



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

**URS DISPUTE NO. 128A3CF0**

Determination DEFAULT

**I. PARTIES**

Complainant(s): Elemis USA, Inc. (US)  
Complainant's authorized representative: IP Twins (FR)

Respondent(s): PrivacyGuardian.org llc (US)

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

Domain Name: ELEMIS.TOP  
Registry Operator: .TOP Registry  
Registrar: Namesilo, LLC

**III. PROCEDURAL HISTORY**

Complaint submitted: 2024-05-13 10:05  
Lock of the domain name(s): 2024-05-15 11:54  
Notice of Complaint: 2024-05-15 12:11  
Default Date: 2024-05-30 00:00  
Notice of Default: 2024-05-30 10:23  
Panel Appointed: 2024-06-01 18:10  
Default Determination issued: 2024-06-04 07:25

**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:**

1. The Complainant claims that it was founded in 1989 and is a part of the “L'Occitane” Group, a natural and organic ingredients-based cosmetics retailer. The Complainant states that its “ELEMIS” trademark has been recognized as the Best Premium Skincare Brand at 2020's “Sunday Times Style Beauty Awards” and its “Instagram” page is currently followed by more than 563.000 Internet users. The Complainant refers to previous UDRP decisions involving the “ELEMIS” mark. The disputed domain name was registered on April 30, 2024. The Complainant asserts that the disputed domain name includes the “ELEMIS” mark in its entirety. The <.top> gTLD does not affect a finding of identity or confusing similarity.
2. The Complainant claims that it has neither authorized the Respondent to make use of its mark in any manner nor is the Respondent known by the disputed domain name or holds trademark rights in the “ELEMIS” sign. The disputed domain name resolves to a website which allegedly offers “ELEMIS”-branded goods and displays the “ELEMIS” mark. The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use its trademarks or to seek registration of any domain name incorporating Complainant’s marks. Furthermore, the disputed domain name is so similar to the “ELEMIS” mark that the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name.
3. The Complainant alleges that given the reputation of its trademarks, there is no doubt that the Respondent was aware of the existence of its trademarks. The disputed domain name resolves to an online shop which is a copy of the Complainant's website. The Respondent offers goods under the Complainant’s mark for sale. The Complainant states that the offered goods through the Respondent’s website are heavily discounted. The Complainant submits that these goods are counterfeits. Therefore, the Respondent is intentionally trying to attract, for commercial gain, Internet users to their website by giving the false impression that the website is legitimate. The Complainant asserts that the Respondent knew, or should have known, about the existence of the Complainant when registering the disputed domain name. A simple “Google” search of the term "elemis" only displays results linked to the Complainant. The use of the disputed domain name in connection with an online store is further evidence of bad faith. The website does not accurately and prominently disclose the lack of a relationship between the Complainant and the Respondent. The Complainant alleges that the Respondent may be connected to online shopping scams.

## **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 April 30, 2024. On the date of this determination the disputed domain name resolves to an “under construction” page without content. However, the Complainant provided evidence that the disputed domain name previously resolved to a website that seemed to offer Complainant’s goods for sale at discounted prices.

The Complainant relies on the following “Elemis” trademark registrations:

- US trademark registration “ELEMIS” (word) No. 6936670, registered since December 27, 2022;
- US trademark registration “ELEMIS” (word) No. 2664274, registered since December 17, 2002;
- US trademark registration “ELEMIS” (word) No. 1678043, registered since March 03, 1992;
- International registration under the “Madrid” system “ELEMIS” (word) No. 1692772, registered since September 21, 2022 and
- International registration under the “Madrid” system “ELEMIS” (word) No. 778031, registered since March 26, 2002.

The Complainant provided evidence that its word trademarks referred to above are in use such as results of Google search depicting the marks and goods, copies of online publications and screenshots of its own website.

## **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 “ELEMIS” in the US and internationally and proof of use of its trademarks.

Therefore, the Complainant proved its trademark rights and that its word trademarks are in use.

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

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 “ELEMIS” mark as it has no elements other than “elemis”.

The domain zone <.top> does not affect finding that the disputed domain name is identical to the Complainant’s mark.

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 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 at discounted prices.

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 choosing an identical domain name, the Respondent creates a false impression of affiliation with the Complainant or endorsement by the Complainant in the absence of any express statements or disclaimers. Besides, the website makes an impression of an online shop of the Complainant, or an online shop approved by the Complainant. The choice of an identical domain name plus the content of the website and the absence of any explanations as to the nature of the relationship between the Parties indicate an intent of impersonation. As noted in the URS dispute No. F92ADA5E: "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 "ELEMIS" 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 at the heavily discounted prices, using the disputed domain name for an Internet shop in the absence of any explanations as to the relationship between the Parties and creating an impression that Respondent's activity is approved by the Complainant;
- 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, 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 website 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. 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" and URS DISPUTE NO. 52CF98EC: "The disputed domain name is associated with a fraudulent website looking like an official website belonging to the Complainant or at least authorized by it").

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: ELEMIS.TOP

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: 2024-06-04