



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

URS DISPUTE NO. A44CFBAB

Determination DEFAULT

I. PARTIES

Complainant: S.L.E. SERVICES AUX LOTERIES EN EUROPE (BELGIUM)
Complainant's authorized representative(s): INLEX IP EXPERTISE, JULIE DULMAN
(FRANCE)

Respondent: PROXIVEST LTD (CYPRUS)

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

Domain Name(s): EUROMILLIONS.TIPS
Registry Operator: Binky Moon, LLC (Donuts, Inc.)
Registrar: GoDaddy.com, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2018-10-24 15:40
Lock of the domain name(s): 2018-10-26 10:46
Notice of Complaint: 2018-10-26 13:57
Default Date: 2018-11-10 00:01
Default Notice: 2018-11-12 12:09
Panel appointed: 2018-11-12 12:15

IV. EXAMINER

Examiner's Name: Marinos Papadopoulos

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 claims that:

1. It owns EUTMs, aka EUTM 002987568 applied as of 23/12/2002 and registered as of 28/09/2004 as word mark “EUROMILLIONS” (registered for Nice Classes 9, 16, 28, 35, 36, 38, 41) & the EUTM 0096656638 applied as of 13/01/2011 and registered as of 21/06/2011 as figurative mark including the word element consisting of the words “EURO MILLIONS” (registered for Nice Classes 9, 16, 28, 35, 38, 41) which are both used currently.
2. It is the owner of several trademarks including the word element “EUROMILLIONS” in various European countries, and which are currently in use in the field of gambling activities.
3. The game “EUROMILLIONS” was launched in February 2004 in three countries followed by six others later on. Currently, “EUROMILLIONS” is one of the most popular games in European Union.
4. The registration of the challenged domain name was made in bad faith.
5. At the time of registration (2014) of the challenged domain name, the Registrant was the company Proxinvest LTD. This company has no rights in the name “EUROMILLIONS”.
6. The disclaimer used in Respondent’s website includes the following wording: “*Euromillions.tips is affiliated with Proxinvest Ltd for marketing purposes only. The content and operations of this website have not been approved or endorsed by Euromillions - Services aux Loteries en Europe (SLE)*”. This disclaimer exists in Respondent’s website in the footer of the homepage in very small and almost invisible print (grey-on-black). Users may be confused and may believe that the website is controlled /endorsed by the Complainant which is not the case.
7. The email address proxinvest@gmail.com used by the registrant of the challenged domain name as is indicated in the whois of the challenged domain name is also associated with the registration of other domain names such as *eurojackpot.today* and *powerball.tips* which are domain names that may be associated with Eurojackpot® and Powerball® that are two other famous lotteries.
8. The holder of the challenged domain name *euromillions.tips* has no legitimate right or interest to the aforesaid domain name, which includes the word element *euromillions* that is identical to the word element included in Complainant’s above-reported EUTMs.
9. The challenged domain name is identical or confusingly similar to its registered valid EUTMs and other national trademarks for which the Complainant is right-holder and makes use of them, currently.
10. The challenged domain name *euromillions.tips* reproduces the Complainant’s trademarks and domain names EUROMILLIONS. The extension *.tips* is secondary and not sufficient to avoid a risk of confusion. This extension is due to the current specificities of the Domain Name System (DNS).
11. There is no business relationship between the Complainant and the Respondent. The Complainant has never licensed or authorized the Respondent to use the EUROMILLIONS trademarks as a domain name. The Respondent registered the contested domain name regardless of the existence of the Complainant’s trademarks, their reputation and the lack of authorization for using them.
12. The use of the challenged domain name directs users to the website <http://multilotto.com> which is of commercial activity.
13. There are circumstances indicating that the challenged domain name was/were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring said domain name registration to the Complainant who is the owner of the above-reported



EUTMs or to a competitor of that complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the challenged domain name.

14. The Respondent never answered to letters/reminders sent by the Complainant regarding the use of the challenged domain name.

