

## **ADMINISTRATIVE PANEL DECISION**

Decathlon v. Stephanie Haas

Case No. D2023-3715

### **1. The Parties**

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

The Respondent is Stephanie Haas, China.

### **2. The Domain Name and Registrar**

The disputed domain name <decathlossn.shop> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2023. On September 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 7, 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 September 11, 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 September 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2023.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on October 17, 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 major French manufacturer specialized in the conception and retailing of sporting and leisure goods that operates under the brand DECATHLON.

The Complainant is the owner of numerous trademark registrations for DECATHLON, such as the French registration n° 1366349, with the application date of April 22, 1986.

The Respondent registered the disputed domain name on July 6, 2023.

The Panel accessed the disputed domain name on October 28, 2023, when it was not linked to any active website<sup>1</sup>. The Complainant submitted evidence that the disputed domain name was recently pointing to a website reproducing the DECATHLON brand and offering DECATHLON products for sale.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name identically reproduces the term “decathlon” with the sole addition of two middle letters “s”. However, this difference is insufficient to prevent it from being confusingly similar to its prior trademarks. Prior panels constantly recognize that the addition of middle letter to a complainant’s trademark does not prevent a finding of confusing similarity and is a case of typosquatting. Secondly, the addition, for technical reasons, of the “.shop” Top-Level Domain (“TLD”) at the end of the disputed domain name is irrelevant in the comparison of the signs at stake.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. To the Complainant’s best knowledge, the Respondent is not currently and has never been known under the name “decathlossn”. The Complainant did not know the Respondent and ascertains that the Respondent is not in any way related to his business, is not one of his distributors and does not carry out any activity for or have any business with them. Furthermore, the right to use such mark as a basis for a domain name requires an express authorization. In this case, the Complainant has never licensed, authorized, or otherwise permitted the Respondent to register a domain name incorporating its trademarks. Thus, the Respondent is intentionally creating confusion in order to divert consumers from the Complainant’s websites to its own website, which is not used to promote a *bona fide* offering of goods or services, nor to serve a noncommercial legitimate purpose but to host a parked page. Since the Complainant has not authorized the Respondent to use his trademarks and domain names, this use can only be fraudulent, and certifies that the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- The disputed domain name was registered and is being used in bad faith. It is highly likely that the Respondent knew the Complainant and his well-known trademarks sport related products and services when filing application for the disputed domain name. The DECATHLON trademarks and domain names were registered long before the disputed domain name at issue was registered. Any search for “decathlossn” conducted with a search engine such as Google leads in the first place to websites relating to the Complainant and its products. The Respondent has registered the disputed domain name primarily for the

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<sup>1</sup> Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8, “[n]oting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision...This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name...”.

purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor, for valuable consideration in excess of the Complainant's costs, which is a proof of bad faith. The disputed domain name is currently used to resolve a website selling products under the brand DECATHLON that are copies of the Complainant's products. By using the disputed domain name to sell confusingly similar, if not counterfeit, products, the Respondent is not only causing harm to the Complainant to an economic point of view but may also create high risks for the consumers in terms of safety and security. Where a domain name is so obviously connected with a well-known mark its very use by someone with no connection to the trademark suggests opportunistic bad faith. In view of all of the foregoing, the Respondent has used the disputed domain name in an attempt to intentionally attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation or endorsement. Also, the lack of transparency as to the person operating behind the website at the disputed domain name is clear evidence of doing business in bad faith. Since the Complainant has not authorized the Respondent to use its trademarks and domain names, this use could only be fraudulent. There is no reason why the Respondent has reserved a domain name that is substantially similar to the Complainant's prior well-known trademarks DECATHLON.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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 Panel has no doubt that "DECATHLON" is a term directly connected with the Complainant's well-known trademark.

Annexes F1 to F3 to the Complaint show trademark registrations belonging to the Complainant for DECATHLON that date as early as in 1986.

The trademark DECATHLON is wholly encompassed within the disputed domain name. The disputed domain name differs from the Complainant's trademark DECATHLON merely by the by the addition of two middle letters "s", forming "decathlossn". Such misspelling of the Complainant's trademark may characterize a practice commonly called "typosquatting", a kind of cybersquatting in which a respondent registers a domain name in order to take advantage of typing errors eventually made by Internet users seeking a complainant's website (see *CPP, Inc. v. Virtual Sky*, WIPO Case No. [D2006-0201](#)).

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is also already well established that the addition of a generic Top-Level Domain ("gTLD") extension such as ".shop" is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and that the Complainant has satisfied the first element of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed or authorized the usage of its trademarks to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name. The Respondent has not indicated any reason to justify why it has chosen the specific term "decatlossn" to compose the disputed domain name.

The Panel notes that the present record provides no evidence to demonstrate the Respondent's intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name is currently not linked to any active website and previously resolved to a website reproducing the Complainant's brand and offering products developed by the Complainant. While the nature of the goods and the availability of said goods is unknown, the Panel notes that the nature of the disputed domain name, and in particular its false sense of affiliation to the Complainant and lack of disclaimer reinforcing said impression, demonstrate that the Respondent has no rights or legitimate interests in the confusingly similar disputed domain name. [WIPO Overview 3.0](#), sections 2.5.1 and 2.8.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

## **C. Registered and Used in Bad Faith**

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

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent registered the domain name in order to prevent the owner of the trademark 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted 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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent (in 2023) the trademark DECATHLON was already well-known worldwide and directly connected to the Complainant's retail stores.

According to the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The disputed domain name was recently used to allegedly sell DECATHLON products under the DECATHLON brand.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent – at the time of the registration of the disputed domain name – could not have been aware of the Complainant's famous trademark, as well as that the adoption of the expression “decathlossn” together with the gTLD extension “.shop” could be a mere coincidence.

In this Panel's opinion, the addition of two letters “s” is not enough to avoid the risk of confusion in the present case.

From the Panel's search, the disputed domain name does not currently resolve to any active website.

However, UDRP panels have frequently found that the apparent lack of so-called active use of the domain name (passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Polaroid Corporation v. Jay Strommen*, WIPO Case No. [D2005-1005](#).

The non-collaborative posture of the Respondent, i.e., (a) not presently using the disputed domain name, (b) not indicating any intention to use it, and (c) not at least providing justifications for the use of a famous third party trademark, certainly cannot be used in benefit of the Respondent in this Panel's opinion, which circumstances, together with (d) the lack of any plausible justification for the adoption of the term “decathlossn” by the Respondent, (e) the evidence provided by the Complainant's demonstration of previous uses of the disputed domain name, and (f) the subsequent change in use of the disputed domain name, are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied 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 <decathlossn.shop> be transferred to the Complainant.

*/Rodrigo Azevedo/*

**Rodrigo Azevedo**

Sole Panelist

Date: November 1, 2023