

## **ADMINISTRATIVE PANEL DECISION**

Decathlon v. Diana Reyes  
Case No. D2022-3027

### **1. The Parties**

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

The Respondent is Diana Reyes, Colombia.

### **2. The Domain Name(s) and Registrar(s)**

The disputed domain name <deccathlon.com> is registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2022. On August 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 August 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 30, 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 sporting goods retailer. It owns the trademark DECATHLON for which it enjoys the benefit of registration in a number of jurisdictions (e.g., International Reg. No. 613216, registered on December 20, 1993). According to the Whois records, the disputed domain name was registered on November 20, 2021. The disputed domain name does not point to an active web page, but MX records have been established for the disputed domain name, apparently to enable the disputed domain name to be used to send and receive email messages.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name 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. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the DECATHLON mark by providing evidence of its trademark registrations.

A minor misspelling of a mark within a disputed domain name results in a domain name that is confusingly similar to the Complainant's mark. *America Online, Inc. v. John Zuccarini*, WIPO Case No. [D2000-1495](#); see also *İD Group v. Nomi Nee / Aero1 Ltd, No Lo / Aerol Ltd*, WIPO Case No. [D2012-2469](#) (<jaccadi.com> found to be confusingly similar to the JACADI trademark). Guided by these principles, the Panel finds the disputed domain name to be confusingly similar to the Complainant's DECATHLON mark.

The Complainant has established this first UDRP element.

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

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed

domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent has not been known by the mark “deccathlon”, which is comprised within the disputed domain name, (2) the Respondent is not in any way related to the Complainant’s business, is not one of its distributors and does not carry out any activity for or have any business with the Complainant, (3) the Complainant has not authorized the Respondent to use the DECATHLON mark in the disputed domain name, and (4) the Respondent is not using the disputed domain name to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie showing*. And nothing in the record otherwise tilts the balance in the Respondent’s favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [the respondent’s] website or location”.

Because the Complainant’s DECATHLON mark is well-known and enjoys the benefits of registration, the Panel finds it likely that the Respondent was aware of the mark when it registered the disputed domain name. In the circumstances of this case, without the benefit of any explanation whatsoever from the Respondent as to a possible good faith use of the disputed domain name, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The circumstances also demonstrate bad faith use of the disputed domain name. Where a disputed domain name is “so obviously connected with such a well-known name and products...its very use by someone with no connection with the products suggests opportunistic bad faith”. See *Parfums Christian Dior v. Javier Garcia Quintas*, WIPO Case No. [D2000-0226](#). Furthermore, from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)). The Respondent’s bad faith is also evidenced by its establishment of MX records with the disputed domain name, suggesting the disputed domain name could be used to send fraudulent email. See *Carrier Corporation v. DNS Admin, Domain Privacy LTD*, WIPO Case No. [D2021-3728](#) (“if the Respondent is using the disputed domain name to send fraudulent emails – which the MX records suggest is at least a possibility – then bad faith use is further obvious”).

The Complainant has established this third UDRP element.

## 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 <deccathlon.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: October 14, 2022