

ADMINISTRATIVE PANEL DECISION

Jacquemus SAS v. Durand Hugo
Case No. D2023-2622

1. The Parties

The Complainant is Jacquemus SAS, France, represented by DBK Law Firm, France.

The Respondent is Durand Hugo, France.

2. The Domain Name and Registrar

The disputed domain name <jacquemusprivate.online> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 23, 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 June 23, 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 June 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2023.

The Center appointed Jane Seager as the sole panelist in this matter on August 10, 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 engaged in the manufacturing and sale of clothing and accessories. The Complainant is the owner of a number of trademark registrations for JACQUEMUS, including the following:

- International Trademark Registration No. 1211398, JACQUEMUS, registered on February 5, 2014;
- European Union Trade Mark No. 018080381, JACQUEMUS, registered on October 18, 2019; and
- International Trademark Registration No. 1513829, JACQUEMUS, registered on November 19, 2019.

The Complainant is also the registrant of the domain name <jacquemus.com>, from which it operates a public-facing website and online store.

The disputed domain name was registered on June 1, 2023. At the time of submission of the Complaint to the Center, the disputed domain name resolved to a website that purported to offer for sale goods bearing the Complainant's JACQUEMUS trademark (the Respondent's website), making use of product images as displayed on the Complainant's official website. At the time of this decision, the disputed domain name resolves to a hosting provider parking page stating "Sorry, this store is currently unavailable."

5. Parties' Contentions

A. Complainant

The Complainant asserts rights in the JACQUEMUS trademark. The Complainant submits that the disputed domain name is confusingly similar to its JACQUEMUS trademark, that the addition of the term "private" to the Complainant's trademark does not prevent a finding of confusing similarity, but rather that Internet users viewing the disputed domain name will be led to believe that the disputed domain name is connected to a website dedicated to private sales of the Complainant's products.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant asserts that the Respondent is using the disputed domain name to resolve to a "copycat" website that does not provide any disclaimer regarding the Respondent's website's lack of affiliation with the Complainant. The Complainant notes that a TikTok account appears to have been created to promote the Respondent's website, and submits that the Respondent is benefitting, either directly or indirectly, from wrongfully associating itself with the Complainant.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant notes that the registration of its JACQUEMUS trademarks substantially predates the registration of the disputed domain name, and asserts that the choice of the disputed domain name does not appear to have been a mere coincidence, but that it was made on purpose to generate a likelihood of confusion between the disputed domain name and the Complainant's JACQUEMUS trademarks. The Complainant submits that the disputed domain name has been used to resolve to a website that seeks to copy the Complainant's official website where products bearing the Complainant's JACQUEMUS trademarks are offered for sale, whose origin and authenticity are called into question by the Complainant. The Complainant argues that the creation of a TikTok account to promote the Respondent's website increases the likelihood of confusion with the Complainant. Finally, the Complainant submits that the registration of the disputed domain name using a privacy service, coupled with the absence of contact information on the Respondent's website, amounts to further evidence of the Respondent's bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to prevail, the Complainant must demonstrate, on the balance of probabilities, that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) The disputed 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 disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights in the trademark JACQUEMUS, the registration details of which are set out in the factual background section above.

The disputed domain name comprises the Complainant's JACQUEMUS trademark, followed by the descriptive term "private". The Panel finds the Complainant's JACQUEMUS trademark to be clearly recognizable in the disputed domain name, and further finds that the addition of the descriptive term "private" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also *Vontobel Holding AG v. WhoisGuard, Inc., WhoisGuard, Inc. / Ellen Wong*, WIPO Case No. [D2020-1409](#) (<vontobelprivate.com>).

The generic Top-Level Domain ".online" may be disregarded for purposes of comparison under the first element of the Policy; see [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the disputed domain name to be confusingly similar to the JACQUEMUS trademark in which the Complainant has rights. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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; see [WIPO Overview 3.0](#), section 2.1.

As noted above, the disputed domain name previously resolved to a website that purported to offer for sale goods bearing the Complainant's JACQUEMUS trademark. According to the Complainant, the website's legal notice and terms of use pages included the Complainant's company name as well as the name of the Complainant's founder, Simon Porte Jacquemus. There is no prior business relationship between the Parties, nor has the Complainant granted any licence or other authorization for the Respondent to make use of the Complainant's trademarks in a domain name or otherwise.

Prior UDRP panels have observed that unauthorized resellers using a domain name containing a complainant's trademark to undertake sales related to the complainant's goods or services may be making a *bona fide* offering of goods or services and thus have a legitimate interest in such a domain name; see [WIPO Overview 3.0](#), section 2.8.1; see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In using the disputed domain name as described above, the Respondent failed to accurately and prominently disclose the absence of any relationship with the Complainant. Indeed, the Respondent's use of the disputed domain name tends to suggest that the Respondent was attempting to impersonate the Complainant, making use of product images that appear to have been misappropriated from the Complainant's website. The Panel finds that such activity does not amount to use of the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

The Respondent has been identified as "Durand Hugo", whose name bears no resemblance to the disputed domain name. There is no other evidence to suggest that the Respondent has become "commonly known" by the disputed domain name as contemplated by paragraph 4(c)(ii) of the Policy.

Whether a genuine offering of goods or not, the Respondent's website had the appearance of an online store, and was therefore intended to be commercial in nature. The Respondent has not made any legitimate noncommercial or fair use of the disputed domain name pursuant to paragraph 4(c)(iii) of the Policy.

The Panel further accepts the Complainant's assertion that the composition of the disputed domain name itself, consisting of the Complainant's JACQUEMUS trademark together with the term "private", is such that Internet users seeking the Complainant could easily be misled into believing that the disputed domain name was associated with private sales of the Complainant's clothing and accessories, thereby creating a risk of implied affiliation with the Complainant.

The Panel finds that the Complainant has established a *prima facie* showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not come forward to submit a Response and has failed to produce any evidence to rebut the Complainant's case. The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's JACQUEMUS trademarks predate the registration of the disputed domain name. The Complainant has provided evidence of both consumer and industry recognition of the Complainant's Jacquemus-branded clothing and accessories. It can be inferred from the contents of the Respondent's website that the Respondent was well aware of the Complainant and its trademarks when registering the disputed domain name, and did so with a view to obtaining commercial gain from its unauthorized use of the Complainant's trademark in the disputed domain name, in bad faith.

The Panel further finds that by using the disputed domain name in connection with a website purporting to offer for sale goods bearing the Complainant's JACQUEMUS trademark, as described above, the Respondent has attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the goods offered for sale therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The fact that the disputed domain name no longer resolves to an active online store (but rather a hosting provider parking page) does not materially affect the Panel's findings above.

The Panel finds that the disputed domain name was registered and is being used in bad faith. The Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <jacquemusprivate.online> be transferred to the Complainant.

/Jane Seager/

Jane Seager

Sole Panelist

Date: August 22, 2023