

## **ADMINISTRATIVE PANEL DECISION**

Thorpe Technologies, Inc. v. Domains By Proxy, LLC / Gregory Kudasz,  
Irukandji-USA

Case No. D2022-1456

### **1. The Parties**

The Complainant is Thorpe Technologies, Inc., United States of America (“United States”), represented by Churovich Law, LLC, United States.

The Respondent is Domains By Proxy, LLC, United States / Gregory Kudasz, Irukandji-USA, United States, self-represented.

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

The disputed domain name <jtt.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 22, 2022. On April 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 4, 2022, 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 amended Complaint on May 9, 2022. The Center received email communications from the Respondent on May 4, May 6, May 10, and May 12, 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 the Respondent of the Complaint, and the proceedings commenced on May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Response was filed with the Center on May 19, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on June 12, 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

The Complainant is a corporation established under the laws of the State of California and headquartered in San Dimas, California, United States. It is a subsidiary of GPRE Holdings, Inc. The Complaint states that the Complainant “was formed in 1993 and has for over twenty years been a major designer and manufacturer of a complete line of custom engineered industrial furnaces and heat processing equipment, and a provider of engineering services for the aluminum, forging, heat treating, and incineration industries worldwide”. The Complainant operates a website at “www.thorpetech.com” (the “Complainant’s website”). According to information included with the Complaint, the Complainant employs approximately 30 people and generates annual worldwide sales in excess of USD 16 million.

The Complainant uses the following logo comprised of the stylized letters “JTT”:



On April 4 and April 6, 2022, some three weeks before filing the Complaint in this proceeding, the Complainant filed applications with the United States Patent and Trademark Office (“USPTO”) as “Thorpe Technologies, Inc. AKA JTT CORPORATION” to register JTT as a standard character mark (Serial Number 97345315) and to register the JTT logo shown above as a composite mark with letters and design, without claiming color as a feature of the mark (Serial Number 97348932). Those applications are pending at the time of this Decision.

The Complainant claims common law trademark rights in both JTT as a word mark and in its logo featuring the stylized letters “JTT”. The record includes images of the JTT logo on signage, documents, and the Complainant’s website from 1995 through 2022. These images do not show the letters “JTT” appearing in ordinary characters but rather in the stylized form shown above. Indeed, the Complaint refers to the exhibits as examples that “prominently display Claimant’s JTT mark stylized as the JTT Logo”.

The Registrar’s Whols database shows that the Domain Name was created on January 19, 1996, and that it was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Gregory Kudasz, who listed his organization as Irukandji-USA, showing a postal address in Charlotte, North Carolina, United States and the email address “[...]@fansites.com”. The domain name <fansites.com> resolves only to a parking page.

The Response states that the Respondent is the original registrant of the Domain Name, and that the Respondent has owned the Domain Name continuously since 1996. However, the Respondent reports that the Respondent lost control of the Domain Name for a period in 2012 when “the Domain Name was stolen and required a federal lawsuit to get it back”, citing *Kudasz v. Pavlov*, (3:12-cv-00625), US District Court, W.D. North Carolina.

The Panel notes that the online database operated by the North Carolina Secretary of State does not include a registered business entity with a name including “Irukandji-USA” or “Irukandji USA”. (“Irukandji” is a species of jellyfish.) This is a name that the Respondent Mr. Kudasz has used for at least one former business entity. The online database of the Nevada Secretary of State shows that IRUKANDJI USA LC was formed as a Nevada limited liability company in 2005 with Gregory Kudasz as the Manager. The entity

status is shown as “permanently revoked”. The Response in this proceeding was submitted only in the name of Gregory Kudasz, so the Panel will treat “Irukandji-USA” as an alter ego of Mr. Kudasz and refer to both collectively hereafter as “the Respondent”.

The Response attaches a Certificate of Assumed Name for a Corporation dated December 29, 1995, showing that “the Respondent” (actually, a Delaware corporation called Tifa Networks Incorporated, for which Mr. Kudasz signed as a corporate officer) registered “Jellyfish Television and Theatre” with the Mecklenburg County Register of Deeds as a name under which it would do business in North Carolina. According to the Response, this “DBA” (“doing business as”) name was used in connection with a website of more than 100,000 pages that “provided communications for separate businesses”. The Response does not include screenshots of this website. The Panel notes that the Internet Archive’s Wayback Machine includes numerous screenshots of the former website at “www.fansites.com” operated by Tifa Networks Incorporated, which allowed fans to post information and buy and sell items related to favorite movies, television shows, video games, and sports celebrities. The domain name <fansites.com> no longer has an active website, but it is the domain name that the Respondent used for contact emails in registering the Domain Name.

