



URS | DETERMINATION
(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. 2B442984

Determination DEFAULT

I. PARTIES

Complainants: ALPARGATAS, S.A. (BR) and ALPARGATAS EUROPE, S.L.U (SP)
Complainants' authorized representative(s): PADIMA TEAM, SLP, Maria Cristina Martinez Tercero (SP)

Respondent(s): Privacy Guardian, See PrivacyGuardian.org (US)

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain Name(s): HAVAIANAPT.ONLINE
Registry Operator: DotOnline Inc.
Registrar: NameSilo, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2020-10-01 11:44
Lock of the domain name(s): 2020-10-01 16:05
Notice of Complaint: 2020-10-02 15:16
Default Date: 2020-10-17 00:00
Notice of Default: 2020-10-17 09:21
Panel Appointed: 2020-10-17 09:21
Default Determination issued: 2020-10-19 08:24

IV. EXAMINER

Examiner's Name: Paddy Tam

The Examiner certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

The Complainant, ALPARGATAS, S.A., domiciled in Brazil, is the manufacturer of the well-known flip-flop sandals and the owner of the of the following HAVAIANAS trademarks registered with the European Union Intellectual Property Office (EUIPO):

- EUTM 007156128 "HAVAIANAS" registered and in force for the following goods and services: Class 25: Clothing, footwear, headgear.
- EUTM 008664096 "HAVAIANAS" registered and in force for the following goods and services: Class 25: Clothing, footwear, headgear.
- EUTM 003772431 "havaianas" registered and in force for the following goods and services: Class 25: Clothing, footwear, headgear.

In addition, the Complainant hosts its official website at <https://www.havaianas-store.com> where HAVAIANAS products are offered.

ALPARGATAS EUROPE, S.L.U, is the licensee and exclusive distributor of the HAVAIANAS trademark in Europe.

The Complainant asserts the following regarding the Respondent:

1. The registered domain name is identical or confusingly similar to a word or mark [URS 1.2.6.1]: For which the Complainant holds a valid national or regional registration and that is in current use.
2. Registrant has no legitimate right or interest to the domain name [URS 1.2.6.2]
3. The domain name was registered and is being used in bad faith [URS 1.2.6.3]

B. Respondent:

The Respondent has not submitted a Response within the Response-period.

C. Procedural findings:

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4.

In accordance with URS Procedure Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

D. Findings of fact:

The Examiner notes that Privacy Guardian, See PrivacyGuardian.org is named as the Respondent on the Complaint Form. Despite Privacy Guardian, See PrivacyGuardian.org might only be the name of the privacy or proxy service employed by the actual underlying Registrant of the Disputed Domain Name, due to it is the only publicly accessible information and lack of additional input from the Registry Operator, Registrar or the Respondent, the Examiner accepts that Privacy Guardian, See PrivacyGuardian.org is the Respondent of the present case.



The Registration Date of the Disputed Domain Name is 2020-07-10.

Despite the Respondent has defaulted, the Examiner is still required to review the case on the merits of the claim. [URS 6.3]

E. Reasoning:

1. The domain name(s) is(are) identical or confusingly similar to a word mark

To satisfy URS 1.2.6.1, a Complainant needs to prove its rights in a word mark and the domain name is identical or confusingly similar to the word mark.

In the present case, the Examiner satisfies that the Complainant is a well-known manufacturer of flip-flops who also owns trademark registrations for the word mark HAVAIANAS with the EUIPO.

The Complainant claims that the Disputed Domain Name is confusingly similar to the HAVAIANAS trademark. The Examiner notes that the only difference between the prominent part of the Disputed Domain Name and Complainant's HAVAIANAS trademark is that the last character "s" on the trademark is replaced by 2 other characters "pt" on the Disputed Domain Name. The Examiner accepts that the difference does not alter the underlying trademark or negate the confusing similarity and it does not sufficiently differentiate the Disputed Domain Name from that trademark. In addition, the Examiner also finds that the ".online" generic top-level domain ("gTLD") does not reduce the likelihood of confusion.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.1.

2. Respondent has no rights or legitimate interests to the domain name(s)

To satisfy URS 1.2.6.2, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests.

The Complainant asserts that the Respondent is not authorized by the Complainant to use the trademark HAVAIANAS in the Disputed Domain Name or to include the Complainant's logo and photographs on the website resolved by the Disputed Domain Name.

The Examiner finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Respondent has not rebutted the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.2.

3. The domain name(s) was(were) registered and is(are) being used in bad faith

To satisfy URS 1.2.6.3, the Complainant must prove both the registration and use of the domain name are in bad faith.

The Complainant claims that the Respondent has demonstrated actual knowledge of the HAVAIANAS trademark by reproducing the trademark on the website and capitalizes on the

reputation of the HAVAIANAS trademark by creating an online shopping site. Furthermore, the Complainant also contends that the Disputed Domain Name and the website created by the Respondent are indeed a fraudulent scheme to the consumers of the Complainant.

Having reviewed the screenshots of the website on the Disputed Domain Name, the Examiner agrees that the Respondent did have actual knowledge of the HAVAIANAS trademark demonstrating the bad faith registration, and disrupts Complainant's business and attempted to commercially benefit off the HAVAIANAS trademark in bad faith.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.3.

4. Abusive Complaint

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): HAVAIANAPT.ONLINE Suspends for the balance of the registration period

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Paddy
Surname: Tam
Date: 2020-10-19