

ADMINISTRATIVE PANEL DECISION

MM Products, Inc. v. qiang liu
Case No. D2022-4700

1. The Parties

Complainant is MM Products, Inc., United States of America (“United States” or “U.S.”), represented by Cozen O’Connor, United States.

Respondent is qiang liu, United States.

2. The Domain Name and Registrar

The disputed domain name <joyjoltstore.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 December 7, 2022. On December 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 8, 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 December 12, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 14, 2022.

The Center verified that the Complaint together with the amended 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 December 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 11, 2023.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on January 16, 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

Since at least 2015, Complainant has manufactured, marketed, and sold glassware and other kitchenware using the trademark JOYJOLT. Complainant has a number of JOYJOLT trademarks, such as:

- U.S. Trademark Registration No. 4,998,034 registered on July 12, 2016;
- U.S. Trademark Registration No. 5,683,868 registered on February 26, 2019;
- U.S. Trademark Registration No. 5,996,365 registered on February 25, 2020.

Respondent registered the disputed domain name on June 24, 2022. The website at the disputed domain name displays glassware and other products for sale that are described on Respondent's website as being JOYJOLT products.

5. Parties' Contentions

A. Complainant

Complainant asserts that the disputed domain name "is essentially identical to Complainant's registered JOYJOLT family of trademarks in sight, sound, appearance and commercial impression". Complainant notes that the disputed domain name incorporates the entirety of Complainant's registered mark, but adds the word "store" after "JOYJOLT", which Complainant asserts "does nothing to reduce any consumer confusion and, if anything, exacerbates the confusion because it falsely suggests that Respondent is offering Complainant's goods as part of its online 'store'". Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name because there is no *bona fide* offering of goods or services. Rather, Complainant asserts that Respondent's offering of goods using the JOYJOLT trademark is infringing. Thus, Complainant asserts that Respondent is attempting to attract Internet users to Respondent's "copycat website" "with the express intent to misappropriate the goodwill of Complainant", and that Respondent "is using the [disputed] Domain Name to intentionally pass itself off as Complainant and to make a profit through the sale of infringing product". Complainant also notes that it has not given Respondent permission to use its registered trademarks or any domain name confusingly similar thereto. Complainant also asserts that Respondent has not been commonly known by the disputed domain name. Complainant asserts that the disputed domain name was registered and is being used in bad faith because it uses Complainant's trademark and is likely to confuse a substantial number of users as to whether Respondent's website is affiliated with Complainant. Further, Complainant notes that Respondent's use of the disputed domain name is for commercial gain, by selling products that are "virtually identical to the products that Complainant sells on its legitimate website". Complainant asserts that Respondent chose to incorporate Complainant's JOYJOLT mark into the disputed domain name as a reference to Complainant, and that Respondent intended to confuse users, as evidenced not only by the disputed domain name but also by the fact that "Respondent has copied Complainant's logo as well as the website as a whole".

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings "shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (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

Under paragraph 4(a)(i) of the Policy, Complainant must show that the disputed domain name is “identical or confusingly similar to a trademark or service mark in which the complainant has rights”.

Complainant’s trademark registrations annexed to the Complaint demonstrate that Complainant has rights in the JOYJOLT mark.

The disputed domain name consists of the JOYJOLT mark, followed by “store”, with the generic Top-Level Domain (“gTLD”) “.shop” at the end. Generally, “where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.” [WIPO Overview 3.0](#), section 1.8. Nor does the addition of the “.shop” gTLD prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.11.1 (“The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a mark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Complainant also must demonstrate that Respondent has “no rights or legitimate interests in respect of the domain name”, per paragraph 4(a)(ii) of the Policy.

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [Respondent’s] rights or legitimate interests to the [disputed] domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [Respondent] of the dispute, [Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [Respondent] (as an individual, business, or other organization) ha[s] been commonly known by the [disputed] domain name, even if [Respondent has] acquired no trademark or service mark rights; or
- (iii) [Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.” Policy, paragraph 4(c).

There is no evidence that Respondent was making a *bona fide* use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Rather, Complainant asserts that Respondent's use of Complainant's trademark in the disputed domain name is infringing (and thus not *bona fide*), that Respondent has not been commonly known by the disputed domain name, and that Respondent is engaging in commercial use of the disputed domain name by misleadingly diverting Consumers to Respondent's website when they are looking for Complainant. Complainant notes that this latter point is further supported by the fact that Respondent has largely copied Complainant's website and uses Complainant's trademark on the site. Further, Complainant notes that it has not given Respondent permission to use Complainant's JOYJOLT trademark.

