



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

URS DISPUTE NO. 553EE1EC

Determination DEFAULT

I. PARTIES

Complainant(s): Breitling (CH)
Complainant's authorized representative: IP Twins (FR)

Respondent(s): Domain Privacy, Domain Name Privacy Inc. (CY)

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

Domain Name: BREITLING.SITE
Registry Operator: Radix Technologies Inc.
Registrar: Communal Communications Ltd

III. PROCEDURAL HISTORY

Complaint submitted: 2024-04-15 13:19
Lock of the domain name(s): 2024-04-15 21:20
Notice of Complaint: 2024-04-17 09:46
Default Date: 2024-05-02 00:00
Notice of Default: 2024-05-03 14:41
Panel Appointed: 2024-05-03 14:59
Default Determination issued: 2024-05-07 07:45

IV. EXAMINER

Examiner's Name: Dr. Marinos Papadopoulos

The Examiner certifies that he/she has acted independently and impartially and to the best of his/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's contentions can be summarized as follows:

1. The Complainant is a legal entity founded in 1884, and since then has been manufacturing high-end chronographs, watches and related accessories.
2. It has been known worldwide for precision-made chronometers designed for aviators and operates stores and collaborates with distributors on all continents.
3. It owns and makes use of numerous trademark registered worldwide in the term BREITLING, such as the International Trademark No. 613794 BREITLING (figurative mark), registered since January 07, 1994 for Nice Class 14, and the International Trademark No. 641658 BREITLING (figurative mark), registered since July 19, 1995 for Nice Classes 3, 9, 16, 18, 25 & 28 (hereinafter collectively referred to as "the BREITLING trademark").
4. The BREITLING trademark is in current use, including the use on the Complainant's domain name and related website <breitling.com>, registered since June 01, 1995.
5. The disputed domain name is identical to the BREITLING trademark. The TLD is not taken into consideration when assessing the risk of confusion.
6. The term "BREITLING" is arbitrary in relation to watch-making. Arbitrary and fanciful marks are among the strongest varieties of marks and, consequently, are generally given strong protection against infringement (see WIPO Case No. D2004-1041).
7. The disputed domain name is not used in connection with a bona fide offering of goods or services. The disputed domain name is not used at all, since it resolves to a blank page. The non-use of the disputed domain name is indicative of bad faith registration and use.
8. The Respondent (as an individual or an organization) is not known by the disputed domain, nor holds any rights in the BREITLING trademark. The Respondent lacks rights or legitimate interests in the disputed domain name.
9. The Respondent registered the disputed domain name despite having received a notification stating that the domain name matched the Complainant's trademark registered in the Trademark Clearinghouse (TMCH). The Respondent might have registered the disputed domain name for the purpose of selling it to the Complainant.
10. There is evidence that the Respondent knew or must have known, at the time of registration of the disputed domain name, the existence of the Complainant.
11. The fact that the disputed domain name is identical to the Complainant's trademark results in the likelihood of confusion and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's inactive website.
12. By using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.
13. The Complainant, therefore, submits that it has made a prima facie case, the three elements of URS Procedure 1.2.6 are satisfied.

B. Respondent:

The Respondent did not provide any 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:

1. The Complainant is a legal entity with a history of 140 years in the manufacturing of high-end chronographs, watches and related accessories and a worldwide reputation for precision-made chronometers designed for aviators.
2. The Complainant operates many stores worldwide and collaborates with distributors on all continents. There are three distributors of Complainant's products in Cyprus (2 in Limassol and 1 in Paphos) wherein the Respondent is based.
3. The Complainant has provided documentary evidence to show that it owns the International Trademark No. 613794 BREITLING (figurative mark), registered since January 07, 1994 for Nice Class 14, and the International Trademark No. 641658 BREITLING (figurative mark), registered since July 19, 1995 for Nice Classes 3, 9, 16, 18, 25 & 28 (hereinafter collectively referred to as "the BREITLING trademark").
4. The Complainant has provided documentary evidence (among others, the SMD file) to show that it makes use of BREITLING trademark, including on its official website.
5. The disputed domain name was registered on April 9, 2024 by "Domain Name Privacy Inc."
6. The disputed domain name does not resolve to any active website.

E. Reasoning:

The Examiner shall make a Determination of a Complaint in accordance with URS Procedure, URS Rules and any rules and principles of law that he deems applicable.

