



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

URS DISPUTE NO. 12BC5237

Determination DEFAULT

I. PARTIES

Complainant(s): Kocca S.r.l. (IT)
Complainant(s)'s authorized representative(s): Spheriens (IT)

Respondent(s): Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf (IS)

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

Domain Name(s): KOCCOUTLET.ONLINE
Registry Operator: DotOnline, Inc.
Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2021-08-27 13:47
Lock of the domain name(s): 2021-08-30 19:28
Notice of Complaint: 2021-09-01 15:30
Default Date: 2021-09-16 00:00
Notice of Default: 2021-09-16 10:38
Panel Appointed: 2021-09-16 10:41
Default Determination issued: 2021-09-21 19:32

IV. EXAMINER

Examiner's Name: Maria Cristina Martínez-Tercero Molina

The Examiner certifies that she has acted independently and impartially and to the best of her 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 an Italian fashion company, active in the manufacturing, marketing and selling fashion clothing and accessories for women since 1996. The Complainant is the owner of the trademark “KOCCA”, with several trademark registrations worldwide including:

- EUTM No. 001444363 filed on December 30, 1999 for classes 18 and 25;
- International Registration No. 1090588 registered on July 18, 2011 for classes 18 and 25.

The Complainant also owns the domain names `kocca.com`, `kocca.it` and `kocca.eu` used to resolve to the Complainant's website and items.

The Complainant asserts the following regarding the Respondent:

1. The registered domain name is identical or confusingly similar to a word mark [URS 1.2.6.1] for which the Complainant holds a valid national or regional registration and that is in current use.
2. The registrant has no legitimate right or interest to the domain name [URS 1.2.6.2].
3. The domain name was registered and is being used in bad faith [URS 1.2.6.3].

B. Respondent:

The Respondent did not submit a response within the deadline.

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 by the Respondent on July 15, 2021.

The Complainant is the owner of the earlier trademark registrations referred above.

Despite the Respondent has defaulted, the Examiner is still required to review the case on the merits of the claim [URS 6.3].

E. Reasoning:

1. The domain name is identical or confusingly similar to a word mark

First, and in order to comply with this requirement, the Complainant must demonstrate its trademark rights and use in the market. From the evidence filed in the present case, the Examiner satisfied that the Complainant is a well-known Italian company in the field of fashion, manufacturing, marketing and selling fashion clothing and accessories for women since 1996.



In this regard, the Complainant has successfully demonstrated to be the owner of several registered trademarks in different jurisdictions (more than 75), and also domain names. Furthermore, the Complainant has proven the use of its trademark.

Having established this, the disputed domain name almost fully incorporates the Complainant's trademark, except for the last letter "a" (which seems to be deleted in order to add the term "outlet" to the Complainant's trademark for ease of pronunciation), followed by the term "outlet", a generic word which directly could refer to the Complainant's business (an outlet is a shop/e-commerce with products of previous seasons of the same trademark), and does not add any distinctive characteristic that would dispel a finding of confusingly similarity between the trademark and the domain name.

The ".online" TLD only is useful to reinforce the intention of the Respondent of selling product online through the domain name in dispute.

Based on the above and the evidence of record, the Examiner finds that the requirements set for under URS 1.2.6.1 have been satisfied.

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

To satisfy this requirement, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests.

In this regard, the Complainant asserts that the Respondent has no connection with it, and it is not an authorized seller of its products. The Complainant also states that it is not aware of the existence of any evidence demonstrating that the Respondent might be commonly known by a name corresponding to the disputed domain name as an individual, business, or other organization.

The Examiner finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not rebutted the assertion.

In addition, as per the evidence on record and focusing on the content of the website to which the disputed domain name resolves, it is apparent that the Respondent not only do not have any legitimate interest in the disputed domain name, but is using the domain name to attract Internet users to the website, creating a likelihood of confusion with the Complainant's trademark and trading off the Complainant's reputation. Please see the third requirement below for a more complete analysis.

Therefore, the Examiner finds the Complainant has satisfied URS 1.2.6.2.

3. The domain name was registered and is being used in bad faith

To comply with URS 1.2.6.3, the Complainant must prove both the registration and use of the disputed domain name are in bad faith.

The Complainant asserts that the disputed domain name is used as a commercial website where counterfeit products seem to be sold, without any disclaimer informing about the lack of relationship with the Complainant. Moreover, from the Complainant's perspective, Respondent's domain name obviously confuses potential customers and discourages users from locating Complainant's website, thereby diluting the value of Complainant's trademark. Finally, the most important proof of bad faith, from the Complainant's perspective, is the content of the website associated with the disputed domain name, which mimics the Complainant's one reproducing its mark as well as Complainant's copyrighted images without any authorization.

After having reviewed the screenshots of both the disputed domain name's website and the Complainant's official website, the Examiner considers that the domain name in dispute resolves to a website that reproduces elements and the look and feel of the Complainant's website (which seem to be protected under copyright), and this indicates that the purpose of the disputed domain name is to deceive potential consumers, by giving appearance that the website inside the domain name in dispute belongs to the Complainant.

Furthermore, the term "outlet" in the domain name and the ".online" TLD also demonstrates the bad faith of the Respondent, due to their connection to both, the Complainant's market field, and the aim of selling online products. Moreover, and considering the lack of the last letter of the KOCCA trademark, it is clearly a typosquatting case, and evidences an intention on the part of the Respondent (hereby corroborated by infringing website content) to confuse users seeking or expecting the Complainant.

Finally, the WHOIS information shows that the Respondent is deliberately hiding its identity, and this strongly indicates the bad faith in the registration and use of the domain name in dispute.

Considering the foregoing, the Examiner finds that the domain name in dispute was registered and has been used by the Respondent in bad faith, as per the requirements set forth under URS 1.2.6.3.

4. Abusive Complaint

The Examiner finds that the Complaint is neither abusive nor contains deliberate material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): KOCCOUTLET.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: Maria Cristina

Surname: Martínez-Tercero Molina

Date: 2021-09-21