

## **ADMINISTRATIVE PANEL DECISION**

Koninklijke Douwe Egberts B.V. v. Busy Biz  
Case No. DCO2023-0078

### **1. The Parties**

The Complainant is Koninklijke Douwe Egberts B.V., Netherlands (Kingdom of the), represented by Ploum, Netherlands (Kingdom of the).

The Respondent is Busy Biz , United States of America ("United States").

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

The disputed domain name <jdecooffee.co> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 11, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 13, 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 September 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 10, 2023.

The Center appointed Kateryna Oliynyk as the sole panelist in this matter on October 16, 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 the Jacobs Douwe Egberts group. Jacobs Douwe Egberts which is known by the abbreviated name, JDE, was formed in 2015 by the merger of D.E Master Blenders, founded in 1753, and the coffee division of Mondelez International. JDE is an international tea and coffee company, headquartered in the Netherlands that processes and trades in coffee, tea and other foods since 1753.

The trademark JDE is used as an umbrella brand in relation to the Complainant's tea and coffee portfolio which includes many well-known household names including: Jacobs, Tassimo, Moccona, Senseo, L'OR, Douwe Egberts, TiÓra, Super, Kenco, Pilao & Gevalia. All product packages of the above mentioned include both the household trademark and the JDE trademark. Today the Complainant's coffee and tea portfolios are available in over 100 countries around the world.

The Complainant owns and operates websites using numerous domain name incorporating the JDE and the JACOBS DOUWE EGBERTS trademarks including: <jdecoffee.com>, and <jacobsdouweegberts.com>.

The Complainant is the holder of a large number of trademark registrations worldwide, consisting of or including the element JDE, which include, *inter alia*, the following trademark registrations:

- International Trademark Registration No. 1248744 for JDE, registered on April 16, 2015, for goods and services in international classes 07, 11, 21, 29, 30, 32, 34;
- Benelux Trademark Registration No. 1301280, for JDE, registered on April 22, 2015, for goods and services in international classes 05, 07, 11, 16, 21, 29, 30, 32, 35, 43.

The disputed domain name was registered on July 17, 2023, and used to resolve to a pay-per-click ("PPC") website, which displayed links related to the Complainant's business. At the time of submission of this Decision, the website under the disputed domain name is inactive. Mail eXchange ("MX") records, necessary for sending and receiving emails using the disputed domain name, have been activated for the disputed domain name on the hosting server.

Before starting the present proceeding, the Complainant made some efforts to resolve this matter amicably.

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

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

Identical or Confusingly Similar

The Complainant contends that the disputed domain name and the JDE trademark are confusingly similar.

According to the Complainant's contentions, the disputed domain name is confusingly similar to the JDE trademark, as it incorporates the JDE trademark in its entirety. The addition of the term "cooffee", that is an obvious misspelling of the word "coffee", does not prevent a finding of confusing similarity between the disputed domain name and the JDE trademark, as the JDE trademark remains recognizable in the disputed domain name.

The Complainant submits that the applicable generic Top-Level Domain (“gTLD”) in the disputed domain name should be viewed as a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

#### No Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name.

According to the Complainant’s contentions, the Respondent is not commonly known under the name “JDE” or “JDECOOFFEE”, nor has the Respondent acquired any trademark or service mark rights.

The Complainant asserts that the Respondent is not affiliated with the Complainant and the Complainant has not licensed or otherwise permitted the Respondent to use the JDE trademark or to register a domain name incorporating the JDE trademark.

The Complainant further indicates that the Respondent cannot claim prior rights or legitimate interest in the disputed domain name, whereas the JDE trademark registrations precede the registration of the disputed domain name for many years.

The Complainant submits that there is no evidence of the Respondent making use of the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. The previous use of the disputed domain name to host a parked page comprising PPC links, including hyperlinks competing with and/or relating to the Complainants’ businesses, does not represent a *bona fide* offering or a legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant submits that the Respondent is using the disputed domain name for the purpose of a fraudulent phishing scheme.

#### Registered and Used in Bad Faith

The Complainant contends that the disputed domain name has been registered and used in bad faith. The Complainant asserts that the Respondent has no right or legitimate interest in the disputed domain name and therefore creates confusion with Complainant’s business.

The Complainant suggests that the Respondent may be engaged in phishing schemes aimed to deceive Internet users and make them believe that the Respondent is the Complainant.

The Complainant further contends that the availability of MX records to be indicative of bad faith use of the disputed domain name.

The Complainant claims that the use of the disputed domain name that is confusingly similar to the JDE trademark to obtain click-through-revenue can amount to bad faith.

The Complainant further contends that the Respondent has registered and is using the disputed domain name in bad faith as it intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant’s JDE trademark.

#### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Considering that the Respondent did not reply to the Complainant’s contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel “shall draw such inferences therefrom as it considers appropriate”.

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

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

### A. Identical or Confusingly Similar

Under the first element, the Complainant must establish that the disputed domain name is identical with, or confusingly similar to the Complainant’s trademark rights.