B. Respondent:

The Respondent did not submit a Response and did not file any Observations in reply to Complainant's claims.

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.

Language of the Determination: In absence of a Response, the language of the Determination shall be English.

D. Findings of fact:

Regarding the Complainant's claims that:

- ✓ It owns EUTMs, aka EUTM 002987568 applied as of 23/12/2002 and registered as of 28/09/2004 as word mark "EUROMILLIONS" (registered for Nice Classes 9, 16, 28, 35, 36, 38, 41) & the EUTM 0096656638 applied as of 13/01/2011 and registered as of 21/06/2011 as figurative mark including the word element consisting of the words "EURO MILLIONS" (registered for Nice Classes 9, 16, 28, 35, 38, 41) which are both used currently.
- ✓ It is the owner of several trademarks including the word element "EUROMILLIONS" in various European countries, and which are currently in use in the field of gambling activities.

The Complainant submitted proof of evidence through the Appendix 1 of its Complaint regarding its EUTM and its national trademark registrations including the word element EUROMILLIONS many of them including the aforesaid EUTMs being prior to the registration of the challenged domain name. Also, the Complainant submitted snapshots from its websites used currently providing proof of evidence regarding the use of the EUROMILLIONS marks, domain names and lottery games (Annexes: Proof of Use Euromillions & Screen Shot Of The Complainant's Website).

- ✓ The game "EUROMILLIONS" was launched in February 2004 in three countries followed by six others later on. Currently, "EUROMILLIONS" is one of the most popular games in European Union.

The Complainant submitted proof of evidence through the Appendix 1bis of its Complaint regarding WIPO Case No. D2014-0183 between the Complainant and the Domains by Proxy LLC of Scottsdale/Finchdale Ltd involving the disputed domain name *euromillionsonline.org*; WIPO Case No. DFR2007-0037 between the Complainant and the

societate Ascope, Paris, France involving the disputed domain name *euromillion.fr*; WIPO Case No. D2014-1850 between the Complainant and Juergen Strenger of Koln, Germany regarding the disputed domain name *euromillionsticketsonline.com*; WIPO Case No. D2016-0294 between the Complainant and the DomainsbyProxy.com of Scottsdale, USA/Marcel Klugman of Tel Aviv, Israel regarding the disputed domain name *euromillions-raffle.com* in which cases it is confirmed that:

1. the Complainant is a Belgian company founded in 2003 which operates a lottery game named “EUROMILLIONS” in collaboration with operators of public lotteries in several member states of the EU.
 2. The EUROMILLIONS game was originally launched in 2004 in the UK and Northern Ireland, Spain, France, and subsequently extended to Austria, Belgium, Ireland, Luxemburg, Portugal, and Switzerland.
- ✓ At the time of registration (2014) of the challenged domain name, the Registrant was the company Proxinvest LTD. This company has no rights in the name “EUROMILLIONS”.

The Complainant submitted proof of evidence through Appendix 3 of its Complaint regarding the Registrant of the challenged domain name confirming the above-reported information per Registrant of said domain name.

- ✓ The disclaimer used in Respondent’s website includes the following wording: *“Euromillions.tips is affiliated with Proxinvest Ltd for marketing purposes only. The content and operations of this website have not been approved or endorsed by Euromillions - Services aux Loteries en Europe (SLE)”*. This disclaimer exists in Respondent’s website in the footer of the homepage in very small and almost invisible print (grey-on-black). Users may be confused and may believe that the website is controlled /endorsed by the Complainant which is not the case.

The Complainant submitted proof of evidence through Appendix 7 of its Complaint regarding the disclaimer that is included in the website under the disputed domain name.

- ✓ The email address proxinvest@gmail.com used by the registrant of the challenged domain name as is indicated in the whois of the challenged domain name is also associated with the registration of other domain names such as *eurojackpot.today* and *powerball.tips* which are domain names that may be associated with Eurojackpot® and Powerball® that are two other famous lotteries.

