

ADMINISTRATIVE PANEL DECISION

Decathlon v. Host Master, Transure Enterprise Ltd
Case No. D2022-4085

1. The Parties

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

The Respondent is Host Master, Transure Enterprise Ltd, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <suppordecathlon.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 (“ABOVE_PRIVACY”) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 4, 2022 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 November 7, 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 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 November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 2, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on December 12, 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 limited company and a major French manufacturer specialized in the conception and retailing of sporting and leisure goods under the DECATHLON trademark.

The Complainant owns numerous registrations for the word mark DECATHLON in several jurisdictions, including the following:

- French Trademark DECATHLON No. 1366349 registered on January 16, 1987 for goods and services 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;
- International Trademark DECATHLON No. 613216 registered on December 20, 1993 for goods and services in classes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39 and 42;
- European Union Trademark DECATHLON No. 000262931 registered on April 28, 2004 for goods and services in class 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42.

The Complainant offers for sale its sporting and leisure goods online, through its official websites notably located at “www.decathlon.fr” registered since June 29, 1995, “www.decathlon.com” registered since May 30, 1995, and uses its trademark in domain names to promote its activities online.

The disputed domain name was registered on February 10, 2022. The disputed domain name currently redirects to the Complainant’s official website “www.decathlon.fr”.

5. Parties’ Contentions

A. Complainant

The Complainant is a French company founded in 1976. Currently operating 1,510 stores in 49 countries around the world, it had a turnover of EUR 11 billion in 2017. In April 2022, the company Decathlon employs 105,000 employees worldwide with annual sales of 13.8 billion euros. In 2021, it was operating 1,747 stores throughout the world.

In essence, the Complainant argues as follows:

On the first element of the Policy, the Complainant provides evidence of trademark registrations, and argues that the Complainant’s trademark is well known. The disputed domain name is similar to the Complainant’s trademark as it reproduces DECATHLON with the addition of “suppor” in the beginning, which is insufficient to dispel the likelihood of confusion.

On the second element, the Complainant indicates that the Respondent does not have rights or legitimate interests over the disputed domain name. The Respondent is not authorized to use the Complainant’s trademark. The Respondent is not commonly known by the disputed domain name. The Respondent has not made any use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

On the third element of the Policy, the Complainant claims that the Respondent registered and is using the disputed domain name in bad faith. The Complainant believes the Respondent knew of the Complainant’s activity and prior trademark rights when the Respondent registered the disputed domain name.

The Complainant further argues that the Respondent’s purpose in using the disputed domain name is to create a phishing campaign aimed at the Complainant’s customers. The disputed domain name currently

redirects to the Complainant's official website "www.decathlon.fr", which indicates that the Respondent is trying to impersonate the Complainant. The Respondent has attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, creating an idea of an affiliation or endorsement of the Respondent's website.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable, and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Panel confirms that the Complainant has established rights over the trademark DECATHLON.

With the Complainant's rights in the DECATHLON trademark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level-Domain ("gTLD") in which the disputed domain name is registered) is identical or confusingly similar to the Complainant's mark.

The first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark DECATHLON, since it reproduces it in its entirety and is clearly recognizable in the disputed domain name.

The addition of the (partial) word "suppor" does not prevent a finding of confusing similarity between the disputed domain name and the trademark DECATHLON. Indeed, the word "suppor" or any misspelled version of the word "support" will constantly be understood by Internet users as the word "support" and being perceived as a generic term. As discussed in section 1.8 of the [WIPO Overview 3.0](#), in cases where the relevant trademark is recognizable within the disputed domain name, the addition of such term would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of "proving a negative", in particular as the evidence needed to show the Respondent's rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

In that sense, the Panel finds that the Complainant has made a *prima facie* case against the Respondent, who is not commonly known by the disputed domain name and is not affiliated with the Complainant nor has been licensed or otherwise permitted to use any of the Complainant's trademarks or to register domain names incorporating the Complainant's trademark DECATHLON.

The Panel finds that the adjunction of the (partial) word "suppor" may be perceived as a way to indicate to users that the disputed domain name resolves an official website dedicated to customer or employees help, as the word "support" is often used to designate ancillary services, which increases the risk of confusion.

Furthermore, the disputed domain name is not used to promote a *bona fide* offering of goods or services, nor to support a noncommercial legitimate use.

In the absence of a Response, the Respondent has moreover failed to demonstrate any of the non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's trademark registrations significantly predate the registration date of the disputed domain name. As it is proved by the case file, the Complainant enjoys a long-lasting worldwide reputation, which has now been established by previous panels for years. Therefore, under this Panel's view, the Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known

trademark by an unaffiliated entity can by itself create a presumption of bad faith. See *Carrefour SA v. blackwhite, dolly Tiwari*, WIPO Case No. [D2021-0274](#). Therefore, the Panel finds that the disputed domain name was registered in bad faith.

Furthermore, it is highly unlikely that the Respondent chose to use the disputed domain name in good faith at least for the following reasons:

- at the moment of consideration of this case the disputed domain name redirected to the Complainant's official website "www.decathlon.fr", which suggests that the Respondent is trying to impersonate the Complainant;

- it appears that MX servers have been activated in relation with the disputed domain name which that the domain name can send and receive emails, suggesting that the Respondent has the intention to use the domain name to support an email account.

This combination of facts indicates that the Respondent's purpose in using the disputed domain name is to create a phishing campaign aimed at the Complainant's customers.

In similar cases, previous panels have stated that such use of a domain name, and notably the activation of such MX records, creates a risk of fraudulent use characterizing bad faith use and behavior. See *Decathlon v. Registration Private, Domains By Proxy*, WIPO Case No. [D2021-2228](#).

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name was registered and used in bad faith by the Respondent.

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 <suppordecathlon.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: December 21, 2022