

## ADMINISTRATIVE PANEL DECISION

Kybun Joya Retail AG v. Zhang Qiang  
Case No. D2024-0824

### 1. The Parties

The Complainant is Kybun Joya Retail AG, Switzerland, represented by Ebrand Services, Poland.

The Respondent is Zhang Qiang, China.

### 2. The Domain Names and Registrar

The disputed domain names <chaussuresjoya.com>, <joyaamsterdam.com>, <joyaargentina.com>, <joyaaustralia.com>, <joyabordeaux.com>, <joyaboty.com>, <joya-brussels.com>, <joyachaussuressuisse.com>, <joyacipo.com>, <joyacolombia.com>, <joyadebrasil.com>, <joyadubaimall.com>, <joyadublin.com>, <joyafootwearuk.com>, <joyahrvatska.com>, <joyajapan.com>, <joyaleón.com>, <joyamagyarországon.com>, <joyanorge.com>, <joyaportugal.com>, <joyariga.com>, <joyaromania.com>, <joyaschoenenbelgië.com>, <joyaschoenen.com>, <joyaschuhedeutschland.com>, <joyaschuhewien.com>, <joyashoescanada.com>, <joyashoesgreece.com>, <joyashoesjapan.com>, <joyashoeskuwait.com>, <joyashoesonlinesale.com>, <joyashoesale.com>, <joyashoesuksale.com>, <joyaskodanmark.com>, <joyaskohelsingør.com>, <joyaskonorge.com>, <joyaskorstockholm.com>, <joyaslovenia.com>, <joyasrbija.com>, <joyasuomi.com>, <joyatoronto.com>, <joyatürkiye.com>, <joyauruguay.com>, <joywarszawa.com>, <scarpejoya.com>, <zapatosjoyabaratos.com>, <zapatosjoya.com> are registered with Paknic (Private) Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 8, 2024, 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.

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 March 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 10, 2024.

The Center appointed Mladen Vukmir as the sole panelist in this matter on April 22, 2024. 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 Swiss company specialized in manufacturing and selling orthopaedic footwear. The Complainant is the owner of JOYA brand under which the legal predecessor of the Complainant, Joya Schuhe AG, has manufactured and sold footwear and other related products since 2008.

The Complainant is the owner of numerous earlier registered JOYA trademarks ("JOYA trademarks") in various jurisdictions, such as: JOYA (word) registered in Switzerland on September 16, 2010, under the registration number 605452, in classes 10, 25, 35 of International Classification; JOYA (word) international trademark registration registered on September 16, 2010, under the registration number 1055824 in classes 10, 25, 35; and JOYA (fig.) international registration registered on September 17, 2008, under the registration number 983282, in classes 18, 25, 28 of International Classification. Considering the circumstances and evidence presented by the Complainant, the Panel deems the Complainant's JOYA trademarks to be well-known.

The Complainant is the registrant of numerous domain names incorporating the Complainant's JOYA trademark like <joyaschuhe.de>, <joya-shoes.com>, and <joyasko.no>.

The disputed domain names have been registered in a period between May 10, 2022, and October 30, 2023 - they resolve to websites that are created to be used as online stores, they prominently feature the Complainant's JOYA trademarks, and contain photos of the Complainant's products bearing JOYA trademarks. The actual sales of shoes do not take place on the websites created under the disputed domain names, the visitors are only required to create an account and provide personal details.

Before commencing the present procedure, the Complainant has sent a cease-and-desist letter to the Respondent on February 22, 2023, and has attempted to contact the Respondent via email on May 12, 2023, July 24, 2023, January 9, 2024, and February 7, 2024. The Respondent failed to respond.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for cancellation of the disputed domain names.

Notably, the Complainant contends that:

(i) the Complainant is a Swiss company specializing in manufacturing and selling orthopaedic footwear. The Complainant is the owner of the JOYA brand under which the predecessor of the Complainant, Joya Schuhe AG, has manufactured and sold footwear and other related products since 2008. The Complainant operates globally, its products can be purchased in more than 40 countries.

(ii) the disputed domain names are identical or confusingly similar to trademarks and business identifiers owned by the Complainant, including JOYA trademarks, the company name Kybun Joya Retail AG (formerly Joya Schuhe AG), the business name Joya and the Complainant's domain names containing the Complainant's JOYA trademarks.

(iii) the Complainant asserts that Joya was founded in 2008 and is, to their knowledge, the only company using word "Joya" for shoes. They state that the Respondent is not affiliated to the Complainant, and the disputed domains are not official or authorized domains of the Complainant. Despite efforts, the Complainant found no evidence of the Respondent using the word "Joya" in any business activity, nor were there any websites registered by the Respondent containing the word "Joya" that were not associated with the Complainant. The Respondent uses the disputed domains to run online stores impersonating the Complainant, uses the Complainant's brand, aiming to profit from customers attracted by the low prices of the products. Consequently, the Complainant argues that legitimate non-commercial or fair use of the domain names cannot be claimed (Paragraph 4(c)(iii) of the Policy)

(iv) the Respondent established online stores created under all disputed domain names, impersonating Joya brand. On these websites the Respondent uses the JOYA trademarks and features numerous photos of the Complainant's products, prominently displaying the JOYA trademark. All products on these websites are offered at significantly discounted prices, creating the impression of attractive offers to encourage purchases. However, despite appearing as online stores, the websites created under the disputed domain names do not sell Joya products. Visitors to these websites are required to create an account and provide personal details without any indication of who processes this data, which should be classified as phishing.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In reaching the decision, the Panel analyzed and assessed each disputed domain name individually and separately, after which it made the conclusions that apply to all the disputed domain names.

