

ADMINISTRATIVE PANEL DECISION

TRICOTS SAINT-JAMES v. sdfsagvs gb lgkfvyu

Case No. D2024-2380

1. The Parties

The Complainant is TRICOTS SAINT-JAMES, France, represented by Fidal, France.

The Respondent is sdfsagvs gb lgkfvyu, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <saintjameshomes.top> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (No information) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 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 amendment to the Complaint on June 18, 2024.

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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2024.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on July 15, 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 famous French fashion manufacturer of clothing and fashion accessories for men, women and children, specializing in the design of clothing under the SAINT JAMES brand since 1889. The Complainant has more than 173 points of sale in France and Europe.

The Complainant owns a portfolio of trademark registrations for SAINT JAMES, such as:

- European Union Trademark Registration No. 006625339 for SAINT JAMES registered on December 12, 2008 for goods in class 25;
- International Trademark Registration No. 1178246 for SAINT JAMES registered on May 2, 2013 for goods in classes 3, 14, 18, 24, and 25; and
- International Trademark Registration No. 1527542 for SAINT JAMES registered on June 5, 2019 for goods in classes 3, 4, 9, 14, 16, 18, 20, 21, 24, and 25.

The Complainant is also the owner of numerous domain names and notably <saint-james.com>, registered on December 10, 2001.

The disputed domain name was registered on April 17, 2024, and resolved to a website displaying the Complainant's SAINT JAMES trademark and purportedly offering for sale products under the SAINT JAMES trademark. At the time of this Decision, the disputed domain name does not resolve to an active website.

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 that:

(1) The disputed domain name is confusingly similar to its trademark because it incorporates the trademark in its entirety, removes the space in the mark and merely adds "homes" and the generic Top-Level Domain ("gTLD") ".top".

(2) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not granted permission to use its trademark to the Respondent. The Respondent has not been commonly known by the disputed domain name. The Respondent has no trademark or intellectual property rights in the disputed domain name.

(3) The Respondent registered and is using the disputed domain name in bad faith. The Respondent uses the disputed domain name in connection with offering for sale unauthorized or counterfeit versions of the Complainant's products. Consequently, consumers may wrongly believe that the goods are being offered as a result of a business cooperation between the Respondent and the Complainant, which is not the case. Therefore, the Respondent's intentions to mislead consumers and divert them from the Complainant's real and official website in order to create a commercial gain, constitute bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, in a UDRP complaint, complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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 are being used in bad faith.

The Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint. The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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 3.0](#), section 1.7.

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

The entirety of the trademark is reproduced within the disputed domain name, following the term "homes". Removing the space between the two words of the Complainant's trademark and adding the term "homes" followed by a gTLD ".top" does not prevent a finding of confusing similarity between the disputed domain name and the mark under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.1. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademark SAINT JAMES.

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.

The Panel found that the Respondent has no trademark rights related to the disputed domain name. The Panel also has not found evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark. The Panel also takes into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way.

Although the Complainant suggests that the discounted prices of goods on the website associated with the disputed domain name indicate potential counterfeit products, the Panel does not need to determine the nature of these goods. The Respondent's website prominently displays the Complainant's SAINT JAMES mark, closely mimics the Complainant's official website, and fails to provide any information regarding its relationship (or lack thereof) with the Complainant. See [WIPO Overview 3.0](#), sections 2.8 and 2.13.2. According to the "Oki Data test" established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, even if the goods offered were genuine, the use of the disputed domain name cannot be considered fair use due to the absence of disclaimers.

As regards to the Complainant's notion that the "Respondent's website is selling counterfeiting", the Panel notes, however, that this mere allegation is not supported by any of the Complainant's evidence in the case file.

The Respondent offered clothing and accessories under the SAINT JAMES trademark on the website associated with the disputed domain name. The website also used SAINT JAMES trademarks belonging to the Complainant. This use, both in the disputed domain name combined with the term "homes", and on the Respondent's website, indicates an attempt to deceive customers into believing that the goods being sold are authentic by creating a strong impression of affiliation with the Complainant. Such use of the disputed domain name, which attempts to pass off as the Complainant, does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use, as per Policy, paragraphs 4(c)(i) and (iii).

The Panel also finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain name.

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 this case, the Panel notes that the Complainant's SAINT JAMES trademark has been used continuously and extensively for many years, resulting in significant worldwide reputation and goodwill. It is unlikely that the Respondent was unaware of the Complainant's SAINT JAMES trademark when registering the disputed domain name. Previous panels have consistently determined that merely registering a domain name identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can, in itself, create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

In light of the fact that the disputed domain name wholly incorporates the Complainant's SAINT JAMES trademark, the contents of the Respondent's website using the Complainant's marks in the banner and throughout the page that seems geared to giving the false impression that the Respondent is authorized by or affiliated with the Complainant, and its failure to include an accurate and prominent disclaimer on the

website, the Panel concludes on balance of probabilities that the Respondent both registered and is using the disputed domain name with the intention of taking unfair advantage of the Complainant's goodwill in its SAINT JAMES trademark.

The products offered may be genuine products of the Complainant, or counterfeits thereof. Offering counterfeit products is an indication of bad faith. If genuine products are being offered the circumstances of this case still support a finding of bad faith. Regardless of the specific nature of the goods offered at the disputed domain name, the Panel finds 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 website or of goods on that website (paragraph 4(b)(iv) of the Policy).

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 <saintjameshomes.top> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: July 25, 2024