



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

URS DISPUTE NO. 7CC8C84E

Determination DEFAULT

I. PARTIES

Complainant(s): AVM Computersysteme Vertriebs GmbH (DE)
Complainant's authorized representative: MSA IP – Milojevic, Sekulic and Associates (RS)

Respondent(s): John Doe (AF)

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

Domain Name(s): FRITZ.BOX
Registry Operator: Intercap Registry Inc.
Registrar: NameSilo, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2024-02-13 18:07
Lock of the domain name(s): 2024-02-14 20:29
Notice of Complaint: 2024-02-15 12:58
Default Date: 2024-03-01 00:00
Notice of Default: 2024-03-01 11:23
Panel Appointed: 2024-03-01 11:27
Default Determination issued: 2024-03-04 23:06

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, a German company, asserts to be among Europe's leading manufacturers of broadband-connections and digital-home products, whose products are sold in more than 30 countries worldwide, having, in 2023, 890 employees and generated a turnover of EUR 580.000.000.

The Complainant further asserts to be the owner of the registered trademarks FRITZ! and FRITZ!Box, which are in use for data processing equipment, including:

- German trademark registration No. DE 39501970 for the word mark FRITZ!, registered on December 6, 1995, successively renewed, in classes 9, 41 and 42;
- European Union trademark registration No. 000916429 for the word mark FRITZ!, registered on October 14, 1999, successively renewed, in classes 9, 35, 38, 41 and 42.
- German trademark registration No. DE 30423109 for the word mark FRITZ!Box, registered on November 29, 2004, successively renewed, in classes 9, 38, 42 and 45; and
- European Union trademark registration No. 003789906 for the word mark FRITZ!Box, registered on September 15, 2005, successively renewed, in classes 9, 38 and 42.

In addition to that, the Complainant states to have been using the domain name <fritz.com> since 2018 and which presently redirects Internet users to the Complainant's company-website available at <avm.de>.

Also, according to the Complainant, given the success of its FRITZ!Box routers, its trademarks have achieved a well-known status in Germany and other countries, there presently being at least 25 million FRITZ!Box devices in use around the world, all of which count with the FRITZ.BOX address printed on their back as well as being provided with the DNS suffix FRITZ.BOX.

Therefore, under the Complainant's view, the disputed domain name is confusingly similar to the Complainant's trademarks, given that lack of the exclamation mark ("!") should be disregarded.

Furthermore, the Complainant contends that the Respondent has no right or legitimate interest in the disputed domain name given that the Respondent is not known as "Fritz.box" nor is the Respondent a licensee or partner of the Complainant, also not having been authorized by the Complainant to use its trademarks in the disputed domain name or any other manner. Moreover, the disputed domain name is being used for disrupting the Complainant's business for the Respondent's commercial gain, given that it is being offered for sale at the OpenSea marketplace for 420 ETH (corresponding to USD 1,126,608.00 on February 13, 2024), what cannot be considered as a bona fide offering of goods or services.

As to the Respondent's bad faith, the Complainant alleges that the disputed domain name was registered and is being used in bad faith also in order to prevent Complainant from reflecting its trademarks in a corresponding domain name and that the disputed domain name can lead to security risks for the Complainant's customers, including man-in-the-middle attacks, not being the apparent passive holding of the disputed domain name impeditive of a finding of the Respondent's bad faith conduct. Lastly, the Complainant contends that the Respondent has engaged in pattern of bad faith conduct, having registered other domain names that refer to third party's well-known marks such as <wpad.box> and <o2.box> and which are also being offered for sale at the OpenSea platform.

B. Respondent:



The Respondent did not reply to the Complaint's contentions.

C. Procedural findings:

Having reviewed the 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 January 22, 2024 and presently does not resolve to an active webpage.

As seen above, the Complainant has shown trademark rights over FRITZ! and FRITZ!Box.

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(s) is(are) identical or confusingly similar to a word mark

The Complainant is the owner of trademark registrations for the word trademarks FRITZ! and FRITZ!Box in various jurisdictions.

The disputed domain name <fritz.box> is confusingly similar to the Complainant's trademarks.

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.)".

It is common knowledge that domain names can only be composed of letters and/or numbers and/or hyphens ("-"), and, therefore, the exclamation mark ("!"), a non-registrable character in domain names, should be ignored for the confusing similarity test.

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(s)

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 by the Complainant to the Respondent to use the Complainant's trademarks or to register the disputed domain name.

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(s) was(were) registered and is(are) being used in bad faith

While the disputed domain name is not presently in use, previous panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

The totality of the circumstances of a particular case has to be taken into account and mainly 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 trademarks – the Complainant's FRITZ! And FRITZ!Box trademarks are arbitrary trademarks and are 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;
- (iii) The Respondent's offer of the domain name for sale on <https://my.box/> platform via the OpenSea marketplace for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; and
- (iv) The implausibility of any good faith use to which the disputed domain name may be put taking into account the distinctiveness and use of the Complainant's trademarks.

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).

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): FRITZ.BOX
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: 2024-03-04