

## **ADMINISTRATIVE PANEL DECISION**

EPSE Joueclub Entente des Professionnels Specialistes de l'Enfant v. Martin Parker

Case No. D2024-5353

### **1. The Parties**

The Complainant is EPSE Joueclub Entente des Professionnels Specialistes de l'Enfant, France, represented by CMC Avocats, France.

The Respondent is Martin Parker, United States of America.

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

The disputed domain name <jouetoyclub.shop> (the "Domain Name") is registered with West263 International Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 31, 2024. On January 2, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 6, 2025, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 7, 2025, 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 January 13, 2025.

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 January 14, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 3, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 6, 2025.

The Center appointed Nicholas Smith as the sole panelist in this matter on February 7, 2025. 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 that operates as a co-operative of traders and retailers specializing in the distribution and retail of toys. It was established in 1952 and since then has operated retail stores, a distribution network, and subsequently a website under a trademark consisting of the word “JOUÉCLUB” with minor stylization (the “JOUÉCLUB Mark”). The Complainant’s network currently comprises 348 stores of which 300 are located in France and its e-commerce website at “www.joueclub.fr” which received more than 25 million visits in 2024. The Complainant also operates <joueclub.com>.

The Complainant has held trademark registrations for the JOUÉCLUB Mark (in various formats) in numerous jurisdictions since 1983 for toys and related retail services including French trademark registration No. 1227507 registered since February 15, 1983.

The Domain Name was registered on November 22, 2024. The Domain Name is presently inactive but prior to the commencement of the proceeding the Domain Name resolved to a website (the “Respondent’s Website”) that featured an image of one of the Complainant’s physical stores, a reproduction of the JOUÉCLUB Mark and offered toys in direct competition with the Complainant.

#### **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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the JOUÉCLUB Mark, having registered the JOUÉCLUB Mark in various jurisdictions including France. The Domain Name is confusingly similar to the JOUÉCLUB Mark as it merely adds the descriptive term “toy” and the generic Top-Level Domain (“gTLD”) “.shop” to the mark.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the JOUÉCLUB Mark. The Respondent is not commonly known by the Domain Name, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain by purporting to offer toys in direct competition with the Complainant while displaying an image of one of the Complainant’s stores. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s Website to disrupt the Complainant’s business and divert Internet users searching for the Complainant to a competing website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Panel notes that the design elements in the JOUÉCLUB Mark can be disregarded for purposes of assessing identity or confusing similarity under the first element as they would be incapable of being reproduced in a domain name. [WIPO Overview 3.0](#), section 1.10. Furthermore, the absence of the accent aigu is a minor omission that would not prevent the mark from being recognizable within the Domain Name.

Although the addition of other terms here, "toy" between "JOUÉ" and "CLUB" elements that may bear on 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 Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

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 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 Domain Name such as those enumerated in the Policy or otherwise.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage purporting to offer toys in direct competition with the Complainant, under the JOUÉCLUB Mark and containing a photo of one of the Complainant's stores does not amount to use for a bona fide offering of goods and services. This conduct amounts to the Respondent passing itself off as the Complainant. It appears that the purpose behind the Respondent's Website is to encourage visitors, under the impression that they are dealing with the Complainant, to purchase the toys and related products purportedly offered by the Respondent, such conduct not being a bona fide offering of goods and services.

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the JOUÉCLUB Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name that consists of the JOUÉCLUB Mark and a descriptive term ("toy") and direct it to a website offering toy products in direct competition with the Complainant while displaying an image of one of the Complainant's stores unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its JOUÉCLUB Mark.

The Respondent passes off as the Complainant and purports to offer toys in direct competition with the Complainant on the Respondent's Website. The Panel finds that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the JOUÉCLUB Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. The current inactiveness of the Domain Name does not prevent a finding of bad faith.

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 Domain Name <jouetoyclub.shop> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: February 12, 2025