Archived screenshots of websites associated with the Domain Name on the Internet Archive’s Wayback Machine show that for many years the Domain Name has variously produced error messages, “coming soon” messages, or advertised the Domain Name for sale. In May 2002, it resolved to a portal with third-party links, including links to <fansites.com> and sub-domains on <fansites.com>, the website described above that was associated with the Respondent. In the late 1990s, the Domain Name was used for a website headed “familyshows.com” that presented links and information about movies and television shows. That website had a copyright notice for Tifa Networks Incorporated, the same company associated with the Respondent that also produced <fansites.com>.

The Complainant learned that the Domain Name was listed for sale through the Registrar and contacted the Respondent about a possible purchase of the Domain Name. “When Complainant attempted to offer a reasonable payment for the JTT.COM domain name to cover Registrant’s out-of-pocket costs, the Registrant’s offer was flatly refused”. This proceeding followed.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant asserts that the Domain Name is identical to the “un-stylized” “JTT” lettering of its logo, which it claims as a common law “trademark/service mark”.

The Complainant argues that there is no evidence that the Respondent has been known by a corresponding name or has used the Domain Name in connection with a *bona fide* offering of goods or services, or made demonstrable preparations for such use, or has otherwise made fair use of the Domain Name. The Complainant concludes that the Respondent lacks rights or legitimate interests in the Domain Name, merely parking the Domain Name and offering it for sale for an exorbitant price, citing listings by the Registrar for as much as USD 57,500. The Complainant argues that this amounts to bad faith:

“Given that the Respondent has owned the JTT.COM domain name for multiple years, is demanding an outrageous amount of money for the domain name, but there is no evidence that the Respondent has any rights or legitimate interests with respect to the domain name ... the Respondent’s registration and use of the JTT.COM domain name has clearly been in bad faith.”

### **B. Respondent**

The Respondent observes that the Complainant only applied for trademark registration weeks before filing the UDRP Complaint. The Respondent challenges the Complainant’s common law trademark claims,

arguing that the Complainant does not use “JTT” apart from the logo, and the “Complainant’s trademark is too stylized and indecipherable as a word mark or acronym” as the Complainant asserts.

The Respondent contends that three-letter domain names are intrinsically valuable, as indicated by the selling prices suggested for the Domain Name by the Registrar and its domain name broker AfterNic, and that the Respondent has a legitimate interest in holding the Domain Name for potential resale. The Response also suggests, without insisting on the point, that the Domain Name would be appropriate as the initials for the DBA Jellyfish Television and Theater.

The Respondent denies prior awareness of the Complainant or its claimed JTT common law mark and argues that the Complainant is not well known outside its industry. The Respondent observes that Internet searches on “JTT” do not prominently products results concerning the Complainant but rather “Junior Team Tennis, a gallery on Broadway in New York City, a 1990’s teen actor, Arizona Job Training Tax (JTT), Journal of Telemedicine and Telecare, Joint Tactical Terminal - Integrated Broadcast Service”.

The Respondent asks for a finding of Reverse Domain Name Hijacking, on the grounds that the Complainant’s claimed mark was not established when the Domain Name was registered and there is no plausible evidence that the Respondent contemplated the mark or tried to sell the Domain Name to the Complainant or disrupt its business.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following:

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

Under paragraph 15(a) of the Rules, “[a] Panel 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”.

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

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a straightforward comparison between the complainant’s trademark and the domain name”. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. The Domain Name is identical to the claimed mark JTT. (As usual, the Top-Level Domain “.com” is disregarded as a standard registration requirement. See *id.* section 1.11.2.) The mark is not registered, however, and so requires evidence “that the mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.” [WIPO Overview 3.0](#), section 1.3.

The Complainant has furnished such evidence from 1995 to the present for the stylized JTT design logo but not for the initials “JTT” apart from their use in the design logo. The Respondent protests that the letters as featured in the design logo are so stylized that they are practically “indecipherable”, but the Panel does not find that the letters cannot be recognized or that the design elements of the mark “overtake the textual elements” (see *id.*, section 1.10). Accordingly, the Panel finds that the Complainant has adduced sufficient evidence of acquired distinctiveness to support reliance on the JTT logo as a common law mark for purposes of the Policy, the textual element of which is identical to the Domain Name.

The Panel concludes, therefore, that the Complainant has established the first element of the Complaint.

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

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the Respondent's failure to use the Domain Name for at least the last two decades for an active website. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent suggests that the initials "JTT" could be relevant for the DBA Jellyfish Television and Theater, but there is no evidence of such use or demonstrable preparations to use the Domain Name in that connection. In any event, WIPO panels generally find that claims of rights or legitimate use must be assessed as of the time of the UDRP proceeding (see [WIPO Overview 3.0](#), section 2.11), and there is no evidence of current use or preparations to use the Domain Name for a commercial or non-commercial activity relevant to the acronym "JTT".

