

ADMINISTRATIVE PANEL DECISION

JD Sports Fashion Plc v. Barbara Bayer

Case No. D2022-4913

1. The Parties

The Complainant is JD Sports Fashion Plc, United Kingdom, represented by Haseltine Lake Kempner LLP, United Kingdom.

The Respondent is Barbara Bayer, Germany.

2. The Domain Name and Registrar

The disputed domain name <jdsportsbudapest.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 the Complainant on December 24, 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 December 28, 2022.

The Center verified that the Complaint together with the amendment to 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 January 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on February 21, 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, JD Sports Fashion Plc, is a leading retailer of sports and casual wear, including footwear, based in the United Kingdom with over 900 stores across 21 territories worldwide. The Complainant was incorporated in 1985 and subsequently changed its corporate name to JD Sports Fashion Plc in 2008.

The Complainant is the registered proprietor of numerous registered trademarks for JD and JD SPORTS, including European Union (EU) trademark number 008182644 for JD (word), registered on December 13, 2011 for goods and services in international classes 9, 14, 18, 25, 28, 35, 36 and EU trademark number 008182611 for JD SPORTS (word) registered on December 13, 2011 for goods and services in international classes 9, 14, 18, 25, 28, 35, 36. The Complainant also owns a number of domain names, which include the marks JD and JD SPORTS such as <jdsports.co.uk>

The disputed domain name was registered on June 23, 2021 and resolves to an active website that offers sale of sports clothing and footwear.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is identical/confusingly similar to the Complainant's JD Sports Marks, JD and JD SPORTS. The disputed domain name contains an identical reproduction of both of the JD Sports Marks. The use of the word "budapest" in the disputed domain name does not sufficiently distinguish the disputed domain name from the Complainant's marks.

The Complainant further asserts that the Respondent does not have rights or legitimate interests in respect of the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. On the contrary the use of the disputed domain name has been intentionally directed at falsely suggesting an affiliation between the disputed domain name and the Complainant. Moreover, the Complainant has been provided with evidence which suggests that the website associated with the disputed domain name may be involved in phishing activity.

The Complainant finally asserts that it is clear, the disputed domain name was registered and is being used to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name or of goods/services provided through the disputed domain name. As such, it is clear that the disputed domain name was registered, and is being used, in bad faith.

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 disputed 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 disputed domain name; and
- (iii) that the disputed 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 under the Policy, the disputed domain name is confusingly similar to the Complainant's registered trademark JD SPORTS because it contains the mark in its entirety. The addition of the geographical term "budapest" does not prevent a finding of confusing similarity in the present case. The generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the confusing similarity test.

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 and 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 Panel finds that the composition of the disputed domain name, including the Complainant's trademark JD SPORTS and the term "budapest", carries a risk of implied affiliation with the Complainant's trademark. Moreover, the use of the confusingly similar disputed domain name for a website that offers the same types of goods as those offered by the Complainant cannot confer upon the Respondent rights or legitimate interests, nor does such use qualify as a *bona fide* noncommercial offering.

The Respondent has not produced any evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is 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 respondent 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on the respondent'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, including the evidence on record of the use of the Complainant's trademark JD SPORTS, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. This is substantiated by the fact that the Respondent uses the disputed domain name for a website that offers sale of sports clothing and footwear *i.e.*, sale of goods that are identical to the goods that are also sold by the Complainant in the Complainant's shops and on its websites.

The Panel therefore finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Moreover, noting the Respondent's competitive operations it is also likely that the Respondent registered the disputed domain name with the intent of disrupting the business of the Complainant.

Noting that the disputed domain name incorporates the Complainant's distinctive trademark JD SPORTS, that no Response has been filed, and that there does not appear to be any conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, 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 <jdsportsbudapest.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: March 13, 2023