



URS | DETERMINATION
(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. 0539FFA3

Determination DEFAULT

I. PARTIES

Complainant: Tencent Holdings Limited, KY
Complainant's authorized representative(s): CSC Digital Brand Services Group AB, Paddy Tam, SE

Respondent(s): Syaifur Roni, Global Injectorcorp, ID

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain Name(s): MIDASBUY.STORE
Registry Operator: DotStore, Inc.
Registrar(s): CV. Rumahweb Indonesia

III. PROCEDURAL HISTORY

Complaint submitted: 2020-07-30 11:41
Lock of the domain name(s): 2020-07-31 15:04
Notice of Complaint: 2020-08-03 12:42
Default Date: 2020-08-18 00:00
Notice of Default: 2020-08-18 09:07
Panel Appointed: 2020-08-18 09:12
Default Determination issued: 2020-08-19 12:25

IV. EXAMINER

Examiner's Name: Igor Motsnyi

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

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

The Complainant is a Chinese multinational holding company founded in 1998 and is the world's largest video game company. It partly owns battle royal games such as PlayerUnknown's Battlegrounds (PUBG). MidasBuy is a top-up center for popular video games, music, videos and other forms of entertainment. It is mostly known for handling the in-game purchases for PUBG and PUBG Mobile. The platform provides users with a number of special offers and promotional activities, including Unknown Cash (UC) for users to make in-game purchases. The Complainant uses the domain name <midasbuy.com> to promote its services under the MIDASBUY brand. The domain name has been registered and continuously used since June 5, 2018. The Complainant owns trademark registrations in Hong Kong for MIDASBUY:

- MIDASBUY (TM Reg. No. 305112053, registered on November 13, 2019) for services in classes 35 and 36;
 - MIDASBUY (TM Reg. No. 305119669, registered on November 21, 2019) for services in class 42.
1. The disputed domain name was registered on March 26, 2020 and the Complainant asserts the disputed domain name is the exact match of the word element in Complainant's MIDASBUY trademark. Although Complainant's trademark is a combined word and device mark, the word element of the mark is clearly separated from the device element showing the MIDASBUY word element prominently, resulting in the disputed domain name being identical to Complainant's trademark. The disputed domain name is also identical to Complainant's <midasbuy.com> domain name.
 2. The Complainant alleges that the Respondent is not affiliated with the Complainant and is not commonly known by the disputed domain name. The Complainant has not authorized the Respondent to use Complainant's trademark in any manner. The disputed domain name resolves to a website that copies and attempts to duplicate Complainant's logo and official website. The website has purposely been designed to serve as an exact replica of Complainant's website, to deceive internet users into believing that the disputed domain name and its website are associated with the Complainant. Respondent's attempt to pass off the disputed domain name as being affiliated with the Complainant, and in fact as being the Complainant, is in itself evidence of the fact that the Respondent does not have rights and legitimate interests in the disputed domain name.
 3. By registering the disputed domain name identical to Complainant's MIDASBUY trademark and its <midasbuy.com> domain name, the Respondent has demonstrated knowledge of and familiarity with Complainant's brand and business. Further, the Respondent creates a likelihood of confusion with the Complainant and its trademark by copying Complainant's logo and official website, with the Respondent then attempting to profit from such confusion by selling UCs to users. The Respondent is attempting to cause consumer confusion in an attempt to profit from such confusion. The impression given by the disputed domain name and its website would cause consumers to believe the Respondent is somehow associated with the Complainant when, in fact, it is not. Respondent's actions create a likelihood of confusion as to the source or affiliation and the Respondent is thus using the fame of the Complainant's trademark to improperly increase traffic to the website for Respondent's own commercial gain. It is well-established that such conduct constitutes bad faith.



B. Respondent:

The Respondent did not submit a Response.

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.

In accordance with URS Procedure Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

D. Findings of fact:

The disputed domain name was registered on March 26, 2020. On the date of this Determination the website under the disputed domain name is suspended however the Complainant provided evidence that this website contained content similar to the content on the Complainant's official website and related to games, including Complainant's logo.

The Complainant has demonstrated that it owns the following Hong Kong registered trademarks:

- MIDASBUY (TM Reg. No. 305112053, registered on November 13, 2019) for services in classes 35 and 36;
- MIDASBUY (TM Reg. No. 305119669, registered on November 21, 2019) for services in class 42.

Both trademarks are combined meaning that they contain both word and device elements however the word "MIDASBUY" element is prominent and clearly separate from the device elements of the marks.

The Complainant also provided proof of use of its trademarks: declaration and specimen of use in commerce - screenshots from its website.

E. Reasoning:

According to Paragraph 13 of the URS Rules, the Examiner shall make a Determination of a Complaint in accordance with the URS Procedure, the URS Rules and any rules and principles of law that it deems applicable.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires Complainant to make a *prima facie* case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name should be suspended.