The Respondent's more fundamental argument is simply that "[h]olding a domain name for sale is a *bona fide* commercial activity", and three-letter domain names have "particular value". This is because they are simpler to read and type than long domain name strings, memorable, and can be relevant for many possible initials or acronyms.

In the Panel's view, this issue is similar to the assessment of claims of legitimate interests in the registration of domain names corresponding to dictionary words, phrases, acronyms, or numbers. See [WIPO Overview 3.0](#), section 2.10.1. They have potential value to many users for non-trademark reasons, and a respondent may establish a legitimate interest in them for those reasons if the respondent can "indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant's mark" (*id.*, section 2.10.2). The "status and fame" of the mark at issue is often a relevant consideration in deciding whether the respondent's interest is legitimate or pretextual.

Here, the Respondent registered the Domain Name in January 1996, a few days after filing a DBA registration for an assumed name with the initials "JTT", for a company that produced a television and movie fan site. For some years, the Domain Name was used for television and movie information and links, including links to that fan site. The Respondent has maintained the Domain Name registration for 26 years, contending that the three-letter Domain Name is a valuable investment.<sup>1</sup> As described further in the next section, there is little reason to believe that this conduct was a pretext for attacking the Complainant's mark.

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<sup>1</sup> The 2012 dispute and litigation mentioned in the Response does not appear to have impacted the registration of the Domain Name, and the Panel finds on the current record that the Respondent maintained continuous registration of the Domain Name since 1996.

The example of legitimate interests given in the Policy, paragraph 4(c) are expressly not exhaustive. The Panel finds that the Respondent has a credible interest in the Domain Name for its resale value as an intrinsically valuable, short domain name, which the Respondent has attempted to sell through domain name brokers, and that this represents on the facts of this case a legitimate interest for purposes of the Policy.

The Panel concludes, therefore, that the Complainant fails to establish the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following (in which “you” refers to the registrant of the domain name):

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or ...

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Complainant must show that the Respondent both registered and used the Domain Name in bad faith, and that is difficult where the Respondent registered the Domain Name more than 26 years ago in 1996. The Complainant infers bad faith because the Respondent has not posted an active website associated with the Domain Name since 2002 and is now seeking a high price for the Domain Name. These are flawed assumptions. By its own account, the Complainant started using the unregistered JTT logo in 1995, in connection with industrial machinery. The record does not include the level of sales and advertising in 1995, but these were clearly not consumer products. There is no particular reason to presume that the Respondent would have been aware of the JTT logo in January 1996 when the Respondent registered the Domain Name and started using it for a website dedicated to television and movie information and links (which the Complainant ignored in its chronology of archived uses of the Domain Name) and later for a portal with links to the Respondent’s related website at “www.fansites.com”. Notably, the Respondent had registered a DBA with the initials “JTT” a few days before the Domain Name registration. In 26 years, the Respondent did not approach the Complainant about selling the Domain Name, and correspondence in the record shows that the Registrar and a broker considered that the Domain Name had high value as a short “.com” domain name. On this record, the Respondent appears to have had plausible reasons for registering and maintaining the Domain Name, and there is little reason to doubt the Respondent’s denial of prior awareness of the Complainant or its mark.

The Panel concludes that the Complainant has failed to establish the third element of the Complaint.

### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the UDRP Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking (‘RDNH’) or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. The Respondent has requested such a finding here.

Reverse Domain Name Hijacking is defined under the UDRP Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. Mere lack of success of a complaint is not sufficient to find Reverse Domain Name Hijacking. See [WIPO Overview 3.0](#), section 4.16. A finding of RDNH is warranted, for example, when a panel finds that the complainant (especially one

represented by counsel) should have recognized that it could not succeed on one of the three elements of the complaint under any fair interpretation of the available facts or brings a complaint based “on only the barest of allegations without any supporting evidence” (*id.*).

Here, the Complaint is clearly deficient. The Complainant is not a large enterprise, and it operates in a niche market selling to industrial customers. The Respondent registered the three-letter Domain Name 26 years ago, less than a year after the Complainant says it began using its unregistered design logo. It should have been clear that the Complainant would have to establish that its logo quickly acquired distinctiveness to serve as a common law mark and also a national reputation, and that the Respondent more likely than not meant to attack this mark in 1996. But the Complaint makes no serious effort to address these issues. The Complainant focuses on the fact that the Respondent offers the Domain Name for a large amount of money, but this is no surprise considering that it is a three-letter “.com” domain name. A UDRP complainant cannot simply overlook the question of whether there were trademark rights at the time of the domain name registration and whether it was likely that the respondent meant to exploit them.

The Panel finds that the Complainant brought the Complaint in bad faith, within the meaning of Rule 15(e), in an attempt at Reverse Domain Name Hijacking.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: June 26, 2022