



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

URS DISPUTE NO. 937D6532

Determination DEFAULT

I. PARTIES

Complainant(s): Les Laboratoires Servier (FR)
Complainant(s)'s authorized representative(s): IP Twins (FR)

Respondent(s): Withheld For Privacy Purposes Withheld For Privacy Purposes (IS)

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

Domain Name(s): SERVIERONLINE.XYZ
Registry Operator: Xyz.com, LLC
Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2021-04-21 16:16
Lock of the domain name(s): 2021-04-22 16:28
Notice of Complaint: 2021-04-22 18:50
Default Date: 2021-05-07 00:00
Notice of Default: 2021-05-07 15:04
Panel Appointed: 2021-05-07 15:37
Default Determination issued: 2021-05-10 10:37.

IV. EXAMINER

Examiner's Name: Igor Motsnyi

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 the largest independent French pharmaceutical group and is present in 150 countries worldwide. 100 millions of patients are treated each day with the group's various medicines. The Servier Group was founded in 1954 by Dr Jacques Servier, "Servier" is a surname that has no dictionary meaning to the best of the Complainant's knowledge, and the Respondent therefore cannot claim that "Servier" is a descriptive term which he needs to use in the course of his business activities to describe his goods or services.

The Complainant is the owner of numerous trademarks with the word element "Servier".

1. The disputed domain name was registered on March 10, 2021. The disputed domain name consists of the trademark of the Complainant in its entirety with the added generic term "online". The distinctive part of the disputed domain name is "servier" which stands out as domain names are read from left to right and due to the fanciful nature of the word "servier". The mere addition of a generic term such as "online" should not allow the disputed domain name to escape confusing similarity.
2. The Respondent has not been authorized to register the disputed domain name by the Complainant, who contends that the Respondent is not affiliated with the Servier Group in any way. The Complainant could not find any clue that would indicate that the Respondent would have legitimate rights on "servier" or "servier online", or a bona fide offering of goods or services linked to the disputed domain name. The Respondent's details are unknown to the Complainant due to the use of a WHOIS privacy service, and the disputed domain name currently redirects to a generic parking page displaying PPC commercial links. Such activity cannot be considered as legitimate in the presence of a well-known, widely used trademark such as SERVIER. In this situation, the Complainant contends it has made a prima facie case of the Respondent lacking rights or legitimate interests in the disputed domain name.
3. The Complainant contends that the Respondent has registered the disputed domain name in bad faith. The combination of the distinctiveness of the Complainant's trademark and its extensive use across the world makes it highly unlikely that the Respondent did not know about the Complainant before the registration of the disputed domain name. Top-ranked Google search results relate to the Complainant (notably servier.com website). The Respondent knew or should have known that, when registering and using the disputed domain name, he would do so in violation of the Complainant's earlier trademark rights. Regarding the use of the disputed domain name, the Complainant contends that the current use qualifies as an intentional attempt to attract, for commercial gain, Internet users to the Respondent's PPC links page by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site accessible through the disputed domain name.

B. Respondent:

The Respondent did not submit a 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 Procedure 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 March 10, 2021 and resolves to PPC parking page with various links.

The Complainant has demonstrated that it owns the following registered trademarks:

- EU word trademark SERVIER No. 004279171, dated February 7, 2005, duly renewed and designating goods and services in international classes 05, 35, 41 42 and 44;
- International word trademark SERVIER No. 814214, dated August 8, 2003, duly renewed, and designating goods and services in international classes 05, 35, 41, 42 and 44;
- International trademark (word + design) SERVIER No. 571972, dated May 29, 1991, duly renewed and designating goods in international classes 01, 03 and 05 and
- International trademark SERVIER (word + design) No. 549079, dated January 19, 1990, duly renewed and designating goods and services in international classes 01, 03, 05, 10, 16, 35, 41 and 42.

The Complainant provided proof of use of its trademarks including Google search results and registration in the Trademark Clearinghouse.

E. Reasoning:

According to Paragraph 13 of the URS Rules, the Examiner shall make a Determination of a Complaint in accordance with the URS Procedure, the URS Rules and any rules and principles of law that it deems applicable.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires Complainant to make a *prima facie* case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name should be suspended.

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

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

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

The Complainant has provided evidence of ownership of both word marks and combined marks with both device and word elements.

As noted by other Examiners *"the use of the words "word mark" in URS 1.2.6.1 does not specifically exclude trademarks which are combined of a word element and a graphical element, provided the word element is clear, and sufficiently distinct and separate from the graphical element...As is also acceptable under the UDRP body of law, and without derogating from the URS goals, the word element in the trademark should not have been disclaimed leaving the design element the only element having the source of distinctiveness"* (see URS appeal determination, Forum case FA1604001672049 where this question was analyzed in detail and MFSD URS DISPUTE No. 369B0FE1).

In the combined marks the "Servier" word mark is a dominant element. Therefore, the Examiner finds that all four (4) trademarks relied on by the Complainant in this dispute shall be taken into account.

The Complaint also provided evidence of use of its trademarks. Therefore, the Examiner finds that the Complainant has trademark rights for the purpose of URS.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) *“where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”* (see par. 1.8).

In the present case the disputed domain name fully incorporates the Complainant’s trademarks including dominant word elements of the marks and Complainant’s mark is clearly recognizable in the disputed domain name.

The addition of the generic and descriptive word “online” does not eliminate the confusion as noted by WIPO Overview 3.0 and the .xyz gTLD shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, 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 is required to make out a prima facie case that the Respondent lacks rights or legitimate interests; and once such prima facie case is made, the burden shifts to the Respondent who has to demonstrate his rights or legitimate interests.

The Complainant made a prima facie case and the Respondent failed to respond and explain any rights or interests in respect of the disputed domain name. The disputed domain name is used for parking purposes and some of the links appear to be related to Complainant’s activity according to the evidence provided by the Complainant.

As noted in WIPO Overview 3.0 *“panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”* (see par. 2.9).

The disputed domain name does not represent a dictionary word, it fully incorporates the Complainant’s mark and the Complainant provided evidence of the global use and recognition of its trademark.

Based on the above, 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 that the disputed domain name is used to host a parked page comprising PPC links. At least some of them appear to be connected to Complainant’s activity (i.e. “pharma”).

There is a disclaimer on the webpage provided by the Complainant that the domain owner does not have relationships with the advertiser.

However, as noted in par. 3.5 of WIPO Overview 3.0:

“panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by



a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.”

The Complainant provided evidence confirming the distinctiveness of its "Servier" trademarks and their extensive use globally.

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 (par. 3.1.4). URS jurisprudence also confirms bad faith when a disputed domain name includes a highly distinctive mark and is used for PPC parking page, see e.g. Forum case FA1809001808860 and Forum Case FA2006001899636.

Given the well-known character and global recognition of the Complainant's trademarks, the fact that the disputed domain name is used for a parking page and appears to capitalize on Complainant's mark reputation and fame, absence of response and explanations of the Respondent and implausibility of any good faith registration and use of the disputed domain name in the current circumstances, 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): SERVIERONLINE.XYZ 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: Igor

Surname: Motsnyi

Date: 2021-05-10