

## **ADMINISTRATIVE PANEL DECISION**

AJE IPCO PTY LTD v. Yan Whirring

Case No. D2023-4130

### **1. The Parties**

The Complainant is AJE IPCO PTY LTD, Australia, represented by Hitch Advisory, Australia.

The Respondent is Yan Whirring, China.

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

The disputed domain name <ladyaje.com> 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 October 4, 2023. On October 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 (Name.com, Inc.) and contact information in the Complaint. The Center notified the Complainant of the formal deficiency in the Complaint and requested the Complainant to submit an amendment to the Complaint on October 6, 2023, providing the registrant and contact information disclosed by the Registrar. The Complainant filed an amendment to the Complaint on October 10, 2023.

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 October 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 31, 2023.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on November 3, 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 an Australian company, founded in 2008, that designs and distributes fashion products in Australia and internationally. It offers online shopping and also operates retail stores under the AJE brand.

The Complainant owns a portfolio of AJE-formative trademarks which are protected in Australia and internationally for fashion products including clothing, shoes, bags and accessories, and for retail store services.

Examples of its registrations for the word marks AJE and AJE ATHLETICA include:

United States of America trademark No. 5730551, registered April 23, 2019 (AJE); Australian Trademark No. 1919170 registered April 11, 2018 (AJE); and Australian Trademark No. 2095221 registered June 11, 2020 (AJE ATHLETICA).

The Complainant also owns (through an affiliated entity) and uses the related domain names <ajeworld.com> and <ajeworld.com.au> in connection with its principal commercial website for online shopping.

The disputed domain name was registered on May 23, 2023. The disputed domain name appears to contain direct copies of images taken from Complainant's websites and displaying these images as its own.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it is the owner of well-established rights in the trademark AJE based on use and registration in Australia and other countries where it carries on business. The disputed domain name is confusingly similar to the Complainant's registered trademark; the addition of the descriptive word "lady" does not diminish the likelihood of confusion.

With respect to the absence of rights or legitimate interests, the Complainant submits that the Respondent has engaged in a scheme to deceive users who access his website, which has been designed to resemble the Complainant's retail website, under the name "AJE Women". The Respondent has never been authorized to engage in this conduct or to adopt a confusingly similar domain name. The Complainant further submits that the Respondent is not making a *bona fide* offering of services but rather is using the disputed domain name to divert unknowing users who are deceived by the associated website.

With respect to bad faith, the Complainant relies on evidence of the Respondent's impersonation scheme using misappropriated content on his website, to establish abusive registration and use of the disputed domain name. Based on this misconduct, the Complainant submits that there is sufficient evidence to support a finding of bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

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

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

The Complainant clearly holds relevant ownership rights in the trademark AJE, as demonstrated by the registered trademarks enumerated in paragraph 4, which were registered before Respondent took any steps to acquire and use the disputed domain name.

The test for confusing similarity is described as a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark. The disputed domain name includes the entirety of the distinctive AJE mark with the addition of the descriptive term “lady”. This variation does not prevent a finding of confusing similarity under the first element. The Complainant’s trademark is clearly recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.8).

The Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Although the Policy places on the Complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a complainant to make out a *prima facie* case, which then shifts the burden to the respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the respondent fails to produce such evidence, the complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

In this proceeding, the Complainant has provided evidence of the Respondent’s misconduct in misappropriating the Complainant’s trademark and creating an online store (associated with the disputed domain name) which copies content from the Complainant’s website, all of which is in furtherance of a scheme to deceive users. The documentary evidence shows unauthorized misappropriation of product images, names and the Complainant’s distinctive script logo in the Respondent’s AJE Women online store, in connection with “cheap” pricing at discounts up to 80%. The totality of the evidence establishes a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Illegal conduct of this nature is highly probative in connection with this issue. “Panels have categorically held that the use of a domain name for illegal activity (e.g., [...] impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.” ([WIPO Overview 3.0](#), section 2.13.1.)

In the absence of any response from the Respondent, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

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

The Panel finds that the disputed domain name constitutes an abusive registration which was registered and is being used in bad faith in order to take advantage of the reputation of the AJE brand. The Respondent clearly set out to target the Complainant and to deceive users into believing that his website, associated with the confusingly similar disputed domain name, was in fact a website of the Complainant. The Respondent’s website was cunningly adapted so it had the appearance of a legitimate virtual shop for the AJE line of products, including the replication of the Complainant’s distinctive script logo and the related AJE

ATHLETICA brand as well as the reproduced product images. Other indicia of bad faith include the use of a false business address for “AJE Women” in Prattville Alabama (which in reality appears to be a pharmacy). [WIPO Overview 3.0](#), section 3.4 recognizes this type of use of deceptive impersonation websites as probative evidence of bad faith (see *Magna International Inc. v. Stefan Polisky*, WIPO Case No. [D2021-0875](#)).

Accordingly, the Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant's AJE mark, as to the source, sponsorship, affiliation or endorsement of the website and products offered on it, under paragraph 4(b)(iv) of the Policy.

The Complainant has satisfied 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, <ladyaje.com> be transferred to the Complainant.

*/Christopher J. Pibus/*

**Christopher J. Pibus**

Sole Panelist

Date: November 17, 2023