

ADMINISTRATIVE PANEL DECISION

JPW Industries Inc. v. Gbcs Ybcwq
Case No. D2022-4173

1. The Parties

The Complainant is JPW Industries Inc., United States of America (“United States”), represented by Waller Lansden Dortch & Davis, LLP, United States.

The Respondent is Gbcs Ybcwq, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 7, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 November 10, 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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed Ian Lowe as the sole panelist in this matter on December 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 and its predecessors have since 1960 carried on business under the JET trademark, designing, manufacturing, importing and supplying tools, tool accessories, and other material-handling products.

The Complainant is the registered proprietor of a number of trademarks comprising JET including United States trademark number 0713132 JET, registered on March 28, 1961; International trademark number 806142 JET, registered on October 23, 2002, designating a number of jurisdictions including China and the United Kingdom; and United States trademark number 3627037 JET and device, registered on May 26, 2009 (the "Jet Device Mark"):

The Complainant has since December 1995 operated a website at "www.jettools.com" marketing and promoting its JET branded products.

The Domain Name was registered on August 11, 2022. It resolves to a website (the "Respondent's Website") comprising a substantial copy of the Complainant's website. It carries the Jet Device Mark in the header to the home page as well as an almost identical red banner. The Respondent's Website purports to offer for sale JET branded products, many of them bearing the Jet Device Mark, at very substantially discounted prices. It features numerous images and text copied from the Complainant's website. By way of example, it offers a Horizontal Geared Head Bandsaw for sale at USD 97.50. An Internet search discloses that a United States reseller offers the identical genuine JET product for sale at USD 3,569.00.

Neither the About Us webpage nor the Contact Us webpage of the Respondent's Website gives any information about the identity of the operator of the website. The Contact Us page provides an address in Las Vegas, United States but this is the address of the Walmart Las Vegas Store.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar both to its JET trademark (the "Mark") and to its <jettools.com> domain name, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered or is using the Domain Name in bad faith within the meaning of the Policy.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (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.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark, both by virtue of its trademark registrations and as a result of the substantial goodwill and reputation acquired through its widespread use of the Mark over very

many years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark together with the terms “tool” and “shop”. In the Panel’s view, the addition of these terms does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent is not authorized by the Complainant to use the Domain Name. The Respondent’s Website is a substantial copy of the Complainant’s website, comprising numerous images and text sections copied from the Complainant’s website without its consent, featuring the Mark and the Jet Device Mark, and purporting to offer for sale JET branded products at very substantially discounted prices.

Although there has been no Response by the Respondent, the Panel has in mind that previous UDRP panels have recognized that resellers 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 thus have a legitimate interest in such domain name. The Oki Data¹ test as set out in section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) outlines the following cumulative requirements for such a finding:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site only to sell the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

So far as the first requirement is concerned, the Website offers what purport to be the Complainant’s goods, but in light of the numerous products purportedly for sale and the very substantially discounted prices, it is in the Panel’s view a legitimate inference that the Respondent is not in fact in a position to deliver the products on offer. Turning to the third requirement, the Website gives no information whatsoever as to the identity of the operator of the Website or seller of the products on offer and fails to make clear in an accurate and prominent way, or at all, the Respondent’s relationship (or absence of relationship) with the Complainant. The Respondent has used false address details on its website. The third requirement is not therefore met.

Accordingly, the Panel does not consider that the Respondent has met the Oki Data test, and finds that there is a *prima facie* case that the Respondent does not have any rights or legitimate interests in respect of the Domain Name. Furthermore, the construction of the Domain Name itself is such as to carry a risk of implied affiliation and thus cannot constitute fair use.

The Panel is in no doubt that the Respondent has registered and used the Domain Name with a view to confusing Internet users into believing that the Respondent’s Website was operated by or authorized by the Complainant. The Panel further considers on balance that the Respondent has done so to solicit payment for genuine JET branded products that it is in no position to deliver. Such activity cannot possibly give rise to rights or legitimate interests.

The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the evidence available to the Panel. In the circumstances, the Panel finds that the Complainant has established that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

¹ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)

C. Registered or Used in Bad Faith

In light of the use of the Complainant's Mark and the Jet Device Mark and the nature of the Respondent's website, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. The Panel considers that the Respondent has registered and used the Domain Name to deceive Internet users into believing that the Domain Name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the Mark, no doubt for commercial gain. The Panel considers that this amounts to paradigm bad faith registration and use.

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 Domain Name <jettoolshop.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: December 26, 2022