to demonstrate a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a *prima facie* case, the burden of production then shifts to the Respondent, which has to then demonstrate rights or legitimate interests in the disputed domain name.

On the basis of the submitted evidence, the Panel considers that the Complainant has successfully established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name: the Respondent is not commonly known under the disputed domain name, nor owns any registered rights on the disputed domain name nor has been authorized by the Complainant to use the prior trademarks in any way.

The Panel does not find any indications that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or has rights or legitimate interests in any other way in the disputed domain name. On the contrary, the disputed domain name previously directed to a website impersonating the Complainant's website, which cannot amount to a legitimate noncommercial or fair use of the disputed domain name.

Therefore, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Given these circumstances the Panel finds that the second element of the Policy has been satisfied.

C. Registered and Used in Bad Faith

In regard to the registration of the disputed domain name, the Panel considers it is unlikely that, at the time

of the registration of the disputed domain name, the Respondent did not know about the JACQUEMUS trademark.

Indeed, given the fact that the Complainant's trademarks are well-known in the fashion industry, the Respondent cannot credibly claim to have been unaware of the existence of the previous trademarks (see section 3.2.2 of the [WIPO Overview 3.0](#)) and previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

As for the use of the disputed domain name in bad faith, given the circumstances described in the Complaint, the documentary evidence provided by the Complainant, and the brief verification carried out by the Panel of the website associated with the disputed domain name, the Panel is satisfied that the disputed domain name is used in bad faith.

Indeed, the Complainant provided evidence that the website to which the disputed domain name used to resolve clearly tried to create a likelihood of confusion with the Complainant's trademark.

Taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

In addition, the Respondent obscured its identity and failed to reply to communications from the Complainant and the Center, and the Respondent has not submitted a response offering legitimate reasons for registering and holding the disputed domain name based on the Complainant's globally known trademark.

Therefore, the Panel finds that the requirement of registration and use in bad faith is satisfied, according to the 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 disputed domain name, <jacquemus.net> be transferred to the Complainant.

/Elise Dufour/

Elise Dufour

Sole Panelist

Date: August 22, 2023