



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

**URS DISPUTE NO. 2C974C9B**

Determination DEFAULT

**I. PARTIES**

Complainants: ALPARGATAS, S.A. (BR), ALPARGATAS EUROPE, S.L.U (ES)  
Complainants' authorized representative(s): PADIMA TEAM, SLP, Ana Bricio (ES)

Respondent(s): Zhang Ping, yao feiyang, Bao Laosan, Wang Rong (CN)

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

Domain Name(s): HAVAIAANASALE.TOP, HAVAIASALE.TOP, USAHAVAIAANAS.TOP,  
USHAVAIAANAS.TOP

Registry Operator: .TOP Registry

Registrar: Hongkong Kouming International Limited

**III. PROCEDURAL HISTORY**

Complaint submitted: 2022-09-05 11:28

Lock of the domain name(s): 2022-09-09 11:02

Notice of Complaint: 2022-09-09 12:37

Default Date: 2022-09-24 00:00

Notice of Default: 2022-09-24 18:08

Panel Appointed: 2022-09-24 18:16

Default Determination issued: 2022-09-26 18:49

**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 Complainants, Alpargatas, S.A. (BR) is the owner of several HAVAIANAS trademarks as below and Alpargatas Europe, S.L.U (ES) (hereinafter “Complainant” or “Complainants”), is the licensee and exclusive distributor of the following trademarks in Europe:

- EUTM n°007156128 "HAVAIANAS" registered and in force since 2008-08-11 for the following goods and services: Class 25: Clothing, footwear, headgear
- EUTM n°008664096 "HAVAIANAS" registered and in force since 2009-11-05 for the following goods and services: Class 25: Clothing, footwear, headgear
- EUTM n°003772431 "havaianas" registered and in force since 2004-04-29 for the following goods and services: Class 25: Clothing, footwear, headgear

The official webpage of the company is <https://www.havaianas-store.com> where HAVAIANAS products are offered for sale.

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 several international registrations and that are 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 did not file an official Response within the deadline.

### **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 Rules Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

### **Consolidation:**

The Complainant submits that the Disputed Domain Names were registered by the same person considering the similarities between the Disputed Domain Names, i.e., they were registered via the same registrar and were registered within the same month. The Examiner has reviewed the case including the screenshots of the websites to which the Disputed Domain Names resolved, provided by the Complainant, and the Examiner finds that the contents are highly identical, and all of the websites are hosted at the same hosting service provider. The Examiner also considers that all of the Registrant(s) are domiciled in China and none of them has submitted an official Response within the required period of time.

On this basis, the Examiner hereby accepts that the Disputed Domain Names are either registered by the same person or under common control and be consolidated in the present proceeding.

### **D. Findings of fact:**



The Registration Date of the Disputed Domain Names are:

- havaianasale.top: 2022-08-11
- havaiasale.top: 2022-08-12
- usahavaianas.top: 2022-08-13
- ushavaianas.top: 2022-08-13

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 that the domain name is identical or confusingly similar to the word mark.

In the present case, the Examiner is satisfied that the Complainant is a well-known footwear manufacturer who also owns trademark registrations for HAVAIANAS with the European Union Intellectual Property Office.

The Complainant claims that the Disputed Domain Names are confusingly similar to the HAVAIANAS trademark as they consist of either the entire HAVAIANAS mark or the very similar terms: "havaia". In this sense, the additional terms "us", "usa" and "sale" are all generic / geographical words which do not negate the confusing similarity that exists. Consequently, the term that is being used to identify the domain name is "havaia" which clearly evokes "HAVAIANAS" trademarks.

In addition, the Examiner also finds that the “.top” 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(s) lacks rights and legitimate interests in the disputed domain names, and the burden of prove then shifts to the Respondent(s) to show it does have rights or legitimate interests.

The Complainant asserts that the Respondent(s) is not authorized by the Complainant to use the trademark HAVAIANAS in the Disputed Domain Names or to include the Complainant’s logo and pictures on the websites to which the Disputed Domain Names resolve. The Complainant further asserts that the use of the Disputed Domain Names make believe to the consumers that the resolved websites are an official HAVAIANAS website.

The Examiner finds that the Complainant has established a prima facie case that the Respondent(s) has no rights or legitimate interests in the Disputed Domain Names and the Respondent(s) 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 disputed domain names are in bad faith.

The Complainant claims that the Respondent(s) has demonstrated actual knowledge of the HAWAIIANAS trademark by reproducing the trademark on its websites and capitalizes on the reputation of the HAWAIIANAS trademark by using the brand "HAWAIIANAS" to manufacture, distribute, export and/or offer HAWAIIANAS products. Moreover, the images that appear on the websites resolved by the Disputed Domain Names are owned by the Complainant. In addition, the whole webpage is trying to show a legal ecommerce but without authorization. The Respondent's purpose is to capitalize on the reputation of the Complainant's trademarks by diverting Internet users seeking HAWAIIANAS products to its websites for financial gain, by intentionally creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website and/or the goods offered or promoted through said website.

Having reviewed the screenshots of the websites resolved by the Disputed Domain Names and in the absence of a timely Response submitted by the Respondent(s), the Examiner agrees that the Respondent(s) did have actual knowledge of the HAWAIIANAS trademark at the time of registration, demonstrating thus the bad faith registration of the Disputed Domain Names. Moreover, the Examiner finds that, by the use of the Disputed Domain Names, the Respondent has disrupted the Complainant's business and attempted to commercially benefit of the HAWAIIANAS 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): HAWAIIANASALE.TOP Suspends for the balance of the registration period

HAWAIIASALE.TOP Suspends for the balance of the registration period

USAHAWAIIANAS.TOP Suspends for the balance of the registration period



USHAVAIANAS.TOP 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: 2022-09-26