

Decision for dispute CAC-UDRP-104666

Case number CAC-UDRP-104666

Time of filing 2022-06-23 09:38:31

Domain names jonakkonline.com

Case administrator

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

Complainant

Name Joseph NAKAM

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Amanda Gorman

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of two trademark registrations - at EU and international level - for the term "JONAK" since 1994.

Likewise, the Complainant also owns several domain names incorporating the wording "JONAK", such as <jonak.fr>, registered since 1999.

FACTUAL BACKGROUND

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

The Complainant – a French man running as CEO of the company KARINE, specialized in female footwear – owns some trademark registrations, such as the international trademark registration no. 625324 "JONAK", filed in 1994 and duly renewed.

The Respondent has registered the disputed domain name on June 13, 2022, which, as of this day, redirects to a

competitor's online store.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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 name (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 name has been registered and is 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. IDENTICAL OR CONFUSINGLY SIMILAR

In particular, the Panel finds that the disputed domain name is confusingly similar to the trademark "JONAK" and to the relative domain name registered by the Complainant, which has proven to have prior rights since the early 90's.

With no argumentation at all provided by the disputed domain name holder, the Panel shall keep in mind the established WIPO case-law, according to which the addition of generic terms (such as "online") does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

In this regard, the Panel would also like to remind WIPO Case No. D2003-0888, according to which "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP".

As for the addition of letter k in the disputed domain name <jonakKonline.com>, relevant case law stated that "The addition of the letter [...] adds nothing distinctive, and the emphasis remains on the name [...] to attract the attention of Internet users. The deletion or addition of one letter is an insignificant change for the purposes of the Policy paragraph 4(a)(i)" (WIPO Case No. D2004-0680).

The Panel believes the above cases are particularly fitting for the present dispute.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark "JONAK", or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant also affirms that Amanda Gorman is not commonly known by the disputed domain name.

It is undeniable that the Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

Given all the above, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

3. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

As a matter of fact, the existence of a website sponsoring and selling the same goods for which the Complainant's trademark has been registered and is used is an indication of commercial gain. The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the possible likelihood of confusion through the use of a name corresponding closely to a trademark held by and existing website operated by the Complainant (see, among others, WIPO Case no. D2013-1409).

In the absence of a response from the Respondent, the Panel infers that the Respondent had the Complainant's trademarks "JONAK" in mind when registering the disputed domain name. Consequently, the Panel believes that the same was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. JONAKKONLINE.COM: Transferred

PANELLISTS

Name	Tommaso La Scala
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DATE OF PANEL DECISION 2022-07-29

Publish the Decision
