

ADMINISTRATIVE PANEL DECISION

Decathlon v. Doug Gursha

Case No. D2023-0987

1. The Parties

1.1 The Complainant is Decathlon, France, represented by AARPI Scan Avocats, France (the “Complainant”).

1.2 The Respondent is Doug Gursha, United States of America (the “United States”) (the “Respondent”).

2. The Domain Name and Registrar

2.1 The disputed domain name <decathlons.org> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2023. On March 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 20, 2023.

3.2 The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2023.

3.4 The Center appointed Ike Ehiribe as the sole panelist in this matter on April 20, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of

Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

4.1 The Complainant is a French limited liability company registered under the laws of France. The Complainant is a major French manufacturer and specialises in the conception and retailing of sporting and leisure goods. From 1988, it is said production of the Complainant's goods became more international with the opening of the first production office in Asia and the subsequent opening of a store in Shanghai in 2003. In April 2022, the Complainant employed 105,000 employees worldwide with annual sales of EUR 11.4 billion. In 2021, the Complainant is on record as having operated 1,747 stores throughout the world. The Complainant is the owner of a large number of trademarks consisting or including the wording DECATHLON in FRANCE and abroad and the Complainant's efforts at promoting its DECATHLON trademark has resulted in the development of a solid reputation with French and foreign consumers. The Complainant owns the registration of the DECATHLON mark in France since April 22, 1986 (French Trademark Registration No. 1366349), in the European Union since April 28, 2004 (European Union Trade Mark Registration No. 000262931), and international since December 20, 1993 (International Registration No. 613216). The well-known character of the trademark DECATHLON has been also recognised in the context of decisions rendered under the UDRP. Several of those decisions are referred to in the complaint. See for instance, *Decathlon v. WhoisGuard, Inc./ Win Millett*, WIPO Case No. [D2018-2195](#). The Complainant also offers for sale its sporting and leisure goods online, through its official websites located at "www.decathlon.fr" and "www.decathlon.com". Furthermore to promote its reputation on the Internet and sell its products it is said that the Complainant registered numerous domain names among which are <decathlon.com> registered on May 30, 1995; <decathlon.fr> registered on June 29, 1995; and, <decathlon.net> registered on June 22, 1998.

4.2 The Respondent is reportedly based in the United States and according to the Whois database, registered the Disputed Domain Name <decathlons.org> on March 3, 2021, with the Registrar NameCheap, Inc. The Disputed Domain Name resolves to a website hosting a parked page with pay-per-click links relating to commercial stores and sport stores, in competition with the Complainant.

5. Parties' Contentions

A. Complainant

5.1 The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's well-known DECATHLON trademark considering that the Disputed Domain Name identically reproduces the term DECATHLON entirely. It is further argued that the addition of the letter "s" to the Disputed Domain Name is insufficient to prevent a confusingly similarity finding as this is a clear case of typo squatting. The Complainant in this respect relies on a number of previous UDRP provisions including *Skyscanner Limited v. Khaled Samir*, WIPO Case No. [D2020-2669](#). The Complainant also contends that the addition of the Top-Level Domain ("TLD") ".org" is irrelevant when conducting a confusing similarity enquiry following *Fox Media LLC v. Bill Biersdorf*, WIPO Case No. [D2022-4600](#).

5.2 The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in that in the first instance the Respondent has never been known under the name DECATHLONS as following a recent trademark search on the trademark database conducted by the Complainant, there is nothing to suggest that the Respondent ever filed any trademark identical or similar to its own rights. Secondly, the Respondent who has no relationship with the Complainant has never been licensed, authorised or otherwise permitted to register a domain name incorporating its trademarks. Thirdly, it is asserted that the Respondent is intentionally creating confusion in order to divert consumers from the Complainant's website to its own website which is not used to promote a *bona fide* offering of goods or services, nor to serve a noncommercial legitimate purpose but to host a parked page. The Complainant

concludes that from the foregoing, the Respondent's activities must be fraudulent and contends that the Respondent has no rights or legitimate interest in the Disputed Domain Name following previous UDRP decisions such as *Decathlon v. Wang Yongwei/ Domain Admin, Information Privacy Protection Services Limited*, WIPO Case No. [D2015-0198](#).

5.3 The Complainant also asserts that the Respondent registered the Disputed Domain Name in bad faith and has engaged in continued bad faith use of the Disputed Domain Name. In the first instance the Complainant contends that it is highly likely that the Respondent knew of the Complainant and its well-known trademarks and sports related products and services when the Respondent decided to create the Disputed Domain Name, considering that the Complainant's DECATHLON trademark and domain names were registered long before the Disputed Domain Name was created and in particular, any search of the term/mark DECATHLON conducted with a Google search engine would lead to the Complainant's websites and its products. The Complainant cites *Sanofi v. Registration Private, Domains By Proxy, LL/ Ernest Medina*, WIPO Case No. [D2016-0594](#), in support of this contention. On the question of bad faith use, the Complainant alludes to the fact that the Disputed Domain Name is used to redirect Internet users to a parking page with links directly related to the Complainant's business activity as evidence of bad faith use following *Baring Asset Management Limited v Jibril Shehu*, WIPO Case No. [D2020-1733](#). Secondly, the Complainant contends that since the Disputed Domain Name has MX servers configured to receive and send emails, this is indicative of an intention to support an email account and that in itself is further evidence of fraudulent use characterising bad faith use. See *Decathlon v. Registration Private, Domains By Proxy, LLC/ Ivan Costin*, WIPO Case No. [D2021-2228](#). The Complainant therefore submits in conclusion that the Respondent's attempts at attracting Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source by creating an idea of an affiliation or endorsement of the Respondent's website constitutes bad faith use.