The Complainant submitted proof of evidence through Appendix 6 of its Complaint regarding the email address proxinvest@gmail.com used by the registrant of the challenged domain name as is indicated in the whois of the challenged domain name which is also associated with the registration of other domain names such as *eurojackpot.today* and *powerball.tips* and which are domain names that may be associated with Eurojackpot® and Powerball® that are two other famous lotteries.

- ✓ The Respondent never answered to letters/reminders sent by the Complainant regarding the use of the challenged domain name.

The Complainant submitted proof of evidence through Appendix 4 of its Complaint regarding its communication as of 27/07/2014 with the Respondent per the challenged domain name. Also, the Complainant submitted proof of evidence through Appendix 5 of its Complaint



regarding its repeated communication attempts (made on 11/02/2015, on 02/04/2015, on 25/09/2015, and on 21/11/2017) with the Respondent per the challenged domain name.

E. Reasoning:

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

1. The registered domain name is identical or confusingly similar to a word or mark for which the Complainant holds a valid national or regional registration and that is in current use;
2. Registrant has no legitimate right or interest to the domain name;
3. The domain name was registered or is being used in bad faith.

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 abovementioned three elements to obtain an order that a domain name should be suspended.

This Determination has been made in accordance with the URS Procedure, URS Rules and any rules and principles of law that the undersigned Examiner deems applicable, taking into consideration all of the evidence, annexed material and submissions provided by the Parties.

Regarding the **first condition set forth under Paragraph 1.2.6.1 (i) of the URS Procedure** the following are noteworthy:

The Complainant has proved to be the holder of EUTMs and national trademark registrations including the word element EUROMILLIONS many of them including the aforesaid EUTMs being prior to the registration of the challenged domain name. Also, the Complainant proved use of the EUROMILLIONS marks, domain names and lottery games by submitting snapshots from its websites used currently providing proof of evidence regarding the aforesaid use. Also, the Complainant has proved that it is a Belgian company founded in 2003 which operates a lottery game named “EUROMILLIONS” in collaboration with operators of public lotteries in several member states of the EU. And that the EUROMILLIONS game was originally launched in 2004 in the UK and Northern Ireland, Spain, France, and subsequently extended to Austria, Belgium, Ireland, Luxemburg, Portugal, and Switzerland.

Regarding the challenged domain name *euromillions.tips* there is no doubt that it is identical or confusingly similar to a number of Complainant’s registered trademarks including EUTMs and national trademarks as well, which the Complainant holds as right-holder and that are in use by the Complainant currently.

It is widely established that the addition of the gTLD to a domain name does not generally avoid confusing similarity since the use of a TLD is only a technical requirement. Therefore, in this case, the addition of the gTLD “.tips” to the disputed domain name does not add to it any distinctive characteristic and does not make it being something other than identical or confusingly similar to Complainant’s rights on EUROMILLIONS word element included in its various registered EUTMs and national trademarks. Thus, the Examiner finds sustainable the Complainant’s claim that the challenged domain name *euromillions.tips* reproduces the Complainant’s trademarks and domain names EUROMILLIONS, and that the extension *.tips*

is secondary and not sufficient to avoid a risk of confusion. This extension is due to the current specificities of the Domain Name System (DNS).

The Complainant's trademarks are clear and easily recognizable in the disputed domain name *euromillions.tips*. Therefore, the Examiner finds that the disputed domain name is confusingly similar, at least, to all prior registered Complainant's trademarks that include the word element "EUROMILLIONS" and/or the word element "EURO MILLIONS".

Based on the above and the evidence on record, the Examiner finds that the first requirement set forth under Paragraph 1.2.6.1 (i) of the URS Procedure has been satisfied.

Regarding the **second condition set forth under Paragraph 1.2.6.2 of the URS Procedure** the following are noteworthy:

The Complainant proved being the owner of various trademarks that include the word element "EUROMILLIONS" and/or the word element "EURO MILLIONS", and also claimed that it did not authorized the Respondent to use in the disputed domain name or elsewhere the word element "EUROMILLIONS" and/or any similar to it. Also, the Complainant claimed that there is no business relationship between the Complainant and the Respondent.

