Decision for dispute CAC-UDRP-106963

Case number	**CAC-UDRP-106963**
Time of filing	**2024-11-04 14:23:32**
Domain names	**juwelo.net**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Juwelo Deutschland GmbH**

Complainant representative

Organization	**Lubberger Lehment Rechtsanwälte Partnerschaft mbB**

Respondent

Name	**QINGRU WU**

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 the following registered trademarks:

Mark	Territory	Registration No.	Application date	Registration date	Classes
JUWELO (word)	EM	009801739	10 March 2011	22 August 2011	14, 35, 38
JUWELO (word)	EM	018881296	03 May 2023	23 November 2023	9, 14, 35, 38, 41

In addition, the Complainant owns numerous domain names comprising of the term JUWELO such as its official websites <JUWELO.COM>, <JUWELO.FR>, <JUWELO.DE> and <JUWELO.IT>.

FACTUAL BACKGROUND

The Complainant, manufactures and sells jewellery products, mostly via online and tele-shopping, across Europe. The Complainant’s

tele shopping channel Juwelo TV, receivable via cable, satellite and internet, started operations in 2008, the Complainant's online shop business followed shortly after.

The Complainant is the owner of the European trademark JUWELO since at least 2011.

The disputed domain name <JUWELO.NET> was registered on June 18, 2024, by the Respondent QINGRU WU based in China and, according to evidence submitted with the Complaint, redirects to a GoDaddy branded page stating that the disputed domain name is available for a buy it now price of USD 1.450,00 $ or a lease price of USD 99,69 $ per month.

According to the Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the disputed domain name and is not related in any way to the Complainant's business.

The Registrar of the disputed domain name confirmed that the Respondent is the current Registrant, and that English is the language of the registration agreement.

The facts asserted by the Complaint are not contested by the Respondent.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

COMPLAINANT:

First element: Confusingly similar to the protected mark

The Complainant states that the disputed domain name <JUWELO.NET> is identical to its trademark JUWELO.

Second element: Rights or legitimate interest

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

The Complainant asserts that there is no fair or non-commercial use in connection with the disputed domain name. Further, "JUWELO" is not an existing word but a term that was invented by the Complainant. The Complainant asserts that it has not licensed or otherwise permitted the Respondent to use the Complainant's trademark JUWELO and there is no relationship between the Complainant and Respondent.

Third element: The disputed domain name has been registered and is being used in bad faith

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith.

The Complainant states that its trademark JUWELO is very popular and well-known, and so is the trade name Juwelo. According to the Complainant, a basic Google search of the term "JUWELO" yields obvious references to the Complainant which raises an inference of knowledge of the Complainant on the part of the Respondent. In light of the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is reasonable to infer that the Respondent registered and used the disputed domain name with knowledge of the Complainant and its trademarks.

The Complainant asserts that there are circumstances indicating the Respondent registered the disputed domain name for the purpose of selling or otherwise transferring it to the Complainant or its competitor for valuable consideration in excess of out-of-pocket costs, because the disputed domain name is offered for sale for a buy it now price of USD $1,450.

Further, the Complainant claims that the lack of active use of the disputed domain name is evidence of bad faith, because it is not possible to conceive of any plausible active purpose thereof that would not be infringing on the Complainant's rights.

For these reasons, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

The Respondent did not reply to the Complaint.

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

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

THREE ELEMENTS THE COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that a disputed domain name should be transferred or cancelled:

(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.

The Panel has examined the evidence available to it and has come to the following conclusions concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term JUWELO in several classes in numerous territories around the world. Such trademark rights were created and registered prior to June 18, 2024, the creation date of the disputed domain name. A nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Accordingly, the Panel finds that the Complainant possesses rights in its JUWELO trademark such that it has standing under the Policy.

The term JUWELO is reproduced identically in the disputed domain name, with nothing added besides the TLD. The TLD – in this case ".net" - may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Accordingly, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain name is identical to the Complainant's mark.

