

ADMINISTRATIVE PANEL DECISION

JCB Co., Ltd. v. bu dele
Case No. D2023-4082

1. The Parties

The Complainant is JCB Co., Ltd., Japan, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America.

The Respondent is bu dele, China.

2. The Domain Names and Registrar

The disputed domain names <giftjcb.co>, <giftjcb.store>, <jcbcard.online>, and <jcbshop.online> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2023. On September 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 29, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 October 6, 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 proceeding commenced on October 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 30, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on November 15, 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

A. Complainant

The Complainant is a company founded in 1961 and headquartered in Japan.

The Complainant provides a wide range of credit card, debit card, prepaid card, and gift card services to customers in Japan and worldwide under the trade mark JCB (the "Trade Mark") or JCB-formative trade marks like JCB CARD under United States of America registration No. 3,080,016.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including Japanese registration No. 5,656,971 for JCB エクセ, with a registration date of March 14, 2014; Chinese registration No. 175,373 for JCB, with a registration date of April 15, 1983.

B. Respondent

The Respondent is apparently located in China.

C. The Disputed Domain Names

The disputed domain name <jcbcard.online> was registered on July 14, 2023; and the disputed domain names <giftjcb.co>, <giftjcb.store>, and <jcbshop.online> were registered on July 17, 2023.

D. Use of the Disputed Domain Names

The disputed domain names were previously resolved to Japanese language websites offering gift cards (the "Websites").

As at the date of this Decision, the disputed domain names are no longer resolved to any active websites.

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 names.

Notably, the Complainant contends that the disputed domain names have been used, without the authorisation or approval of the Complainant, for commercial gain, by attracting Internet users to the Websites, which offered gift cards in competition with those provided by the Complainant under the Trade Mark for many years.

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 Trade Mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical and confusingly similar to both the Trade Mark and the JCB CARD trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "gift", "card", and "shop") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark 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 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 the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. Rather, the disputed domain names were previously resolved to the Websites, offering competing commercial services to those of the Complainant, which cannot confer rights or legitimate interests upon the Respondent.

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 light of the manner of the Respondent's use of the disputed domain names referred to above, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy. While the disputed domain names no longer resolve to active website, given the prior use, the identical and confusingly similar nature of the disputed domain names, and the lack of response from the Respondent, the current passive holding of the disputed domain names does not prevent a finding of bad faith, pursuant to [WIPO Overview 3.0](#), section 3.3.

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 names <giftjcb.co>, <giftjcb.store>, <jcbcard.online>, and <jcbshop.online> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: November 29, 2023