



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

URS DISPUTE NO. D75BF4C6

Determination DEFAULT

I. PARTIES

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

Respondent: Privacy Guardian, See PrivacyGuardian.org, US

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

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

III. PROCEDURAL HISTORY

Complaint submitted: 2020-06-16 13:02
Lock of the domain name(s): 2020-06-17 15:45
Notice of Complaint: 2020-06-17 18:00
Default Date: 2020-07-02 00:00
Notice of Default: 2020-07-02 10:56
Panel Appointed: 2020-07-02 10:58
Default Determination issued: 2020-07-07 09:55

IV. EXAMINER

Examiner's Name: Ganna Prokhorova

The Examiner certifies that she has acted independently and impartially and to the best of her 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 is a footwear manufacturer in Brazil.

The Complainant is the owner of the trademark HAVAIANAS with several international and national trademark registrations worldwide, including:

- 007156128 "HAVAIANAS" registered and in force for the following goods of IC 25: Clothing, footwear, headgear;
- 008664096 "HAVAIANAS" registered and in force for the following goods of IC 25: Clothing, footwear, headgear;
- 003772431 "havaianas" registered and in force for the following goods of IC 25: Clothing, footwear, headgear.

The official webpage of the company is <https://www.havaianas-store.com>.

The Complainant asserts the following regarding the Respondent:

1. The registered domain name <havaianassale.online> 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. The Respondent has no legitimate right or interest to the domain name [URS 1.2.6.2]

The Respondent has no legitimate right or interest to the domain name

3. The domain names were registered and is being used in bad faith [URS 1.2.6.3]:

By using the domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location

B. Respondent:

The Respondent has not filed 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.

The Examiner notes that Privacy Guardian, See PrivacyGuardian.org is named as the Respondent on the Complaint Form and the Registry Operator confirmed Privacy Guardian, See PrivacyGuardian.org is the Registrant Organization of the Disputed Domain Name. 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 lack of disclosure by the Registrar and the Respondent, the Examiner accepts that Privacy Guardian, See PrivacyGuardian.org is the Respondent of the present case.



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 Registration Date of the Disputed Domain Name is as below:

<havaianassale.online>: 2020-06-01

Despite the Respondent has defaulted, URS Procedure 1.2.6, requires 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 should 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 and 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

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

In the present case, the Examiner finds that the Complainant is a well-known footwear manufacturer who also owns trademark registrations for HAVAIANAS in different jurisdictions.

The Complainant claims that the Disputed Domain Name is confusingly similar to the HAVAIANAS trademark. The Examiner accepts that the additional term “sale” does not alter the underlying trademark or negate the confusing similarity and it does not sufficiently differentiate the Disputed Domain Names from that trademark.

In addition, the Examiner also finds that the “.online” generic top-level domain (“gTLD”) does not prevent the finding of confusing similarity under the first element.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.1 as the disputed domain name is confusingly similar to the Complainant’s registered trademarks.

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(s), 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 has not been authorized by the Complainant to use the trademark HAVAIANAS in the Disputed Domain Name or the content of the website. The Respondent's use is not a legitimate noncommercial or fair use, and is not in connection with a bona fide offering of goods or services.

The Examiner finds that the Complainant has met its burden and 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 as the Respondent has no legitimate rights or interest to the domain names.

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 the website on the Disputed Domain Name is a fraud page that reproduces the HAVAIANAS trademark and pictures owned by the Complainant on the website under the Disputed Domain Name without consent of the Complainant. Furthermore, the Respondent seems to use the brand HAVAIANAS to manufacture, distribute, export and/or offer HAVAIANAS products in Spain and in other countries. In addition, the whole webpage is trying to show a legal ecommerce, but the real situation is that the Complainant has not authorized either the domain name or the content of the web site.

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.

By using the domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.3 as the Respondent registered the disputed domain name and is using it 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): HAVAIANASSALE.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: Ganna

Surname: Prokhorova

Date: 07 July 2020