

ADMINISTRATIVE PANEL DECISION

Jo Malone Inc. v. zhenhao xu, zhenhaoyouxiangongsi and weihui lin,
weihuimaoyi

Case No. D2023-4417

1. The Parties

The Complainant is Jo Malone Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondents are zhenhao xu, zhenhaoyouxiangongsi, China, and weihui lin, weihuimaoyi, China.

2. The Domain Names and Registrar

The disputed domain names <jomaloneau.com> and <jomaloneonline.com> are registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2023. On October 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 27, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on October 30, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on November 2, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 23, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on November 28, 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 markets and sells fragrances, candles, skin care, and cosmetic products under the JO MALONE brand on a worldwide basis through more than 170 retail and online vendors that offer JO MALONE goods, and through more than 180 JO MALONE retail stores.

The Complainant holds trademark registrations for JO MALONE in multiple jurisdictions, including the following:

- Australian trademark registration number 796620, registered from June 8, 1999, for goods and services in classes 4 and 39;
- Australian trademark registration number 756999 registered from March April 11, 1998, for goods in class 3; and
- Chinese trademark registrations numbers 1150379, 1093578, and 1104647, registered on February 14, 1998, September 7, 1997, and September 21, 1997, specifying goods in classes 3, 4, and 5, respectively.

The Complainant has also registered "jomalone" in multiple top-level domains and secondary level domains, including <jomalone.com>, which it uses in connection with online stores where it offers JO MALONE products for sale. The Complainant also operates social media accounts with the JO MALONE mark.

The disputed domain names <jomaloneonline.com> and <jomaloneau.com> and are both registered with 1API GmbH (the "Registrar") on the August 5, 2023, and August 10, 2023, respectively. Both registrations were updated on October 26, 2023.

The disputed domain name <jomaloneau.com> redirects to the disputed domain name <jomaloneonline.com>, which resolves to an online store that displays the JO MALONE mark and purportedly offers for sale the Complainant's JO MALONE products. The said website has also virtually the same layout and display photographs of the Complainant's products.

5. Parties' Contentions

A. Complainant

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

The Complainant contends that the disputed domain names are confusingly similar to its JO MALONE mark. The disputed domain name <jomaloneonline.com> thus contains the mark in its entirety with the addition of the generic and descriptive term "online", and <jomaloneau.com> contains the mark in its entirety with the addition of the country code for Australia "au". The Complainant further contends that the Respondents have no rights or legitimate interests in the disputed domain names and that the Respondents registered and are using the disputed domain names in bad faith, for a web shop that purports to offer genuine JO MALONE products at discounted prices, and which has virtually the same layout and display photographs of the Complainant's products.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Issue: Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules since the Complainant thus believes that two disputed domain names are under common control, *inter alia* since they are both registered to the same registrar and were registered around the same time.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that both disputed domain names are registered to the same registrar, that they were registered around the same time, and that both of the registrations were updated on the same date. More importantly is however the fact that the disputed domain name <jomaloneau.com> redirects to the disputed domain name <jomaloneonline.com>, which resolves to an online store that displays the JO MALONE mark and purportedly offers for sale the Complainant's JO MALONE products at low prices. This is a clear indication that the disputed domain names are subject to common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2 Substantive Issues

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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

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

Although the addition of other terms here, "online" and "au" respectively, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing

similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

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

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

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant’s *prima facie* showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

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 the Respondents are using the disputed domain name <jomaloneau.com> to redirect to the other disputed domain name <jomaloneonline.com>, which resolves to an online store that displays the JO MALONE mark and which purportedly offers for sale the Complainant’s JO MALONE products *inter alia* by using virtually the same layout and by displaying photographs of the Complainant’s products.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <jomaloneau.com> and <jomaloneonline.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: January 1, 2024