### **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.

The Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other words, here geographical and/or descriptive words, may bear on assessment of the second and third elements, the Panel finds the addition of such words does not prevent a finding of confusing similarity between the disputed domain names and mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The disputed domain names consist of the Complainant's JOYA trademarks, and geographical or descriptive words (-dublin, -colombia, zapatos-, -shoecanada etc.). Where the relevant trademark is recognizable within the disputed domain name, the addition of other words (whether descriptive, geographical, meaningless, or otherwise), would not prevent a finding of confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.8.

With respect to the disputed domain name <joywarszawa.com>, although the word joy- in beginning of the disputed domain name can be considered as descriptive, in this Panel panel's view omission of letter "a" in light of all circumstances of this particular case, can be seen as an intentional misspelling of the Complainant's JOYA trademark, i.e., typosquatting. A domain name which consists of a common, obvious, or intentional misspelling of a trademark should be considered as confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

Regarding the generic Top-Level Domain ("gTLD") ".com" in the disputed domain names, as a standard registration requirement it should be disregarded under the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

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 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.

The Respondent is not authorized by the Complainant to use JOYA trademarks, and there is no indication that the Respondent is commonly known under the disputed domain names. There is no apparent relation from the record between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its JOYA trademarks, or to apply for or use any domain name incorporating the same trademark.

There is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain names in connection with a bona fide offering of goods or services or making a legitimate non-commercial or fair use of the disputed domain names. The Respondent has failed to provide any reply to the Complaint, and accordingly failed to rebut the Complainant's showing that the Respondent has no rights or legitimate interests in the disputed domain name.

The nature of the disputed domain names, consisting of the Complainant's JOYA trademark and additional geographic or descriptive words (either a prefix or suffix within these domains), as well as the unauthorized use of the Complainant's trademark, indicates awareness of the Complainant and its JOYA trademarks. This creates a risk of implied association or affiliation with the Complainant, which does not support the determination of any rights or legitimate interests in this case. [WIPO Overview 3.0](#), section 2.5.1.

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 notes that the Respondent has established multiple online stores created under the disputed domain names whereby it is using the Complainant's JOYA trademarks and impersonating the Complainant. In this Panel's view, the Respondent is, by using JOYA trademarks in the disputed domain names, as well as presenting the JOYA trademark on the websites created under the disputed domain names, intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant and its JOYA trademarks. Requiring visitors to create an account and provide personal details without disclosing who processes this data constitutes potential phishing, which is another act of 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.

Panels have held that the use of a domain name for illegal activity, here impersonating the Complainant and potential phishing, 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.

This Panel accepts that the Complainant's JOYA trademarks are distinctive, well-known, and that it is highly unlikely that the Respondent was unaware of the Complainant and its JOYA trademarks when it registered the disputed domain names, particularly when considering the use to which the disputed domain names were put (namely, websites displaying the Complainant's JOYA trademarks).

In this Panel's view, by registering the disputed domain names that contains the Complainant's JOYA trademark, the Respondent is attempting to take advantage of the Complainant's reputation, and well-known trademark.

The Panel finds that the Complainant has established the third element 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 names <chaussuresjoya.com>, <joyaamsterdam.com>, <joyaargentina.com>, <joyaaustralia.com>, <joyabordeaux.com>, <joyaboty.com>, <joya-brussels.com>, <joyachaussuressuisse.com>, <joyacipo.com>, <joyacolombia.com>, <joyadebrasil.com>, <joyadubaimall.com>, <joyadublin.com>, <joyafootwearuk.com>, <joyahrvatska.com>, <joyajapan.com>, <joyaleón.com>, <joyamagyarország.com>, <joyanorge.com>, <joyaportugal.com>, <joyariga.com>, <joyaromania.com>, <joyaschoenenbelgië.com>, <joyaschoenen.com>, <joyaschuhedeutschland.com>, <joyaschuhewien.com>, <joyashoescanada.com>, <joyashoesgreece.com>, <joyashoesjapan.com>, <joyashoeskuwait.com>, <joyashoesonlinesale.com>, <joyashoessale.com>, <joyashoesuksale.com>, <joyaskodanmark.com>, <joyaskohelsingør.com>, <joyaskonorge.com>, <joyaskorstockholm.com>, <joyaslovenia.com>, <joyasrbija.com>, <joyasuomi.com>, <joyatoronto.com>, <joyatürkiye.com>, <joyauruguay.com>, <joywarszawa.com>, <scarpejoya.com>, <zapatosjoyabarat.com>, <zapatosjoya.com> be cancelled.

*/Mladen Vukmir/*

**Mladen Vukmir**

Sole Panelist

Date: May 6, 2024