



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

URS DISPUTE NO. E05E84F0

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): HAVAIAPT.SHOP, HAVAIASINFRADITO.ONLINE,
HAVAIFLIPFLOPS.SHOP, HOVAIANERSALE.SHOP, INFRAHAVAIANES.ONLINE
Registry Operator(s): DotOnline, Inc. and GMO Registry, Inc.
Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2021-09-24 10:32
Lock of the domain name(s): 2021-09-27 10:14
Notice of Complaint: 2021-09-28 13:17
Default Date: 2021-10-13 00:00
Notice of Default: 2021-10-13 15:49
Panel Appointed: 2021-29-28 15:53
Default Determination issued: 2021-10-15 11:26

IV. EXAMINER

Examiner's Name: Nathalie Dreyfus

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 Complainants request that the domain names 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 argue that “HAVAIANAS” is a renowned trademark, protected worldwide, not only thanks to the well-known “HAVAIANAS” flip-flops, but also for the use of the trademarks to distinguish clothes and accessories related to summer or beach environments.

The Complainants allege that the Disputed Domain Names are reproducing their trademarks, in a confusing similar way since they contain the words "havai", havaia", "havaianes" or "hovaia", with the addition of generic words like "flipflops", "infradito" (which means "flipflops" in Italian), "sale", "infra" or "pt" (which refers to Portugal). Those differences do not dismiss the risk of confusion.

Furthermore, the Disputed Domain Names resolve to websites dedicated to manufacture, distribute, export and/or offer HAVAIANAS products. Besides, the Complainants state that the websites reproduce their photographs and their trademark logo.

Hence, the Complainants have not authorized the Respondent to use the “HAVAIANAS” trademarks, nor licensed the Respondent to use them.

The Complainants also contend that the Disputed Domain Names will lead consumers to believe that said websites are official “HAVAIANAS” websites while it is not the case. Consequently, the Disputed Domain Names are, according to the Complainants, used in bad faith.

Finally, the Complainants claim that the Respondent’s purpose is to capitalize on their reputation and trademarks by diverting Internet users seeking “HAVAIANAS” products to its websites for financial gain, and by intentionally creating a likelihood of confusion with Complainant’s trademarks as to the source, sponsorship, affiliation or endorsement of its website and/or the goods offered or promoted through said websites.

B. Respondent:

The Respondent did not submit a Response and is therefore in default.

C. Procedural findings:

The Complainants request that the Disputed Domain Names be consolidated in a single proceeding because the Disputed Domain Names are registered by the same entity. The Examiner, in reviewing the evidence finds that all the Disputed Domain Names can be consolidated in the same proceeding. Indeed, both Disputed Domain Names were registered by the same registrar and almost at the same date (two of them were registered on the same date). Moreover, the content on the webpage is almost the same in all of them, which leads to think that the website owner is the same for all the Disputed Domain Names.

Based on all of these evidences, the Examiner accept the consolidation of the Complaint.

Under the paragraph 1.1.3 of the URS “*one Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related*”. The Examiner finds that the Complainants are related, because the Spanish company is the licensee of the other Complainant. Therefore, the Examiner accepts the Complaint submitted by the two Complainants.

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.

C. Findings of fact:

The Complainants are the owner and the licensee of the following trademarks:

- European Union Trademark n°007156128 "HAVAIANAS" filed on August 11, 2008, for goods in class 25 and duly renewed since then;
- European Union Trademark n° 008664096 "HAVAIANAS" filed on November 5, 2009 for good in class 25 and duly renewed since then;
- European Union Trademark n°003772431 "havaianas" filed on April 29, 2004 for goods in class 25 and duly renewed since then.

The three trademarks contain the word element “HAVAIANAS”.

The Disputed Domain Names resolve to website where various “HAVAIANAS” products are offered for sale.

E. Reasoning:

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

Under the Paragraph 1.2.6.1 of the URS Procedure, the Complainants shall prove *“that the registered domain name is 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”*.

The Complainants have proven through the evidence on record that they own trademark rights on the sign “HAVAIANAS” since at least 2008 for clothing, footwear and headgear, and appear to be currently in use.

The paragraph 1.8 of the WIPO Overview 3.0 indicates that *“where the relevant trademark is recognizable within the disputed domain name, the addition of other terms whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarities under the first element”*.

The Disputed Domain Names are each composed by two words. The first one is “havai”, “havaia”, “havaianes” or “hovaia” which are all slightly different from the Complainants’ trademarks but where the “HAVAIANAS” trademark is recognizable, although not reproduced in its entirety in the Disputed Domain Names. The second word is, for each of the Disputed Domain Names, descriptive: it is either the translation of the word “flip-flops”, the product sold by the Complainants, in Italian for the domain name containing the word “infradito”, or refers to a geographical place such as “pt”, for Portugal, or “sale” and “infra”. Those terms do not prevent any likelihood of confusion since they are generic and may even describe the products that are sold under the Complainants’ trademarks.

Consequently, and according to the paragraph 1.8 of the WIPO Overview 3.0, the addition of the terms does not prevent a finding of confusing similarity.

Therefore, the Examiner finds that the requirements of the Paragraph 1.2.6.1 of the URS Procedure have been satisfied.

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

The Complainants are required to make out a prima facie case that the Respondent lacks right or legitimate interests in the Disputed Domain Names. Once the prima facie case is made, the burden of proof shifts to the Respondent who has to prove his right or legitimate interests.

The Complainants claim that they have not authorized the Respondent to use the “HAVAIANAS” trademark and that there is no link between the Respondent and them. Neither did the Complainants give any license to the Respondent.

Since the Respondent has not submitted any Response in this proceeding, Respondent has not demonstrated any rights or legitimate interests in the Disputed Domain Names.

Based on the above, the Examiner finds that the Respondent lacks rights or legitimate interests with respect to the Disputed Domain Names as per the requirements set forth under Paragraph 1.2.5.2 of the URS Procedure.

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

The Disputed Domain Names are similarly reproducing the Complainants’ trademarks with the mere addition of a descriptive or generic term. Regarding the reputation of the Complainants, it could not be a coincidence to associate such typographic mistakes in the trademarks and associate them with terms such as “flip-flops” that are the main products for which the Complainants are renowned.

Furthermore, the Disputed Domain Names resolve to websites offering footwear and accessories under the Complainants’ trademarks, logos and name. Additionally, the Disputed Domain Names use some photographs owned by the Complainants’.

Therefore, the Examiner finds that the Respondent, by using the Disputed Domain Names, has intentionally attempted to attract for commercial gain, Internet users to the Respondent’s websites, by creating a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web sites. Indeed, the Respondent is using the Disputed Domain Names to sell the Complainants’ products, without authorization.

The Examiner finds that the requirements set forth under Paragraph 1.2.6.3 of the URS Procedure have been satisfied by Complainants.

4. Abusive Complaint

The Examiner finds that the Complaint was neither abusive nor contained material falsehood.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts



Domain Name(s): HAVAIAPT.SHOP Suspends for the balance of the registration period

HAVAIASINFRADITO.ONLINE Suspends for the balance of the registration period

HAVAIFLIPFLOPS.SHOP Suspends for the balance of the registration period

HOVAIANERSALE.SHOP Suspends for the balance of the registration period

INFRAHAVAIANES.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: Nathalie
Surname: Dreyfus
Date: 2021-10-15