

ADMINISTRATIVE PANEL DECISION

JOTT MARKET & DISTRIBUTION v. Jerry Braxton

Case No. D2023-3865

1. The Parties

The Complainant is JOTT MARKET & DISTRIBUTION, France, represented by Fidal, France.

The Respondent is Jerry Braxton, United States of America.

2. The Domain Name and Registrar

The disputed domain name <jott-boutique.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 15, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 15, 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 (No information provided) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 on September 21, 2023.

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 of the Complaint, and the proceedings commenced on October 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 23, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on October 31, 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 sells since 2010 clothing and fashion accessories for men, women and children in particular under the trademark JOTT. The Complainant has more than 1500 points of sale in France and abroad.

It results from the Complainant's documented allegations, which remained undisputed, that it holds a large portfolio of trademarks containing or consisting of the verbal element JOTT. In particular, the Complaint is based on International Trademark **JOTT**, no 1712870, registered with priority of April 12, 2022, for goods and services in classes 18, 25 and 35, with protection granted amongst others for the European Union.

The disputed domain name was registered on August 21, 2023. The language of the Registration agreement is English.

The Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website which mimics the Complainant's website by offering apparel under the JOTT trademark and using the Complainant's photos and (in part) text.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant contends that the disputed domain name is at least confusingly similar to the Complainant's mark. Indeed, it reproduces said mark identically and at the beginning of the disputed domain name. The addition of the term "boutique" which is generic in the field of retail does not distinguish the disputed domain name from the Complainant's trademark.

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name. Neither is the Respondent commonly known under the disputed domain name nor is it offering a *bona fide* offer of product or services. The Complainant further believes the goods offered for sale on the website are counterfeits as the Respondent has not been authorized to sell the Complainant's goods under the trademarks JOTT and has not been authorized to set up the website. In fact, the Complainant has not authorized, licensed, permitted or otherwise consent to the Respondent's use of the trademark JOTT in the disputed domain name nor website and has no relationship with the Respondent.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. The website available under the disputed domain name reproduces without any authorization the Complainant's trademarks JOTT. Said trademark appears identically on the Respondent's website. A comparison of the Complainant's website and the Respondent's website clearly shows that the latter identically reproduces the Complainant website's architecture, photos, looks, sentences and feel. The Respondent uses the disputed domain name to attract consumers to a website that promotes the same products as those offered by the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 has been registered and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will, therefore, proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of International Trademark, **JOTT** No. 1712870, registered with priority of April 12, 2022 and with protection granted amongst others for the European Union.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark for purposes of the first element where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element (*cf.* section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). This Panel shares the same view and notes that the disputed domain name contains the Complainant’s registered trademark identically, which is placed at the beginning of the disputed domain name. In particular, the Panel considers the addition of the term “-boutique” to the Complainant’s trademark in the disputed domain name would not prevent a finding of confusing similarity under the first element. The Panel has no doubts that in a side-by-side comparison of the disputed domain name and the relevant trademark, the latter mark remains clearly recognizable within the disputed domain name, not least because of its separation by a hyphen from the second element “boutique”.

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests to the disputed domain name.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name:

Firstly, it results from the Complainant's undisputed allegations that the disputed domain name resolves to a website which mimics the Complainant's website by offering apparel under the JOTT trademark and using the Complainant's photos and (in part) text. According to the Complaint, which has remained unchallenged, the Complainant has neither authorized said use of the trademark JOTT nor registration of the disputed domain name comprising said mark entirely. In the Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that a registrant has no legitimate interest in a domain name that identically includes to a third party's mark, where the composition of the domain name is associated to the business of the trademark holder, and that is being used to address consumers in the same business as the trademark holder operates ([WIPO Overview 3.0](#) at section 2.5).

Secondly, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Thirdly, the Panel assesses such use as described above as being commercial, so that it cannot be considered a legitimate, noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy.

Finally, previous UDRP panels have found that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. It results from the Complainant's documented allegations that the disputed domain name resolves to a website which mimics the Complainant's website by offering apparel under the JOTT trademark and using the Complainant's photos and (in part) text. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's JOTT mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name, having registered it due to its similarity with the Complainant's JOTT mark. Registration of the disputed domain name which contains a third party's mark, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand which are:

- (i) the Respondent's failure to submit a response;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the implausibility of any good faith use to which the disputed domain name may be put;
- (iv) the Respondent trying to hide his identity by not providing contact data and
- (v) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the Center's inability to deliver the Center's written communications by email and fax and the courier's inability to deliver under the address provided.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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, <jott-boutique.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: November 14, 2023