

## **ADMINISTRATIVE PANEL DECISION**

MELJAC v. Skat Pro LLC

Case No. DME2023-0009

### **1. The Parties**

The Complainant is MELJAC, France, represented by Ipaz Selarl, France.

The Respondent is Skat Pro LLC, Russian Federation.

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

The disputed domain name <meljac.me> is registered with RU-CENTER-MSK (Regional Network Information Center, JSC dba RU-CENTER) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2023. On July 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 2023, 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 (PRIVACY PROTECTION SERVICE –whoisproxy.ru) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Respondent sent an informal email communication to the Center. The Complainant filed an amended Complaint in English on July 24, 2023.

On July 20, 2023, the Center informed the parties in Russian and English, that the language of the registration agreement for the disputed domain name is Russian. On July 21, 2023, the Complainant requested English to be the language of the proceeding. The Respondent objected to the Complainant’s request and requested Russian to be the language of the proceeding on July 24, 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 August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Response was filed with the Center on August 1, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 11, 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 specialized in the manufacture of luxury electrical switches and other wiring accessories.

The Complainant is the owner of the International trademark MELJAC with registration No. 904520, registered on July 13, 2006, for goods and services in International Classes 6, 9, 14, and 42, registered for multiple jurisdictions, including the Russian Federation, where the Respondent is located (the “MELJAC Trademark”).

The Complainant is also the owner of the domain name <meljac.com>, which resolves to its official website.

The disputed domain name was registered on January 20, 2023. It resolves to a Russian language website that displays the Complainant’s MELJAC Trademark and offers for sale the Complainant’s products. The website contains the header:

“MELJAC | Дизайнерские выключатели”

(in English:

“MELJAC | Designer switches”),

and includes the following statements:

“Дизайнерские выключатели

Meljac – Французский бренд электрооборудования премиум класса, которому доверяют самые роскошные интерьеры Европы.”

(in English:

“Designer switches

Meljac is the French premium electrical equipment brand trusted by Europe’s most luxurious interiors”);

“О бренде

В своей работе мы руководствуемся рациональным подходом к выбору электроустановочных изделий. Поэтому выключатели и розетки фабрик, представленные в нашем каталоге — это лидеры продаж в Европе и в остальном мире. Их выбирают миллионы.

Мы собрали для вас передовые серии и отдельные эксклюзивные экземпляры изделий фабрик, которые в производстве товаров делают акцент не только на дизайн, но и на функциональность.”

(in English:

“About the brand

In our work we are guided by a rational approach to the choice of electrical installation products. Therefore, the switches and sockets of the factories presented in our catalog are the leaders of sales in Europe and the rest of the world. They are chosen by millions.

We have collected for you advanced series and individual exclusive samples of products of factories that in the production of goods place an emphasis not only on design, but also on functionality”).

The website does not include any statement about the existence of a relationship between the Complainant and the website provider or the lack thereof.

## **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 name.

The Complainant states that the disputed domain name is identical to its MELJAC Trademark and its trade name.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it does not hold trademark rights in the name MELJAC and is not commonly known by the name MELJAC nor by the disputed domain name, and because the Complainant has not authorized the Respondent to use the MELJAC Trademark and there is no affiliation between the Parties.

The Complainant points out that the disputed domain name is being used to operate a website displaying the Complainant's MELJAC Trademark and the visual identity of the Complainant, and offering for sale models of switches and electrical equipment belonging to the Complainant's range of products. According to the Complainant, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain, and is not carrying out a *bona fide* offering of goods or services, as the items offered on its website are only presented as loss-leader products to capitalize on the reputation and goodwill of the Complainant's MELJAC Trademark and to extract benefit from them, and when the Respondent is asked for a quote for the items presented on the website at the disputed domain name, it directs consumers to the goods of the Complainant's competitors, insisting that prices and delivery times are more attractive than for the Complainant's genuine goods.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that the real identity of the holder of the disputed domain name was shielded by a privacy service, preventing the Complainant from knowing its identity. The Complainant maintains that the MELJAC Trademark has acquired a very high profile, and is now the market leader for top-of-the-range switches and cites a number of positive reviews in the media in support of this contention.

