



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

URS DISPUTE NO. 638D27CB

Determination DEFAULT

I. PARTIES

Complainant(s): ETAM (FR)

Complainant(s)'s authorized representative(s): Domgate (FR)

Respondent(s): EVOLUCIEL, Richard Pellerin (FR)

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

Domain Name(s): ETAM.REST

Registry Operator: Punto 2012 Sociedad Anonima Promotora de Inversion de Capital Variable

Registrar: Dynadot, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2022-10-29 23:12

Lock of the domain name(s): 2022-11-02 11:39

Notice of Complaint: 2022-11-03 15:24

Default Date: 2022-11-18 00:00

Notice of Default: 2022-11-20 12:57

Panel Appointed: 2022-11-20 14:11

Default Determination issued: 2022-11-22 18:17

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

A. Complainant:

First, Complainant, a French company, claims to be the holder of several “ETAM” trademarks, duly registered worldwide. Complainant asserts that it is recognized as one of the world’s most popular international lingerie brands with the presence on many social networks (Facebook, Twitter, Instagram, YouTube, Snapchat, etc. and via the following websites: <www.etam.com>, <etam-groupe.com> and <press.etam.com>).

Complainant alleges that the disputed domain name <etam.rest> (hereinafter referred to as the “**Disputed Domain Name**”) is identical or confusingly similar to its trademark. The Disputed Domain Name is made up of Complainant’s “ETAM” trademark, which is an invented word, not a descriptive term followed by the extension .REST. Complainant asserts that the TLD “.REST” does not prevent a finding of confusing similarity between the Disputed Domain Name and Complainant’s well-known mark.

Complainant further states that Respondent has no legitimate right or interest to the Disputed Domain Name since no license or permission of any kind has been given by Complainant to Respondent to use Complainant’s “ETAM” trademarks. Moreover, Respondent is not known under these trademarks in question.

Furthermore, Complainant argues that the Disputed Domain Name was registered and is used in bad faith. Complainant alleges that the Disputed Domain Name was registered / acquired primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant or to its competitor for valuable consideration in excess of Respondent’s out-of-pocket costs directly related to the Disputed Domain Name. Complainant contends that Respondent intentionally attempted to attract for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on the Respondent’s website or location. Complainant emphasizes that the Disputed Domain Name resolves to a page which is composed of commercial links giving access to competitors’ websites.

B. Respondent:

Respondent did not reply to Complainant’s contentions and is therefore in default.

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:

Complainant owns valid trademark registrations on the sign “ETAM”, and among others:

- International trademark ETAM, No. 216180, dated January 09, 1959, duly renewed, for goods in classes 1, 2, 23, 24, 25;
- International trademark ETAM, No. 578691, dated November 18, 1991, duly renewed, for goods in class 3;
- International trademark ETAM, No. 744378, dated July 21, 2000, duly renewed, for goods in classes 3, 9, 18, 25;



- International trademark ETAM, No. 1028239, dated November 25, 2009, duly renewed, for goods in classes 3, 18, 25;
- International trademark “ETAM + device”, No. 1115884, dated February 09, 2012, for goods and services in classes 3, 9, 14, 16, 18, 25, 26, 28, 35;
- European Union trademark ETAM, No. 000874313, dated of July 13, 1998, duly renewed, for goods in classes 3, 18, 25;
- European Union trademark “ETAM LINGERIE + device”, No. 003618113, dated January 13, 2004, duly renewed, for goods in classes 3, 14, 18, 25;
- European Union trademark “ETAM PARIS + device”, No. 014404768, dated July 23, 2015, for goods and services in classes 3, 18, 25, 35.

Respondent registered the Disputed Domain Name on September 21, 2022.

E. Reasoning:

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

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

Under Paragraph 8.2 of the URS Procedure, the burden of proof shall be clear and convincing evidence.

To conclude in favor of the Complainant, a Determination shall be rendered that there is no genuine issue of material fact. Such Determination may include: i) the Complainant has rights to the name; and ii) the Registrant has no rights or legitimate interest in the domain name(s). In other words, the Complainant shall present adequate evidence to substantiate its trademark rights in the domain name(s) (e.g. evidence of a trademark registration and evidence that the domain name(s) was(were) registered and is(are) being used in bad faith in violation of the URS).

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 Complaint under the relief available under the URS (Paragraph 8.4 of the URS Procedure).

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

Complainant has shown it has trademark rights to “ETAM” worldwide, including the European Union by providing the list of registered trademarks.

The domain name incorporates the entirety of Complainant’s trademark ETAM, followed by the extension “.REST”. The Examiner finds that the addition of the extension “.REST” does not prevent a finding of confusing similarity to Complainant’s trademark.

Therefore, the Examiner concludes that the requirements of Paragraph 1.2.6 (i) of the URS Procedure have been satisfied and that the Disputed Domain Name is identical to Complainant’s trademark.

2. Respondent has no rights or legitimate interests to the domain name(s)

Complainant asserts that Respondent has no license and that no permission of any kind has been given by Complainant to use its “ETAM” trademarks. Complainant also asserts that Respondent has not been known under these trademarks. As a result, Complainant claims that Respondent has no right or legitimate interest to the Disputed Domain Name.

Respondent did not respond to Complainant’s contentions; therefore, Respondent has failed to demonstrate its rights or legitimate interests to the Disputed Domain Name.

In these circumstances and in the absence of contradictory evidence, the Examiner finds that Respondent does not have rights or legitimate interests in the Disputed Domain Name and that the requirements of Paragraph 1.2.6 (ii) of the URS Procedure have been satisfied.

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

Complainant demonstrates the established reputation of its trademarks “ETAM”. Respondent must have been aware of Complainant’s trademarks rights to the “ETAM” marks especially since Respondent is located in France as well as Complainant.

Further, the Disputed Domain Name resolves to a parking page with commercial links. One of them redirects towards a clothing store, which may be considered as Complainant’s competitor. Respondent’s use of the Disputed Domain Name may derive a commercial benefit, which demonstrates that Respondent has made a bad faith use of the Disputed Domain Name.

The Examiner finds that Respondent intentionally attempts to attract for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant’s trademark 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.

In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (iii) of the URS Procedure have been met.

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): ETAM.REST 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: Nathalie
Surname: Dreyfus
Date: 2022-11-22