These allegations make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not rebutted. See, e.g., *COGI Pty Ltd v. 袁刘*, WIPO Case No. [D2022-3662](#) (no rights or legitimate interests in <cottononoutlets.store> domain name, which was being used to sell COTTON ON goods without authorization from a website that copied Complainant's graphics, logo, and website layout); *U-Haul International, Inc. v. PrivacyProtect.org / Ken Gossett*, WIPO Case No. [D2011-0347](#) ("There is no question that Respondent deliberately incorporated Complainant's well-known U-HAUL mark into the Disputed Domain Names and that the Disputed Domain Names are being used to entice consumers and to sell goods that are not made, sponsored, affiliated, or endorsed by Complainant. It is well settled under the Policy that a knowingly infringing use of a trademark to offer goods and services is not a *bona fide* offering of goods and services under the Policy."); *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#) ("[i]t is clear that no license or authorization of any kind has been provided by Complainant to Respondents to use any of its trademarks or to apply for or use any domain name incorporating those marks. [...] Thus, it is clear that no *bona fide* or legitimate use of the domain names could be claimed by Respondents.").

In addition, the Panel finds that the nature of the disputed domain name, and its use to sell unauthorized goods that are labeled as JOYJOLT goods, carries a risk of implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. Not only does the disputed domain name fully incorporate Complainant's trademark, but the addition of "store" suggests an online store that lawfully sells JOYJOLT goods, and the use of the ".shop" gTLD "tend[s] to support a finding that the respondent obtained the domain name to take advantage of the complainant's mark and as such that the respondent lacks rights or legitimate interests in the domain name". [WIPO Overview 3.0](#), section 2.14.1.

Moreover, Respondent has attempted to conceal its identity by providing false contact information (the Registrar verification disclosed information for the registrant of the disputed domain name listing an address in Anhui Province, China, but also then specifies "Country: US"). See [WIPO Overview 3.0](#), section 2.5.3.

Accordingly, the record supports a conclusion that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant also bears the burden of establishing that the "domain name has been registered and is being used in bad faith". Policy, paragraph 4(a)(iii). As set forth in the Policy, paragraph 4(b):

"[T]he 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:

(i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [Respondent 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 [Respondent has] engaged in a pattern of such conduct; or

(iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [Respondent's] website or location or of a product or service on [Respondent's] website or location."

"Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant's trademark would also satisfy Complainant's burden."

[WIPO Overview 3.0](#), section 3.1.

Here, it appears that Respondent has attempted to attract Internet users to Respondent's website for commercial gain, by creating a likelihood of confusion with Complainant's mark as to source, sponsorship, affiliation, and/or endorsement. The uses of the JOYJOLT trademark in the disputed domain name and on Respondent's website appears to be intended to attract Internet users to Respondent's website when they likely were looking for Complainant or for Complainant's authorized products. The addition of "store" in the disputed domain name and the uses of ".shop" as the gTLD appear to be designed to reinforce the notion that the user has reached an authorized JOYJOLT store / shop. The use of a website that mirrors Complainant's own website in many ways also appears to be intended to confuse consumers.

The registration and unauthorized commercial use of a domain name that is known to be confusingly similar to another party's trademark is evidence of bad faith under paragraph 4(b)(iv) of the Policy. *Caliber Home Loans, Inc. v. Domains By Proxy, LLC / Patrick Scott*, WIPO Case No. [D2018-0524](#) ("[w]hat is clear is that the Respondent (a) was well aware of the Complainant's mark, [...], and (b) traded on the Complainant's reputation to attract Internet users to a portal that offered both competing and related financial services, presumably for commercial gain. This is very like the example cited in the Policy, paragraph 4(b)(iv), and certainly amounts to bad faith for Policy purposes"); *Cotton on Clothing Pty Ltd v. T H LOH*, WIPO Case No. [D2009-1132](#) ("by fully incorporating the COTTON ON Marks into the disputed domain name and by using the website at such domain name [for commercial purposes] [...] [t]he Panel is therefore satisfied that the Respondent has also used the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy."). The use of the ".shop" gTLD to imply that the consumer has reached a JOYJOLT shop also tends to indicate bad faith. [WIPO Overview 3.0](#), section 1.11.2 ("in cases where the TLD corresponds to the complainant's area of trade so as to signal an abusive intent to confuse Internet users, panels have found this relevant to assessment under the third element"). The other factors cited by Complainant also are evidence of bad faith. [WIPO Overview 3.0](#), section 3.1.1 ("[i]f on the other hand circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, ... (iii) website content targeting the complainant's trademark, ... (iv) failure of a respondent to present a credible evidence-backed rationale for registering the domain name"); *International Business Machines Corporation v. Laohu Liu*, WIPO Case No. [D2020-1650](#) ("Complainant is a famous company, well-known worldwide as a provider of products and services in the field of information technology. ...[S]ince Respondent was never authorized or licensed to use Complainant's IBM famous mark, there is no conceivable use of the disputed domain name that would not be in bad faith. ... Respondent failed to respond to the Complaint or to provide any explanation whatsoever in this proceeding. ... Given all these facts and circumstances, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

Accordingly, the Panel finds that the record supports a conclusion that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(a)(iii) of the Policy is satisfied.

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, <joyjoltstore.shop> be transferred to Complainant.

/Bradley A. Slutsky/

Bradley A. Slutsky

Sole Panelist

Date: January 30, 2023