Furthermore, there is no evidence on record showing that the Respondent owns a trademark registration that includes the word element "EUROMILLIONS" and/or the word element "EURO MILLIONS" and is registered prior to Complainant's EUTMs and national trademark registrations.

Since the Respondent provided no response to the Complaint, it has failed to justify any rights or legitimate interests in the disputed domain name producing evidence to rebut the Complainant's prima facie case.

Based on the above, the Examiner finds that the Complainant has met its burden pursuant to the second requirement set forth under Paragraph 1.2.6.2 of the URS Procedure and the Respondent as registrant of the disputed domain name has not proved any legitimate right in the registration and use of the aforesaid domain name.

Regarding the **third condition set forth under Paragraph 1.2.6.3 of the URS Procedure** the following are noteworthy:

At the time of the disputed domain name's registration, a.k.a. 03/03/2014 the Examiner considers unlikely that the Respondent did not know about the EUROMILLIONS trademarks, both the EUTMs and the national trademark registrations of which the Complainant was—and still is—the right-holder. Several factors in this case lead to this conclusion, namely i) the extensive presence of EUROMILLIONS lottery game over the Internet, verified by the Examiner, ii) the inherent distinctive character of the EUROMILLIONS trademarks owned by the Complainant, and iii) the prior WIPO cases reported above hereto through which the Respondent must have become aware of Complainant's will to enforce its trademark's rights and protect its industrial property assets from their encroachment by third parties. Also, as soon as 24/07/2014 the Respondent was informed by the Complainant's legal representative (trademark Attorney-at-Law) that the domain names *euromillions.tips* and *euromillions.today* which were registered by the Respondent create a likelihood of confusion with Complainant's industrial property rights, thus said registrations violate the law and must be abandoned; in addition, the Complainant informed the Respondent that its encroachment upon the



EUROMILLIONS lottery game through the website <http://multilotto.com> was arbitrary and did not have any legal foundation. The Complainant informed the Respondent the disputed domain name creates a likelihood of confusion because of its similarity to the EUROMILLIONS word element used in Complainant's various trademark registrations, and that by adding the gTLD *.tips* to the word mark *euromillions* the challenged domain name *euromillions.tips* did not differentiate from Complainant's industrial property assets and its rights upon them.

As per the evidence on record and looking at the broader context of the case, namely, the content of the Websites, it is further apparent that the Respondent must have known of the Complainant and its EUROMILLIONS & EURO MILLIONS various trademarks, acting in bad faith when registering and using the disputed domain name. There're at least the following three requirements met collectively in Respondent's action to register the disputed domain name in 2014:

1. Knowledge of prior use of the EUROMILLIONS mark
2. Intention of Respondent to leverage on Complainant's EUROMILLIONS lottery game extensive use and recognizability.
3. The degree of legal protection of the EUROMILLIONS mark as element of Complainant's various EUTM and national trademark registrations before its registration as the challenged domain name

This Conclusion is corroborated by the disputed domain name's use after its registration for lottery gaming through the website <http://multilotto.com> as well as from the disclaimer that was found to exist in the aforesaid website which includes the following wording: "*Euromillions.tips is affiliated with Proxinvest Ltd for marketing purposes only. The content and operations of this website have not been approved or endorsed by Euromillions - Services aux Loteries en Europe (SLE)*".

The evidence on record indicates that the disputed domain name drives to website that pertains to competitive commercial action similar the Complainant's lottery gaming commercial activity leveraging on Complainant's wide EUROMILLIONS's recognition. To that fact attests the finding of similarity between the Complainant's website and the Respondent's website through which lottery gaming is provided leveraging on the EUROMILLIONS mark: by visiting the Respondent's website <http://multilotto.com> and clicking on the EUROMILLIONS option offered through it, the user is directed to the URL: <https://www.multilotto.com/gr/euromillions> which offers lottery gaming in similar—if not almost identical—user interface that is met in Complainant's website <https://www.euromillions.com/euromillions/play> which can be found through its website under the domain name <https://www.euromillions.com/>.

