



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

URS DISPUTE NO. 107509B0

Determination DEFAULT

I. PARTIES

Complainant(s): C.W.F. CHILDREN WORLDWIDE FASHION (FR)
Complainant's authorized representative: DOMGATE (FR)

Respondent(s): Dynadot Privacy Service, Super Privacy Service LTD c/o Dynadot (US)

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

Domain Name: BILLIEBLUSH.SHOP
Registry Operator: GMO Registry, Inc.
Registrar: Dynadot Inc

III. PROCEDURAL HISTORY

Complaint submitted: 2024-04-22 10:07
Lock of the domain name(s): 2024-04-23 14:47
Notice of Complaint: 2024-04- 21:48
Default Date: 2024-05-08 00:00
Notice of Default: 2024-05-13 15:26
Panel Appointed: 2024-05-13 20:46
Default Determination issued: 2024-05-16 08:32

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 states that it is in the business of producing and distributing its own ready-to-wear clothing brands for children. It claims that its “Billieblush” brand was created back in 2012. The Complainant alleges the “Billieblush” mark is well-known and the goods under this brand are sold in different physical retail stores operated by the Complainant’s group, various department stores, via online platforms and other distribution channels. The Complainant claims that its brand has a strong social media presence, including 19 000 followers on “Facebook”, 59 700 followers on “Instagram” and that the hashtag #billieblush was used in 57 354 publications on “Instagram”. The Complainant refers to its various “Billieblush” marks registered across the globe. The Complainant states that the disputed domain name is confusingly similar or identical to its trademarks since it incorporates the registered, well-known and "highly distinctive" trademark plus the <.shop> gTLD.
2. The Complainant alleges no license or permission of any kind has been to the Respondent to use the Complainant's trademarks. The Respondent is not known under the “BILLIEBLUSH” name.
The Complainant alleges that the Respondent uses the disputed domain name for a website offering counterfeiting products and uses Complainant’s logos and photos from Complainant’s own website.
3. The Complainant claims that the Respondent registered and used the disputed domain name to create consumers’ confusion and attract consumers to its website and take an unfair advantage of the Complainant’s marks. Therefore, the Complainant states that the Respondent has registered and is using the domain name in 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 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 July 12, 2022. The disputed domain name does not resolve to an active website on the date of this determination, however the Complainant provided evidence that it has been previously used for a website that offered goods under the Complainant’s “BILLIEBLUSH” mark for sale and contained pictures of the goods, including pictures from the Complainant’s own website and a stylized logo “BILLIEBLUSH”.

The Complainant relies on numerous trademark registrations including the following:

- French trademark registration “BILLIEBLUSH” (word) No. 3912708, registered since November 02, 2012;
- EU trademark registration “BILLIEBLUSH” (word and device) No. 010804714, registered since September 12, 2012 and
- EU trademark registration “BILLIEBLUSH” (word) No. 018396596, registered since June 03, 2021.



E. Reasoning:

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

The Complainant has provided proof of its registered word trademarks “BILLIEBLUSH” and marks containing the “BILLIEBLUSH” word element and proof of use of its trademarks: screenshots of its website and social media account, information from the Internet including various webpages with the goods under the “BILLIEBLUSH” mark. Therefore, the Complainant proved its trademark rights and that the trademarks are in use.

The disputed domain name contains the “BILLIEBLUSH” mark in its entirety without any other additional elements plus the gTLD <shop>.

As provided in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) the test “for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” (sec. 1.7).

The disputed domain name is identical to the “BILLIEBLUSH” mark.

The domain zone <.shop> actually increases confusion as it is related to the Complainant’s activity in the fashion and clothing industry.

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 legitimate right or interest to the domain name(s)

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

The Complainant has made a prima facie case. The Respondent has failed to respond.

The Respondent is not authorized by the Complainant to use its trademarks in the disputed domain name and the parties are not related.

According to the provided evidence, the disputed domain name was previously used for a website advertising the Complainant’s goods and offering them for sale with pictures and logos taken from the Complainant’s own website.

The Respondent can be potentially considered as an unauthorized reseller and thus may have a legitimate interest under certain circumstances as provided by the “Oki Data Test” (see Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, <okidataparts.com>) and 2.8.1 of WIPO Overview 3.0.

The Respondent in this case fails to fulfill the “Oki Data Test” requirements, namely the Respondent fails to “accurately disclose the registrant’s relationship with the trademark holder”. According to the provided evidence, there was nothing on the website at the disputed domain name that would explain the Respondent’s relationship with the Complainant.

On the contrary, by using the logos and pictures of the Complainant and by choosing an identical domain name in the <.shop> gTLD, the Respondent creates a false impression of affiliation with the Complainant or endorsement by the Complainant.

Based on the provided evidence, it is clear that the Respondent has attempted to impersonate the Complainant. As noted in the URS dispute No. F92ADA5E (disputed domain name <FR-CAROLL.SHOP>): “impersonation is not fair and does not create legitimate right or legitimate interest”.

Based on the above, the Examiner finds that the Respondent lacks any legitimate right or legitimate interest 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 Examiner finds that the Complainant has provided clear and convincing evidence of Respondent's bad faith registration and use of the disputed domain name.

As provided in WIPO Overview 3.0, sec. 3.1: "bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark" and the following evidence inter alia indicates bad faith registration and use: (i) actual confusion, (ii) seeking to cause confusion, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name and (iv) absence of any conceivable good faith use (sec. 3.1.4 of WIPO Overview 3.0).

The Examiner finds bad faith registration and use of the disputed domain name based on the following:

- date of registration of the disputed domain name and its composition— registered many years after registration of the Complainant's trademarks and identical to the Complainant's mark;
- the Respondent is seeking to cause confusion by using the disputed domain name for advertising and offering the goods of the Complainant for sale, using the disputed domain name for an Internet shop and using logos of the Complainant and pictures from the Complainant's website;
- the lack of Respondent's own legitimate rights or legitimate interests in the disputed domain name and absence of any conceivable good faith use under the circumstances of this dispute taking into account absence of a response and evidence provided by the Complainant, in particular, the screenshots of the Complainant's own website and social media, screenshots of the website by the disputed domain name, the composition of the disputed domain name (identical to the Complainant's mark) and evidence of impersonation.

Based on the above, in accordance with Paragraph 1.2.6.3 letter (d) of the URS Procedure, the Examiner finds that the Respondent has intentionally attempted to attract for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website (see also previous URS determinations, e.g. URS DISPUTE NO. DD71CB05: "the Respondent reproduces the general appearance of the Complainant's official website...", URS DISPUTE NO. 5E452A69: "the Respondent would have purposefully used the trade mark CAROLL on the Respondent's website to deceive Internet users into a mistaken belief of affiliation or connection with the Complainant, and that the Respondent is offering legitimate CAROLL products. This is particularly telling given that the Respondent's website mimics a number of features of the Complainant's own website..." and URS DISPUTE No. NO. B51132E4: "the evidence in the case file clearly proves that the website in question was reproducing the Complainant's official website, including depicting its trademarks, logo, pictures, etc., and claiming to offer items at bargain prices to attract consumers").

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: BILLIEBLUSH.SHOP
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: 2024-05-16