There are two parts to this inquiry; (i) the Complainant must demonstrate that it has rights in a trademark and, if so, (ii) the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the [WIPO Overview 3.0](#). The Complainant submitted evidence that the JDE trademark enjoys protection under national and international trademark registrations. Thus, the Panel finds that the Complainant’s rights in the JDE trademark have been established pursuant to the first element of the Policy.

The disputed domain name consists of the Complainant’s JDE trademark followed by the additional term “cooffee”, and followed by the country-code Top-Level Domain (“ccTLD”) “.co”. The additional term “cooffee” in the disputed domain name is the obvious misspelling of the term “coffee” associated with the Complainant’s business.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within a 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. The nature of such additional term may however bear on assessment of the second and third elements.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Finally, for the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the ccTLD, see section 1.11.1 of the [WIPO Overview 3.0](#).

It is the view of the Panel that it is readily apparent that the Complainant's JDE trademark remains recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the JDE trademark in which the Complainant has rights.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

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

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant's contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its JDE trademark.

The Complainant further contends that the Respondent is not commonly known by the disputed domain name and has not made any *bona fide* use - neither commercial nor noncommercial, of the same.

Based on the present case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

There is no evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial fair use or a *bona fide* offering of goods or services.

Simply holding the disputed domain name does not, in the absence of other evidence, amount to use for a *bona fide* offering of goods or services. Nor does the previous use of the disputed domain name for a parking page with PPC links.

Non-use of the disputed domain name constitutes passive holding and so the disputed domain name has not been used in connection with a *bona fide* offering of goods or services. The Panel finds that the passive holding of the disputed domain name does not constitute legitimate noncommercial or fair use of the disputed domain name.

As far as the previous use of the disputed domain name for a parking page with PPC links is concerned, the Panel notes the statements in the [WIPO Overview 3.0](#) on the question of whether "parked" pages comprising PPC links support the Respondent's rights or legitimate interests. Section 2.9 of the [WIPO Overview 3.0](#) stated that:

"[a]pplying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark.”

In the instance of this proceeding, the Panel has established that the disputed domain name used to resolve to the parking page with various headings and PPC links, which are related to the Complainant's coffee business, illustrating the intent of the Respondent to use the disputed domain name to capitalize on the reputation and goodwill associated with the Complainant.

In the present case, the use of the Complainant's JDE trademark in the disputed domain name has no inherent meaning and hence the Respondent's use of the confusingly similar disputed domain name to host a parking page with PPC links does not, absent any further explanation, provide the Respondent with rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights or legitimate interests in the disputed domain name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraph 4(a)(ii) of the Policy.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

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

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The Complainant notes that the disputed domain name used to resolve to a parking page with PPC links and the including hyperlinks competing with and/or relating to the Complainants' businesses. Furthermore, MX records, necessary for sending and receiving email using the disputed domain name, have been activated for the disputed domain name on the hosting server.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.3.

The Panel finds, on the balance of probabilities, that the Respondent would have been aware of the Complainant and its reputation in the JDE trademark at the time the Respondent registered the disputed domain name. There is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register the disputed domain name incorporating the JDE trademark together with the obvious misspelling of the term “coffee” unless, as suggested by the Complainant and not denied by the Respondent, there was an intention to create a likelihood of confusion between the disputed domain names and the JDE trademark.

The disputed domain name has been used for a parking page with PPC links for which the Respondent might have received some commercial and financial gain. In these circumstances, where the Respondent has offered no plausible explanation for the registration of the disputed domain name, the Panel finds that the Respondent has been using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the JDE trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

Respectively, the Panel finds that the use of a domain name that is identical or confusingly similar to a trademark to obtain click-through-revenue can amount to bad faith use (see, among others, *Iffscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#); and *AMADEUS IT GROUP, S.A. v. Contact Privacy Inc. Customer 0151133672, Contact Privacy Inc. Customer 0151133672 / Milen Radumilo*, WIPO Case No. [D2018-2192](#)).

The Panel notes that at the point of issuance of this Decision the website associated with the disputed domain name is “passively held”.

The Panel notes that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent’s behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent’s passive holding amounts to acting in bad faith.). Please see para. 3.3. of the WIPO Overview.

The particular circumstances of this case that the Panel has considered are:

- (i) the Complainant’s JDE trademark is considered as being a well-known and reputable trademark;
- (ii) the fact that the disputed domain name comprises an obviously intentional misspelling of the term “coffee” associated with the Complainant’s business;
- (iii) the Respondent has not submitted any response and has not provided any evidence of actual or contemplated good-faith use;
- (iv) the Respondent concealed its identity;
- (v) the implausibility of any good faith use to which the disputed domain name may be put.

UDRP panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.

In light of the aforesaid and applying the above-referenced factors, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

## 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, <jdecooffee.co>, be transferred to the Complainant.

/Kateryna Oliinyk/

**Kateryna Oliinyk**

Sole Panelist

Date: October 25, 2023