Decision for dispute CAC-UDRP-102791

Case number	CAC-UDRP-102791
Time of filing	2019-11-28 10:05:38
Domain names	cheapunderarmourbasketballoutlet.com, cheapunderarmourshoesoutlet.com, cheapunderarmourwomensshoes.com, underarmourmensshoessale.com, underarmourrunningshoesoutlet.com, underarmourshoesoutletsale.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Under Armour Inc.

Complainant representative

Organization	Convey srl

Respondent

Organization	Milena Cornick

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations consisting of the terms “UNDER ARMOUR”, in particular U.S.A. Trademark Registration no. 2279668 registered on September 21, 1999 and European Union Trademark no. 002852721 registered on December 9, 2003.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded in 1996 by former University of Maryland football player Kevin Plank and is the originator of performance apparel - gear engineered to keep athletes cool, dry and light throughout the course of a game, practice or workout. At the end of the first decade of 2000, the Complainant surpassed $1 billion in annual revenue almost quadrupling revenues in a five-year period. Over the years, the Complainant has made significant strides in establishing a strong presence outside of the US; through on-field partnerships with elite professional teams and players, the brand gained

enormous traction with athletes in Japan, Europe, Canada, Latin America. Its first-ever brand store in China was opened in 2011. Complainant's Facebook account has more than ten million followers.

The Complainant contends that is widely known as one of the largest sportswear brands in the U.S. and has spent considerable effort in promoting his trademark. The Complainant also contends that its trademark "UNDER ARMOUR" is well-known worldwide.

The Complainant uses the domain names <underarmour.com>, <underarmour.asia> and <underarmour.cn> to promote and sell online its products.

The disputed domain name <cheapunderarmourbasketballoutlet.com> was registered on May 24, 2018 and the disputed domain names <cheapunderarmourshoesoutlet.com>, <cheapunderarmourwomensshoes.com>, <underarmourmensshoessale.com>, <underarmourrunningshoesoutlet.com>, <underarmourshoesoutletsale.com> were registered on January 8, 2018.

They resolved to the website www.shopsneakerwholesale.com promoting and selling alleged products of the Complainant and its competitors.

The Complainant sent cease and desist letters in May 2019 (for the disputed domain names <cheapunderarmourshoesoutlet.com>, <cheapunderarmourwomensshoes.com>, <underarmourmensshoessale.com>, <underarmourrunningshoesoutlet.com>, <underarmourshoesoutletsale.com>) and in October 2019 (for the disputed domain name <cheapunderarmourbasketballoutlet.com>) to the domain names owners' known e-mail addresses indicated at that time in the WhoIs record, but the Respondents failed to respond.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondents to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

According to the information provided by the Registrar upon the Request for Registrar Verification sent by Online ADR Center of the Czech Arbitration Court, the disputed domain names are registered by different Registrants(Respondents): i.e. Milena Cornick (US) is the Registrant of <cheapunderarmourbasketballoutlet.com> and Didi Dimtroff (UK) is the Registrant of <cheapunderarmourshoesoutlet.com>, <cheapunderarmourwomensshoes.com>, <underarmourmensshoessale.com>, <underarmourrunningshoesoutlet.com>, <underarmourshoesoutletsale.com>.

In the Amended Complaint the Complainant contends that "the disputed domain names are subject to an evident common

control, thus making the consolidation of the dispute equitable and procedurally efficient".

Under Paragraph 10(e) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) "A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules".

In the Panel's view the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the domain names or corresponding websites and fairness and equitableness of the consolidation to all parties.

The Panel considers the consolidation as appropriate, taking into consideration the following factors: (1) in particular, the disputed domain names redirected to the same website (the content of the website corresponding to the disputed domain names give evidence of a common control of the domain names at issue); (2) the disputed domain names share similarities in relation to the name serves, and (3) they share the same identity shield and Registrar; (4) furthermore, there are irregularities in relation to the Registrant's address disclosed for <cheapunderarmourshoesoutlet.com>, <cheapunderarmourwomensshoes.com>, <underarmourmensshoessale.com>, <underarmourrunningshoesoutlet.com>, <underarmourshoesoutletsale.com> (i.e. the address given does not exist in the UK, on the contrary a similar address exists in U.S.A., where the Registrant for <cheapunderarmourbasketballoutlet.com> is located). In addition, the phone numbers disclosed for both Registrants have the US prefix.

As specified in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 4.11.2 "Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. Many panels have found that a disputed domain name is confusingly similar to a Complainant's trademark where the disputed domain name incorporates the Complainant's trademark in its entirety. This is the case in the case at issue where the Complainant's trademark "UNDER ARMOUR" is fully included in the disputed domain names. The generic and descriptive terms that precede (i.e. cheap) or follow (i.e. basketball, outlet, shoes, outlet, women, men, sale, running) the Complainant's trademark "UNDER ARMOUR" in the disputed domain names are not able to prevent the possibility of confusion amongst consumers. In fact, the trademark "UNDER ARMOUR" is clearly recognizable within the disputed domain names. On the contrary, they are related to the Complainant's business activity and are likely to increase the possibility of confusion amongst consumers.

2. In the absence of any Response, or any other information from the Respondents indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

In particular, the Respondents are not affiliated with nor authorized by the Complainant in any way, and are not related in any way to the Complainant's business. In addition, the Respondents are not commonly known by the disputed domain names.

In addition, the disputed domain names resolved to a website promoting and selling alleged products of the Complainant and its competitors. This Panel finds that such use can neither be considered as bona fide offering of goods or services nor

a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3. Finally, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

It is the view of this Panel that the Respondents have intentionally registered the disputed domain names which totally reproduce the trademark “UNDER ARMOUR” of the Complainant, that has been established more than twenty years ago. Moreover, this trademark is followed or preceded by the generic and descriptive terms which are related to the Complainant’s area of activity. By the time the disputed domain names were registered, it is unlikely that the Respondents did not have knowledge of the Complainant’s rights on its trademark. In addition, the disputed domain names resolved to a website promoting and selling alleged products of the Complainant and its competitors. These facts, including the failure to submit a response, the failure to respond to the cease and desist letters sent by the Complainant in relation to the disputed domain names, the privacy shield to hide the Respondent’s identity, also confirm that the disputed domain names have been registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **CHEAPUNDERARMOURBASKETBALLOUTLET.COM**: Transferred
2. **CHEAPUNDERARMOURSHOESOUTLET.COM**: Transferred
3. **CHEAPUNDERARMOURWOMENSSHOES.COM**: Transferred
4. **UNDERARMOURMENSSHOESSALE.COM**: Transferred
5. **UNDERARMOURRUNNINGSHOESOUTLET.COM**: Transferred
6. **UNDERARMOURSHOESOUTLETSALE.COM**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2020-02-03

Publish the Decision