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URS | DETERMINATION

(URS Procedure 9, URS Rules 13)

Insert Dispute Number (8)

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Determination

I. Parties

II. The Domain Name(s), Registry Operator(s) and Registrar(s)

No domain name has been indicated as subject of this proceeding

III. Procedural History

IV. Examiner

Examiner's Name

The Examiner certifies that he/she has acted independently and impartially and to the best of his/her knowledge has no known conflict in serving as the Examiner in this administrative proceeding

V. Relief Sought

VI. Standard Of Review

Clear and convincing evidence.

VII. Discussions And Findings

C. Procedural findings



Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4

Multiple Complainants: if there is more than one Complainant, the Examiner shall verify if the Complainant(s) has provide adequate arguments and evidence to support the consolidation of multiple Complainants in a single Complaint

Multiple Respondents: if there is more than one Respondent, the Examiner shall verify if the Complainant has adequately described and proved the relationship between them, which justifies them being named in a common Complaint

Language of the Determination: the Complaint shall be submitted in English. The Notice of Complaint to the Respondent shall be transmitted in English and the predominant language used in the registrant's country or territory, as determined by the country(ies) listed in the Whois record when the Complaint is filed. The Response may be submitted in English or in one of the languages used for the present Notice of Complaint. The Examiner will determine, in its sole discretion, in which language to issue its Determination. In absence of a Response, the language of the Determination shall be English.

Privacy or proxy service: if one or more domain names are registered with a privacy or proxy service, or the nominal registrant changes after the Complaint is filed, it shall be the sole discretion of the Examiner to determine if the respondents are sufficiently related and to dismiss the Complaint with respect to any unrelated domain names. The Examiner may rely on information submitted by the Complainant and/or the Respondent(s) and on the record of the proceeding in making his/her finding.

D. Findings of Fact

E. Reasoning

The Examiner shall make a Determination of a Complaint in accordance with URS Procedure, URS Rules and any rules and principles of law that he/she deems applicable.

The Examiner shall determine the admissibility, relevance, materiality and weight of the evidence.

For the Complainant to succeed, it must establish that each of the three conditions under the URS Procedure 1.2.6 are satisfied.

The burden of proof shall be clear and convincing evidence.

To conclude in favor of the Complainant, a Determination shall be rendered that there is no genuine issue of material fact. Such Determination may include: i) the Complainant has rights to the domain name(s); and ii) the Registrant has no rights or legitimate interest in the domain name(s).

The Complainant shall present adequate evidence to substantiate its trademark rights in the domain name(s) (e.g. evidence of a trademark registration and evidence that the domain name(s) was(were) registered and is(are) being used in bad faith in violation of the URS).

If the Complainant does not meet its burden of proof or genuine issues of material fact remain in regards to any of the elements, the Complaint shall be rejected.

If evidence is presented or available to the Examiner that the use of the domain name in question is a non-infringing use or fair use of the trademark, the Complaint shall be dismissed.

If there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint shall be denied.

THE URS IS NOT INTENDED FOR USE IN ANY PROCEEDINGS WITH OPEN QUESTIONS OF FACT, BUT ONLY CLEAR CASES OF TRADEMARK ABUSE.

If a Party, in absence of exceptional circumstances, does not comply with any provision of, or requirement under, URS Procedure, URS Rules or MFSD's Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate.

1. The domain name(s) is(are) identical or confusingly similar to a word mark

The Complainant shall specify the trademark(s) or service mark(s) on which the Complaint is based and, for each mark, describe the goods or services with which the mark is used including evidence of use - which can be a declaration and a specimen of current use in commerce - submitted directly or by including a relevant SMD (Signed Mark Data) from the Trademark Clearinghouse.

The Complainant shall prove that the domain name(s) is(are) identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use; or that has been validated through court proceedings; or that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the Complaint is filed; and use can be shown by demonstrating that evidence of use - which can be a declaration and one specimen of current use - was submitted to, and validated by, the Trademark Clearinghouse Proof of use may also be submitted directly with the URS Complaint.

2. Respondent has no rights or legitimate interests to the domain name(s)

The Complainant shall specify why the Respondent should be considered as having no rights or legitimate interests in respect of the domain name(s).

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name(s) - WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition. The Respondent shall present adequate evidence in support of any claims concerning its alleged rights or legitimate interests in the domain name(s).

3. The domain name(s) was(were) registered and is(are) being used in bad faith

The Complainant shall specify why the domain name(s) should be considered as having been registered and used in bad faith by the Respondent.

URS Procedure 1.2.6.3 identifies non exclusive list of circumstances that Examiner could consider as constituting bad faith:

- Circumstances indicating that the domain name(s) was/were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration(s) to the Complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name(s).
- The domain name(s) was/were registered in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct.
- The domain name(s) was/were registered primarily for the purpose of disrupting the business of a competitor.
- By using the domain name(s), the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

URS Procedure 5.7 sets out examples of circumstances demonstrating bona fide registration of the domain name(s):

- Before any notice to the Respondent of the dispute, there is evidence of Respondent's use of, or demonstrable preparations to use, the domain name(s) or a name corresponding to the domain name(s) in connection with a bona fide offering of goods or services.
- The Respondent (as an individual, business, or other organization) has been commonly known by the domain name(s), even if the Respondent has acquired no trademark or service mark rights.
- The Respondent is making a legitimate or fair use of the domain name(s), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark(s) or service mark(s) at issue.

URS Procedure 5.8 sets out examples of defenses to the Complaint to demonstrate that the Respondent's use of the domain name is not in bad faith:

- The domain name is generic and descriptive and the Registrant is making fair use of it.
- The domain name(s) sites are operated solely in tribute to or in criticism of a person or business.
- Respondent's holding of the domain name(s) is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
- The domain name(s) is(are) not part of a wider pattern or series of abusive registrations because the domain name(s) is(are) of a significantly different type or character to other domain names registered by the Respondent.

URS Procedure 5.9 sets out other factors that the Examiner shall consider:

- Trading in domain name for profit, and holding a large portfolio of domain names, are themselves not indicia of a bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute.
- Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. In this connection the Examiner shall take into account the nature of the domain name(s), the nature of the advertising links on any parking page associated with the domain name and that the use of the domain name(s) is ultimately the Respondent's responsibility.

4. Abusive Complaint

The Examiner may, of its own accord, find that a Complaint is abusive or contains deliberate material falsehoods. A Respondent may, in its Response, allege that a Complaint was brought in an abuse of the URS process or contains deliberate material falsehoods.

The Determination shall contain sufficient rationale to justify the finding that a Complaint was abusive or contained a deliberate materially falsehood to any potential Appeal Panel.

A Complaint may be deemed ABUSIVE if the Examiner determines that:

- it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase cost of doing business; or
- the claims or other assertions were not warranted by any existing law or the URS standards; or
- the factual contentions lacked any evidentiary support.

An Examiner may find that the Complaint contained a DELIBERATE MATERIAL FALSEHOOD if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.

In the event a party is deemed to have filed 2 abusive Complaints or 1 deliberate material falsehood, that party shall be barred from utilizing the URS for 1 year following the issuance of a Determination finding a Complainant to have filed its second abusive Complaint or filed a deliberate material falsehood. 2 findings of deliberate material falsehood shall permanently bar the Complainant from utilizing the URS.

VIII. Determination

Signature

Name

Surname

No domain name has been indicated as subject of this proceeding
 The information filled in the form is not sufficient to submit the form
 CONFIRM AND CONTINUE

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