Under paragraph 1.2.6 of the URS Procedure, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- 1.2.6.1. 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; and
- 1.2.6.2. the Registrant has no legitimate right or interest to the domain name; and
- 1.2.6.3. the domain 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 Complainant has established to have rights in the BREITLING trademark which is in current use.

In domain disputes the test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark under the first element. The TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the complainant's trademark as it is a technical requirement of the registration.

In the case at hand, the distinctive and dominant component in the compared signs, i.e., the Complainant's BREITLING trademark from one side and the Respondent's disputed domain name from the other side, is the word "BREITLING". The disputed domain name is to be considered identical to the Complainant's earlier mark, because it reproduces, without any modification or addition, said mark.

Accordingly, the Examiner finds that the complaint meets the first requirement of paragraph 1.2.6 of the URS Procedure.

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. Once 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.

The Complainant contends that it has not authorized the Respondent, nor granted the Respondent a license or permission to register the disputed domain name or use its BEITLING trademark.

In addition, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks registered by the Respondent corresponding to the disputed domain name corroborate with the indication of the absence of any right or legitimate interest (paragraph 5.7.2 of the URS Procedure).

Moreover, the disputed domain name is inactive. Therefore, there is no evidence that the Respondent, before any notice of the dispute, used or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services (paragraph 5.7.1 of the URS Procedure) or is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue (paragraph 5.7.3 of the URS Procedure).

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances which could demonstrate, pursuant to the URS, any rights or legitimate interests in the disputed domain name.

Therefore, the Examiner finds that the Complaint meets the second requirement of paragraph 1.2.6 of the URS Procedure.

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

Paragraph 1.2.6.3 of the URS Procedure identifies a non-exclusive list of circumstances that the Examiner could consider as constituting bad faith:

- Circumstances indicating that the domain name(s) was/were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration(s) to the Complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name(s).
- The domain name(s) was/were registered in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct.
- The domain name(s) was/were registered primarily for the purpose of disrupting the business of a competitor.



- By using the domain name(s), the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The circumstances basically indicate the wrongful intention of the domain name holder to benefit, obstruct, disrupt or create confusion with the business of the trademark holder. Apart from the four factors mentioned above, the case law has also accepted bad faith in other circumstances such as when there is a standard of actual and constructive knowledge of the domain name holder who knew or ought to have known about the trademarks of the Complainant, because the parties operate in the same industry or because of the worldwide use of the trademarks of the Complainant or of Complainant's worldwide reputation and fame of the Complainant's trademarks (see WIPO Case D2008-0359, *Reebok International Limited v Domian Privacy Service, Hong Kong Names LLC*; WIPO Case DTV 2007-0009, *AFC Ajax v R de Monchi*; WIPO Case D2006-0032, *Adidas v Zhifang Wu*; WIPO Case DTV 2006-0002, *G-Star International v James Hobart*; WIPO Case D2006-0748, *Adidas-Salomon AG v Digi Real Estate Foundation, Patrick Williamson*).

The disputed domain name is identical to Complainant's earlier BREITLING trademark. The term "BREITLING" is arbitrary in relation to watch-making. Considered the worldwide reputation acquired by the BREITLING trademark over the years, it is inconceivable that the Respondent was not aware about the Complainant's trademark when he registered the disputed domain name. To the contrary, even though at the time of registration the Respondent received a notification that the domain name matched the BREITLING trademark in the Trademark Clearinghouse (TMCH), he proceeded with the registration. Thus, the Respondent had actual constructive knowledge of Complainant's prior and widely used trademark by the time he applied for the registration of the disputed domain name.

Also, the disputed domain name resolves to a blank page. Past panels have held that the non-use of a domain name identical or confusingly similar to well-known trademark is indicative of bad faith under the passive holding doctrine (see in particular WIPO Case No. D2000-0003, *Telstra Corporation Limited v. Nuclear Marshmallows*).

Therefore, the Examiner finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract users for commercial gain by creating a likelihood of confusion as to its source or affiliation with the Complainant.

In consideration of the all the above analysis, in the case at hand all the three elements of URS Procedure 1.2.6 are satisfied, i.e., -1) the disputed domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use; -2) the registrant, i.e., the Respondent has no legitimate right or interest to the disputed domain name; -3) the disputed domain was registered and is being used in bad faith.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name: BREITLING.SITE
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: Marinos
Surname: Papadopoulos
Date: 2024-05-07