



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

**URS DISPUTE NO. 6E3E4975**

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): Rose Cully (ES)

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

Domain Name(s): HAVAIATONGS.ONLINE  
Registry Operator(s): DotOnline, Inc. and GMO Registry, Inc.  
Registrar: Namecheap, Inc.

**III. PROCEDURAL HISTORY**

Complaint submitted: 2021-10-01 13:34  
Lock of the domain name(s): 2021-10-04 16:40  
Notice of Complaint: 2021-10-05 16:16  
Default Date: 2021-10-20 00:00  
Notice of Default: 2021-10-20 10:45  
Panel Appointed: 2021-10-20 10:47  
Default Determination issued: 2021-10-20 16:35

**IV. EXAMINER**

Examiner's Name: Athur Fouré

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 are ALPARGATAS, S.A. (BR) and ALPARGATAS EUROPE, S.L.U (SP). URS Procedure 1.1.3 provides that “*one Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related.*” The Panel accepts the Complainants’ statement that the latter is the “*licensee and exclusive distributor*” of the former, in the absence of rebuttal by the Respondent. The companies ALPARGATAS, S.A. and ALPARGATAS EUROPE, S.L.U will be referred to as the Complainant.

The Complainant holds rights on the HAVAIANAS trademarks, and notably the European trademark HAVAIANAS No. 7156128, registered on 23 March 2009 and designating goods in international class 25.

The Complainant asserts that it widely uses its trademark in connection flip-flops and other clothing items, and that its trademark is well-known worldwide.

The Complainant asserts the following:

1. The registered domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use [URS 1.2.6.1];
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 is using a well-known privacy protection service. The Respondent has not submitted a Response.

## **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 is havaiatongs.online, registered on 21 June 2021.

The disputed domain name has been used in connection with an online store depicting the Complainant’s trademark and products with no disclaimer as to a relationship or lack thereof with the Complainant.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires the Complainant to make a prima facie case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name be suspended.

[URS 1.2.6.1] The registered domain name(s) is/are identical or confusingly similar to a word mark:



- i. for which the Complainant holds a valid national or regional registration that is in current use; or
- ii. that has been validated through court proceedings; or
- iii. that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

[URS 1.2.6.2] Registrant has no legitimate right or interest to the domain name.

[URS 1.2.6.3.] The domain was registered and is being used in bad faith.

#### **E. Reasoning:**

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

The Complainant presented consistent evidence of ownership and long-lasting extensive use of the HAVAINANAS mark in jurisdictions throughout the world.

The disputed domain name havaiatongs.online is highly similar to the HAVAIANAS trademark. The addition of the gTLD .online does not prevent the finding that the domain name is identical or similar to the Complainant's mark under the first element. The first letter of the trademark in the same order and in attack position. The domain name also contains the generic term "tongs", which is the French word for "flip-flops" and relates to the Complainant's business.

The gTLD .online may increase the likelihood of confusion since the Respondent is using the disputed domain name in connection with online stores depicting the Complainant's well-known products. See URS Dispute No. D306BC2E, ALPARGATAS, S.A and ALPARGATAS EUROPE, S.L.U v. Privacy Guardian.

Given the above, the Examiner finds that the Complainant has met the requirements under the first element of the Policy.

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

The Complainant asserts that it has not authorized the Respondent to use its HAVAIANAS mark. Furthermore, the evidence on record shows no evidence that Respondent is commonly known by the Domain Name.

Under the Oki Data Americas test developed by past UDRP Panels, the use of a domain name identical or similar to a trademark and used for the purpose of selling the trademark holder's goods may grant rights or legitimate interests on a domain name. See Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903.

However, the Oki Data test strictly applies to the case of authorized sales or service agents, which is rebutted by the Complainant.

Since no Response was submitted in this proceeding, the Respondent has failed to justify any rights or legitimate interests in the domain name in dispute. Additionally, as per the evidence on record and looking at the broader context of the case, namely, the content of the website, it is apparent that the Respondent not only did not have any right or legitimate interest in the domain name in dispute, but was instead trading off the Complainant's reputation.

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.

The Examiner finds that Complainant has satisfied URS 1.2.6.2 as the Respondent has no legitimate rights or interest to the domain name.

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

Having reviewed the evidence available on the record, the Examiner is of the view that the Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainant's well-known HAWAIANAS marks.

The use of the disputed Domain Name in connection with an online store depicting the Complainant's trademarks and goods without authorization from the Complainant shows the Respondent's evident knowledge of the HAWAIANAS trademark at the time of registration of the disputed Domain Name.

In the absence of any explanation from the Respondent, the Examiner agrees that the Respondent did have actual knowledge of the HAWAIANAS trademark demonstrating the bad faith registration, and disrupts Complainant's business and attempted to commercially benefit off the HAWAIANAS trademark in bad faith.

The Examiner finds that Complainant has satisfied URS 1.2.6.3 as the disputed domain name was registered and is being used in bad faith.

### **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): HAVAIATONGS.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: Arthur  
Surname: Fouré  
Date: 2021-10-20