

## **ADMINISTRATIVE PANEL DECISION**

HAIK SAS v. Jean Renaud, jottfrance

Case No. D2022-0994

### **1. The Parties**

The Complainant is HAIK SAS, France, represented by Fidal, France.

The Respondent is Jean Renaud, jottfrance, France.

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

The disputed domain name <jott-outlet.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2022. On March 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 23, 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 April 5, 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 amendment to the Complaint on April 6, 2022.

The Center verified that the Complaint together with the amendment to the 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 April 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 18, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on April 25, 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 manufactures and sells since 2010 clothing and fashion accessories for men, women and children, specializing in the design of clothing and particularly down jackets under the trade mark JOTT and JUST OVER THE TOP. The Complainant has more than 1500 points of sale in France and abroad.

The Complainant relies in particular on the following trade marks:

- International trade mark JOTT (fig.) No. 1486973 registered since March 22, 2019, in Classes 18; 25 and 35;

The logo for the JOTT trade mark consists of the word "JOTT" in a bold, red, sans-serif font. The letter 'O' is stylized with a white outline and a red shadow effect.

- International trade mark JOTT JUST OVER THE TOP JOTT Everybody Can be JOTT ! (fig.) No. 1488003 registered since March 22, 2019, in Classes 18; 25 and 35;



The disputed domain name was registered on November 26, 2020, through a privacy shield. The identity of the Respondent, an individual domiciled in France, was disclosed by the Registrar in the course of this proceeding.

The disputed domain name resolved to a website which is very similar overall to the website of the Complainant. It was available in French and purportedly offered for sale down jackets, which corresponds to the core business of the Complainant, under the trade marks JOTT and JUST OVER THE TOP JOTT Everybody Can be JOTT !, displaying Complainant's trademark. At the time of drafting this Decision, the disputed domain name resolves to a host parking website.

#### 5. Parties' Contentions

##### A. Complainant

The arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant notes that its trade mark JOTT is reproduced identically in the disputed domain name. It adds that "the addition of "outlet" does not distinguish the disputed domain name from the Complainant's JOTT trade mark and such use in fact merely serves to heighten potential Internet user confusion with the Complainant's domain names, website and the clothing that it offers through them."

On the second element of the Policy, the Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent whatsoever to use the Complainant's trade marks in the disputed domain name or in any other manner. Also, the

Respondent is not commonly known by the disputed domain name and does not hold any trade mark for the disputed domain name. The Complainant also indicates that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services, as it is deliberately creating confusion with the Complainant's business.

On the third element of the Policy, the Complainant highlights that the Respondent's website clearly shows that the latter identically reproduces the Complainant website's appearance. It adds that "the Respondent is deliberately using the identity of JOTT and aims to create confusion with the Complainant in order to give credibility to its scams and phishing operations. Consequently, the Respondent registered and uses fraudulently and in bad faith the disputed domain name <jott-outlet.com> by reproducing the Complainant's prior rights with intent to take advantage of its brand's reputation and give credibility to its scams and phishing operation".

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in this proceeding:

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

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

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the trade mark JOTT.

The disputed domain name <jott-outlet.com> includes the Complainant's trade mark in its entirety, combined with the term "outlet", separated with a hyphen "-". This addition does not prevent the Complainant's trade mark from being recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

As the disputed domain name includes the Complainant's trade mark in its entirety combined with a term that does not prevent the Complainant's trade mark from being recognizable in the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Therefore, the first element of the Policy is satisfied.

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

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production to demonstrate rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In this case, the Respondent has not rebutted the allegations made by the Complainant. The Respondent has no rights, and no legitimate interests, in the disputed domain name.

Besides, the operation by the Respondent of a website which mirrors that of the Complainant, and which uses the trade marks of the Complainant, is likely to mislead Internet users and does not amount to a *bona fide* offering of goods or services under the disputed domain name.

For this reason, and failing any specific allegation by the Respondent, the second element of the Policy is deemed to be satisfied.

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

In order to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances, which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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.

In this case, the Respondent has undoubtedly registered, and is using, the disputed domain name in bad faith.

Regarding bad faith registration: the Respondent has specifically targeted the Complainant's trade mark when configuring the disputed domain name, by associating the trade mark JOTT and adding the generic word "outlet", which refers to the retail of items on sales. Besides, the Respondent refers himself to the "reputation" of the trade mark JOTT on the Respondent's website.

Regarding bad faith use: the Respondent operates a website which has the appearance and overall lookout of that of the Complainant, with the inclusion of several of its trade marks and the retail of down jackets. By doing so, the Respondent intends to attract Internet users by creating a likelihood of confusion with the products and services provided by the Complainant.

All this evidences bad faith registration and use, as per paragraph 4(b)(iv) of the Policy.

The third element of the Policy is satisfied, and pursuant to the request of the Complainant, the disputed domain name should be transferred.

## **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, <jott-outlet.com> be transferred to the Complainant.

*/Benjamin Fontaine/*

**Benjamin Fontaine**

Sole Panelist

Date: June 8, 2022