



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

URS DISPUTE NO. 8C983CE6

Determination DEFAULT

I. PARTIES

Complainant(s): INTICOM S.p.A. (IT)

Complainant's authorized representative: Barzanò & Zanardo Milano S.p.A. (IT)

Respondent(s): Yan Hu (CN)

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

Domain Name(s): ITYAMAMA.SHOP

Registry Operator: GMO Registry, Inc.

Registrar: Chengdu West Dimension Digital Technology Co., Ltd.

III. PROCEDURAL HISTORY

Complaint submitted: 2023-01-27 15:27

Lock of the domain name(s): 2023-02-07 12:29

Notice of Complaint: 2023-02-07 20:28

Default Date: 2023-02-22 00:00

Notice of Default: 2023-02-22 15:26

Examiner Appointed: 2023-02-22 15:34

Default Determination issued: 2023-02-23 14:53

IV. EXAMINER

Examiner's Name: Jonathan Agmon

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, INTICOM S.p.A., is the owner of the trademark YAMAMAY, an Italian underwear and lingerie brand. The Complainant states that it owns several trademark registrations for the YAMAMAY trademark.

The Complainant asserts the following against the Respondent:

1. The registered domain name is identical or confusingly similar to a word or mark [URS 1.2.6.1]: for which the Complainant holds a valid national or regional registration and that is in current use;
2. The Respondent has no legitimate right or interest to the domain name [URS 1.2.6.2]; and
3. The domain name was registered and is being used in bad faith [URS 1.2.6.3] such as: b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; and c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor.

B. Respondent:

The Respondent did not submit any response.

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 Complainant owns the following trademark registrations of the YAMAMAY trademark:

- European Trademark Registration No. 005343769 registered on August 30 2007; and
- European Trademark Registration No. 003159795 registered on September 6 2004.

E. Reasoning:

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

The Complainant is the owner of the registered YAMAMAY mark. The disputed domain is <ityamama.shop>. The Examiner finds that the disputed domain name which comprises a section of the YAMAMAY mark with the prefix “it”, lacks the suffix letter “y” and addition of the top-level domain “.shop” does not avoid confusing similarity with the Complainant’s registered trademark. The prefix “it” is used to denote Italy.

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 has not authorized Registrant to use its YAMAMAY mark. The Complainant also argued that the Respondent is not commonly known by the registered domain name. The Respondent did not file a Response to the Complaint to rebut Complainant's allegations.

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 Complainant provided evidence showing two screenshots of two product webpages under the disputed domain name which appears to sell what Complainant stated are "alleged" Complainant's products. These pages bear Complainant's YAMAMAY trademark and appear to use the Complainant's photographs. However, given the limited scope of evidence presented, the Examiner is not convinced that these are sufficient to show that the Respondent was targeting the Complainant and its trademark. Contrary to Complainant's contentions, the webpages do not represent a copy of the look and feel of Complainant's website. Respondent may have used Complainant's trademark to sell Complainant's own goods and Complainant did not positively state that Respondent was selling third-party or counterfeit goods under the disputed domain name or its trademark.

Complainant also alleged that the Respondent was using information related to the history and the organization of the Complainant but failed to provide information in the English language to this effect.

URS paragraph 8.5 provides that it "... is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse." Prior URS cases have stated that "the URS process is a narrow one with a very high burden of proof and is "without prejudice to the Complainant... proceed[ing] with an action in [a] court of competent jurisdiction or under the UDRP," URS, para. 8.5, where the record may be more fully developed and the factual and legal arguments not constrained by, among other things, the 500-word limit for URS complaints." See *Banco Bilbao Vizcaya Argentaria, S.A. v. Gandiyork SL et al.*, FA1403001548656 (28 March 2014).

Accordingly, having considered the evidence submitted by the Complainant, it is the Examiner's conclusion that the Complainant failed to show URS 1.2.6.3(d).

The Examiner finds that the requirements set forth under Paragraph 1.2.6.3. of the URS Procedure have not 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

Not demonstrated

B. Complaint and remedy

Complaint: Rejects

Domain Name(s): ITYAMAMA.SHOP to be unlocked and returns to the full control of the Registrant.

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Jonathan
Surname: Agmon
Date: 2023-02-23