

## Decision for dispute CAC-UDRP-103809

Case number	CAC-UDRP-103809
Time of filing	2021-05-21 09:31:32
Domain names	underarmourshoesoutletstore.com

### Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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### Complainant

Organization	Under Armour Inc.
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### Complainant representative

Organization	Convey srl
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### Respondent

Name	Jonathan Poleszczuk
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#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

#### IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the word element "UNDER ARMOUR", such as:

- U.S.A. Trademark Registration n° 2279668 for UNDER ARMOUR of September 21, 1999 in class 25;
- U.S.A. Trademark Registration n° 2509632 for UNDER ARMOUR of January 11, 2005 in class 25;
- U.S.A. Trademark Registration n° 2917039 for UNDER ARMOUR of November 20, 2001 in class 25;
- International Trademark n° 996450 for UNDER ARMOUR – of February 18, 2009, in classes 15 and 28; and
- European Union Trademark n° 002852721 for UNDER ARMOUR of December 09, 2003, in class 25.

Furthermore, the Complainant is the owner of several domain names consisting of the word element bearing "UNDER ARMOUR", such as:

<UNDERARMOUR.COM>, registered on June 2, 1997, <UNDERARMOUR.ASIA>, registered on November 27, 2007, or <UNDERARMOUR.CN>, registered on November 16, 2005.

#### FACTUAL BACKGROUND

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

The Complainant is an U.S. company that manufactures footwear, sports and casual apparel and is headquartered in Baltimore, Maryland with additional offices located in Amsterdam (European headquarters), Austin, Guangzhou, Hong Kong, Houston, Jakarta, London, Mexico City, Munich, New York City, Panama City (International headquarters), Paris, Pittsburgh, Portland, San Francisco, São Paulo, Santiago, Seoul, Shanghai (Greater Chinese headquarters), and Toronto.

Founded in 1996 manufactures and distributes performance apparel - gear. In 2005, the Complainant went public, trading at NASDAQ under "UARM". Following year, the footwear business captured a 23% share of the market. Also, the Complainant became sponsor of famous athletes as Ray Lewis, Lindsey Vonn, Georges St-Pierre, Brandon Jennings, Michael Phelps, Tom Brady and Sloane Stephens. 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 traction with athletes in Japan, Europe, Canada, Latin America. Today, the Complainant is widely known as one of the largest sportswear brands in the U.S. also for its partnership with NBA athlete Stephen Curry.

Also, the Complainant's websites and social media accounts generate a significant number of visitors by internet users every day. For example, the Complainant's Facebook account has more than ten million followers.

The Complainant uses, inter alia, the domain names <UNDERARMOUR.COM>, <UNDER-ARMOUR.ASIA> and <UNDERARMOUR.CN> as well as its trademarks "UNDER ARMOUR" for its services and as company name.

The disputed domain name <UNDERARMOURSHOESOUTLETSTORE.COM> has been registered by the Respondent on September 30, 2017. It points to a website publishing the "UNDER ARMOUR" trademarks and promoting and selling purported products of the Complainant. In detail, the linked website hosts an e-shop offering for sale products from the Complainant's portfolio, i.e. apparel and shoes bearing the Complainant's trademarks. In light of the low prices, the apparel and shoes offered for sale are prima facie counterfeit products.

The domain name website does not contain any information about the owner or operator of the e-shop and no contact details are provided. It only includes the brief statement "Powered by <http://www.underarmourshoesoutletstore.com/>".

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### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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).

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### NO RIGHTS OR LEGITIMATE INTERESTS

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

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### BAD FAITH

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

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### 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.

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### PRINCIPAL REASONS FOR THE DECISION

As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. Thus, the Panel considers the contentions of the Complainant as conceded by the Respondent.

A. The disputed domain name is confusingly similar to the trademarks "UNDER ARMOUR" of the Complainant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid trademark rights in "UNDER ARMOUR". The disputed domain name includes the Complainant's trademarks in its entirety.

Also, the addition of the descriptive term(s) "SHOESOUTLETSTORE" is not sufficient to distinguish the disputed domain name from the trademarks. Much more, the Complainant's trademarks are very connected, in the social imaginary, to the single terms "shoes", "outlet" and "store", since the Complainant is a manufacturer of footwear and its products are sold both online and offline. As result, the disputed domain name could be assumed by internet users as managed by a dealer of the Complainant.

Lastly, the addition of the gTLD suffix ".COM" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and does not change the overall impression of the designation as being connected to the trademarks of the Complainant.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademarks in a domain name. Also, the domain name at stake does not correspond to the name of the Respondent and he is not commonly known as "UNDER ARMOUR".

Furthermore, the disputed domain name website is misleading and creates a false impression of affiliation between the Complainant and the Respondent since the e-shop hosted is not legitimate and offers to sale prima facie counterfeited products branded with the trademarks of the Complainant. Also, there is no disclaimer as to the Respondent's lack of relationship with the Complainant.

Moreover, such use of the disputed domain name cannot be considered legitimate non-commercial or fair use without intent for commercial gain since the Respondent is obviously attempting to gain from the sales of prima facie counterfeit products. The Respondent's intention is to benefit from the Complainant's trademarks reputation to illegitimately trade on the Complainant's fame for commercial gain. Such wilful conduct demonstrates, that Respondent did not intend to use the disputed domain name in connection with any legitimate purpose.

Summarised, there is no evidence for a use of the disputed domain name for any bona fide offer of goods or services or a legitimate non-commercial or fair use.

C. The disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

The Complainant's trademarks "UNDER ARMOUR" are well known and have already been well known at the time, the Respondent registered the disputed domain name. Given the distinctiveness of the Complainant's trademarks and reputation, it can be concluded that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

Beyond this, the fact that prima facie counterfeit "UNDER ARMOUR" branded shoes and apparel are offered for sale on the website corresponding to the disputed domain name indicates that the Respondent was fully aware of the Complainant's trademarks reputation and association with the Complainant. This also indicates that Respondent's purpose in registering the disputed domain name was solely to capitalize on the reputation of these trade marks by diverting internet users seeking

products of the Complainant to its own commercial website. In other words, the Respondent has intentionally attempted to attract for commercial gain internet users to its website by creating a likelihood of confusion with Complainant's trademarks as to Complainant as a source, sponsor, affiliate or endorser of Respondent's website. Lastly, on the website corresponding to the disputed domain name there is no disclaimer informing the users as to the Respondent's lack of relationship with the Complainant. Thus, the website creates the impression that it is authorized by the Complainant. Such intentional likelihood of confusion is also evidence of bad faith registration and use.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UNDERARMOURSHOESOUTLETSTORE.COM**: Transferred
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## PANELLISTS

Name	<b>Dominik Eickemeier</b>
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DATE OF PANEL DECISION **2021-06-28**

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Publish the Decision

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