

ADMINISTRATIVE PANEL DECISION

Strellson AG v. Hongxia Wang
Case No. D2022-3131

1. The Parties

Complainant is Strellson AG, Switzerland, represented by SKW Schwarz Rechtsanwälte, Germany.

Respondent is Hongxia Wang, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <joopgeschäft.xyz> (<xn--joopgeschft-t8a.xyz>) is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2022. On August 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 26, 2022, 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 Complainant on September 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 1, 2022.

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 Respondent of the Complaint, and the proceedings commenced on September 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 6, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on October 21, 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

Complainant is the owner of registration as an European Union Trade Mark (EUTM) for the word JOOP on the register of the European Union Intellectual Property Office (EUIPO), registration number 013083852, registration dated February 3, 2015, in international classes (ICs) 4, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 27, 34, 35 and 42, covering, *inter alia*, textile products (clothing) of various kinds and the sale of various products, including clothing and furnishings, through retailing, wholesaling and online sales. Complainant also is owner of registration as an EUTM for the word JOOP! ONLINESHOP on the register of the EUIPO, registration number 007543119, registration dated July 23, 2009, in ICs 18, 25, and 35, covering, *inter alia*, fashion and travel accessories, textile products (clothing) and the sale of various products, including clothing and furnishings, through retailing, wholesaling and online sales.

Complainant is a designer and seller of clothing, jewelry, eyewear, furniture and other products. Complainant is based in Germany, with physical retail outlets located principally in Europe. Complainant advertises and sells its products through an online presence. Complainant operates an English-language website at “<https://joop.com/brand/en/>”, and a German (and English) website at “<https://joop.com/de/de/>”.¹

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. A Whois lookup record dated September 13, 2022, indicates that the record of registration of the disputed domain name was created on June 2, 2022. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

Respondent uses the disputed domain name to direct Internet users to a website displaying elements identical or similar to those used on Complainant’s website, including identical photographs of fashion models, and displaying clothing and footwear items using Complainant’s “JOOP!” branding, with pricing indicated. Respondent’s website provides a physical contact address that is not associated with Complainant. Complainant indicates that Respondent’s website requests Internet users to enter ordering and credit card payment data, but that data is not related to supply centers or accounts of Complainant. It is not clear whether Respondent ships products (whether counterfeit or otherwise) to parties placing orders on Respondent’s website.

5. Parties’ Contentions

A. Complainant

Complainant alleges that it owns rights in the trademarks JOOP and JOOP! ONLINESHOP and that the disputed domain name is confusingly similar to those trademarks.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant has not licensed Respondent to register and use the disputed domain name; (2) Respondent “is using the domain names within of the scope of trademark law [sic]”; (3) Respondent is using the disputed domain name to identify products said to be associated with Complainant while Complainant is not the source, and; (4) Respondent use of Complainant’s trademarks contravenes accepted principles of morality by operating a “fake web shop” the identity of which is neither transparent nor factual.

¹ Complainant provided limited information about its business in the Complaint. The Panel visited Complainant’s website on November 4, 2022, for basic information.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent is using Complainant's trademark in the disputed domain name to direct Internet users to Respondent's fake web shop without Complainant's authorization; (2) Respondent is using the disputed domain name with intention for commercial gain to attract Internet users to Respondent's website by creating confusion regarding Complainant as the source, sponsor, affiliate or endorser of Respondent's website; (3) Respondent's web shop does not reflect values connected to Complainant's trademark, and Respondent is free-riding on Complainant's trademark and damaging the reputation of Complainant, and; (4) websites such as those operated by Respondent are detrimental to the public interest, harming potential customers and manufacturers.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical address provided in its record of registration. Courier delivery of the Written Notice to Respondent could not be completed because of inaccurate address information in the record of registration. There is no indication of problems with the transmission of email to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has provided evidence of rights in the trademarks JOOP and JOOP! ONLINESHOP, including by registration at EUIPO and through use in commerce. Respondent has not challenged Complainant's assertion of rights. The Panel determines that Complainant owns rights in the trademarks JOOP and JOOP! ONLINESHOP.

