

ADMINISTRATIVE PANEL DECISION

Decathlon v. Kayli Kassulke

Case No. D2023-1999

1. The Parties

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

The Respondent is Kayli Kassulke, United States of America.

2. The Domain Name and Registrar

The disputed domain name <decathloshop.com> (the “Disputed Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 8, 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 May 17, 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 May 22, 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 June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 4, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on July 6, 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 France headquartered company that operates a global sports and leisure retail business established in 1976, with annual sales in 2021 of EUR 11.4 billion. The Complainant holds registrations in numerous countries for the mark DECATHLON including, for example, French Trademark No. 1366349, registered 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 on April 22, 1986.

The Complainant owns the domain name <decathlon.com>, where its main e-commerce website is located.

The Disputed Domain Name <decathloshop.com> was registered on April 7, 2023. The Disputed Domain Name resolves to a website impersonating the Complainant's official e-commerce website that offers products that resemble those of the Complainant's for sale and soliciting private details from Internet users.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for DECATHLON in various countries, as *prima facie* evidence of ownership.

The Complainant submits that its rights in the trademark DECATHLON predate the Respondent's registration of the Disputed Domain Name <decathloshop.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the DECATHLON trademark and that the similarity is not removed by the omission of the letter "n" and the addition of the word "shop".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because use of the Disputed Domain Name is unauthorized and it is not used to promote a *bona fide* offering of goods or services, nor to serve a noncommercial legitimate purpose and, in addition, has allegedly been used in a possible phishing scheme.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that the Respondent registered the Disputed Domain Name with knowledge of the Complainant's well known mark and then used the Disputed Domain Name "to resolve a website reproducing the Complainant's well-known trademarks and passing off as an official Decathlon online shop. Said website indeed reproduces the Complainant's trademark and includes images of products sold by the Complainant. Furthermore, the website enables Internet users to create an account" which, the Complainant submits, evidences registration and use of the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark DECATHLON. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the DECATHLON trademark, the Panel observes that the Disputed Domain Name comprises: (a) the Complainant’s DECATHLON trademark; (b) omitting the letter “n”; (c) followed by the word “shop”; (d) followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “decatshop” (see section 1.11.1 of the [WIPO Overview 3.0](#)).

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

Panels will normally find that employing an obvious or intentional misspelling signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant. This Panel accepts that the omission of the letter “n” and the addition of the word “shop” does not preclude a finding of confusing similarity to the Complainant’s trademark (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant’s trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that “The Complainant has never given any authorization or permission to the Respondent to register or to use its trademark or domain name “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. The Respondent is not commonly known under the [Disputed] [D]omain [N]ame. The [Disputed] [D]omain [N]ame at issue is not used to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use.”

The composition of the Disputed Domain Name consists of the Complainant's trademark with the letter "n" omitted, and the word "shop". In this Panel's view, the conduct indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

The use of a domain name for illegal activity such as impersonation, passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. This Panel also accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating the Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolve to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name.

Therefore, this Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent has registered and used the Disputed Domain Name in bad faith is overwhelming.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the content of the website it resolves to, the Panel is satisfied that the Respondent knew of the Complainant's well-known trademark DECATHLON when it registered the Disputed Domain Name (see: [WIPO Overview 3.0](#), section 3.2.2).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name is a further indicator of bad faith. (See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration of the Disputed Domain Name by at least 37 years.

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website bearing the Complainant's trademark along with images, products, and artwork apparently lifted from the Complainant's online store, and purportedly offering them for sale from a webstore apeing the DECATHLON e-commerce website.

The Complainant's evidence is also that the Disputed Domain Name has been used in attempted phishing by using the Disputed Domain Name to attempt to impersonate the Complainant to seek to fraudulently obtain private information from Internet users. In line with prior UDRP panel decisions, the Panel finds that the use of a domain name for *per se* illegitimate activity such as phishing supports a finding of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

This Panel finds that the Respondent has taken a recognizable version of the Complainant's trademark DECATHLON and incorporated it in the Disputed Domain Name without the Complainant's consent or authorization, along with the descriptive word "store" for the purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy.

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, <decathloshop.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: July 13, 2023