

ADMINISTRATIVE PANEL DECISION

JOTT Market & Distribution, SAS v. BARRY Toby
Case No. D2023-1679

1. The Parties

The Complainant is JOTT Market & Distribution, SAS, France, represented by Fidal, France.

The Respondent is BARRY Toby, France

2. The Domain Name and Registrar

The disputed domain name <jottcanada.net> is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed considering 20 disputed domain names with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 19, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On April 20 and April 24, 2023, the Registrars transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain name (Not disclosed) which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 2023 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 5, 2023 considering one disputed domain name <jottcanada.net>. The Center sent the Partial Notification of (Requested) Withdrawal to the Parties on May 9, 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 May 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 2, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on June 15, 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 is a French company JOTT MARKET & DISTRIBUTION that operates in the field of clothing and fashion. It owns and uses a number of trademark registrations for JOTT:

- French trademark JOTT No. °4860768 filed and registered on April 12th 2022 in classes 3; 9; 14; 16; 18; 25; 28 and 35;
- French trademark JOTT No. °4860769 filed and registered on August 26, 2022 in classes 3 ; 9; 14; 16 and 28;
- International trademark JOTT No. ° 1486973 registered on March 22, 2019 in classes 18; 25 and 35;
- International trademark JUST OVER THE TOP JOTT EVERYBODY CAN BE JOTT No. ° 1488003 registered on March 22 2019 in classes 18; 25 and 35;
- International trademark JUST OVER THE TOP JOTT No. ° 1407616 registered on March 2, 2018 in classes 14; 25 and 28;
- International trademark JUST OVER THE TOP JOTT No. ° 1398549 registered on October 4, 2017 in class 25;
- International trademark JUST OVER THE TOP No. ° 1154878 registered on January 29th 2013 in class 25.

The disputed domain name is <jottcanada.net> and was registered on March 1st, 2023. It routes to an active website where the Complainant's products are displayed.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademarks, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

The Complainant is the owner of a number of JOTT trademarks, all registered and used before the date when the disputed domain name was registered.

The disputed domain name <jottcanada.net> reproduces the Complainant's trademark JOTT in its entirety.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case the geographic name "Canada" would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".net" is a standard registration requirement and as such does not prevent a finding of confusing similarity.

The disputed domain name therefore is confusingly similar to the Complainant's earlier registered trademark JOTT.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, [the 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 and services;
- (ii) [the Respondent] (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) [the 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.

The Panel notes that the Respondent has not filed a Response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further claims that the Respondent is not known under the disputed domain name, does not own any proprietary rights in the name "jottcanada" and does not make any *bona fide* use - neither commercial nor noncommercial, of the same.

The Complainant highlights that the disputed domain name routes towards an active website where its products are exhibited.

A comparison of the Complainant's website and the Respondent's website (as per screenshots supplied by the Complainant) reflects that some images and photographs of the Complainant's products, as published in its own website, are reproduced in the Respondent's website.

Still, the Complainant claims that the Respondent is not engaged in a *bona fide* commercial use of the disputed domain name for its website would be fictitious (the Complainant uses the term “scam”, presumably to indicate that the Respondent would not run any real business) and that, in any case, should actual sales be performed, the products offered for sale by the Respondent would necessarily be counterfeits.

In any event, the Panel also notices that the disputed domain name is formed exclusively with the Complainant’s trademark (*i.e.*, it is inherently misleading), and that the related website does not contain any disclaimer that the same is not run by the Complainant, as sole trademark owner and manufacturer of the trademarked products.

Even if the Respondent was an unauthorized but legitimate reseller of the Complainant’s goods, it should have inserted in its website a clear disclaimer informing the public that it is not the manufacturer of the good, but only a distributor, all the more since the disputed domain name <jottcanada.net> induces that the same is related to the official online store of the Complainant (see section 2.5.1 of [WIPO Overview 3.0](#)).

It is a consensus view among UDRP panels that a reseller or distributor can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, and the site is accurately and prominently disclosing the registrant’s relationship with the trademark holder.

See: *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and *ITT Manufacturing Enterprises, Inc., ITT Corporation v. Douglas Nicoll, Differential Pressure Instruments, Inc.*, WIPO Case No. [D2008-0936](#).

In the present matter, in the absence of any disclaimer and the nature of the disputed domain name comprising the Complainant’s trademark in its entirety with the geographical term “Canada”, and taking into account the contentions of the Complainant, that the Respondent has not contested, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

There is no doubt in the present matter that the Respondent had the Complainant’s trademark in mind when it registered the disputed domain name, as the Respondent’s website does exhibit the Complainant products and reproduces images, texts and photographs taken from the Complainant’s website.

The Panel further observes that the Respondent used a privacy registration service, and appears to be eventually located in France.

It is a consensus view among panels that although use of a privacy or proxy registration service is not in and of itself an indication of bad faith, the manner in which such service is used can in certain circumstances constitute a factor indicating bad faith. For example, registrant use of a privacy service in combination with provision of incomplete contact information to such service or a continued concealment of the “true” or “underlying” registrant may be evidence of bad faith.

The Complainant highlights that the Respondent’s website does not contain any information enabling Internet users to identify or make contact with the person or company that runs the said website.

From the above, the Panel is able to conclude that the Respondent is concealing its identity and has provided incomplete details not only when it sought to register the disputed domain name but also on the website to which the disputed domain name directs, thus making impossible for Internet users to make contact with it.

It is also noted that the Respondent's website is confusing as it can be construed by any unsuspecting Internet users as the genuine online store of the Complainant. As stated above, the said website does not contain any disclaimer informing the public that the Respondent is not the original manufacturer of the trademarked goods.

Moreover, the disputed domain name is inherently misleading.

The Respondent is thus making a misleading and possible fraudulent use of the Complainant's trademarks and images of products, with a view to diverting traffic to its own profit.

For all above reasons, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

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 <jottcanada.net> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: June 22, 2023