B. Respondent

5.4 The Respondent did not reply to the Complainant's contentions. In the circumstances the Panel shall draw adverse inferences from the failure or refusal of the Respondent to reply to those contentions as it considers appropriate.

6. Discussion and Findings

6.1 Under paragraph 4 (a) of the Policy, to succeed in the administrative proceedings the Complainant must prove that: (1) the Disputed Domain Name is identical and or confusingly similar to the trademark or service mark of the Complainant; (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and (3) the Disputed Domain Name has been registered and is being used in bad faith.

6.2 As expressly stated in the Policy the Complainant must establish the existence of each of these three elements in any UDRP proceeding.

A. Identical or Confusingly Similar

6.3 This Panel finds and accepts that the Complainant is a well-known French manufacturer and retailer of sporting and leisure goods. The Panel also accepts that the Complainant is the owner of numerous trademark registrations containing the trademark DECATHLON registered in France and other jurisdictions abroad.

6.4 Accordingly, the Panel without any hesitation finds that on a visual examination of the Disputed Domain Name, the Disputed Domain Name is indeed confusingly similar to the Complainant's DECATHLON trademark. In this regard, reliance is placed on section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is evidently a case of typosquatting. The Panel also finds that the generic Top-Level Domain ("gTLD") ".org" can be ignored as a standard

technical registration requirement in the Domain Name System. The Panel places reliance on section 1.11 of the [WIPO Overview 3.0](#).

6.5 The Panel is therefore satisfied that the Complainant has established the confusing similarity requirement being the first element of the Policy.

B. Rights or Legitimate Interests

6.6 On the question of rights and legitimate interests in the Disputed Domain Name, the Panel is satisfied that the Respondent has failed to adduce any evidence which suggests that the Respondent has such rights or legitimate interests as stipulated in paragraphs 4(a)(ii) and 4(c) of the Policy. The Panel finds that the Respondent is not commonly known by the Disputed Domain Name nor is there any evidence that the Respondent has been authorised, permitted or licensed by the Complainant to make use of the Complainant's DECATHLON trademark to register a domain name or in any other manner. The evidence adduced by the Complainant clearly demonstrates that the Respondent is not using the Disputed Domain Name for a *bona fide* offering of goods and services or a legitimate noncommercial or fair use purpose considering that the Disputed Domain Name resolves to a website hosting a parked page with links that compete with and capitalize upon the reputation and goodwill associated with the Complainant's trademark. Instead, as argued by the Complainant, the Respondent is using the Disputed Domain Name to cause confusion by diverting the Complainant's customers from its website. See in this regard a previous UDRP decision in *Decathlon v. Wang Yongwei / Domain Admin, Information Privacy Protection Services Limited., supra*.

6.7 The Panel is therefore satisfied that the Complainant has established the lack of rights and legitimate interests requirement being the second element of the Policy as stipulated in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

6.8 With particular reference to bad faith registration and use, the Panel has considered a number of factors to arrive at the conclusion that the Respondent engaged in bad faith registration and has continued to engage in bad faith use. First of all, as correctly articulated by the Complainant, the Respondent must have known of the prior existence of the Complainant and the Complainant's world-wide rights in the DECATHLON trademark before electing to create the Disputed Domain Name in March 2021. As the Complainant argues, an Internet search would have revealed to the Respondent of the Complainant's websites, world-wide reputation of the Complainant's registered trademarks, registered domain names through which it conducts its business worldwide, and its sporting or leisure products. In this regard, reliance has been placed on a previous UDRP decision contained in *Sanofi v. Registration Private, Domains By proxy, LL Earnest Medina, supra*. As far as continuous bad faith is concerned, attention has been drawn by the Complainant to the Respondent's deliberate acts of causing confusion in the minds of Internet users for commercial gain by diverting them to the Respondent's website which resolves to parked pages with links directly related to the Complainant's business activities and the setting up of MX servers configured on the Disputed Domain Name with the likely intention to send and receive emails as all evidence of intentional bad faith use. See in this regard *Baring Asset Management Limited v. Jibril Shehu, supra*. See also *Alstom v. Helmut Letterno, XOP, WIPO Case No. D2020-1941*, where the activation of MX servers on the domain name in dispute was equally held to be indicative of bad faith use. As earlier indicated in paragraph 5.4 above, the Panel has drawn adverse inferences from the failure or refusal of the Respondent to reply to the contentions of the Complainant in this reference.

6.9 Accordingly, the Panel is satisfied that the Complainant has established the registration and bad faith requirement being the third element of the Policy.

7. Decision

7.1 For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <decathlons.org>, be transferred to the Complainant.

/Ike Ehiribe/

Ike Ehiribe

Sole Panelist

Date: May 12, 2023