



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

URS DISPUTE NO. 4A4BD32A

Determination DEFAULT

I. PARTIES

Complainant(s): Cache Cache (FR)
Complainant's authorized representative: MIIP - MADE IN IP (FR)

Respondent(s): Mu ha (FR)

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

Domain Name: CACHEVENTE.STORE
Registry Operator: Radix FZC DMCC
Registrar: DDD Technology Pte. Ltd.

III. PROCEDURAL HISTORY

Complaint submitted: 2023-11-28 11:20
Lock of the domain name(s): 2023-11-29 19:48
Notice of Complaint: 2023-11-30 11:17
Default Date: 2023-12-15 00:00
Notice of Default: 2023-12-26 21:39
Panel Appointed: 2023-12-26 21:39
Default Determination issued: 2023-12-29 19:56

IV. EXAMINER

Examiner's Name: Nathalie Dreyfus

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

Procedural findings:

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under 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.

Findings of fact:

The Complainant is a French Company, part of GROUPE BEAUMANOIR, and the exclusive proprietor of the CACHE-CACHE Trademark. The Complainant claims that the disputed domain name used by the Respondent is confusingly similar to its CACHE-CACHE Trademark. The Complainant also asserts that the Respondent has neither any rights to nor any legitimate interests in the contested domain name. The Complainant alleges that the Respondent has both registered and has been using the disputed domain name in bad faith.

Reasoning:

Even though the Respondent has defaulted, URS Procedure 1.2.6 requires the 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:

“1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name.

1.2.6.3. that the domain was registered and is being used in bad faith”.

Additional URS sections provide that:

“8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complainant under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner that the use of the domain name in question is a non-infringing use or fair use of the trademark.

8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complainant will be denied, the URS proceeding will be terminated without prejudice, e.g. a URS Appeal, UDRP, or a court proceeding may be utilized. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse”.

In its Complaint, the Complainant provided documentary evidence that it holds valid registrations for the CACHE CACHE Trademark. Complainant also provided documentary evidence that it is the owner of the domain name <cache-cache.fr> and that its CACHE CACHE Trademark is in use through its official website.



However, the Examiner finds that the disputed domain name is not confusingly similar to the Complainant's trademarks.

The Complainant's trademarks consist in the repetition of the word "CACHE", which means "hide and seek" in French. In the present case, the disputed domain name does not reproduce in its entirety the Complainant's CACHE CACHE Trademark. The mere partial reproduction of the word "CACHE" in the disputed domain name is not sufficient to prove confusing similarity. Indeed, the Complainant does not own a right on the generic term "CACHE" (meaning "hide" in English).

The addition of the word "VENTE" (meaning "sale" in French) prevents even more the similarity between the disputed domain name and the CACHE CACHE Trademark.

The Complainant has therefore not met its burden to prove that the disputed domain name is identical or confusingly similar to its trademarks.

In other words, a complainant's failure to establish any of the aforementioned three elements by clear and convincing evidence must result in a decision rejecting the complainant's requested relief. (See Paragraph 8.6 of the URS Procedure: *"If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP"*).

As Paragraph 8.5 of the URS Procedure states: *"The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse"*.

After reviewing the Complainant's submissions, the Examiner determines that the Complainant has not established by a standard of clear and convincing evidence the first element of the URS Procedure, which is that the disputed domain name be identical or confusingly similar to the Complainant's CACHE CACHE Trademark. Having failed to establish this element of the URS Procedure with respect to the disputed domain name, the Complaint is denied without prejudice.

VIII. DETERMINATION

A. Demonstration of URS elements

Not demonstrated

B. Complaint and remedy

Complaint: Rejects

Domain Name: CACHEVENTE.STORE

Unlocks and returns to the full control of the Registrant

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Nathalie

Surname: Dreyfus

Date: 2023-12-29