



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

URS DISPUTE NO. 32C1A790

Determination DEFAULT

I. PARTIES

Complainant(s): EXNESS HOLDINGS CY LIMITED (CY)

Respondent(s): SUN XIN HAI (CN)

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

Domain Name(s): IEXNESS.TOP
Registry Operator: .TOP Registry
Registrar: XinNet Technology Corporation

III. PROCEDURAL HISTORY

Complaint submitted: 2022-11-04 14:12
Lock of the domain name(s): 2022-11-09 09:40
Notice of Complaint: 2022-11-10 17:23
Default Date: 2022-11-25 00:00
Notice of Default: 2022-11-25 10:27
Panel Appointed: 2022-11-25 10:31
Default Determination issued: 2022-12-02 04:02

IV. EXAMINER

Examiner's Name: Carrie Shang

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 the owner of a trademark for the word mark EXNESS, nationally registered in the Republic of Cyprus and internationally registered via WIPO in multiple countries and jurisdictions.

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 Complainant is part of the Exness Group, a global financial broker offering a broad range of instruments from multiple asset classes since 2008. The Complainant is the owner of a trademark for the word mark EXNESS, nationally registered in the Republic of Cyprus and internationally registered via WIPO in multiple countries and jurisdictions.

The Exness Group operates its official website at <www.exness.com>, domain name registered on 26 August 2008. The Complainant also controls more than 450 domain names with identified parts containing the term “exness”.

The disputed domain name in this case iexness.top was created on 5 August 2022, via the Registrar Xin Net Technology Corporation.

E. Reasoning:

According to Paragraph 13 of the URS Rules, the Examiner shall make a Determination of a Complaint in accordance with the URS Procedure, the URS Rules and any rules and principles of law that it deems applicable.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires Complainant to make a prima facie case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name should be suspended.

For the Complainant to succeed, it must establish that each of the three following conditions under 1.2.6 URS Procedure are satisfied:

- That the disputed domain name is identical or confusingly similar to a word mark;
- That the Registrant has no legitimate right or interest to the disputed domain name;
- That the disputed domain name was registered and is being used in bad faith.

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

The disputed domain name is confusingly similar to the EXNESS trademark, as it contains the entire EXNESS trademark with the added initial letter <i>. The added letter does not negate the confusing similarity that exists.



In the present case the disputed domain name fully incorporates the Complainant's trademark and is identical to the Complainant's registered trademark. The top level domain name .top should not impact the finding of identity and/or similarity.

Therefore, 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.

In this present case and according to the Complainant, the Complainant has never given consent to Respondent to use its EXNESS trademark, for any domain name nor for any other purpose. The Respondent is not known by the disputed domain name and has not acquired rights in the EXNESS trademark.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. In the case at issue the Respondent decided not to submit any Response or evidence of any concrete circumstances which could demonstrate, pursuant to the URS, that it has any rights or legitimate interests in the disputed domain name.

Under these circumstances, the Examiner finds that the requirements of URS Procedure 1.2.6.2 have been satisfied.

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

According to URS Procedure 1.2.6.3, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. URS Procedure 1.2.6.3 identifies non-exclusive list of circumstances that Examiner could consider as constituting bad faith.

Noting that the scenarios of bad faith use and registration are non-exhaustive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant's trademark would also satisfy the complainant's burden.

In a non-exhaustive manner, below circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain names in bad faith:

- The Respondent's website exploits the Complainant's goodwill by offering currency pairs trading services under the EXNESS name on the website linked to the disputed domain name. Such services are similar to services provided by the Complainant and for which the Complainant is recognized as a leading provider. The use of the disputed domain

name in this way makes consumers believe that the resolved website is connected to the Complainant;

- Taking into the circumstances, it is highly unlikely that the Respondent was unaware of the Complainant's EXNESS trademark rights when the Respondent registered the disputed domain name. The presumed knowledge of an otherwise well-known mark when registering a confusingly similar domain name implies bad faith.

The Respondent did not provide any formal response with conceivable explanation of its behaviour within these proceedings. In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant URS Procedure 1.2.6.3.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): IEXNESS.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: Carrie

Surname: Shang

Date: 2022-12-02