

Decision for dispute CAC-UDRP-105377

Case number	CAC-UDRP-105377
Time of filing	2023-04-21 09:49:32
Domain names	golashoesaustralia.com

Case administrator

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

Organization	D. Jacobson & Sons Limited
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Complainant representative

Organization	TLT LLP
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Respondent

Name	Leonie Osterhagen
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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 owns several trademarks, including the following relevant trademark registrations:

- United Kingdom trademark GOLA with no. 00000272980 for goods in class 25 of May 25, 1905;
- United Kingdom trademark GOLA with no. 00001097140 for goods in class 18 of June 14, 1978;
- European Union trademark GOLA with no. 001909936 for goods in classes 18, 25, 28 of October 4, 2000; and
- European Union trademark GOLA with no. 003399681 for goods and services in classes 5, 10, 12 and 35 of October 8, 2003.

Such trademarks are hereinafter individually and jointly referred to as the "GOLA trademark".

FACTUAL BACKGROUND

The Complainant is a British designer, importer, seller and exporter of ladies', men's and children's footwear who owns the GOLA trademark, which it has applied, amongst other things, to its range of footwear and bag designs.

The Respondent registered the disputed domain name on December 24, 2022. The Panel found that the disputed domain name currently resolves to a website which displays the text

“Access denied

You do not have access to golashoesaustralia.com.

The site owner may have set restrictions that prevent you from accessing the site”.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

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).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant failed to show that the Respondent lacks rights or legitimate interests in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant failed to show that 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).

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

1. The Respondent did not reply to the Complainant’s contentions. However, the consensus view of UDRP panels is that the Respondent’s default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from a respondent’s default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.
2. The Complainant alleges that the Respondent infringed its GOLA trademark as the disputed domain name “*will likely mislead relevant members of the public who are attempting to purchase products through the Infringing Domain into believing that they are doing so from the Complainant’s genuine website or from a website that is in some way connected to or associated with the Complainant, contrary to the fact*”, and that the “*operation of the website under the Infringing Domain and the use of Trade Marks by the Respondent also constitutes passing off in the UK and unfair competition*”. The Complainant did, however, bring this claim under the Policy, of which paragraph 4(a) requires the Complainant to prove that (i) the disputed domain name is identical or confusingly similar to the GOLA trademark; (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. This is markedly different from alleging trademark infringement, passing off and /or unfair competition.

3. If the Panel reads the Complaint sympathetically in light of paragraph 4(a) of the Policy, the Panel is satisfied that the first element of paragraph 4(a) is met. The disputed domain name includes the GOLA trademark in its entirety, followed by “shoesaustralia”. The GOLA trademark is recognizable in the disputed domain name and the contiguous terms “shoes” and “Australia” do not prevent a finding of confusing similarity under the first element of the UDRP (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.8). The Panel therefore finds that the disputed domain is confusingly similar to the Complainant's GOLA trademark.
4. The Complainant must further show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455). Although the Complainant alleges that the Respondent uses the disputed domain name without the Complainant's authorization or permission, it asserts that Internet users may believe that there is a commercial relationship between the Complainant and the Respondent, and that the disputed domain name and the Respondent's use of the GOLA trademark “*will likely mislead relevant members of the public who are attempting to purchase products through the Infringing Domain into believing that they are doing so from the Complainant's genuine website or from a website that is in some way connected to or associated with the Complainant*”. This allegation is not supported by any evidence and the Panel finds this allegation difficult to accept in view of the fact that the Panel found the disputed domain name to resolve to a website which denied the visitor access, and did neither use the GOLA trademark nor offered products for sale. Although the Panel considers it probable that the Respondent lacks rights or legitimate interests in the disputed domain name and registered and used the disputed domain name in bad faith, this is currently insufficiently supported by the Complainant's allegations and evidence.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **golashoesaustralia.com**: Remaining with the Respondent

PANELLISTS

Name	Alfred Meijboom
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DATE OF PANEL DECISION	2023-05-23
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Publish the Decision
