



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

URS DISPUTE NO. 5E452A69

Determination DEFAULT

I. PARTIES

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

Respondent: Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf (IS)
(collectively referred to as 'the Parties')

II. THE DOMAIN NAME, REGISTRY OPERATOR AND REGISTRAR

Domain Name: CAROLLFR.SHOP ('the disputed domain name')
Registry Operator: GMO Registry, Inc.
Registrar: NameCheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2024-04-04 16:51
Lock of the domain name(s): 2024-04-10 20:07
Notice of Complaint: 2024-04-11 09:40
Default Date: 2024-04-26 00:00
Notice of Default: 2024-04-26 10:00
Panel Appointed: 2024-04-26 10:12
Default Determination issued: 2024-04-29 02:14

IV. EXAMINER

Examiner's Name: Gustavo Moser

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 URS administrative proceeding.

V. RELIEF SOUGHT

The Complainant requests that the disputed 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. Disputed domain name

The disputed domain name was registered on 25 March 2024.

At the time of writing, the disputed domain name resolves to an active website, the particulars of which are addressed in the below sections of this URS determination (for present purposes, ‘the Respondent’s website’).

B. Complainant:

B.1 Trade mark standing

For the purposes of this URS administrative proceeding, the Complainant relies on the following registered trade marks:

- EU trade mark registration no. 009892431, filed on 13 April 2011, for the word mark CAROLL, in classes 14, 18, and 25 of the Nice Classification;
- International trade mark registration no. 1208979, filed on 25 February 2014, for the word mark CAROLL, in classes 18, 25, and 35 of the Nice Classification; and
- French trade mark registration no. 1233265, filed on 15 April 1983, for the word mark CAROLL, in classes 18 and 25 of the Nice Classification.

(collectively or individually referred to as ‘the Complainant’s trade mark’, ‘the Complainant’s trade mark CAROLL’, or ‘the trade mark CAROLL’).

In addition to the above, the Complainant advises that a URS examiner has found the trade mark CAROLL to be well-known (MFSD URS dispute no. 9A037A5B).

B.2 Complainant’s Factual Allegations

The Complainant is a famous French clothing brand for women, created in 1963. It commercialises CAROLL products under more than 500 stores in France and worldwide, as well as through its website at <www.caroll.com/fr>.

The Complainant seeks to obtain the suspension of the disputed domain name on the grounds advanced in section B.3 below.

B.3 URS grounds

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

The Complainant submits that the disputed domain name incorporates the Complainant’s trade mark alongside the contiguous country code abbreviation ‘fr’ for France. In addition, the suffix ‘fr’ has no other purpose than to mislead Internet users into thinking that the disputed domain name is owned by the Complainant.

ii. Respondent has no rights or legitimate interests in respect to the disputed domain name



The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been authorised by the Complainant to use the Complainant's trade mark or to register any domain name bearing the Complainant's trade mark. Furthermore, there is no legal or business relationship between the Parties.

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

The Complainant submits that the disputed domain name was registered and is being used in connection with a fraudulent website which mimics the Complainant's own website, for instance, trade mark, logo, and pictures. Furthermore, in the 'About us' section, the Respondent's website reproduces the brand story of a Complainant's competitor instead.

Moreover, the Respondent claims to offer CAROLL products at bargain prices to unduly attract consumers and perpetrate fraudulent activities.

C. Respondent:

The Respondent has defaulted in this URS administrative proceeding and has therefore failed to advance any substantive case on the merits.

D. 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.

E. Findings of fact:

The disputed domain name <carollfr.shop> was registered on 25 March 2024.

The disputed domain name resolves to an online store on which CAROLL products appear to be commercialised, notwithstanding the absence on the Respondent's website of a disclaimer regarding the relationship with the Complainant, or the lack thereof.

The Complainant has, to the satisfaction of the Examiner, adduced proof that the Complainant has trade mark rights in the term 'Caroll'.

F. Reasoning:

Pursuant 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 rule and principles of law that the Examiner deems applicable.