(B) THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the disputed domain name. The approach generally adopted by panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Overview 3.0., Paragraph 2.1). ("While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."). However, the burden of proof still remains with the complainant to make out its prima facie case on a balance of probabilities. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

Paragraph 4(a)(ii) of the Policy contemplates examining the available facts to determine whether a respondent has rights or

legitimate interest in the domain name. Paragraph 4(c) sets out circumstances under which a respondent may demonstrate that it does have such rights or interests.

The first circumstance, under Paragraph 4(c)(i), is where "before any notice to you of the dispute, your use of, or 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". Here, there is no observable active website associated with the disputed website nor any evidence of demonstrable preparations to use it. Rather, the disputed domain name redirects to a GoDaddy-branded page. Accordingly, the Panel finds no evidence of a bona fide offering or goods or services or demonstrable preparations to use per Policy 4(c)(i) and Respondent has not established rights or legitimate interests with respect to the disputed domain name thereunder.

The second circumstance, under Paragraph 4(c)(ii), concerns cases where the respondent is commonly known by the domain name. Here, according to the registrar verification, the Respondent's name is "QINGRU WU" – which has no similarity or connection to the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. As such, this second circumstance of legitimate rights or interests under the Policy is not applicable to the Respondent.

Regarding the third circumstance, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's JUWELO trademark. According to the evidence submitted, there is no relevant active website associated with the disputed domain name. The disputed domain name merely resolves to a redirected GoDaddy branded webpage, offering the disputed domain name for sale or lease. As such, none of the accepted categories of fair use - such as news reporting, commentary, political speech, education etc. – are found to apply and thus the Panel does not find any legitimate non-commercial or fair use on the part of the Respondent.

As a final point on the second element, the Complaint states that the Respondent is not licensed, nor authorized to use the Complainant's JUWELO trademark in the disputed domain name.

Accordingly, the Complainant has sufficiently made out its prima-facie case on the second element of the Policy. Thus, the burden of proof is shifted to the Respondent to rebut the Complainant's case. Here, because the Respondent has not participated in these proceedings, there is no such rebuttal to consider, and the Complainant prevails.

(C) THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD.

The third element requires the Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Further, Paragraph 4(b) of the Policy sets out a non-exhaustive list of four circumstances, any one of which may be evidence of the registration and use of a domain name in bad faith. The four specified circumstances are:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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.

As noted above, there is no evidence that the Respondent is commonly known by the disputed domain name and the Complainant confirms that the Respondent has not been authorized by the Complainant to use the Complainant's trademark(s) and/or register the disputed domain name. Nor is there any business or other association between the Complainant and the Respondent.

Panels have consistently found that the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see Section 3.1.4 WIPO Overview 3.0). Here, there is some evidence that the Complainant's trademark JUWELO has a strong reputation in the retail jewellery industry. The Complainant was formed in 2008 and has been in business since. The Complainant's reputation in its sector is indicated by its social media presence, following, and views, across several platforms including YouTube, Instagram and TikTok, and international reach with dedicated websites targeting different geographic territories and languages. Further, the evidence on record indicates that the top two pages of a Google search of the term "JUWELO" generates results pointing to the Complainant and its JUWELO brand – with the exception of just one of the sponsored ads which also relevantly relates to jewellery products. The Panel finds that because of the established status of the Complainant including its online presence, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trademarks.

The apparently non-active use of the disputed domain name in this case satisfies the doctrine of passive holding as described in WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows considering all of the circumstances of the case because, relevantly, (i) the Complainant's trademark is distinctive and has a strong reputation in its sector, (ii) the Respondent failed to respond to these proceedings and thus has provided no evidence of actual or contemplated good-faith use, (iii) it is impossible to conceive of any plausible actual or contemplated good faith use of the disputed domain name by the Respondent in this case.

As a final point, the Panel may take into consideration the Respondent's silence throughout these proceedings.

In light of the above analysis, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and are being used in bad faith, and thus has satisfied the requirements under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **juwelo.net**: Transferred

PANELLISTS

Name	**Claire Kowarsky**

DATE OF PANEL DECISION 2024-12-04

Publish the Decision