

ADMINISTRATIVE PANEL DECISION

Janie and Jack LLC v. jing guan
Case No. D2024-1004

1. The Parties

The Complainant is Janie and Jack LLC, United States of America (“United States”), represented by Falcon Rappaport & Berkman, United States.

The Respondent is jing guan, China.

2. The Domain Name and Registrar

The disputed domain name <janieandjackstore.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2024. On March 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 2024, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2024, 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 amended Complaint on March 13, 2024.

The Center verified that the Complaint together with the amended 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 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2024.

Due to an issue with the Center's Notification emails, on April 11, 2024, the Center granted the Respondent a five day period in which to indicate whether it wished to participate in this proceeding. The Center did not hear anything from the Respondent within this period.

The Center appointed Andrea Mondini as the sole panelist in this matter on April 17, 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 company based in the United States offering clothing for children under the brand JANIE AND JACK.

The Complainant holds the domain name <janieandjack.com> which resolves to its official website.

The Complainant owns several trademark registrations, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
JANIE AND JACK	United States	3,856,716	October 5, 2010	25
JANIE AND JACK	International Registration	1512894	December 19, 2019	25, 35

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

The disputed domain name was registered on March 14, 2023.

According to the evidence submitted with the Complaint, as of February 2, 2024, the disputed domain name resolved to a website purporting to sell clothing for children using the JANIE AND JACK mark. As of February 15, 2024, it resolves to a pay-per-click site with links to third-party 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 name.

Notably, the Complainant contends as follows:

The disputed domain name is confusingly similar to the JANIE AND JACK trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the term "store" is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that the Respondent has ever used, or has ever had a bona fide intention to use, the disputed domain name in connection with offering of goods or services. The Respondent is not commonly known under the name JANIE AND JACK. There is no evidence that the Respondent is making a legitimate

noncommercial or fair use of the disputed domain name. The Respondent instead is using the disputed domain name to divert consumers away from the Complainant's website for the purpose of conducting illegal phishing operation.

The disputed domain name wholly incorporates the Complainant's mark combined with the word "store" which misleads consumers into the mistaken belief that the disputed domain name is associated with a legitimate Complainant store. As of February 2, 2024, the website purported to sell clothing for children using the JANIE AND JACK mark, though they are unauthorized to do so. As of February 15, 2024, the website featured advertisements with links to third-party websites. The disputed domain name was registered for the purpose of spoofing the Complainant's legitimate website and scamming consumers, thereby damaging the Complainant's good will with its customers.

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.

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 Panel finds the entirety of the mark JANIE AND JACK is reproduced within the disputed domain name.

Although the addition of other terms such as here "store" may bear on assessment of the second and third elements, the Panel finds the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

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 for a complainant to prove that 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 Complainant has shown that the Respondent posted a website under the disputed domain name purportedly offering clothing for children and featuring the Complainant’s trademark. The Complainant contends that the Respondent is not authorized to do so. The Respondent has not denied this allegation. In any event, even if the products offered by the Respondent were genuine, the Respondent’s use of the disputed domain name does not meet the “Ok! Data Test”, because this site does not disclose the lack of relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8. Moreover, the Panel finds that the disputed domain name is inherently misleading. [WIPO Overview 3.0](#), section 2.5.1.

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.

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 and considering that the disputed domain name resolved to a website featuring the Complainant’s trademark and offering clothing for children, 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.

As of February 2, 2024, the disputed domain name resolved to a website purporting to sell clothing for children using the JANIE AND JACK mark without disclosing the Respondent’s lack of a relationship with the Complainant. The impression given by this website and the disputed domain name itself would cause consumers to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. As of February 15, 2024, it resolves to a pay-per-click site with links to third-party websites, including websites with children’s clothing that compete with the Complainant’s products. Such use does not qualify as use in good faith either.

The Panel therefore holds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its web site 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 <janieandjackstore.com> be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: April 26, 2024