

Decision for dispute CAC-UDRP-104577

Case number	CAC-UDRP-104577
Time of filing	2022-05-12 09:16:29
Domain names	underarmournl.com, underarmour-outlet.com, outletunderarmor.com, descuentounderarmourchile.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Julius Bergman
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks for "UNDER ARMOUR", such as the European Trademark 2852721 for "UNDER ARMOUR" applied for on September 19, 2002 and registered on December 9, 2003 in class 25.

FACTUAL BACKGROUND

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

The Complainant was founded in 1996, manufactures inter alia footwear and sports products and has stores around the world. In 2015, a fitness platform with over 200 million users was established.

The disputed domain names were registered between November 12, 2021 and December 1, 2021. Whereas initially the ownership was redacted for privacy, the registrar informed the dispute provider that the Respondent is the owner of all disputed domain names. Cease and desist letters were sent, but no response was received.

The websites under the disputed domain names show under the logo (device mark) of the Complainant allegedly online shops where, allegedly, products of the Complainant are sold for prices significantly cheaper than the original prices. The Complainant is of the view that these products are counterfeits. The websites do not show any statement clarifying any relation to the Complainant.

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 Respondent 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.

PRINCIPAL REASONS FOR THE DECISION

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated 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; and
- (ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established the fact that it has valid trademark rights for "UNDER ARMOUR".

The disputed domain names differ only in geographical identifiers such as "NL" for the Netherlands and "Chile" or by descriptive terms such as "Outlet" or the Spanish term "descuento" for discount. Such additions are of no distinctiveness and do not decrease a confusing similarity between the trademarks of the Complainant and the disputed domain names.

B. Rights or Legitimate Interests

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 the Respondent to use its trademarks or designations confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the

disputed domain name, since there is no indication that the Respondent is commonly known by the name "UNDER ARMOUR" or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

If the Respondent should indeed sell original shoes of the Complainant, which must not be decided here, the special circumstances of this case do not provide the Respondent with a right or a legitimate interest in view of the acknowledged "Oki Data" test (WIPO case Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com>) according to which, in the following citing the WIPO jurisprudential overview 3.0, panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name, if as outlined in the "Oki Data test", the following cumulative requirements will be applied:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

Since in the present case, at least requirement (iii) is not met, Panel does not see any right or legitimate interest of Respondent in using the disputed domain names.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant's prior registrations and, inter alia, the use of different marks of the Complainant suggest that the Respondent registered the disputed domain names with full knowledge of the Complainant and of its "UNDER ARMOUR" trademark.

The Respondent is using the disputed domain names for offering related goods which indicate that the Respondent registered and uses the disputed domain names primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain names to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. UNDERARMOURNL.COM: Transferred
2. UNDERARMOUR-OUTLET.COM: Transferred
3. OUTLETUNDERARMOR.COM: Transferred
4. DESCUENTOUNDERARMOURCHILE.COM: Transferred

PANELLISTS

Name	Dietrich Beier
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DATE OF PANEL DECISION 2022-00-21

Publish the Decision
