



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

**URS DISPUTE NO. 58A22572**

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): HANVCIABATTE.ONLINE  
Registry Operator: DotOnline, Inc.  
Registrar: Namecheap, Inc.

**III. PROCEDURAL HISTORY**

Complaint submitted: 2021-08-18 11:11  
Lock of the domain name(s): 2021-08-20 03:53  
Notice of Complaint: 2021-08-20 08:42  
Default Date: 2021-09-04 00:00  
Notice of Default: 2021-09-04 10:41  
Panel Appointed: 2021-09-04 10:41  
Default Determination issued: 2021-09-06 19:48

**IV. EXAMINER**

Examiner's Name: Wilson Pinheiro Jabur

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 First Complainant asserts to be the owner of several trademark registrations for “HAVAIANAS” which is evoked in the disputed domain name with the addition of the term “ciabatte” which means “flip-flops” in Italian. The Second Complainant claims to be the licensee and exclusive distributor of the HAVAIANAS trademark in Europe.

The Complainants assert that HAVAIANAS is a world-renowned trademark in view of the well-known HAVAIANAS flip-flops, clothes and accessories.

In the Complainants’ point of view the Respondent does not have any legitimate right or interest in the disputed domain name since that the webpage that resolves from the disputed domain name reproduces without consent the Complainants’ trademarks and pictures of the Complainants’ products in what appears to be fraudulent online store, having consumers of the Complainants been defrauded by the Respondent.

As to the registration and use of the disputed domain name in bad faith, the Complainants assert that the Respondent, by using the disputed domain name, intentionally attempted to attract for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainants’ mark as to source, sponsorship, affiliation, or endorsement of his website.

### **B. Respondent:**

The Respondent did not reply to the Complaint.

### **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 disputed domain name was registered on May 5, 2021. The disputed domain name is being used in connection with an online store depicting the Complainants’ trademark and products with no disclaimer as to a relationship or lack thereof with the Complainants.

The First Complainant has shown trademark rights over the expression “HAVAIANAS”.

### **E. Reasoning:**

In spite of the Respondent’s default, URS Procedure 1.2.6 requires the Complainant to make a *prima facie* case, showing clear and convincing evidence for each of the three elements so as to have the disputed domain name suspended.

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



The Complainant has shown to be the owner, among others, of the European Union trademark registration No. 007156128 for the word mark “HAVAIANAS” registered on March 23, 2009 and subsequently renewed to cover goods in class 25.

The disputed domain name <HANVCIABATTE.ONLINE> incorporates the initial portion of the Complainants’ well-known trademark with the generic term “ciabatte” (“flip-flops” in Italian), the well-known Complainants’ products. In addition to that, and as already pointed out and proved by the Complainants, the online shop available at the disputed domain name clearly reproduces the Complainants’ logo, products and is very similar to the Complainants’ official website.

As previously recognized by past panels and summarized in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.7 “[...] panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant”, which is precisely the present case.

The Examiner thus finds that the complaint meets the requirement of the URS 1.2.6 (i).

## **2. Respondent has no rights or legitimate interests to the domain name**

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to the URS, any rights or legitimate interests in the disputed domain name. Nevertheless, the burden of proof is still on the Complainants to make a prima facie case against the Respondent.

In that sense, the Complainants indeed assert that they have not consented to the registration of the disputed domain name nor to the reproduction of the official images of their products in the online store that resolves from the disputed domain name.

Past UDRP panels have recognized that, under certain conditions, the use of a domain name that reflects a trademark for the resale of the trademark holder’s goods can give rise to rights or legitimate interests. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903. These conditions include, inter alia, that the website under the domain name “[is used to sell] only the trademarked goods” and that it “accurately and prominently [discloses] the registrant’s relationship with the trademark holder.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), paragraph 2.8. The websites under the disputed domain name had no such disclaimers.

Also, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, corroborate with the indication of the absence of a right or legitimate interest.

Under these circumstances and absent evidence to the contrary, the Examiner finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name and has therefore met the requirement of the URS 1.2.6 (ii).

### **3. The domain name was registered and is being used in bad faith**

The Respondent, in having redirected Internet users to an online store depicting the Complainants' trademark and products and not disclosing the lack of relationship with the Complainants clearly confirms that he must be aware of the Complainants and the well-known HAVAIANAS trademark and products.

Such use in this Examiner's point of view may create a likelihood of confusion with the Complainants' mark as to source, sponsorship, affiliation, or endorsement of his websites and therefore does not qualify as a *bona fide* use.

### **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: HANVCIABATTE.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: Wilson

Surname: Pinheiro Jabur

Date: 2021-09-06