



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

URS DISPUTE NO. 5C6B2484

Determination DEFAULT

I. PARTIES

Complainant(s): ZeniMax Media Inc. (US)
Complainant's authorized representative: Kisch Global Limited (UK)

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

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

Domain Name(s): FALLOUTMERCH.STORE
Registry Operator: Radix FZC DMCC
Registrar: NameCheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2024-03-05 14:47
Lock of the domain name(s): 2024-03-06 22:20
Notice of Complaint: 2024-03-08 11:12
Default Date: 2024-03-23 00:00
Notice of Default: 2024-03-24 09:32
Panel Appointed: 2024-03-24 09:33
Default Determination issued: 2024-03-25 10:55

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 states that it is an award-winning creator and worldwide publisher of interactive entertainment, best known for action role-playing video game franchises like “DOOM” and “Fallout”. The video game series “Fallout” was released in 1993. Both video game series and franchise merchandise have been almost exclusively distributed through Complainant's official stores, websites and selected authorized distributors, licensees and retailers. The Complainant alleges that “Fallout” is not an ordinary or dictionary word. It refers to various “Fallout” registered trademarks, including its international trademark registration No. 905457 and claims that its “Fallout” marks are used and provides proof of use submitted to the USPTO. The disputed domain name was registered on July 20, 2023 and is used for a website advertising and selling third-party products and accessories which appear to be related to Complainant's video game series. The website by the disputed domain name holds out to be official by prominently using Complainant's FALLOUT trademark in the disputed domain name and at the top of the website. The website reveals no information regarding the identity of the website provider nor acknowledges the Complainant as the real brand owner. This leaves internet users under the false impression that the website is owned by the Complainant or one of its official licensees. The disputed domain name adopts the Complainant's registered trademark together with a merely generic word.
2. The Complainant alleges that the Respondent and the website by the disputed domain name are not in any way affiliated to the Complainant nor has the Complainant authorized Respondent's registration and use of the disputed domain name. The Complainant states that the Respondent fails to comply with the “Okidata” requirements.
3. The Complainant claims that by registering the disputed domain name comprising of Complainant's trademark and prominently using Complainant's trademarks and copyright protected content, the Respondent is attempting to attract internet users looking for Complainant's franchise merchandise, and purposefully misleading users as to the source of the website. By using the Complainant's trademarks in the disputed domain name and hiding the identity of the website provider, the Respondent is purposefully misleading users as to the source, sponsorship, or endorsement of the offerings under the disputed domain name. Such use demonstrates bad faith. The Respondent is intentionally using Complainant's trademarks to confuse and attract customers to its site, while also offering products unrelated to the Complainant. By registering the disputed domain name, which wholly adopts Complainant's FALLOUT trademark and falsely suggests an affiliation with the Complainant, it is clear that the Respondent is illegitimately and directly targeting the Complainant, its trademarks and copyright protected content.

B. Respondent:

The Respondent did not submit a Response.

C. Procedural findings:

The Complainant has submitted the URS Complaint concerning the domain names FALLOUTMERCH.STORE and SKYRIMSHOP.COM.

A URS complaint may only be filed against a new gTLD introduced in the root after 1 January 2013 (section 3, letter (f), of URS Rules), gTLDs and ccTLDs that have specifically opted in



their registry agreement for the URS as an applicable domain name dispute resolution proceeding. Therefore, MFSD, during the administrative review phase of the proceeding and in virtue of section 3.4 of URS Procedure, dismissed, without prejudice, the Complaint with reference to the domain name SKYRIMSHOP.COM, ordering, at the same time, that the URS proceeding proceeds only with reference to the domain name FALLOUTMERCH.STORE. Therefore, the Examiner in his determination does not consider any arguments and evidence in relation to the SKYRIMSHOP.COM domain name. The term “disputed domain name” refers only to FALLOUTMERCH.STORE.

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 July 20, 2023.

The disputed domain name resolves to an active website that appears to advertise and offer for sale Complainant-related merchandise under the FALLOUT trademark and claims to be “Official Fallout Merch Store”.

The Complainant relies on the following word trademark registration for the term FALLOUT:

- International trademark registration under the Madrid system No. 905457, registered on November 02, 2006, protected for certain goods and services in classes 09 and 41.

The Complainant has provided evidence that its word trademark is in use.

E. Reasoning:

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

The Complainant provided proof of the registration of its FALLOUT trademark (word) and proof of use of such mark.

The disputed domain name incorporates the FALLOUT trademark in its entirety with the addition of the “merch” element that can be seen as a descriptive term (short form of “merchandising”).

As provided in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”): “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element” (section 1.8).

The Complainant’s mark is clearly recognizable within the disputed domain name and the descriptive element “merch” does not avoid confusing similarity. Rather it increases the similarity, since it refers to Complainant’s related activity. The <.store> new gTLD does not affect the confusing similarity analysis, since it is a technical requirement of the registration.

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/her rights or legitimate interests.

The Complainant has made a prima facie case and the Respondent 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.

The Respondent appears to be offering Complainant-related merchandises for sale and may have a legitimate interest in domain names 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, however, fails to fulfill the “Oki Data Test” requirements, namely the Respondent fails to “accurately and prominently disclose the registrant’s relationship with the trademark holder”. On the contrary, the Respondent, by using the “Official Fallout Merch Store” sign, creates a false impression of affiliation with the Complainant or endorsement by the Complainant.

Based on the provided evidence it is clear that the Respondent attempts to impersonate the Complainant. 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 rights or legitimate interests 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 circumstances:

- i. date of registration of the disputed domain name and the nature of the disputed domain name – registered many years after registration of the Complainant’s FALLOUT trademark and incorporating the Complainant’s mark with the addition of a descriptive term “merch”;
- ii. the Respondent is seeking to cause confusion by using the disputed domain name for advertising and offering the Complainant-related merchandise for sale and by using the “Official Fallout Merch Store” sign on the website and to impersonate the Complainant;
- iii. 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 evidence provided by the Complainant.

Based on the above, 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. DD71CB05: “the Respondent reproduces the general appearance of the Complainant’s official website using the Complainant’s trademark throughout the mentioned website without any



authorization of the Complainant...”). The Respondent is engaged in impersonation of the Complainant and impersonation evidences bad faith.

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(s): FALLOUTMERCH.STORE
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: 2024-03-25