



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

URS DISPUTE NO. 5125226E

Determination DEFAULT

I. PARTIES

Complainants: Alpargatas, S.A. (BR), Alpargatas Europe, S.L.U (ES)
Complainants' authorized representative(s): Padima Team, SLP (ES)

Respondent(s): Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS)

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

Domain Name(s): HAVAIFLIPFLOPS.ONLINE
Registry Operator: DotOnline, Inc.
Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2021-11-03 14:13
Lock of the domain name(s): 2021-11-03 23:46
Notice of Complaint: 2021-11-04 09:51
Default Date: 2021-11-19 00:00
Notice of Default: 2021-11-19 11:06
Panel Appointed: 2021-11-19 11:28
Default Determination issued: 2021-11-22 10:02

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

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

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

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 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 Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS) is named as the Respondent on the Complaint Form. Despite Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS) 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 Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS) is the Respondent of the present case.

The Registration Date of the Disputed Domain Name is 2021-05-18.

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 footwear manufacturer who also owns trademark registrations for HAVAIANAS with the European Union Intellectual Property Office.

The Complainant claims that the Disputed Domain Name is confusingly similar to the HAVAIANAS trademark as it consists in two terms: "havai" (which identifies the brand) and the term "flipflops". In this sense, the additional term "flipflops" is a generic word which only indicates the kind of products offered on the website and does not negate the confusing similarity that exists. Consequently, the term that is being used to identify the domain name is "havai" which clearly evokes "HAVAIANAS" trademarks.

Despite the website content is not usually considered as part of the comparison between the Disputed Domain Name and Complainant's trademark, the Examiner notes that the Complainant's logo on the website to which the Disputed Domain Name resolves further evidences that the term "havai" of the Disputed Domain Name refers to Complainant's HAVAIANAS trademarks. 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 pictures on the website associated with the Disputed Domain Name. The Complainant further asserts that the use of the Disputed Domain Name makes the consumers believe that the website is an official HAVAIANAS website.

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 using the brand "HAVAIANAS" to manufacture, distribute, export and/or offer HAVAIANAS products. Moreover, the images that appear on the website associated with the Disputed Domain Name are owned by the Complainant. In addition, the whole webpage is trying to show a legal ecommerce, but the real situation is that the Complainant has not authorized it. The Respondent's purpose is to capitalize on the reputation of the Complainant's trademarks by diverting Internet users seeking HAVAIANAS products to his websites for financial gain, by intentionally creating a likelihood of confusion with the Complaint'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 website on the Disputed Domain Name and in the absence of a timely Response submitted by the Respondent, the Examiner agrees that the Respondent did have actual knowledge of the HAVAIANAS trademark demonstrating the bad faith registration, disrupts the Complainant's business and has attempted to commercially benefit from 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): HAVAIFLIPFLOPS.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: 2021-11-22