Decision for dispute CAC-UDRP-103118

Case number	CAC-UDRP-103118
Time of filing	2020-06-15 10:00:26
Domain names	jimdomanager.net, jimdo-expert.net, jimdo-online.net

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Jimdo GmbH

Complainant representative

Organization	SKW Schwarz Rechtsanwälte

Respondent

Organization	Thomas Michael

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant owns several registered trademarks for the word mark JIMDO, inlcuding
• German trademark JIMDO with registration no. 302014049697 of June 12, 2014, for services in classes 42, 35, 38, 41, 45;

• EU trademark JIMDO with registration. no. 8164998 of March 18, 2009, for services in classes 35, 38, 42, 45;

• International Registration JIMDO of March 18, 2009, with registration no. 1020636, for services classes 35, 38, 42, 45, designating Australia, Switzerland, People's Republic of China, Japan, Mexico, the Russian Federation, Turkey and the United States of America.

These registered trademarks shall be referred to as "JIMDO trademarks".

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was established in 2007 and provides web hosting and web page creation services to an international community under the JIMDO trademark. Recently, the Complainant learned that the disputed domain names had been registered by the Respondent. The Respondent remains unknown, since they use a privacy protection service. The Complainant's representatives sent warning letters to the listed e-mail and physical addresses used by the Respondent, which all bounced or were returned.

The Complainant alleges that the disputed domain names are confusingly similar to JIMDO trademark as the second level domain name "Jimdo" is identical to the JIMDO trademarks. Further, nothing indicates that the Respondent could have a right to the disputed domain names or operates a business under the name "Jimdo". Moreover, the Complainant has not authorized the registration of the disputed domain names, and the Respondent has no legitimate interest in the disputed domain names. The rights of the Complainant predate the registration of the disputed domain names. The disputed domain names were registered on the following dates: <jimdomanager.net> on May 19, 2020, <jimdo-expert.net> on May 26, 2020 and <jimdo-online.net> on June 1, 2020.

IThe Complainant further contends that the disputed domain names were registered and arebeing used in bad faith.

The rights of the Complainant all predate the registration of the disputed domain names. The Respondent used a privacy protection service for the registration of the disputed domain names. The physical address used on the website is fake, which implies that the Respondent was aware of the fact that he might be charged with regard to an infringement of the Complainant's intellectual property rights. Further, the Complainant's warning letters, instructing the Respondent on the legal situation and setting a reasonable deadline for the transfer of the domain, remained unanswered. The use of the disputed domain names as well as the content displayed on the websites constitute a trademark infringement. The webpages are fake and fraudulent as they promises search engine optimization for EUR 240. German consumer protection organizations have already issued warnings. The identity of the company is not explained, the address is fake and the name is generic. Some browsers block the webpage due to security problems.

By using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, 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.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain names includes the JIMDO trademark in its entirety with the addition of only the generic terms "manager", “expert”and “online”, respectively. According to standard case law under the UDRP an addition of a generic term to a trademark does not take away the similarity between a domain name and a trademark. The Panel therefore finds that the disputed domain names are confusingly similar to the JIMDO trademarks.

2. The Panel finds that the Complainant has established that the Respondent was not authorized to use the JIMSO trademarks in the disputed domain names. Furthermore, the Panel finds the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor is Respondent making a legitimate non-commercial or fair use of the disputed domain names, nor is Respondent commonly known under the disputed domain names. The evidence was not challenged by the Respondent. The Panel therefore finds the Respondent has no rights or legitimate interests in respect of the disputed domain names.

3. In the absence of a Response, given that "Jimdo" is not a dictionary and/or commonly used term, and given that the Complainant demonstrated that the disputed domain names shortly after their registration resolved to a website which offered paid website related services which were undisputedly deceptive, the Panel infers that the Respondent had the Complainant's JIMSO trademarks in mind when registering the disputed domain names, which were therefore registered in bad faith. Further, the aforementioned fraudulent us of the disputed domain names constitute use in bad faith of the disputed domain names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **JIMDOMANAGER.NET**: Transferred
2. **JIMDO-EXPERT.NET**: Transferred
3. **JIMDO-ONLINE.NET**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2020-07-17

Publish the Decision