

ADMINISTRATIVE PANEL DECISION

Decathlon v. Ying Zaa
Case No. D2023-1594

1. The Parties

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

The Respondent is Ying Zaa, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <decathlon.lol> 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, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (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 14, 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 April 18, 2023.

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 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 11, 2023.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on May 16, 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

The Complainant is a French manufacturer specialized in the conception and retailing of sporting and leisure goods. In 1976, Michel Leclercq opened a self-service supermarket dedicated to sport and leisure products near Lille (France) under the name “Decathlon”. The company “Decathlon” has been registered in the Trade and Companies Register of Lille (France) in 1984. In 2021, the company Decathlon was operating 1,747 stores throughout the world. In 2022, it employed 105,000 employees worldwide with annual sales of EUR 11,4 billion.

The Complainant is the owner of several trademarks for DECATHLON (“DECATHLON trademark”), including:

- French Trademark Registration DECATHLON No. 1366349, registered on April 22, 1986;
- European Union Trademark Registration DECATHLON No. 000262931, registered on August 28, 2004; and
- International Registration DECATHLON No. 613216, registered on December 20, 1993 for several jurisdictions, including: Australia, Colombia, Japan, Mexico and Singapore.

The Complainant is also owner of numerous domain names including the DECATHLON trademark, *inter alia* the domain names <decathlon.com>, <decathlon.fr> and <decathlon.net>.

The disputed domain name was registered on February 22, 2023. At the time of the decision, and since the Complaint was filed, the disputed domain name has been resolving to a website in Indonesian, displaying the DECATHLON trademark, and offering sport and leisure products.

5. Parties' Contentions

A. Complainant

On the first element of the Policy, the Complainant claims that the disputed domain name is identical to the Complainant's DECATHLON trademark. The DECATHLON trademark is well-known and predates the disputed domain. The disputed domain name is identical to the DECATHLON trademark and the Complainant's domain names as the term “decathlon” is entirely reproduced, the generic Top-Level Domain (“gTLD”) “.lol” being disregarded due to its purely technical function.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never given any authorization or permission to the Respondent to register or to use its DECATHLON trademark or domain name containing DECATHLON. The Respondent is not in any way related to the Complainant's business and does not carry out any activity for or has any business with them. Further, the Respondent is not commonly known under the disputed domain name. The disputed domain name is not used to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The DECATHLON trademark was registered and used in France and abroad many years before the disputed domain was registered. Any search for “decathlon” conducted with a search engine such as Google leads in the first place to websites relating to the Complainant and its activities. The mere absence of right or legitimate interest of the Respondent should point out that the disputed domain name has not been registered in good faith. Moreover, MX servers are activated in relation with the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of several trademarks containing DECATHLON. Suitable evidence was submitted. Consequently, the Panel finds that the Complainant has proven that it has rights in the DECATHLON trademark.

The disputed domain name contains the DECATHLON trademark entirely with the addition of the gTLD ".lol". Section 1.11.1 and 1.11.2 of [WIPO Overview 3.0](#) state: "The applicable TLD in a domain name (*e.g.*, '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to "new gTLDs"); the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element." This also applies to the rather uncommon gTLD domain ".lol" (see also *Calvin Klein Trademark Trust, Calvin Klein, Inc. v. "REDACTED FOR PRIVACY, WhoisGuard, Inc."* / *Calvin K Carter*, WIPO Case No. [D2020-1220](#) and *Aftenposten AS v. Whois Agent, Domain Protection Services, Inc. / Project Mayhem, Hans Jørgen Furfjord*, WIPO Case No. [D2020-0940](#)). The gTLD ".lol" will therefore be discounted in the Panel's consideration of identity or confusing similarity.

The Panel finds that the relevant trademark DECATHLON within the disputed domain name is recognizable since the disputed domain name does not contain any other elements to be considered.

For the reasons above, the Panel finds that the disputed domain name is identical to the DECATHLON trademark, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#) states, “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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

According to the Complainant, it has not authorized the Respondent to use the DECATHLON trademarks, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Further, the Respondent has not attempted to justify why the disputed domain name was registered. Moreover, the Panel finds that the identical reproduction of the DECATHLON trademark within the disputed domain name, coupled with the use of the disputed domain name in relation with a website displaying the DECATHLON trademark, and offering sport and leisure products, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant as to the origin or affiliation of the website at the disputed domain name.

Accordingly, the Panel finds that the Complainant has made a *prima facie* showing of the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Section 3.2.2 of the [WIPO Overview 3.0](#) reads: “Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

Considering the reputation and public presence of the Complainant, it is unlikely that the Respondent had no knowledge of the DECATHLON trademark. The incorporation of the DECATHLON trademark within the disputed domain name as well as the fact that the disputed domain resolved to a website displaying the DECATHLON trademark and offering sport and leisure products demonstrates the Respondent’s actual awareness of and intent to target the Complainant. In light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract Internet users to its website or affect the commercial activities of the Complainant by identical reproduction of the DECATHLON trademark within the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <decathlon.lol>, be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: May 30, 2023