

ADMINISTRATIVE PANEL DECISION

Strellson AG v. Camus Deff

Case No. D2022-4498

1. The Parties

The Complainant is Strellson AG, Switzerland, represented by SKW Schwarz Rechtsanwälte, Germany.

The Respondent is Camus Deff, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 24, 2022. On November 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 24, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 28, 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 December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on January 6, 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, Strellson AG, appears to be mainly active in the clothing business.

The Complainant invokes two trade marks consisting of or including the sign JOOP:

- JOOP! ONLINESHOP, European Union Trade Mark registered under No. 007543119 on July 23, 2009 in classes 18, 25, and 35;
- JOOP, European Union Trade Mark registered under No. 013083852 on February 3, 2015 in classes 4, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 27, 34, 35, and 42.

The Disputed Domain Name was registered on August 12, 2022 and resolves to a website offering adult content.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trade mark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant claims that it has not licensed the Disputed Domain Name used by the Respondent. According to the Complainant, there are no legal reasons for the Respondent to use a sign identical to the Complainant's trademarks in order to operate a domain name for pornographic content.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent is using the Disputed Domain Name with the intention to attract, for commercial gain, Internet users to a porn site, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's porn site. Furthermore, the Complainant claims that the Respondent is damaging the reputation of the Complainant by providing a porn site linked to the Disputed Domain Name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Complainant has established that there are trade marks in which it has rights. The Complainant's JOOP trade mark has been registered and used in connection to the Complainant's clothing and related products business.

The Panel observes that the Disputed Domain Name incorporates the Complainant's JOOP trade mark in its entirety, simply adding the descriptive term "cams".

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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's JOOP mark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named "Camus Deff". There are no indications that a connection between the Complainant and the Respondent exists or existed.

The Complainant provides evidence showing that the Disputed Domain Name refers to a website offering adult content. Given that the Disputed Domain Name incorporates the Complainant's JOOP mark in its entirety and based on a *prima facie* assessment, the Panel does not find the Respondent's use of the Disputed Domain Name to host an adult-content website to be a *bona fide*, legitimate noncommercial or fair use (see, e.g., *NFON AG v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / John Smith, NC*, WIPO Case No. [D2021-3744](#); *AREVA Société Anonyme à Directoire et Conseil de Surveillance v. wangyongqiang*, WIPO Case No. [D2016-1100](#); *MatchNet plc v. MAC Trading*, WIPO Case No. [D2000-0205](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

The Complainant therefore succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name has been registered and is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its rights in the JOOP mark when it registered the Disputed Domain Name. The Complainant's JOOP marks predate the registration of the Disputed Domain Name by at least seven years. Although the Complainant provided no evidence regarding the reputation of its mark, limited factual research enabled the Panel to confirm the online presence of the Complainant's mark. The Disputed Domain Name includes the Complainant's mark in its entirety without any reasonable and/or verifiable justification. The Panel finds that the Respondent's awareness of the Complainant's trade mark rights at the time of registration suggests bad faith.

By redirecting Internet users to a website offering adult content, the Panel finds it more likely than not that the Respondent intentionally aimed to attract Internet users to visit this website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website.

Moreover, in the Panel's view, there is a risk of tarnishment of the Complainant's marks by suggesting a connection between the Complainant's marks and adult content (see, *NFON AG v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / John Smith, NC*, WIPO Case No. [D2021-3744](#)).

Finally, it appears that the Respondent used a privacy service when registering the Disputed Domain Name. In the Panel's view, this indicates that the Respondent took active steps to conceal his/her identity. In combination with the above, this supports the finding of bad faith registration and use of the Disputed Domain Name (see section 3.6 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name has been registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

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 <joopcams.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: January 20, 2023