The disputed domain name directly and fully incorporates Complainant's distinctive JOOP trademark.² This is sufficient to establish confusing similarity between Complainant's trademark and the disputed domain name within the meaning of the Policy. Addition by Respondent of the common German noun "geschäft", meaning "business" or "shop" in English,³ does not prevent a finding of confusing similarity.⁴ In addition, use by Respondent of the Top Level-Domain ("TLD") ".xyz" does not prevent a finding of confusing similarity.

The Panel determines that Complainant owns rights in the trademarks JOOP and JOOP! ONLINESHOP, and that the disputed domain name is confusingly similar to the trademark JOOP.⁵

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent has used the disputed domain name to direct Internet users to a website incorporating substantial elements of Complainant's online shopping website(s), including featuring fashion models prominent on Complainant's website(s), and promoting clothing and fashion accessories identified by Complainant's distinctive JOOP! branding. Respondent's website provides false contact information not associated with Complainant, and it provides for Internet user ordering and payment to accounts not associated with Complainant. Such activity by Respondent does not establish rights or legitimate interests.

Respondent is not making a *bona fide* offering of goods or services. Respondent's use of Complainant's trademark to deceptively represent itself as Complainant is not fair or legitimate noncommercial use of Complainant's trademark. It is not authorized by Complainant, and it is likely to damage Complainant's reputation as well as to injure consumers.

Respondent's actions do not otherwise manifest rights or legitimate interests in the disputed domain name.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

² The disputed domain name includes an umlaut above the "a" vowel. As this is an internationalized domain name (IDN), the ACE-encoding form is also shown in the text of the decision.

³ See, e.g., "https://de.langenscheidt.com/deutsch-englisch/geschaefft".

⁴ See further discussion of the additional term regarding the bad faith element, *infra*.

⁵ The Panel does not consider it necessary to separately discuss the JOOP! ONLINE trademark as confusing similarity has been established with respect to Complainant's JOOP trademark.

Respondent registered and used the disputed domain name that is confusingly similar to Complainant's distinctive JOOP trademark after Complainant acquired rights in its trademarks, and likewise after Complainant established a substantial online presence under its trademarks. Respondent has directly incorporated Complainant's distinctive JOOP! branding on its website and has deliberately designed its website to appear as if it is affiliated with Complainant. Respondent knew or should have known of Complainant's trademark rights when it registered and used the disputed domain name.

Respondent has used the disputed domain name to direct Internet users to a website that is designed to convey the appearance that it is operated by or affiliated with Complainant. Respondent has used the term "geschäft" (or "shop" in English) alongside Complainant's trademark in the disputed domain name, and Complainant's website(s) is an online shopping location. As Complainant is based in Germany, Internet users would likely expect Complainant's online location to be identified by an additional German-language term. The additional term does not detract from confusing similarity and may heighten the risks of confusion. Given the reuse by Respondent of distinctive elements of Complainant's website, it is manifest that Respondent was specifically seeking to take advantage of Internet user association with Complainant's branding to direct traffic to Respondent's website.

Respondent's website promotes Internet user product ordering with credit card payments that are not directed to accounts of Complainant. Whether Respondent is shipping some type of product to Internet users (which is unclear from the record), or is instead merely accepting their payments, is not material in the context of this proceeding to a determination of bad faith. Respondent is holding itself out to be directly associated with Complainant, not as some type of authorized third-party reseller of Complainant's branded products. It is operating under false pretenses in a manner likely to injure Complainant and Internet users.

Such activities on the part of Respondent are undertaken for commercial gain to create Internet user confusion regarding Complainant acting as the source, sponsor, affiliate or endorser of Respondent's deceptive website.

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) 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, <joopgeschäft.xyz> (<xn--joopgeschft-t8a.xyz>), be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: November 4, 2022