



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

URS DISPUTE NO. 9159208F

Determination DEFAULT

I. PARTIES

Complainant(s): ETAM (FR)

Complainant's authorized representative: Domgate (FR)

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

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

Domain Name(s): ETAMOUTLET.SHOP

Registry Operator: GMO Registry, Inc.

Registrar: Dynadot, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2023-03-16 11:26

Lock of the domain name(s): 2023-03-22 07:45

Notice of Complaint: 2023-03-22 09:39

Default Date: 2023-04-06 00:00

Notice of Default: 2023-04-06 08:35

Panel Appointed: 2023-04-06 08:40

Default Determination issued: 2023-04-11 23:39

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 French corporation, asserts to be one of the world's most popular international lingerie brands, selling tons of products from over 3,700 stores in 54 countries worldwide.

The Complainant further asserts to be the owner of more than 241 trademark registrations around the world for "ETAM", in addition to the domain name <etam.com> where its official website is found.

According to the Complainant, its well-known trademark is entirely incorporated in the disputed domain name, together with the generic term "outlet" which, as previously decided by past Panels, "demonstrates the bad faith of the Respondent, due to their connection to both, the Complainant's market field, and the aim of selling online products"; under the ".shop" top level domain ("TLD"), which, in its turn, "does not affect the identity between the disputed domain names and the Complainant's trademark".

In addition to that, the Complainant states that no license or permission of any kind has been given by the Complainant to the Respondent to use the Complainant's trademarks and that the Respondent is not known under the name ETAM.

Furthermore, the Complainant argues that had the Respondent had any rights or would it be acting in good faith, it would have given an explanation and reply to at least one of the Complainant's attempts to contact him (Annex 8 to the Complaint).

Lastly, the Complainant contends that the Respondent uses the disputed domain name in bad faith since it resolves to a parked webpage displaying commercial links to competing websites, in order to make commercial gains from the traffic generated by the disputed domain name.

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 10, 2022. Presently no active webpage resolves from the disputed domain name but at the time of the filing of this procedure a parked webpage displaying pay-per-click ("PPC links") resolved from the disputed domain name.

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

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. 744378 for the word mark "ETAM" registered on July 21, 2000 and subsequently renewed to cover goods in classes 3, 9, 18 and 25.

The disputed domain name <ETAMOUTLET.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)".

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 license or permission of any kind has been given by the Complainant to the Respondent to use the Complainant's trademark.

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

While the disputed domain name is not in active use presently, 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 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 mark – the Complainant's ETAM trademark is an arbitrary trademark and is used in 54 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 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 trademark; and
- iv. The Respondent, in having redirected Internet users to a parked webpage displaying PPC links, indicates its intention of unduly profiting from the Complainant's trademark.

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).

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 mark 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 Complainants' mark 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(s): ETAMOUTLET.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: 2023-04-11