

ADMINISTRATIVE PANEL DECISION

Decathlon v. Contact Privacy Inc. Customer 7151571251 / Name Redacted
Case No. D2022-2079

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 7151571251, United States of America (“United States”) / Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <decathlon-fr.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2022, 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 and contact information in the Complaint and informing the Complainant that the language of the Registration Agreement is French. The Center sent an email communication to the Complainant on June 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On June 10, 2022, the Center sent an email communication to the parties, informing them that the language of the Registration Agreement was French. On June 15, 2022, the Complainant sent an email communication to the Center, confirming that it wished to proceed in English. The Complainant filed an amended Complaint on June 15, 2022.

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

¹ The Respondent appears to have used the name and contact details of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *ASOS plc. v. Name Redacted*, WIPO Case No. [D2017-1520](#).

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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 8, 2022.

On June 30, 2022, the Complainant informed the Center that the registrant of the disputed domain name had used the name of the General manager and Director of the Complainant while registering the disputed domain name, and hence the Complainant requested that this name be anonymized in the decision.

The Center appointed Lorenz Ehrler as the sole panelist in this matter on July 13, 2022. 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 company active in the fields of manufacturing and selling sporting and leisure goods. Incorporated in 1976, it now employs 105,000 staff, operates more than 1,700 stores worldwide and generates a turnover of over EUR 11 billion.

The Complainant owns numerous trademarks all over the world, in particular French word trademark DECATHLON (French trademark no. 1366349), European Union word trademark DECATHLON (EU trademark no. 000262937), and international word trademark DECATHLON (IR trademark no. 613216) designating more than 10 jurisdictions. All these trademarks cover numerous products in various classes. The Complainant also holds several domain names, such as <decathlon.fr>, <decathlon.com> and <decathlon.net>. The above-mentioned trademarks were registered between 1986 and 1996.

The disputed domain name was registered by the Respondent or the person behind it on February 10, 2022, and is thus clearly posterior to the Complainant’s trademarks.

The disputed domain name is inactive.

5. Procedural Issues

A. Language of the Proceeding

Pursuant to paragraph 11 of the Rules, the language of the administrative proceeding is 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 the case at hand, the Complainant filed its Complaint in English even though the registration agreement appears to have been made in French. The Complainant has therefore requested that English be determined to be the procedural language instead of French.

Several scenarios may warrant proceeding in another language than that of the registration agreement, e.g. if it is proven or highly probable that the Respondent can understand the language of the complaint and/or if it would appear unfair to cause any delays in the proceedings by ordering the complainant to translate the complaint.

On the one hand, the Panel notes that English is the *lingua franca* in international business. Additionally, the Respondent has not filed any response and therefore has not expressed any views on the language of the

proceedings, which indicates that this issue is indifferent to him. In light of these circumstances, it seems fair and appropriate to accept the Complaint in English and to carry on these proceedings in English.

B. Identity Theft

The Complainant, in an email to the Center, requests that the name of the person who was identified by the Registrar as the actual registrant of the disputed domain name should not appear in the proceedings because said person is in reality not the actual holder and registrant of the disputed domain name. As the Complainant argues, the Registrar-disclosed registrant is the victim of an identity theft and his reputation and image could be damaged if his name were to appear as the Respondent's name in these proceedings. Previous UDRP panels have dealt with cases in which the respondent themselves alleged that they were not the actual domain name holder. See *Moncler S.r.l. v. Name Redacted*, WIPO Case No. [D2010-1677](#); *Boehringer Ingelheim Pharma GmbH & Co. KG v. Name Redacted*, WIPO Case No. [D2012-0890](#).

In the present case, the alleged identity theft is (as between the Parties) an uncontested fact, and it appears to be more than plausible that the individual identified as the registrant of the domain name in dispute is not the actual registrant and that his name has been instrumentalized by a third party to pursue illicit purposes. Accordingly, the Panel decides to redact the Respondent's name from the caption and body of this decision.

6. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name, <decathlon-fr.com> is confusingly similar to its DECATHLON trademarks.

Furthermore, the Complainant states that the Respondent is not affiliated with its group and that no license has been granted to the Respondent to use the Complainant's trademarks.

