

ADMINISTRATIVE PANEL DECISION

AJE IPCO PTY LTD v. Tommy McMahon

Case No. D2023-4497

1. The Parties

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

The Respondent is Tommy McMahon, Australia.

2. The Domain Name and Registrar

The disputed domain name <ajepilates.com> 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 October 30, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (GoDaddy.com, LLC (IANA 146)) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 amendment to the Complaint on November 15, 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on December 20, 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 part of a company group that designs and sells women's clothing and fashion. The Complainant holds trademark registrations in multiple jurisdictions, including Australian trademark registration number 1919170 for AJE, entered on the register on November 13, 2018, specifying goods and services in classes 14, 18, 25, and 35. The Complainant's related company, Aje Pty Ltd, has registered the domain names <ajeworld.com> (on September 11, 2019) and <ajeworld.com.au>, and uses them in connection with the Complainant's company group's global and Australian websites, respectively. The websites display "Aje" with a full stop and in a particular script (the "Aje. logo") as their respective titles and offer for sale the Complainant's company group's clothing and fashion.

The Respondent is an individual based in Queensland, Australia.

The disputed domain name was registered on June 24, 2023. It resolves to a website for "AJE Pilates". The title incorporates the Complainant's Aje. logo. The website promotes pilates and invites Internet users to schedule a pilates class. The price for a 50 minute reformer class is AUD 30.¹

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's AJE mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith. The Respondent's website associated with the disputed domain name is a clear and blatant attempt to misrepresent to the public that it is part of the Complainant or its business or group or otherwise associated with or endorsed by the Complainant or its business or group.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

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

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has visited the website associated with the disputed domain name to verify the Complainant's allegations regarding that website. The Panel considers this process of verification useful to assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.8.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The Panel finds the Complainant has shown rights in respect of the AJE trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the AJE mark is recognizable within the disputed domain name. Although the addition of the term "pilates" may bear on the assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the AJE mark for the purposes of the Policy. The only other element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (".com") which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the AJE mark. See [WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

In the present case, the disputed domain name resolves to a website that promotes pilates and invites Internet users to schedule a class. The website prominently displays the Complainant's Aje. logo in its title, giving the impression that the website is affiliated with, or endorsed by, the Complainant. However, it is clear from the Complaint that the Respondent is not authorized by, or associated with, the Complainant. In the Panel's view, this evidence indicates that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services. The Respondent's website offers pilates classes for a price, which is not a legitimate noncommercial or fair use. The Registrar has verified that the Respondent's name is "Tommy McMaha", which does not resemble the disputed domain name. Nothing indicates that the Respondent is commonly known as the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy establishes circumstances that, in particular, but without limitation, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

“(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 the present case, the Panel notes that the disputed domain name was registered in 2023, years after the registration of the Complainant’s AJE trademark, including in Australia, where the Respondent is based. The disputed domain name wholly incorporates the AJE mark as its initial element, and combines that mark with the word “pilates”. Although “aje” is a three-letter combination, the Panel notes that the title of the Respondent’s website incorporates the Complainant’s Aje. logo, including its stylistic elements. The Respondent and his website offer no explanation for his choice to register “aje” in the disputed domain name. In view of these circumstances, the Panel finds it more likely than not that the Respondent had the Complainant’s AJE mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website for “AJE Pilates”. The website prominently displays the Complainant’s Aje. logo in its title. Although pilates classes are not a service offered by the Complainant, the website title gives the false impression that the website is associated with, or endorsed by, the Complainant. The Respondent does not assert any authorization to use the AJE mark. In view of these circumstances, the Panel finds that, by using the disputed domain name, 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 his website or of a service on that website within the terms of paragraph 4(b)(iv) of the Policy.

For the above reasons, the Panel finds that the Complainant has established the third 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 <ajepilates.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: January 3, 2024