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

- That the disputed domain name is identical or confusingly similar to a word mark;
- That the Registrant has no legitimate right or interest to the disputed domain name;

- That the disputed domain name was registered and is being used in bad faith.

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

The first issue the Examiner needs to address in this dispute is whether the Complainant's trademarks are enough for the purpose of the URS procedure.

URS requires a word mark and the Complainant in this proceeding relies on two combined marks with both device and word elements.

The Complainant states that "*the word element is clearly separated from the device element*" and this shall be sufficient.

This issue has been dealt with by earlier panels and the general conclusion is that "*the use of the words "word mark" in URS 1.2.6.1 does not specifically exclude trademarks which are combined of a word element and a graphical element, provided the word element is clear, and sufficiently distinct and separate from the graphical element...As is also acceptable under the UDRP body of law, and without derogating from the URS goals, the word element in the trademark should not have been disclaimed leaving the design element the only element having the source of distinctiveness*" (see URS appeal determination, Forum case FA1604001672049 where this question was analyzed in detail and also MFSD URS DISPUTE No. 369B0FE1).

The appeal panelists in the URS appeal determination Forum case FA1604001672049 also looked at the documents leading to the establishment of URS procedure to confirm the intent of the drafters of URS.

Any other interpretation would unjustly limit the already limited scope of URS.

In both Complainant's trademarks the "MIDASBUY" word element is a dominant one and is separate from the device element. The word element is not disclaimed and is distinctive *per se*.

The Complaint also provided evidence of use of its trademarks. Therefore, the Examiner finds that the Complainant has trademark rights for the purpose of URS.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") "*In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark ...*" (see par. 1.7).

In the present case the disputed domain name is identical to the Complainant's trademarks (dominant word elements of the marks) and Complainant's mark is clearly recognizable in the disputed domain name.

The .store gTLD shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Examiner finds that the requirements set forth under Paragraph 1.2.6.1. of the URS Procedure have been satisfied.

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

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests; and once such prima facie case is made, the burden shifts to the Respondent who has to demonstrate his rights or legitimate interests.

The Complainant made a prima facie case and the Respondent failed to respond and explain any rights or interests in respect of the disputed domain name.

The website under the disputed domain name is currently suspended and the Complainant provided evidence that it was previously used for providing content imitating content on



Complainant's website, imitating the Complainant and its activity. This does not give rise to rights or legitimate interests. No facts or evidence of this dispute indicate any legitimate rights or interests of the Respondent in respect of the disputed domain name.

Based on the above, the Examiner finds that the Respondent lacks any rights or legitimate interests with respect to the disputed domain name as per the requirements set forth under Paragraph 1.2.6.2. of the URS Procedure.

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

The Complainant provided evidence that the disputed domain name was used for a website that copied and attempted to duplicate Complainant's logo and official website as well as content of the Complainant's web site. Complainant's mark and logo were placed on the website under the disputed domain name.

The Complainant had already been a target of a similar behavior (see MFSD URS DISPUTE NO. 7AAFBC12). Facts and evidence of this dispute indicate that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark.

As stated by WIPO Overview 3.0 the following factors *inter alia* are relevant:

- actual confusion,
- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful,
- the lack of a respondent's own rights to or legitimate interests in a domain name (see par. 3.1.4).

Besides, the content of the web site as well as the chosen top-level domain are also relevant as additional bad faith considerations (see par. 3.2.1 of WIPO Overview 3.0).

The Respondent not only imitated content of the Complainant and fully incorporated Complainant's mark in the disputed domain name but also chose the .store domain that could indicate that the Respondent's website is some kind of an on-line store for Complainant's services controlled by the Complainant.

This clearly demonstrates that the Respondent was well aware of the Complainant and its trademarks while registering the disputed domain name.

As stated by the Examiner in one of the earlier URS disputes: "*the disputed domain name resolves to website that reproduces dominant elements from the Complainant website's digital trade-dress, which includes the look and feel and the apparent services provided by the Complainant. This leads the Examiner to determine that the registration of the disputed domain name was made with the clear intention of deceiving the consumers, through identity theft of the Complainant's name and business*" (see MFSD URS DISPUTE No. 369B0FE1).

This conduct is considered by the URS as a demonstration of bad faith registration and use, under Paragraph 1.2.6.3 (d) of the URS Procedure.

Therefore, the Examiner finds that the requirements set forth under Paragraph 1.2.6.3. of the URS Procedure have been satisfied by the Complainant.

4. Abusive Complaint

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): MIDASBUY.STORE

Suspends for the balance of the registration period

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Igor

Surname: Motsnyi

Date: 2020-08-19