

## **ADMINISTRATIVE PANEL DECISION**

AJE IPCO PTY LTD v. Jin Xiao

Case No. D2023-1663

### **1. The Parties**

The Complainant is AJE IPCO PTY LTD, Australia, represented by Hitch Advisory, Australia.

The Respondent is Jin Xiao, China.

### **2. The Domain Name and Registrar**

The disputed domain name <ajeworld-au.shop> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 15, 2023. On April 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 2023, 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 April 19, 2023 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 April 26, 2023.

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 April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on May 26, 2023. 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 an established and widely recognized women's clothing and fashion brand with a global presence and operation. The Complainant has been operating continuously since 2008, selling clothes and other fashion goods under the brands "AJE" and "AJE Athletica".

The Complainant is the owner of a number of registrations of the AJE mark for goods and services in classes 14, 18, 25 and 35 including international registration 1420499, registered on July 11, 2018 and designating the European Union, United Kingdom and United States of America.

The Complainant owns and operates web shops at "www.ajeworld.com.au" and "www.ajeworld.com".

The disputed domain name was registered on December 16, 2022, and has linked to website allegedly selling and offering the Complainant's AJE goods.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's AJE trademark.

The Complainant further submits that the facts of the case indicates a clear intention by the Respondent to use the goodwill and prestige garnered by the Complainant's brand in an illegitimate attempt at commercial gain and that there is no evidence of extended prior use of the Complainant's mark or brand that can be seen as a *bona fide* offering of goods or services.

Finally, the Complainant submits that the disputed domain name was registered and is used in bad faith. The website under the disputed domain name has used copies of images taken from the original AJE websites and is displaying these images on the website indicating a clear and blatant attempt to misrepresent to the public that it is part of the Complainant, or its business, or group, or otherwise associated with or endorsed by the Complainant or its business or group.

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

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

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

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the

absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

#### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's trademark AJE because it contains the trademark in its entirety. The addition of the words "world-au" does not alter this assessment, since the Complainant's mark is clearly recognizable within the disputed domain name, see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level Domain ("gTLD") ".shop" does also not prevent a finding of confusing similarity as it is disregarded under the first element confusing similarity test, see section 1.11 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

#### **B. Rights or Legitimate Interests**

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark neither in the disputed domain name nor on the website.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this, and the way the Respondent has been and is using the disputed domain name (see below in Section C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

#### **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder'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 holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the extent of use of the Complainant's trademark and the distinctive nature of the mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered or acquired the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. The Panel also notes the similarity between the Complainant's domain name <ajeworld.com.au> and the disputed domain name. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name it chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name has been used for a website that purports to offer the Complainant's goods and on which the Respondent uses the Complainant's trademark AJE just as the Respondent has seemingly copied the Complainant's official product images. This clearly gives Internet users the impression that the website is the official website of the Complainant or a website that is authorized by the Complainant, which is not the case.

The Panel therefore finds that the Respondent by its registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website most likely for commercial gain. Moreover, the Panel finds that this use of the disputed domain name disrupts the Complainant's business.

Noting that the disputed domain name incorporates a registered and used trademark, that no response has been filed, that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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, <ajeworld-au.shop> be cancelled.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: June 9, 2023