



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

URS DISPUTE NO. 07ACC115

Determination DEFAULT

I. PARTIES

Complainant(s): Pierce Protocols Limited (UK)
Complainant(s)'s authorized representative(s): Joseph Hage Aaronson Llp (UK)

Respondent(s): Protection of Private Person, Privacy Protection (RU)

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

Domain Name(s): HENISALE.ART
Registry Operator: UK Creative Ideas Limited
Registrar: Registrar of Domain Names REG.RU LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2022-08-26 17:56
Lock of the domain name(s): 2022-09-02 13:49
Notice of Complaint: 2022-09-05 09:40
Default Date: 2022-09-20 00:00
Notice of Default: 2022-09-20 18:19
Panel Appointed: 2022-09-20 19:15
Default Determination issued: 2022-09-21 06:46

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:

1. The Complainant trades by the name “HENI” and is the owner of several UK registered trademarks for the word “HENI” in various classes including, without limitation, class 9 (computer and downloadable software etc.) and class 16 (printed matter, photographs, prints etc.). The Complainant is active in the field of art services and technology business and uses its “HENI” trademarks in connection with non-fungible tokens (NFTs) as well as in connection with other goods such as physical artworks/prints.

The Complainant also represents one of its business partners, Science Limited (“Science”), which is the owner of all intellectual property rights in works by the artist Damien Hirst. The disputed domain name is identical or, at least, confusingly similar to the Complainant's trademark. The Complainant provides a screenshot of the website by the disputed domain name.

2. The Complainant claims that the Respondent is in no way connected to the Complainant and has not been authorized to use its trademarks. There is no indication that the Respondent has been commonly known by the disputed domain name. The Respondent has no legitimate right or interest to the disputed domain name.

3. The Complainant alleges the disputed domain name was registered and is being used in bad faith. In particular, the Respondent is attempting to attract, for commercial gain, internet users to the disputed website by creating a likelihood of confusion with the Complainant.

The disputed domain name is being used to impersonate the Complainant. The website by the disputed domain name contains a false statement: “Damien Hirst - The Currency I PRIVATE SALE. Total supply: 500 NFTs” and may be used for a phishing scheme or other fraudulent purpose. The Respondent impersonates the Complainant not only through use of the Complainant's trademark in the disputed domain name, but also by purporting to sell NFTs which were previously made available for sale by the Complainant. It also infringes Science's copyright.

Use of the website by the disputed domain name to impersonate the Complainant in this manner strongly indicates that the Respondent was aware of the relevant intellectual property rights at the time of registering the disputed domain name.

The Complainant claims that the website by the disputed domain name is virtually identical to several other fake websites such as www.heni-drop.art and www.henidrop.art, previously taken down by the Complainant.

Therefore, the Complainant believes this represents a clear pattern of infringement of the Complainant's rights.

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 Rules 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 August 22, 2022.



The Complainant has demonstrated that it owns the following registered trademarks for the word “HENI”:

- the UK trademark No. UK00003217825 (word), registration date is June 02, 2017;
- the UK trademark No. UK00003153674 (word), registration date is June 03, 2016;
- the UK trademark No. UK00003706419 (word), registration date is December 31, 2021;
- the UK trademark No. UK00801328933 (word), registration date is June 28, 2017 and
- the UK trademark No. UK00801381342 (word), registration date is June 05, 2018.

The Complainant provided proof of use of its word trademarks: screenshots of the Complainant’s website and “Instagram” account.

E. Reasoning:

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

The Complainant is the owner of numerous “HENI” word trademarks effective in the UK. The Complainant provides proof of use of its “HENI” marks.

The disputed domain name incorporates the “HENI” mark of the Complainant with the addition of the word “sale”. As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) *“where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”* (see par. 1.8).

The trademark is recognizable in the disputed domain name and the addition of the descriptive word “sale” does not eliminate confusing similarity.

The gTLD <.art> actually increases confusion as this gTLD is related to Complainant’s activity.

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 in this dispute has 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 disputed domain name is used for an NFT related website that appears to be offering an NFT item (artwork of the artist Damien Hirst) for sale. This type of activity is directly related to the Complainant’s activity and can be seen as an impersonation of the Complainant and/or passing off as demonstrated by the evidence provided (screenshots of both Complainant’s and Respondent’s websites).

As noted by WIPO Overview 3.0 the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see par. 2.13.1).

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

Based on the evidence available in this dispute, the Respondent attempts to impersonate the Complainant by using the disputed domain name fully incorporating the trademarks of the Complainant and by placing content related to the Complainant on the website by the disputed domain name. The website by the disputed domain name may create an impression of being associated with the Complainant, its “HENI” trademarks and its NFT related activity. Based on the arguments and evidence submitted by the Complainant, the Examiner finds that the Respondent has indeed intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the Complainant’s “HENI” trademarks as to the affiliation and/or endorsement and content of the website by the disputed domain name confirms this.

The content of the website by the disputed domain name also demonstrates Respondent’s knowledge of Complainant’s mark and targeting (see e.g. URS dispute No. FC8FA784: “The website under the disputed domain name reproduces the Complainant’s products, logo and official marketing materials what indicates undoubtful prior knowledge of the Complainant and its trademarks...”).

This dispute closely resembles a previous URS dispute of the same Complainant regarding the same trademarks, namely URS dispute No. B170FBFC with the same pattern of impersonation.

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): HENISALE.ART 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: 2022-09-21