

ADMINISTRATIVE PANEL DECISION

JD Sports Fashion Plc v. KAY KAY
Case No. D2023-4632

1. The Parties

The Complainant is JD Sports Fashion Plc, United Kingdom (“UK”), represented by Haseltine Lake Kempner LLP, United Kingdom.

The Respondent is KAY KAY, United States of America.

2. The Domain Name and Registrar

The disputed domain name <jdsports.vip> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 13, 2023. On November 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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 (REGISTRATION PRIVATE) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 November 16, 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 November 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 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

The Complainant is a major retailer of sports and casual wear, including footwear, based in the UK with over 900 stores across 21 territories worldwide. The Complainant was incorporated in 1985 and subsequently changed its corporate name to JD Sports Fashion Plc in 2008.

The Complainant holds several domain names containing the terms JD SPORTS, among them <jdsports.co.uk> which was registered in 1997 and hosts its website.

The Complainant owns trademark registrations for JD SPORTS in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
JD SPORTS	European Union	008182611	December 13, 2011	9, 14, 18, 25, 28, 35, 36
JD SPORTS	United Kingdom	00908182611	December 13, 2011	9, 14, 18, 25, 28, 35, 36

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on June 29, 2023.

According to the evidence submitted with the Complaint, the disputed domain name resolves to a website offering sport clothing and footwear and replicating the Complainant's French website, including the Complainant's trademark and taglines.

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 as follows:

The disputed domain name is identical to the JD SPORTS trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the generic Top-Level Domain (gTLD), ".vip" has to be disregarded.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark JD SPORTS has been extensively used to identify the Complainant and its products and services. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. To the contrary, the website posted under the disputed domain name reproduces the Complainant's trademark and its layout replicates the Complainant's French website, including the Complainant's taglines.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark JD SPORTS at the time it registered the disputed domain name.

Respondent is using the disputed domain name in bad faith to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with the Complainant and its JD Sports Marks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name or of goods/services provided through the disputed domain name (para.4(b)(iv) UDRP Policy).

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (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.

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 reproduced within the disputed domain name.

The addition of the gTLD ".vip" in the disputed domain name is a standard registration requirement and as such is disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Complainant has shown that the website posted under the disputed domain name impersonates the Complainant, by replicating the Complainant's French website, including the Complainant's trademark and taglines to offer the same type of products as the Complainant. Panels have held that the use of a domain name for illegal activity such as here impersonating the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In addition, the Panel finds that the nature of the disputed domain name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the view of the Panel, noting that that the Complainant's trademark predates the registration of the disputed domain name, that the Complainant's trademark is reproduced in its entirety within the disputed domain name, and considering that the disputed domain name resolves to websites featuring the Complainant's trademark and taglines, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The impression given by this website would cause consumers to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website in the sense of Policy, paragraph ¶ 4(b)(iv).

Moreover, panels have held that the use of a domain name for illegal activity such as in the present case impersonating the Complainant 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 that the Complainant has established the third element of the Policy with regard to the disputed domain name.

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, <jdsports.vip> be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: December 26, 2023