

WIPO Arbitration and Mediation Center
Zaak-/rolnummer: DNL2015-0030
Datum: 17 juli 2015

1. The Parties

Complainant is Alpargatas S.A. of São Paulo, Brazil, represented by Klos Morel Vos & Reeskamp, the Netherlands.

Respondent is LeylaLeyla Leyla of Cuijk, the Netherlands.

2. The Domain Name and Registrar

The disputed domain name <havaiana.nl> (the “Domain Name”) is registered with SIDN through Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2015. On June 9, 2015, the Center transmitted by email to SIDN a request for registrar verification in connection with the disputed domain name. On June 12, 2015, SIDN 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 Dispute Resolution Regulations for “.nl” Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 15, 2015. In accordance with the Regulations, article 7.1, the due date for Response was July 5, 2015. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 6, 2015.

The Center appointed Remco M. R. van Leeuwen as the panelist in this matter on July 14, 2015. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

Alpargatas, founded in 1907, is a leading and world-renowned Brazilian footwear company and has particularly become famous for its flip-flops sold under the trademark HAVAIANAS. As stated by Complainant, since their introduction, HAVAIANAS flip-flops have acquired an iconic status. Roughly 200 million pairs of HAVAIANAS flip-flops are sold annually in about 80 countries worldwide. The HAVAIANAS trademark(s) are consistently ranked amongst the most valuable Brazilian trademarks, according to Complainant.

Complainant is, *inter alia*, holder of the Community trademark HAVAIANAS (word mark), registered on March 23, 2009, registration number: 7156128, for goods in class 25 (footwear) (hereinafter referred to as the “Trademark”). According to Complainant, as a consequence of its lengthy, large-scale and intensive use, the Trademark is a “well known trademark” within the meaning of article 9 paragraph 1 sub c of the Community Trade Mark Regulation.

Respondent registered the Domain Name on December 4, 2014. On the website connected to the Domain Name, (only) shoes of the brand “MBT” are offered for sale.

5. Parties’ Contentions

A. Complainant

Complainant bases its Complaint on the Trademark.

The Domain Name is identical or confusingly similar to the Trademark

Complainant contends that there is a confusing similarity between the Domain Name and the Trademark. The Domain Name omits the letter “s” in the Trademark and the adjunction of the Top Level-Domain (“TLD”) suffix “.nl”. Complainant argues that it is established case law that the addition of a TLD suffix to a trademark is insufficient to avoid the risk of confusion. The Domain Name is therefore almost identical, or at least confusingly similar to the Trademark. The act of registering a domain name that is almost identical to a mark, except for a slight deviation – such as the one at hand – is commonly referred to as “typosquatting”.

No rights or legitimate interests

According to Complainant, Respondent has no rights or legitimate interests in the Domain Name. Respondent does not have any trademark registration and/or a trade name containing the word “havaiana”. Complainant has never licensed or otherwise authorized Respondent to use its Trademark in any way.

On the website which is connected to the Domain name, (solely) shoes of the brand “MBT” are offered for sale. These products have nothing to do with Complainant. Respondent registered the Domain Name with the Trademark in mind with the intention of generating internet traffic which is intended for Complainant. It is established case law that typosquatting constitutes unfair use and is the opposite of a legitimate noncommercial or fair use of a domain name.

The Domain Name has been registered in bad faith

Complainant asserts that the Domain Name has been registered in bad faith. Respondent’s registration and use of the Domain Name is a classic example of typosquatting. It is generally held that typosquatting in itself is sufficient to establish registration and use in bad faith. Given Complainant’s world-famous Trademark and numerous prior rights, Respondent must have been aware of Complainant’s rights at the time of registration of the Domain Name, which according to Complainant is suggestive of Respondent’s bad faith.

B. Respondent

The Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

As Respondent has not filed a response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact. The Panel is entitled to further

inform itself by limited reference to matters of public record (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, paragraph 4.5).

The Panel notes that, in accordance with article 16.4 of the Regulations, the Center has fulfilled its obligation to employ reasonably available means to achieve actual notice of the Complaint to Respondent.

Pursuant to article 2.1 of the Regulations, Complainant's request to transfer the Domain Name must meet three cumulative conditions:

- a. the Domain Name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which Complainant has rights, or other name by means of article 2.1(a) under II of the Regulations; and
- b. Respondent has no rights to or legitimate interests in the Domain Name; and
- c. the Domain Name has been registered or is being used in bad faith.

Considering these conditions, the Panel rules as follows.

A. Identical or Confusingly Similar

Complainant has based its Complaint on its Trademark and has submitted a copy of its trademark registration demonstrating that it is the holder of the Trademark. The Trademark is protected under Dutch law.

It is established case law that the TLD “.nl” may be disregarded in assessing the similarity between the relevant trademark(s) on the one hand, and the disputed domain name on the other hand (see *Caterpillar Inc. v. [Persoonsnaam] Materieel*, WIPO Case No. DNL2011-0073; *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Case No. DNL2008-0008).

The Domain Name only omits the letter “s” in the Trademark. Therefore, the Domain Name is textually, visually and phonetically nearly identical to the Trademark.

The Panel finds that the Domain Name is confusingly similar to the Trademark. Therefore, the first requirement of article 2.1(a) under I of the Regulations is met.

B. Rights or Legitimate Interests

As a result of its failure to submit a Response, Respondent did not use the opportunity to show rights to or legitimate interests in the Domain Name. The Panel could not establish any indications that any of the circumstances as described in article 3.1 of the Regulations apply, nor that Respondent in any possible other way has a right to or legitimate interest in the Domain Name.

Based on the foregoing, the Panel rules that Complainant has fulfilled its obligation to establish *prima facie* that Respondent has no right to or legitimate interest in the Domain Name and has met the second requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

Considering the apparent well-known status of the Trademark, not to mention the specificity of the term, the Panel is of the opinion that Respondent was aware or should have been aware of Complainant and its Trademark at the time of registration of the Domain Name.

Previous panels found that the incorporation of a well-known trademark in a domain name without plausible explanation is in itself an indication of bad faith (see *Intel Corporation v. The*

Pentium Group, WIPO Case No. D2009-0273 in which the panel stated: “The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith”). In this respect, the Panel notes that Respondent has not offered any such explanation.

The Panel established that on the website connected to the Domain Name, only shoes of the brand “MBT” are offered for sale. The Panel assumes these products have nothing to do with Complainant. In the absence of a response, the Panel agrees with Complainant’s view that Respondent registered the Domain Name with the Trademark in mind and with the intention to generate Internet traffic to its website which is intended for Complainant. It is established case law that typosquatting constitutes unfair use (see *SurePayroll, Inc. v. Web Advertising, Corp.*, WIPO Case No. D2007-0470; *Deutsche Telecom AG and T-Mobile Netherlands B.V. v. [Persoonsnaam]*, WIPO Case No. DNL2008-0058).

The specific cumulative circumstances in this case in which the Domain Name is almost identical to the undisputedly well-known Trademark and in which Respondent has provided no evidence whatsoever of any actual or contemplated good-faith use by it of the Domain Name, are indicative of bad faith on the part of Respondent in its registration and/or use of the Domain Name as well (see *The Coca-Cola Company v. [Persoonsnaam]*, WIPO Case No. DNL2012-0037; and *[Persoonsnaam] Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

On the above grounds, the Panel finds that the requirements of registration or use in bad faith of the Domain Name pursuant to article 2.1(c) of the Regulations have been met.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Domain Name, <havaiana.nl>, be transferred to Complainant.

Remco M. R. van Leeuwen
Panelist
Date: July 17, 2015