

## ADMINISTRATIVE PANEL DECISION

JPW Industries Inc. v. Ddfsfd Scd

Case No. D2024-1489

### 1. The Parties

The Complainant is JPW Industries Inc., United States of America, represented by Holland & Knight LLC, United States of America.

The Respondent is Ddfsfd Scd, Hong Kong, China.

### 2. The Domain Name and Registrar

The disputed domain name <powermatictool.com> is registered with Name.com, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2024. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 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 April 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 14, 2024.

The Center appointed Jonathan Turner as the sole panelist in this matter on May 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 and its predecessors have carried on a retail business selling tools, tool accessories, and other material-handling products under the mark POWERMATIC since 1929.

The Complainant is the proprietor of the following (amongst other) registrations of POWERMATIC as a word mark:

- United States of America Trademark Registration No. 0644702 registered in Class 7 on April 30, 1957
- China Trademark Registration No. 816392 registered in Class 7 on November 25, 2003
- European Union Trademark Registration No. 003500204 registered in Class 7 on March 15, 2005

The Complainant has operated an online marketplace at “www.powermatic.com” since August 5, 2003.

The disputed domain name was registered by the Respondent on August 15, 2022, and locates a website that purports to sell POWERMATIC tools at heavily discounted prices.

#### **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 submits that it has registered and common-law rights in the mark POWERMATIC. The Complainant further contends that the disputed domain name is confusingly similar to this mark, which it incorporates in its entirety together with the generic word “tool” and the generic Top Level-Domain suffix, “.com”.

The Complainant denies that the Respondent has any right or legitimate interest in the disputed domain name. The Complainant states that the Respondent was not authorized by the Complainant to register or use the disputed domain name, has not used it for a bona fide offering of goods or services, is not commonly known by it, and is not making legitimate noncommercial or fair use of it.

The Complainant further alleges that the Respondent registered and is using the disputed domain name in bad faith to divert Internet traffic from the Complainant's website. The Complainant points out that the Respondent must have known of the Complainant's business since it purports to sell the Complainant's products using the Complainant's own graphics.

The Complainant requests a decision that the disputed domain name be transferred to it.

##### **B. Respondent**

As stated above, the Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, to succeed in this Complaint, the Complainant must prove: (i) that the disputed domain name is identical or confusingly similar to a mark in which it has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith. It is convenient to consider each of these requirements in turn.

In accordance with paragraph 14(b) of the Rules, the Panel shall draw such inferences as it considers appropriate from the Respondent's failure to file a response. This includes the acceptance of plausible evidence of the Complainant which has not been disputed.

### **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 or service mark 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 name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 extent of purported discounting of POWERMATIC products on the Respondent's website indicates that they are not genuine products of the Complainant. Even if they were, the Respondent's website does not accurately and prominently disclose that the Respondent is not authorized by the Complainant. To the contrary, it indicates falsely, by its use of the Complainant's graphics, that the Respondent is an authorized reseller. The Oki Data test is not satisfied: [WIPO Overview 3.0](#), section 2.8. Moreover, the disputed domain name is inherently misleading. [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 finds on the undisputed evidence of the Complainant that by using the disputed domain name, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation or endorsement of that website and products portrayed on it.

In accordance with paragraph 4(b)(iv) of the Policy, this constitutes evidence of registration and use of the disputed domain name in bad faith. This presumption is not rebutted by any contrary evidence.

In these circumstances, 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 name <powermatictool.com> be transferred to the Complainant.

*/Jonathan Turner/*

**Jonathan Turner**

Sole Panelist

Date: May 31, 2024