Paragraph 1.2.6 of the URS Procedure sets out the grounds which the Complainant must establish to succeed:

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

2. The Respondent has no rights or legitimate interests to the disputed domain name; and
3. The disputed domain name was registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the URS procedure is clear and convincing, which lays down the foundations for examiners to determine each of the three URS Procedure grounds.

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

The Examiner is satisfied that the Complainant has URS-relevant rights in the registered trade mark CAROLL since 1983 as supported by its submission into evidence of screenshots from the websites of the trade mark offices referencing the particulars of the Complainant's trade mark registrations.

The disputed domain name <carollfr.shop> contains the Complainant's trade mark CAROLL in its entirety, together with the abbreviation 'fr' which has no material impact on the recognisability of the Complainant's trade mark in the disputed domain name string. On the contrary, the presence of the abbreviation 'fr' in the disputed domain name enhances the association with the Complainant, to the extent that it evokes one of the Complainant's (and likely the largest) country of business operation (France).

The Examiner further notes that Top-Level Domain (TLD) suffixes, whilst generally disregarded in the assessment of confusing similarity for being part of the anatomy of a domain name, in this case (<.shop>) may actually heighten the risk of confusion given its descriptive nature.

Accordingly, the Examiner finds that the Complainant has succeeded under paragraph 1.2.6.1 of the URS Procedure.

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

The Examiner notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. There is no contractual arrangement between the Parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Examiner also notes that the Complainant claims not to have authorised the Respondent to use the Complainant's trade mark nor to commercialise the Complainant's goods on the Respondent's website. On this particular point, and to err on the side of caution, the Examiner takes stock of the jurisprudential views formed by domain name disputes under the UDRP Policy and UDRP Rules (see WIPO Panel Views on Selected UDRP Question, Third Edition Overview 3.0, paragraph 2.8), according to which resellers, distributors or service providers using a domain name containing a complainant's trade mark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services, and thus have a legitimate interest in such domain name. UDRP panels have termed this as the 'Oki Data test' (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903), which comprises the following four cumulative requirements:

1. The respondent must actually be offering the goods or services at issue;
2. The respondent must use the site to sell only the trade marked goods or services;



3. **The website must accurately and prominently disclose the registrant's relationship with a trade mark holder** (emphasis added); and
4. The respondent must not try to 'corner the market' in domain names that reflect the trademark.

The Respondent would fail to meet the Oki Data test, the Examiner being unable to locate any disclaimer regarding the relationship between the Parties on the screenshots of the Respondent's website as provided by the Complainant. The Examiner is furthermore unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations 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.

The Respondent has submitted no evidence to refute the Complainant's claims. Instead, there is robust evidence on the available record of the Respondent's attempt to impersonate the Complainant, as discussed under item 3. below.

For the foregoing reasons, the Examiner finds that the Complainant has made a *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 1.2.6.2 of the URS Procedure.

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

The Complainant raises a number of factors that may indicate registration and use in bad faith of the disputed domain name. Firstly, the Complainant's trade mark predates the registration of the disputed domain name by many years, in fact for over four decades. Secondly, the disputed domain name bears the trade mark CAROLL in its string, coupled with the abbreviation 'fr' which is immaterial to affect the recognisability of the Complainant's trade mark. The Examiner has therefore no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

As regards the use in bad faith, the Complainant submits that the Respondent has engaged in the conduct d. set out in paragraph 1.2.6.3 of the URS Procedure, which provides as follows:

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

The Examiner has considered the available record and found compelling indicia that the Respondent would have purposefully used the trade mark CAROLL on the Respondent's website to deceive Internet users into a mistaken belief of affiliation or connection with the Complainant, and that the Respondent is offering legitimate CAROLL products. This is particularly telling given that the Respondent's website mimics a number of features of the Complainant's own website. It would appear to the Examiner that the Respondent's sole purpose for registration and use of the disputed domain name was and is to impersonate the Complainant.

In view of the above, the Examiner finds that the Complainant has met the requirement under paragraph 1.2.6.3 of the URS Procedure.

4. Abusive Complaint

For the avoidance of doubt, the Examiner finds that the Complaint was not brought by the Complainant abusively nor does the Complaint contain any deliberate material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name: CAROLLFR.SHOP

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: Gustavo

Surname: Moser

Date: 2024-04-29