The Complainant states that the Respondent uses the disputed domain name for attracting visitors familiar with the Complainant's name and trademark, and at least some of them may be confused into believing that the Respondent's website is associated with or endorsed by the Complainant. The Complainant concludes that the disputed domain name is thus intentionally used to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's MELJAC Trademark. Once Internet users are attracted to the website at the disputed domain name, confusion with the Complainant is maintained by the fact that the website displays the Complainant's goods under the MELJAC Trademark. These items are only presented as loss-leader products, since once contacted by potential customers, the Respondent directs them to similar goods produced by the Complainant's competitors.

### **B. Respondent**

The Respondent has made the following statements in this proceeding:

Informal email of July 20, 2023, written in English:

“Hello, [...].

It is absolutely unclear to us what we should do, what needs to be sent, what is wrong with our domain?

I ask for clear explanations of what the problem is and how it should be solved!

We will be glad to receive your detailed consultation.

Sincerely yours!”

With its informal Response of August 1, 2023 written in Russian, the Respondent alleges that as long as the Complaint was filed in a language different from Russian, the Respondent cannot understand the legal grounds of the Complainant’s claims, what territorial rights are alleged to have been violated and how such rights have been protected. The Respondent submits that the “.me” country-code Top-Level Domain (“ccTLD”) belongs to Montenegro, but it is unable to find any reference to this country in the documents submitted by the Complainant.

The Respondent maintains that, to the extent that the Complaint is based on the fact that the Respondent is located in the Russian Federation, as a result of the international sanctions imposed on the Russian Federation and the withdrawal of most European brands from the Russian market, Russian citizens are fully exempt from any international liability. The Respondent submits that the Russian President has signed a law “On the Termination of International Treaties of the Council of Europe with respect to the Russian Federation”, so the international treaties of the countries of Europe no longer apply to the Russian Federation and to its citizens.

The Respondent adds that if the Complainant is interested in acquiring the disputed domain name, the Respondent is ready to consider such a possibility.

## **6. Discussion and Findings**

### **6.1. Procedural Issue - Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.5.1).

The Complaint was filed in English. The Complainant requests that the language of the proceeding be English, and maintains that the Russian language is not widely understood and spoken in France and that the Complainant is not able to draft its Complaint and to communicate in Russian. In the Complainant’s view, the English language is used internationally for business purposes, so the Respondent, being a trading company, is naturally able to understand English and to communicate in this language. The Complainant adds that the disputed domain name is written in the Latin script and is identical to the Complainant’s MELJAC Trademark. According to the Complainant, a strict and unbending application of paragraph 11 of the Rules may result in delay and considerable and unnecessary expenses, while the usage of English in this proceeding would be fair and efficient and would not put either of the Parties at a disadvantage.

The Respondent requested that the language of the proceeding be Russian. With its informal email of July 24, 2023, written in English, the Respondent stated:

“Hello. According to your request, to transmit our request to determine the language of the proceedings by July 25, 2023. We are sending you our request that the language of the proceedings be Russian, and we object to any proceedings against us being conducted in English, French or any other language. We ask you to record our demand for the rejection of any languages other than Russian in the protocol. Also, we demand to familiarize us with the applicant's claim in Russian. Since we have not yet received information about the essence of the claims and what they are based on.”

With the above statement, the Respondent makes a formal objection to the use of English but does not deny that it understands this language. The Respondent has made one other statement (dated July 20, 2023) in English in this proceeding as well. Given that the Respondent has made these two statements in English, there is no reason to accept that the Respondent does not understand English and the substance of the Complaint, and that it may therefore suffer a prejudice if it is not provided with a Russian translation of the Complaint. At the same time, the use of Russian in the present proceeding is likely to increase the costs and the duration of the proceeding, without any apparent benefits.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. At the same time, the Panel will take into account all statements of the Respondent made in Russian and all the evidence that is available in the case file in that language.

