

ADMINISTRATIVE PANEL DECISION

JACQUEMUS SAS v. Wu Lihua

Case No. D2022-2538

1. The Parties

The Complainant is JACQUEMUS SAS, France, represented by DBK - Société d'avocats, France.

The Respondent is Wu Lihua, China.

2. The Domain Name and Registrar

The disputed domain name <jacquemus-shop.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 July 12, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 2022, 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 July 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 11, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on August 16, 2022. 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 French company. It has manufactured and marketed clothing and fashion accessories since 2013, under the trademark JACQUEMUS. JACQUEMUS products are now sold in 50 different countries around the world. The Complainant is the owner of numerous trademarks including:

French trademark JACQUEMUS registered on December 24, 2013 under No. 4057016;

European Union trademark JACQUEMUS registered on October 18, 2019 under No. 018080381;

International trademark JACQUEMUS registered on February 5, 2014 under No. 1211398; and

International trademark JACQUEMUS registered on November 19, 2019 under No. 1513829.

The Complainant is also the owner of the domain name <jacquemus.com>, registered in 2010 which resolves to an active website used to promote the Complainant's activity and sell its goods.

The Complainant sent a cease and desist letter to the Registrar on May 17, 2022, but did not receive a response.

The domain name in dispute <jacquemus-shop.com> (hereafter the "Domain Name") was registered on May 7, 2022.

5. Parties' Contentions

A. Complainant

The following is a summary of the main assertions of the Complainant.

The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is known worldwide in the fashion industry, notably for the quality and originality of its creations. It is the owner of several trademarks which are well known throughout the world. The Domain Name is phonetically and visually highly similar to the JACQUEMUS trademarks and to the Complainant's own domain name.

The Domain Name incorporates the JACQUEMUS trademark with the addition of the descriptive term "shop" separated by a hyphen. Such addition does not prevent a finding of confusing similarity but would be understood by an Internet user to be linked to a website dedicated to the sale of the Complainant's products. The JACQUEMUS trademark is clearly recognizable within the Domain Name and will lead the public to believe that the Domain Name belongs to the Complainant.

The addition of the generic Top-Level Domain ("gTLD") ".com" should not be taken into account in assessing the likelihood of confusion as it is a technical requirement.

The Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has never authorized the Respondent to register and/or use any domain name incorporating the JACQUEMUS trademark. It has not granted any license, nor any authorization to use the trademark in any other way.

The Domain Name resolves to an active website offering for sale “alleged counterfeiting products”. The prices displayed, the lack of legal information and the reproduction of original pictures from the Complainant’s official website, clearly indicate that the products sold are infringing the Complainant’s rights.

The domain names were registered and are being used in bad faith.

The Complainant’s trademark registrations predate registration of the Domain Name. The JACQUEMUS trademark has acquired an extensive and worldwide reputation and should be considered as well-known.

At the time of registration of the Domain Name the Respondent knew, or at least should have known of the existence of the Complainant’s well-known trademark, and registration of the Domain Name incorporating it constitutes bad faith *per se*. The choice of Domain Name is not coincidence, but seems to have been for the purpose of generating a likelihood of confusion between the Domain Name and JACQUEMUS trademark.

The Domain Name resolves to an active website offering for sale “alleged counterfeiting products”. The prices displayed, the lack of legal information and the reproduction of original pictures from the Complainant’s official website, indicate that the products sold are infringing the Complainant’s rights. The choice of Domain Name is not a mere coincidence, its purpose being to generate a likelihood of confusion in order to sell “alleged” JACQUEMUS products whose origin and authenticity are questionable. Moreover, the Respondent has reproduced pictures of products from the Complainant’s own website, without consent, thus constituting copyright infringement.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove: (i) that a respondent has registered a domain name which is identical or confusingly similar to a trademark or service mark in which a complainant has rights; (ii) that the respondent has no rights or legitimate interests in respect of the domain name; (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

A. Identical or Confusingly Similar

The Complainant is the owner of the JACQUEMUS trademark and thus clearly has rights for the purposes of the Policy.

Ignoring the gTLD “.com” (as the Panel may do for comparison purposes), the Domain Name comprises the JACQUEMUS trademark followed by a hyphen and then the word “shop”. Accordingly, the JACQUEMUS trademark and the Domain Name are not identical and thus the issue of confusing similarity must be considered. Application of the confusing similarity test under the UDRP typically involves “a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.” (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide “...in

cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The JACQUEMUS trademark is incorporated in its entirety within the Domain Name. It is clearly recognizable within the Domain Name. The addition of “-shop” does not prevent a finding of confusing similarity.

The Panel finds that the Domain Name is confusingly similar to the JACQUEMUS trademark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complaint, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or affiliated with a complainant. For instance, it can show that it has been commonly known by the domain name or that it is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Here, however, there is no evidence to suggest that the Respondent is commonly known by the Domain Name. Further, the Respondent’s choice of a confusingly similar Domain Name, the dominant element of which is the Complainant’s JACQUEMUS trademark with the addition of the word (“shop”), a dictionary term describing where goods are sold (thus likely enhancing rather than reducing the risk of confusion), clearly creates a risk of implied affiliation where there is none. The separation of the JACQUEMUS trademark and word, “shop” by a hyphen, does nothing to diminish that risk. It thus cannot be said that there is an absence of an intent to mislead, or anything fair or legitimate about the Respondent’s registration (particularly if the website is offering counterfeit products for sale). In any event, the Respondent’s website is clearly commercial in nature.

A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services, which of course the Respondent would be unable to demonstrate given that the Domain Name is inherently misleading (suggesting that it is owned by the Complainant or at least has an association with it) and, in any event, it resolves to a website offering JACQUEMUS branded products at prices suggesting that they may well be counterfeit. Moreover, the website to which the Domain Name resolves reproduces original pictures from the Complainant’s official website thus infringing the Complainant’s copyright. It is extremely unlikely that the use to which the Domain Name has been put by the Respondent (an imitation site), could ever be regarded as a *bona fide* offering of goods or services.

The Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios which may evidence a respondent’s bad faith. They include, for instance, a respondent registering a domain name primarily for the purposes of disrupting the business of a competitor. Another scenario, indicative of bad faith is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with

a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it. These appear to be the circumstances here.

No Response to the Complaint has been filed, no doubt because there is no explanation the Respondent could give which might cast doubt on the contention that registration and use of the Domain Name has been in bad faith.

In all the circumstances, the Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <jacquemus-shop.com> be transferred to the Complainant.

/Jon Lang/

Jon Lang

Sole Panelist

Date: August 30, 2022