

## **ADMINISTRATIVE PANEL DECISION**

John Lewis Plc. v. taylor christian newsome  
Case No. D2023-4029

### **1. The Parties**

Complainant is John Lewis Plc., United Kingdom, represented by Lewis Silkin LLP, United Kingdom (“UK”).

Respondent is taylor christian newsome, United States of America (“United States”).

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

The disputed domain name <johnlewis.help> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 (Privacy Protected) and contact information in the Complaint. The Center sent an email communication to Complainant on September 28, 2023, 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 October 5, 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 Respondent of the Complaint, and the proceedings commenced on October 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 27, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on November 1, 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

Complainant is one of the UK's largest department stores and employee-owned business. Complainant's business was created in 1864 and has traded for over 150 years. Its core website "www.johnlewis.com" attracts tens of millions of unique visits per month. In the month of August 2023, Complainant's website was visited 23.2 million times and is ranked 1851st globally for Internet traffic and engagement and 82nd in the UK.

Complainant owns a broad range of registered and unregistered trademark rights for JOHN LEWIS, including but not limited to:

- UK Trademark Registration No. UK00002007205, filed on 10 January 1995, registered on 14 March 1997;
- UK Trademark Registration No. UK00002307716, filed on 9 August 2002, registered on 24 January 2003;
- UK Trademark Registration No. UK00903281102, filed on 4 July 2003, registered on 13 October 2004;
- UK Trademark Application No. UK00003917511 for the JLP logo, filed on 31 May 2023 (not yet registered):

Except for application No. UK00003917511, the aforementioned registrations have been duly renewed and are still valid and will hereafter together referred to in singular as the "Trademark".

The disputed domain name was registered on September 18, 2023, and redirects to a log-in page containing reproductions of Complainant's Trademark and logo.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name reproduces Complainant's Trademark in its entirety. For the purposes of assessing identity and confusing similarity it is permissible to ignore the generic Top-Level Domain ("gTLD"). However, in the case at hand, the gTLD ".help" serves to mislead Internet users in to believing that the disputed domain name is used by Complainant's Customer Services department.

Respondent does not own any registered rights in any trademark which comprise part or all of the disputed domain name. The term "john lewis" is not descriptive in any way, nor does it have any generic, dictionary meaning. Complainant has not given its consent for Respondent to use its registered trademark in a domain name registration.

There is a high risk that use of the disputed domain name in this manner will mislead Internet users in to sharing personal log-in details under the mistaken impression that they are dealing with Complainant's Customer Services department. The disputed domain name poses a substantial phishing threat. Such use cannot constitute a *bona fide* use or legitimate interest.

In the absence of a Response or assertion that any right or legitimate interest exists, this must lead to a presumption that Respondent is unable to show that such right or interest exists. Complainant submits that Respondent registered and uses the disputed domain name in bad faith. The disputed domain name replicates Complainant's Trademark in its entirety. Complainant submits that it enjoys substantial reputation in its JOHN LEWIS Trademark. Upon registration, on September 18, 2023, the disputed domain name redirected to a website that replicated Complainant's JLP logo. This demonstrates not only Respondent's prior knowledge of Complainant's rights, but also that the disputed domain name is used to pose as Complainant's business with the aim of obtaining the personal information of Internet users who access the disputed domain name, under the mistaken impression that the disputed domain name is owned and operated by Complainant. Use of the disputed domain name in this manner constitutes bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Dealing, first, with Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that Complainant prove each of the following three elements in order to succeed in its Complaint:

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

### **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 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.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has not been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of Respondent. As such, where a complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted

Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 notes that Complainant's JOHN LEWIS Trademark registrations predates the registration of the disputed domain name by many years. The registrations of the Trademark further support Respondent's awareness of Complainant's rights to the Trademark at the time of its registration. Based on the evidence presented, it is apparent that Respondent had knowledge of Complainant and the Trademark, and deliberately targeted this Trademark during the registration of the disputed domain name with an intention to leverage Complainant's established reputation.

The disputed domain name incorporates the Trademark JOHN LEWIS along with the descriptive gTLD ".help", and resolves to a website that replicated Complainant's JLP logo. Given the evident association of the disputed domain name with the Trademark, the Panel believes that Respondent has intentionally targeted Complainant and its Trademark during the disputed domain name registration. Consequently, the Panel believes that Respondent registered the disputed domain name in bad faith.

The disputed domain name is used to pose as Complainant's business with the aim of obtaining the personal information of unsuspecting Internet users who access the disputed domain name, under the mistaken impression that the disputed domain name is owned and operated by Complainant. This constitutes bad faith use under the Policy. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

### **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, <johnlewis.help>, be transferred to Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: November 15, 2023