## **6.2. Procedural Issue - Applicability of the Policy and Authority of the Panel to Issue a Decision**

With its informal Response of August 1, 2023, the Respondent maintains that as a result of the international sanctions imposed on the Russian Federation and the withdrawal of most European brands from the Russian market, Russian citizens are fully exempt from any international liability. The Respondent submits that the Russian President has signed a law “On the Termination of International Treaties of the Council of Europe with respect to the Russian Federation”, so the international treaties of the countries of Europe allegedly no longer apply to the Russian Federation and to its citizens.

The Panel regards these statements of the Respondent as encompassing an objection to the applicability of the Policy to the present dispute and to the Panel's authority to issue a decision on its substance. Therefore, the Panel will examine this objection before deciding whether to proceed with a decision on the substance of the dispute.

The Respondent has not elaborated the reasons for its objection, and particularly the reasons why and how any unilateral legislative or administrative acts of institutions of the Russian Federation could negate the application of the Policy to the present dispute, involving a domain name in the “.me” ccTLD which the Internet Corporation for Assigned Names and Numbers (ICANN) has delegated to the Government of Montenegro in 2007, or the authority of the Panel to decide such a dispute. The Panel is not aware of any such effects having occurred, and the Registrar, itself also based in the Russian Federation, has expressly confirmed that the Policy is incorporated by reference into the Respondent's registration agreement with the Registrar and thus applies to the disputed domain name.

In view of the above, the Panel accepts that the Policy applies to the disputed domain name and to the present dispute and that the Panel has the necessary authority to issue a decision on the merits, applying the Policy. Therefore, the Panel proceeds to take a decision on the substance of the dispute.

### **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 the MELJAC Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the MELJAC Trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the MELJAC Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

While 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 often-impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

As summarized in section 2.8.1 of [WIPO Overview 3.0](#), panels under the Policy have recognized that resellers and distributors using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name, if they comply with certain cumulative requirements, among which are the requirements that the reseller’s or distributor’s website must accurately and prominently disclose its relationship with the trademark holder and must offer only the trademarked goods.

The disputed domain name is identical to the distinctive MELJAC Trademark and thus carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). The evidence in the case, which has not been disputed by the Respondent, shows that it uses the disputed domain name for a website that offers for sale the Complainant’s MELJAC branded products, while displaying the MELJAC Trademark and product images in the website without authorization by the Complainant, without disclosing the lack of relationship between the Parties. The Respondent has not disputed the Complainant’s statement that Internet users who contact the Respondent in respect of the goods featured on its website are offered to buy third-party products. It therefore appears as more likely than not that the Respondent, being aware of the goodwill of the Complainant’s MELJAC Trademark, has registered and used the disputed domain name in an attempt to exploit the trademark’s goodwill to attract Internet users to the Respondent’s website and then offer them third-party products. Such conduct is not legitimate and would not give rise to rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel therefore 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.

As discussed in the section on rights and legitimate interests, the disputed domain name, being identical to the Complainant's distinctive MELJAC Trademark, carries a high risk of implied affiliation with the Complainant. The undisputed evidence shows that it resolves to a commercial website offering for sale the Complainant's products under the MELJAC Trademark, which is prominently featured on the website multiple times. The website does not disclose the lack of relationship between the Complainant and the website provider. The Respondent does not deny the Complainant's allegation that Internet users are offered products of competitors of the Complainant when they contact the website provider.

Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the MELJAC Trademark in an attempt to attract traffic to the disputed domain name by confusing Internet users that they are reaching an official or authorized online location where the Complainant's products are offered for sale, and has used the disputed domain name to attempt to sell third-party products for commercial gain. This supports a finding of bad faith under paragraph 4(b)(iv) of the Policy.

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

## **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 <meljac.me> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: September 25, 2023,