These circumstances reported above hereto lead the Examiner to conclude that the disputed domain name was registered and are being used in bad faith. The Examiner is of the opinion that in light of prior registration and use of the Complainant's EUTMs and national trademark registrations in connection with the Complainant's offer of lottery games in several countries of the EU, the Respondent's registration of the disputed domain name, which is confusingly similar to the EUROMILLIONS and/or EURO MILLIONS word element in Complainant's trademarks, cannot be ascribed to a mere coincidence.

In addition, by visiting the Respondent's website the Examiner found that the Respondent's use of the logo



which is similar to the Complainant's design in its registered trademarks, which is used by the Respondent for commercial activity in the lottery gaming field for its own commercial gains is in direct competition with the Complainant's commercial activity in the lottery gaming industry. This fact suggests that the Respondent was indeed fully aware of the Complainant's prior industrial property rights at the time of registration of the challenged domain name, and proceeded with the registration of the disputed domain name with the aim to intentionally attract, for its own commercial gains, Internet users to its website by causing a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of Respondent's above-mentioned website.

The case circumstances strongly indicate that the Respondent has intentionally attempted to deceive consumers, attracting for commercial gain Internet users to its Website by creating a likelihood of confusion with the Complainant's mark. This conduct is considered by the URS as a clear demonstration of bad faith registration and use, under Paragraph 1.2.6.3 (d) of the URS Procedure. Further, by registering the disputed domain name the Respondent has prevented the Complainant from reflecting its trademark in the corresponding disputed domain name, which may constitute a pattern of bad faith conduct considering the disputed domain name as well as the fact that the email address proxivest@gmail.com used by the registrant of the challenged domain name as is indicated in the whois of the challenged domain name is also associated with the registration of other domain names such as *eurojackpot.today* and *powerball.tips* which are domain names that may be associated with Eurojackpot® and Powerball® that are two other famous lotteries the right-holder of which is not the Respondent. This conduct disrupts the Complainant's business with whom the Respondent competes in selling the same services, a.k.a. lottery gaming offered online.

Therefore, the Examiner considers these circumstances a clear bad faith registration and use indication, as described under Paragraph 1.2.6.3 (b) of URS PROCEDURE according to which:

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 as described under Paragraph 1.2.6.3 (c) of URS PROCEDURE according to which:

Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor

and as described under Paragraph 1.2.6.3 (d) of URS PROCEDURE according to which:



By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

Other cumulative circumstances of this case may indicate the Respondent is acting in bad faith, in particular its absence of response not providing any evidence of actual or contemplated good faith use.

Because of the absence of Respondent's reply to Complainant's claims, the Examiner cannot confirm the Complainant's claim that there are circumstances indicating that the challenged domain name was/were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring said domain name registration to the Complainant who is the owner of the above-reported EUTMs or to a competitor of that complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the challenged domain name. Therefore, the Examiner considers that it cannot be confirmed what is provisioned under Paragraph 1.2.6.3 (a) of URS PROCEDURE, and specifically that:

Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name

However, confirmation of what is provisioned under Paragraph 1.2.6.3 (a) of URS PROCEDURE is not necessary, given that it is evidently conformed that the provisions of Paragraph 1.2.6.3 (b), (c) and (d) of URS PROCEDURE are applicable per case at hand regarding bad faith registration of the disputed domain name.

Based on all the above, the Examiner finds that the disputed domain name was registered and have been used in bad faith to attract for commercial gain in consideration of the provisions of Paragraph 1.2.6.3 (b), (c) and (d) of URS PROCEDURE.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): EUROMILLIONS.TIPS 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: Marinos

Surname: Papadopoulos

Date: 12 November 2018