



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

**URS DISPUTE NO. F306BC2E**

Determination DEFAULT

**I. PARTIES**

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

Respondent(s): Privacy Guardian, See [PrivacyGuardian.org](https://www.privacyguardian.org) (US)

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

Domain Names: HAVAIANASPT.ONLINE, HAVAIANASTORE.ONLINE  
Registry Operator: DotOnline Inc.  
Registrar: NameSilo, LLC

**III. PROCEDURAL HISTORY**

Complaint submitted: 2020-07-06 14:43  
Lock of the domain name(s): 2020-07-07 02:30  
Notice of Complaint: 2020-07-07 12:47  
Default Date: 2020-07-22 00:00  
Notice of Default: 2020-07-22 11:45  
Panel Appointed: 2020-07-22 11:46  
Default Determination issued: 2020-07-26 17:33

**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 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. Complainants:**

The First Complainant asserts to be the owner of several trademark registrations for “HAVAIANAS” which are incorporated in the disputed domain names. The Second Complainant claims to be the licensee and exclusive distributor of the HAVAIANAS trademark in Europe.

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

On the Complainants’ point of view the Respondent does not have any legitimate right or interest in the disputed domain names since that the webpages that resolve from the disputed domain names reproduce without consent the Complainants’ trademarks and official pictures of the Complainants’ products in what appears to be fraudulent online stores.

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

### **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 <HAVAIANASPT.ONLINE> was registered on May 31, 2020 and the disputed domain name <HAVAIANASTORE.ONLINE> was registered on May 28, 2020. The disputed domain names have been used in connection with online stores depicting the Complainants’ trademark and products with not disclaimer as to a relationship or lack thereof with the Complainants.

The First Complainant has shown trademark rights over the expression “HAVAIANAS” (Annexes 1, 2 and 3 to the Complaint).

### **E. Reasoning:**

In spite of 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 is identical or confusingly similar to a word mark**



The Complainant is the owner, among others, of the European Union trademark registration No. 007156128 for the word mark “HAVAIANAS” registered on March 23, 2009 to cover goods in class 25 (Annex 1 to the Complaint).

The disputed domain names incorporate the First Complainant’s trademark *in totum*. The TLD .online can even add likelihood of confusion since the Respondent is using the disputed domain names in connection with online stores depicting the Complainants’ well-known products.

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 names. 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 names nor to the reproduction of the official images of their products in the online stores that resolve from the disputed domain names.

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 names had no such disclaimers.

Also, the lack of evidence as to whether the Respondent is commonly known by the disputed domain names or the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain names, 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 names and has therefore met the requirement of the URS 1.2.6 (ii).

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

The Respondent, in having redirected Internet users to online stores depicting the Complainants’ trademarks 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 Names:

HAVAIANASPT.ONLINE Suspends for the balance of the registration period.

HAVAIANASTORE.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: 2020-07-26