Lastly, the Complainant contends that the Respondent registered and "uses" the disputed domain name in bad faith, even though it does not resolve to any website, in particular because the Respondent knew or should have known of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 trademarks put forward by the Complainant demonstrate that the Complainant has rights in DECATHLON.

Under the UDRP, the requirement under paragraph 4(a) of the Policy requires the disputed domain name to be identical or confusingly similar to the Complainant's trademarks. There is no requirement of similarity of goods and/or services.

The existence of confusing similarity within the meaning of paragraph 4(a) of the Policy is not in doubt in the present case, given that the main element in the disputed domain names, *i.e.* "decathlon", is identical with the Complainant's distinctive trademark DECATHLON. The incorporation of a trademark in its entirety is typically sufficient to establish that a disputed domain name is identical or confusingly similar to a trademark. The other element of the disputed domain name, *i.e.* the element "fr" corresponds to the country code of France and does not avoid a finding of confusing similarity.

As far as the generic Top Level Domain ("gTLD") ".com" is concerned, this element has a technical function and therefore is typically not taken into account when assessing the issue of identity or confusing similarity.

The Panel thus finds that the disputed domain name is confusingly similar with the Complainant's trademark DECATHLON.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name, in particular that the Respondent has not at any time been commonly known by the disputed domain name and the Respondent is not making legitimate use of said disputed domain name. The Complainant clearly states that it has not granted the Respondent any rights to use its trademarks.

UDRP panels found in previous decisions that in the absence of any license or permission from the complainant to use widely known trademarks, no *bona fide* or legitimate use of a disputed domain name may reasonably be claimed (*LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Furthermore, by not submitting any response to the Complaint, the Respondent failed to invoke any circumstance that might demonstrate, pursuant to paragraph 4(c) of the Policy, that it holds any rights or legitimate interests in the disputed domain names (*Ahead Software AG v. Leduc Jean*, WIPO Case No. [D2004-0323](#); see also, *Nintendo of America, Inc., v. Tasc, Inc. and Ken Lewis*, WIPO Case No. [D2000-1563](#) (finding that respondent's default was sufficient to conclude that it had no rights or legitimate interests in the disputed domain names)).

Accordingly, the Panel finds that the Complainant has shown that the Respondent does not have any rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must, in addition to the matters set out above, demonstrate that the disputed domain name has been registered and is being used in bad faith.

The undisputed *prima facie* evidence establishes that the Respondent is not affiliated with the Complainant and has no license or other authorisation to use the Complainant's trademark.

The Respondent registered the disputed domain name well after the Complainant's trademark was in use. The Panel finds that the Respondent should have known about the Complainant's trademark and business when registering the disputed domain name. This Panel considers that the disputed domain name for itself is a strong indication that the Respondent was aware of the Complainant's trademark DECATHLON, as it seems more than unlikely that the Respondent would have created – randomly – a domain name that is almost identical with the Complainant's distinctive trademark (*cf. Motul v. Contact Privacy Inc. Customer 0138693539 / Konstantin Speranskii*, WIPO Case No. [D2016-2632](#)). This Panel therefore holds that the registration of the disputed domain name was made in bad faith.

It is constant panel practice to consider the passive holding of a domain name to be in bad faith if the complainant's trademark is well known and has a solid reputation. This conclusion is also authorised by the fact that the Respondent has not submitted any evidence of any good faith use of the domain name or at least of any intention of a good faith use of the domain name.

All these circumstances, including the impersonation of the Complainant's General manager and Director, are strong indications for, and allow to conclude, that the Respondent is using the disputed domain name in bad faith.

The Respondent has not brought any evidence showing that the Complainant's allegations are untrue. Absent any such evidence, based on the evidence submitted by the Complainant, the Panel admits the Complainant's submission that the Respondent has registered and is using the disputed domain name in bad faith within the meaning of par (4)(a)(iii) of the Policy.

The Complainant therefore has established registration and use of the disputed domain name 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 name <decathlon-fr.com> be transferred to the Complainant.

/Lorenz Ehrler/

Lorenz Ehrler

Sole Panelist

Date: July 27, 2022