



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

URS DISPUTE NO. 0B83BECD

Determination DEFAULT

I. PARTIES

Complainant: Basic Trademark S.r.l. (IT)
Complainant' authorized representative(s): Studio Sindico e Associate, Domenico Sindico (IT)

Respondent(s): Privacy Guardian, See [PrivacyGuardian.org](https://www.privacyguardian.org) (US)

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

Domain Name(s): ITSUPERGA.ONLINE
Registry Operator: DotOnline Inc.
Registrar: NameSilo, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2020-09-11 11:37
Lock of the domain name(s): 2020-09-11 14:45
Notice of Complaint: 2020-09-14 11:03
Default Date: 2020-09-29 00:00
Notice of Default: 2020-09-29 09:43
Panel Appointed: 2020-09-30 08:48
Default Determination issued: 2020-09-30 11:40

IV. EXAMINER

Examiner's Name: Wilson Pinheiro Jabur

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 claims to be an Italian company that is a market leader in the design and marketing of clothing, footwear and accessories, notably sportswear and leisurewear which are sold under the SUPERGA trademark, extensively used all over the world.

According to the Complainant, its official website is available at <superga.com>, not having the Complainant authorized the Respondent or any third party to register the disputed domain name which is, in the Complainant's view, confusingly similar to the SUPERGA trademark.

Furthermore, the Complainant asserts that the website that resolved from the disputed domain name was an abusive copy of the Complainant's official website, what lead to it being temporarily suspended in view of the violation of the Complainant's rights as well as consumer complaints (Annexes to the Complaint).

On the Complainants' point of view the Respondent does not have any legitimate right or interest in the disputed domain name since that the webpage that resolved from the disputed domain name characterized a servile copy of the Complainant's official webpage and lead to actual consumer confusion (Annex to the Complaint).

As to the registration and use of the disputed domain names in bad faith, the Complainant asserts that the Respondent, by using the disputed domain name, intentionally attempted to attract for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainants' mark as to source, sponsorship, affiliation, or endorsement of its website.

B. Respondent:

The Respondent did not reply to the Complaint.

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 <ITSUPERGA.ONLINE> was registered on May 15, 2020. The disputed domain name does not presently resolve to an active webpage but has been used in connection with a webpage that copied the Complainant's official website.

The Complainant has shown trademark rights over the expression "SUPERGA" dully registered in several jurisdictions around the world (Annexes to the Complaint).

E. Reasoning:

In spite of Respondent's default, URS Procedure 1.2.6 requires the Complainant to make a *prima facie* case, showing clear and convincing evidence for each of the three elements so as to have the disputed domain name suspended.



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

The Complainant is the owner, among others, of the European Union trademark registration No. 003181492 for the word mark SUPERGA, registered on December 10, 2004, in classes 3, 9, 14, 16, 18 and 25.

The disputed domain name incorporates the Complainant's trademark *in totum*, not taking into account the TLD. The addition of the "it" expression can even add likelihood of confusion since possibly indicating the Complainant's Italian origin and its well-known products.

The Examiner thus finds that the complaint meets the requirement of the URS 1.2.6 (i).

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

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to the URS, any rights or legitimate interests in the disputed domain names. Nevertheless, the burden of proof is still on the Complainants to make a *prima facie* case against the Respondent.

In that sense, the redirection of Internet users to a webpage that characterized a servile copy of the Complainant's homepage and the actual consumer confusion that already took place cannot be considered a *bona fide* offering of goods or services under the Policy.

Also, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, corroborates with the indication of the absence of a right or legitimate interest.

Under these circumstances and absent evidence to the contrary, the Examiner finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name and has therefore met the requirement of the URS 1.2.6 (ii).

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

The disputed domain name which has been used in connection with a servile copy of the Complainant's official website indicates undoubtful prior knowledge of the Complainant and its famous trademark.

Such use in this Examiner's point of view has already created actual confusion with the Complainants' mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website and therefore does not qualify as a *bona fide* use.

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: ITSUPERGA.ONLINE 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: Wilson

Surname: Pinheiro Jabur

Date: 2020-09-30