

ADMINISTRATIVE PANEL DECISION

Decathlon v. 吴海霞 (wu hai xia), 袁永武 (yuan yong wu), 张子健 (zhang zi jian)

Case No. D2024-3202

1. The Parties

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

The Respondents are 吴海霞 (wu hai xia), 袁永武 (yuan yong wu), 张子健 (zhang zi jian), China.

2. The Domain Names and Registrar

The disputed domain names <decathlonmalls.com>, <decathlonsale.com>, <decathlonsale.top>, <decathlonsvip.com>, and <decathlontop.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2024. On August 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 7, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (“X”) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all disputed domain names are under common control. The Complainant filed an amended Complaint in English on August 20, 2024.

On August 9, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreements for the disputed domain names is Chinese. On August 20, 2024, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the Complainant’s submission.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on August 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on September 13, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on September 19, 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, Decathlon, founded in 1976, is a major French manufacturer specializing in retailing of sporting and leisure goods.

In 2023, the Complainant had 101,000 employees in 1751 stores worldwide with annual sales of EUR 15.6 billion.

The Complainant is a global operating in France (where it operates 35% of its stores) and other global markets (65% of its stores).

The Complainant has an extensive global portfolio of trade marks incorporating DECATHLON:

- French Trade Mark Registration No. 1366349 for DECATHLON, 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 April 22, 1986;
- European Union Trade Mark Registration No. 000262931 for DECATHLON, 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
- International Trade Mark Registration No. 613216 for DECATHLON, 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, designating inter alia Australia, the Republic of Korea, China and Russian Federation, registered on December 20, 1993.

The disputed domain names were registered on:

- <decathlonsale.com> (Registered on March 18, 2024);
- <decathlonsale.top> (Registered on March 30, 2024);
- <decathlonmalls.com> (Registered on April 1, 2024);
- <decathlonsvip.com> (Registered on April 2, 2024); and
- <decathlontop.com> (Registered on April 2, 2024).

According to evidence provided by the Complainant, at the time of filing the Complaint, the disputed domain names all resolved to inactive pages. Previously, the disputed domain names <decathlonsvip.com>, <decathlonsale.com>, and <decathlontop.com> resolved to the same website containing images copied from the Complainant's official website, purportedly selling sports-related products. At the time of issuance of this Decision, the disputed domain names resolve to inactive pages.

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 names.

Notably, the Complainant contends that the disputed domain names registered by the Respondents are identical or confusingly similar to the Complainant's DECATHLON trade marks, and that the addition of the generic Top-Level Domains ("gTLDs") ".com" and ".top" does not affect the analysis as to whether the disputed domain names are identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant argues that the addition of the terms "sale", "malls", "svip" or "top" does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's DECATHLON mark.

The Complainant asserts that it has not authorized the Respondents to use the DECATHLON mark, and there is no evidence to suggest that any of the Respondents has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services.

The Complainant also claims there is no evidence indicating that any of the Respondents has any connection to the DECATHLON mark in any way, and that there is no plausible good-faith reason for the Respondents to have registered the disputed domain names. The Complainant therefore concludes that the registration and any use of the disputed domain names must be in bad faith.

B. Respondents

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

6. Discussion and Findings

Preliminary Issue: Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

None of the Respondents commented on the Complainant's request for consolidation.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names have been registered with the same Registrar within a short period of time. All the disputed domain names are a combination of the DECATHLON trade mark and a descriptive term applicable to the industry of the Complainant. Currently the disputed domain names do not resolve to active websites. Previously the contents of the websites associated with three of the disputed domain names were identical. Moreover, the phone number of the Respondents as confirmed by the Registrar is the same. The Panel thus concludes that on the balance of probabilities it is likely that the disputed domain names are under common control.

The Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party, particularly in the absence of any response from the Respondents.

Accordingly, the Panel concludes that it is appropriate to consolidate the disputes regarding the disputed domain names registered by the nominally different Respondents into a single proceeding.

Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

In this case, the language of the Registration Agreements for the disputed domain names is Chinese. Hence, the default language of the proceeding should be Chinese.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for the following main reasons:

- The disputed domain names used to resolve to webpages written in English;
- The disputed domain names are registered in Latin lettering, using English generic terms such as "malls", "sale", "top", "vip" indicating that the Respondents at least understand English; and
- [WIPO Overview 3.0](#) provides that "Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case" ([WIPO Overview 3.0](#), section 4.5.1).

The Respondents were notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must judiciously and in the spirit of fairness take into account all relevant circumstances of the case, including the Parties' ability to understand and use the proposed language, time and costs (see [WIPO Overview 3.0](#), section 4.5.1).

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to any Party and should ensure that the proceeding takes place with due expedition.

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 trade mark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The Panel acknowledges that the Complainant has established rights in the DECATHLON trade marks in many jurisdictions around the world.

Disregarding the gTLDs ".com" and ".top", the disputed domain names incorporate the Complainant's trade mark DECATHLON in its entirety. Thus, the disputed domain names should be regarded as confusingly similar to the Complainant's DECATHLON trade mark. The inclusion of the additional terms "sale", "malls", "svip" or "top" does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the DECATHLON trade mark and in showing that the disputed domain names are confusingly similar to its mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which a 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.

The Complainant asserts that it has not authorized the Respondents to use its trade marks and there is no evidence to suggest that the Respondents have used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services. Having reviewed the available record, the Panel finds that the Complainant has established a prima facie case that the Respondents lack rights or legitimate interests in the disputed domain names.

The Respondents did not file a response and has therefore failed to assert factors or put forth evidence to establish that they enjoy rights or legitimate interests in the disputed domain names. Meanwhile, no evidence has been adduced to demonstrate that any of the Respondents, prior to the notice of the dispute, had used or demonstrated their preparation to use the disputed domain names in connection with a bona fide offering of goods or services.

There is also no evidence adduced to show that any of the Respondents has been commonly known by the disputed domain names or is making a legitimate noncommercial or fair use of the disputed domain names. As such, the Panel concludes that the Respondents have failed to rebut the Complainant’s prima facie showing of the Respondents’ lack of rights or legitimate interests in the disputed domain names, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel’s findings below, the Panel finds that the Respondents have no rights or legitimate interests in the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

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.

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. ([WIPO Overview 3.0](#), section 3.2.1.)

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain names.

When the Respondents registered the disputed domain names, the DECATHLON trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondents should have been aware of the Complainant's marks when registering the disputed domain names. The Respondents have provided no evidence to justify their choice of the term "decathlon" in the disputed domain names. The Complainant's registered trade mark rights in DECATHLON for its products and services predate the registration date of the disputed domain names. A simple online search (via services such as Baidu or Google) for the term "decathlon" would have revealed that it is an established brand. [WIPO Overview 3.0](#), section 4.8. Moreover, three of the disputed domain names <decathlonsvip.com>, <decathlonsale.com>, and <decathlontop.com> previously resolved to the same website displaying a photo of a building with a sign of the DECATHLON mark and purportedly selling sports-related products.

The Panel is therefore of the view that the Respondents registered the disputed domain names with full knowledge of the Complainant's trade mark rights.

In light of the foregoing, there are no plausible good faith reasons for the Respondents to have registered and used the disputed domain names. The Panel finds in the circumstances that, by registering and using the disputed domain names <decathlonsvip.com>, <decathlonsale.com>, and <decathlontop.com>, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of their websites or of a product or service on their websites (paragraph 4(b)(iv) of the Policy).

While all of the disputed domain names do not currently resolve to active websites, having reviewed the available record, considering the reputation of the DECATHLON mark, the composition of the disputed domain names, and the lack of response from the Respondents, the Panel finds the current non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. See [WIPO Overview 3.0](#), section 3.3.

Accordingly, the Panel finds that the disputed domain names were registered and used in bad faith.

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 names <decathlonmalls.com>, <decathlonsale.com>, <decathlonsale.top>, <decathlonsvip.com> and <decathlontop.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: October 3, 2024