

ADMINISTRATIVE PANEL DECISION

Decathlon v. Arturo Alterio

Case No. D2024-1566

1. The Parties

The Complainant is Decathlon, France, represented by AARPI Scan Avocats, France.

The Respondent is Arturo Alterio, Spain.

2. The Domain Name and Registrar

The disputed domain name <decathlonhygiene.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2024. On April 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 15, 2024, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2024, 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 April 19, 2024.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2024.

The Center appointed Halvor Manshaus as the sole panelist in this matter on May 28, 2024. 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

The Complainant is a French manufacturer specialized in the conception and retailing of sporting and leisure goods. In April 2022, the Complainant employed 105 000 people globally, had 1 747 stores worldwide and an annual sale of 11,4 billion euros.

The Complainant has, among others, registered the following trademarks containing the DECATHLON mark:

- The French registration number 1366349 for various goods and services in classes 3, 4, 5, 8, 9, 12, 13, 14, 16, 18, 20, 21, 22, 24, 25, 28, 32, 33, 35, 37, 39, 40, 42, 43, 44 and 45 registered on January 16, 1987;
- The European Union registration number 000262931 for goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 registered on April 28, 2004; and
- The international registration number 613216 for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39 and 42 registered on December 20, 1993.

The Complainant has registered the domain names <decathlon.com> on May 31, 1995, <decathlon.fr> on June 29, 1995 and <decathlon.net> on June 23, 1998. The Complainant's official websites are located at "www.decathlon.fr" and "www.decathlon.com" where the Complainant offers sporting and leisure goods.

The disputed domain name was registered on June 6, 2023, and at the date of this decision, it resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademarks and domain names. The Complainant's trademark is well-known, and the disputed domain name contains the exact trademark with the addition of the descriptive term "hygiene". Further, the generic Top-Level-Domain (gTLD) ".com" must be disregarded due to its technical function.

The Complainant asserts that the Respondent has no legitimate interest in the disputed domain name. The Complainant claims that the Respondent is not known under the disputed domain name, and that the Respondent has not received any authorization, license, or other permission to register a domain name incorporating the Complainant's trademark. Further, the Complainant holds that the Respondent is not related to the Complainant's business but is using the disputed domain name to divert customers from the Complainant's website, which does not constitute a promotion of a bona fide offering of goods or services, nor serving a noncommercial legitimate use.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant argues that it is highly likely the Respondent was aware of the Complainant's trademarks when registering the disputed domain name as the Complainant's trademarks and domain names were registered long before the disputed domain name and due to the Complainant and its trademarks being well-known and reputable. Further, the Complainant argues that the Respondent has activated the mail exchanger (MX) record for the disputed domain name, creating a risk of fraudulent use. The Complainant holds that the Respondent had used the disputed domain name to attempt to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term "hygiene" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds it unlikely that the Respondent was unaware of the Complainant's trademark and domain names as the Complainant's trademark is well-known and also predates the registration of the disputed domain name.

The Panel notes that the Respondent has activated the mail exchanger (MX) record for the disputed domain name implying that the Respondent may have connected the disputed domain name to email servers, creating a risk that the disputed domain name is used for misrepresentations or phishing purposes. As previous panels have found see *Alain Afflelou Franchiseur v. Lihongbo, Lihongbo*, WIPO Case No [D2020-2075](#), the Panel finds the activation of the mail exchanger as bad faith behavior.

Further, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details, noted to be in breach of its registration agreement. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain name, and the Respondent's failure to submit a response and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

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 <decathlonhygiene.com> be transferred to the Complainant.

/Halvor Manshaus/

Halvor Manshaus

Sole Panelist

Date: June 11, 2024