



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

URS DISPUTE NO. 67462146

Determination DEFAULT

I. PARTIES

Complainant(s): Cache Cache (FR)

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

Respondent(s): Dynadot Privacy Service, Super Privacy Service LTD c/o Dynadot (US)

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

Domain Name: CACHE-CACHECCOLTHS.SHOP

Registry Operator: GMO Registry, Inc.

Registrar: Dynadot, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2023-11-22 15:35

Lock of the domain name(s): 2023-11-27 11:24

Notice of Complaint: 2023-11-27 12:35

Default Date: 2023-12-12 00:00

Notice of Default: 2023-12-12 10:38

Panel Appointed: 2023-12-12 10:38

Default Determination issued: 2023-12-13 00:09

IV. EXAMINER

Examiner's Name: Wilson Pinheiro Jabur

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:

The Complainant is a French company of the fashion industry that exploits the CACHE CACHE trademark.

The Complainant's official website is available at <cache-cache.fr>. In addition to that, the Complainant is the owner of various registrations for the CACHE-CACHE trademark, amongst which:

- European Union trademark registration No. 017449646, for the word & device trademark CACHE CACHE, filed on November 08, 2017 in classes 3, 9, 14, 16, 18, 24, 25, 35, 41 and 42;
- French trademark registration No. 3412484, for the word & device trademark CACHE CACHE, filed on February 27, 2006, in classes 14, 18, 20, 24 and 25; and
- International trademark registration No. 1103397, for CACHE CACHE, filed on April 22, 2011, in classes 18 and 25.

According to the Complainant its products are sold in 450 shops in France and 933 shops worldwide, being its trademark a renowned brand of women fashion.

Under the to the Complainant's view, the disputed domain name incorporates entirely its registered trademark with the addition of the term "ccloths" which does not add any distinctiveness thereto and has no other purpose than to mislead Internet users, making them believe that the disputed domain name is owned by the Complainant or is affiliated with the latter.

As to the Respondent's rights or legitimate interest in the disputed domain name, the Complainant states that no authorization has been given to the Respondent to use the Complainant's trademark or to register any domain name incorporating the Complainant's trademark as well as that there is no legal or business relationship between the Parties. In addition to that, the Complainant asserts that the Respondent has no prior rights such as trademarks or legitimate interests in the disputed domain name as it registered the disputed domain name after the Complainant had registered its trademarks, and rather has used the disputed domain name in connection with a fraudulent website that reproduces the Complainant's website.

Lastly, the Complainant contends that the Respondent's conduct constitutes bad faith use of the disputed domain name since it has intentionally intended to attract consumers by using the Complainant's trademark in the webpage available at the disputed domain name, reproducing the general appearance of the Complainant's official website and presenting itself as the Complainant in the "about us" section of the website.

B. Respondent:

The Respondent did not reply to the Complaint.

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:

The disputed domain name was registered on November 13, 2023. Presently an active website reproducing the Complainant's trademark and purportedly offering the Complainant's products resolves from the disputed domain name.

The Complainant has shown trademark rights over the expression "CACHE CACHE".

E. Reasoning:

In spite of the Respondent's default, URS Procedure 1.2.6 requires the Complainant to make a *prima facie* case, showing clear and convincing evidence for each of the three elements so as to have the disputed domain name suspended.

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

The Complainant has shown to be the owner, among others, of the International trademark registration No. 017449646 for the word mark "CACHE CACHE" registered on April 22, 2011, successively renewed, in classes 18 and 25.

The disputed domain name <cache-cacheccolths.shop> reproduces the Complainant's trademark in its entirety.

As previously recognized by past panels and summarized in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7 "It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for 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. (This may also include recognizability by technological means such as search engine algorithms.)". This principle is applicable, by analogy, also in the URS.

The Examiner thus finds that the Complaint meets the requirement of the URS 1.2.6 (i).

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

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. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, the Complainant indeed states that no authorization has been given to the Respondent to use the Complainant's trademark or to register any domain name incorporating the Complainant's trademark as well as that there is no legal or business relationship between the Parties.

Also, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, corroborate with the indication of the absence of a right or legitimate interest.

Under these circumstances and absent evidence to the contrary, the Examiner finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name and has therefore met the requirement of the URS 1.2.6 (ii).

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

The totality of the circumstances of a particular case has to be taken into account and the following facts of the present dispute demonstrate bad faith on the Respondent's side:

- i. The degree of distinctiveness or reputation of the Complainant's trademark – the Complainant's CACHE CACHE trademark is an arbitrary trademark and is used in various countries around the world by the Complainant;
- ii. The failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use of the disputed domain name; and
- iii. The Respondent is using the domain name in connection with an active online shop reproducing the Complainant's trademark and purportedly offering the Complainant's products and which impersonates the Complainant.

As confirmed by WIPO Overview 3.0 the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (section 3.1.4). The Examiner notes that the evidential burden for complaints under the URS is significantly higher (clear and convincing evidence) than under the UDRP (balance of probabilities); nevertheless, WIPO Overview 3.0 remains informative to this matter, since the facts and evidence on record remain consistent with the thrust of conducts described under Paragraph 1.2.6.3 of the URS.

From the evidence available in the present dispute, it clearly appears 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 trademark by fully incorporating Complainant's distinctive trademark into the disputed domain name.

This conduct is considered by the URS as a demonstration of bad faith registration and use, under Paragraph 1.2.6.3 (d) of the URS Procedure.

Such use in this Examiner's point of view may create a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of his website and therefore does not qualify as a *bona fide* use.

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: CACHE-CACHECCOLTHS.SHOP
Suspends for the balance of the registration period

C. Abuse of proceedings

Finding of abuse of proceedings: Not found

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Wilson

Surname: Pinheiro Jabur

Date: 2023-12-13