

10DAYSINISTRATIVE PANEL DECISION

10DAYS wholesale B.V. v. Grace Walsh, Adam Godfrey, Lewis Lowe
Case No. D2024-3767

1. The Parties

The Complainant is 10DAYS wholesale B.V., Netherlands (Kingdom of the), represented by Leeway Advocaten, Netherlands (Kingdom of the).

The Respondents are Grace Walsh, Italy, Adam Godfrey, Georgia, and Lewis Lowe, Italy.

2. The Domain Names and Registrar

The disputed domain names <10daysbelgique.com>, <10daysespana.com> and <10daysinparis.com> (the “Disputed Domain Names”) are registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2024. On September 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On September 18, 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 (Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 20, 2024, 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 23, 2024.

The Center sent an email communication to the Complainant on September 20, 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 domain names are under common control. The Complainant filed an amended Complaint on September 23, 2024.

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 of the Complaint, and the proceedings commenced on October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on October 22, 2024.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 31, 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 is a company incorporated in the Netherlands (Kingdom of the) founded in 2007 that operates an online business selling ready-to-wear fashion apparel, footwear, accessories and home items. The Complainant holds registrations for the trademark 10DAYS and variations of it in numerous jurisdictions, including, for example, European Union trade mark no. 009213166 for the mark 10DAYS registered on January 17, 2011, and Australian trade mark No. 2054064 for the mark 10DAYS registered on November 12, 2019.

The Complainant owns the domain name <10dayslifestyle.com>, which hosts its main website.

The Respondents registered the Disputed Domain Names <10daysbelgique.com> and <10dayespana.com> on July 7, 2023, and the Disputed Domain Name <10daysinparis.com> was registered on October 26, 2023. Each of the Disputed Domain Names is used to host a fake website that prominently displays the Complainant’s 10DAYS trade mark and artwork, and purports to sell the Complainant’s products at discounted prices.

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 cites its trademark registrations in numerous countries for the mark 10DAYS and variations of it, as prima facie evidence of ownership.

The Complainant submits, in essence, that the mark 10DAYS is “distinctive” and that its rights in that mark predate the Respondents’ registration of each Disputed Domain Name. It submits that the Disputed Domain Names are confusingly similar to its trade mark, because the Disputed Domain Names are comprised of the 10DAYS trade mark and that the addition of the geographical names “belgique”, “espana” and “in paris” are not sufficient to avoid the confusing similarity.

The Complainant contends that the Respondents have no rights or legitimate interests in respect of the Disputed Domain Names because the Respondents are not related to the Complainant’s business and is not authorized by the Complainant to use its trade marks and that none of the circumstances set out in paragraph 4(c) of the Policy apply.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Names were, and currently are, in bad faith, contrary to the Policy and the Rules having regard to the prior use and “fame” of the Complainant’s trademark, and advances the argument that the “Respondent has been anticipating the Complainant’s natural zone of expansion of its business to countries like France, Spain and Belgium, which

would lead to an interest in acquiring the [D]isputed Domain Names. The Respondent creates confusion for European consumers, who wish to buy genuine 10DAYS products from the Complainant”, which is use in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Matter – Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that “[w]hile the Respondents has registered the [Disputed] Domain Names on behalf of different names, these [Disputed] Doman Names are 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.

The disputed domain name registrants did not comment on the Complainant’s request.

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 Complainant has pointed to a pattern of irregularities that suggest that the Disputed Domain Names are under common control. Two of the Disputed Domain Names were registered on the same day, with the third registered less than four months later, all were registered with the same Registrar; all follow the same pattern of combining the Complainant’s trademark with a geographic term, they were used in a coordinated way and use the same fake website, all use a “cxtmail.com” email address as the contact address.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party. It is not plausible that three different people decided to use the Complainant’s trade mark to register the Disputed Domain Names around the same time to resolve to similar websites.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

6.2 Substantive Matters

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

- (i) that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) that the Disputed Domain Names have been registered and are being used in bad faith.

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 trademark and the Disputed Domain Names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. The requirements of the first element for purposes of the Policy may be satisfied by a trade mark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trade mark rights in the mark 10DAYS in numerous countries.

Turning to whether the Disputed Domain Names are identical or confusingly similar to the 10DAYS trademark, the Panel observes that each Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant's trademark 10DAYS; (b) followed by the suffixes "belgique", "espana" and "inparis", respectively; (c) followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that the gTLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. The relevant comparison to be made is with the second-level portion of each of the Disputed Domain Names, specifically: "10daysbelgique", "10daysespana" and "10daysinparis", respectively.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the terms "belgique", "espana" and "inparis", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

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

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names such as those enumerated in the Policy or otherwise.

The Panel notes the evidence that the Complainant has not licensed or otherwise authorized the Respondent to use its trademarks and that there is no relationship between the Complainant and the Respondent, let alone any accurate or prominent disclosure of that relationship, or absence of such, on its websites. The use of the Complainant's trade mark and artwork on each of the Respondent's websites suggests that the Respondent is actually aware of the Complainant's trade mark, and that the Respondent is using the mark 10DAYS for the sale of possibly counterfeit fashion merchandise. The Panel finds that the Respondent's activities do not represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the substantial reputation and goodwill of the Complainant's mark or capacity to otherwise mislead Internet users.

Panels have held that the use of a domain name for illegitimate activity such as impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established for all of the Disputed Domain Names.

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 sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may 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.

In the present case, the Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Names and the fact that the Complainant's trade marks predate the registration date of the Disputed Domain Names, the Panel is satisfied that the Respondent deliberately sought to target the Complainant's trademark 10DAYS when it registered the Disputed Domain Names.

This Panel finds that there is no reason for the Respondent to have registered the Disputed Domain Names other than to trade off the reputation and goodwill of the Complainant's well-known trademark. [WIPO Overview 3.0](#), section 3.1.4.

Further, a gap of several years between registration of a complainant's trademark and respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration. In this case, the Respondent registered the Disputed Domain Names 12 years after the Complainant established registered trademark rights in the 10DAYS mark.

On the issue of use, the Complainant's evidence is that each of the Disputed Domain Names is used to host a fake webstore that prominently displayed the Complainant's trademark and artwork, and purports to sell the Complainant's products at discounted prices.

Panels have held that the use of a domain name for illegitimate activity here, alleged impersonation or passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Complainant supplied evidence of the possibly counterfeit webstores. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Names constitutes bad faith under the Policy.

The Panel finds that the Complainant has established 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 Names <10daysbelgique.com>, <10daysespana.com>, and <10daysinparis.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: November 4, 2024