

**URS DISPUTE**

Dispute number: **B0084CBB**  
Determination **DEFAULT**

**I. PARTIES**

**Complainant:** Diadora Spa  
**Enrico Moretti Polegato**  
Via Montello, 80 I-31031 Caerano di San Marco

Complainant's Authorized Repr.: **Convey Srl**  
**Michele Provera**  
Via Sagra di San Michele, 27 - 10139 Torino

**Respondent:** **N/A N/A**

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

Domain name: **diadorael.online**  
radix fzc  
185.212.172.111  
namesilo llc

Domain name: **diadoraen.online**  
radix fzc  
185.212.172.113  
namesilo llc

Domain name: **diadorain.online**  
radix fzc  
5.255.62.150  
namesilo llc

Domain name: **diadoraou.online**  
radix fzc  
185.212.172.112  
namesilo llc

**III. PROCEDURAL HISTORY**

Complaint Submitted: 2019-06-14 17:52  
Lock of the Domain name(s): 2019-06-17 16:21  
Notice of Complaint: 2019-06-18 14:25  
Default Date: 2019-07-03 00:01  
Notice of Default: 2019-07-03 09:56  
Panel Appointed: 2019-07-04 15:29  
Default Determination issued: 2019-07-05 12:08

**IV. EXAMINER**

Examiner's Name: **Nathalie Dreyfus**

The Examiner certifies that he/she has acted independently and impartially and to the best of his/her 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 filed a Response

## VI. STANDARD OF REVIEW

Clear and convincing evidence.

## VII. DISCUSSIONS AND FINDINGS

### A. Complainant

The Complainant is DIADORA SPA, a legal corporate entity registered in Italy. Complainant is an athletic footwear and apparel manufacturer. Complainant is the owner of several international and national trademark DIADORA registrations worldwide. Moreover, Complainant also registered several domain names consisting of or comprising the trademark DIADORA under several different TLDs, including <diadora.com> that redirects to Complainant's website.

Complainant argues that the Respondent does not have any right or legitimate interest in the disputed domain names, as the Respondent was not authorized by the Complainant to register the disputed domain names.

Complainant further argues that the domain names were registered and used in bad faith. Complainant states that the Respondent intentionally attempted to attract Internet users to the Respondent's website, for commercial gain, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location, or of a product or service on the Respondent's website or location.

### B. Respondent

The Respondent did not reply to the Complainant's contentions and is therefore in default.

### 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

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.

Paragraph 9(d) of the URS Rules provides that "in absence of a Response, the language of the Determination shall be English", therefore this Determination is written in English.

Complainant requests that the disputed domain names and the named Respondents be consolidated in a single proceeding because the domain names are registered by the same entity. The Examiner finds that Complainant has shown evidence that the disputed domain names are subject to common control. The Examiner accepts the consolidation of the disputed domain names in a single Complaint.

The Examiner finds, in light of the Registrar verification, that the registrant of the domain names is the same person, Jessyca Roseberry, 862 RUE ROBERGE, CHICOUTIMI, AB G7H 5B1, CA.

The Examiner therefore finds that Respondent is Jessyca Roseberry, 862 RUE ROBERGE, CHICOUTIMI, AB G7H

5B1, CA.

#### **D. Findings of Fact**

The Disputed Domain Names <diadorael.online>, <diadoraen.online>, <diadorain.online>, and <diadoraou.online> were all registered in May 2019. The domain names redirect to websites offering for sale counterfeit Complainant products.

The Complainant has shown trademark rights over the "DIADORA" sign.

Complainant registered the domain name <diadora.com> and said domain name is linked to the Complainant's official website.

#### **E. Reasoning**

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

The Complainant has shown rights on the following trademarks:

- The European Union Trademark "DIADORA", No. 000339093 registered on January 7, 1999, duly renewed, in classes 18, 25, 28.
- The Italian Trademark "DIADORA", No. 0000721535, registered on July 31, 1997, duly renewed, in classes 3, 9, 12, 14, 16, 18, 25 and 28.
- The US Trademark "DIADORA", No. 2282558, registered on October 5, 1999, duly renewed, in classes 18, 25, 28.

The Disputed Domain Names reproduce entirely Complainant's trademarks. The mere addition of the letters "in", "ou", "en", and "el" does not prevent the likelihood of confusion. Moreover, the gTLD ".online" does not prevent the likelihood of confusion.

In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (i) of the URS Procedure have been satisfied.

##### **2. Respondent has no rights or legitimate interests to the domain name(s)**

Complainant argues that Respondent has not been authorized by the Complainant to use the DIADORA sign or to register the domain name and that there is no business relationship between them.

Complainant argues that Respondent is not a licensee or authorized dealer of the Complainant nor has been authorized by the Complainant to use the trademark DIADORA in the disputed domain name. The Complainant is not in possession of, nor aware of the existence of, any evidence demonstrating that the Respondent might not be commonly known by the Domain names or a name corresponding to the disputed domain names as an individual, business or other organization.

In 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 that the requirements of Paragraph 1.2.6 (ii) of the URS Procedure have been satisfied.

##### **3. The domain name(s) was(were) registered and is(are) being used in bad faith**

The Disputed Domain Names incorporate the Complainant's DIADORA trademark with the mere addition of letters "in", "ou", "en", and "el".

Complainant argues that Respondent had knowledge of the trademark DIADORA at the time of the registration of the domain names. Complainant states that Respondent was fully aware of Complainant's trademark reputation and association with the Complainant and that its purpose in registering the Domain names was to capitalize on the reputation of Complainant's mark by diverting Internet users seeking products under the DIADORA mark to its own commercial websites.

In these circumstances, the Examiner finds that the domain name was registered in bad faith, and that the requirements of Paragraph 1.2.6 (iii) of the URS Procedure have been satisfied.

**4. Abusive Complaint**

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods.

**VIII. DETERMINATION****A. Demonstration of URS elements**

After reviewing the entire record of the URS proceeding and the Parties submissions, the Examiner shall determine if the Complainant has or has not demonstrated all three elements of the URS by a standard of clear and convincing evidence

Demonstration of URS elements            **Demonstrated**

**B. Complaint and remedy**

The Examiner shall decide whether to accept or reject the Complaint and, therefore, order the domain name(s) be suspended for the balance of the registration period or be unlocked and returned to the full control of the Registrant

Complaint                                        **Accepts**

Domain Name(s)                                **Suspends for the balance of the registration period**

**C. Abuse of proceeding**

The Examiner may find that a Complaint is abusive or contains deliberate material falsehood

Finding of abuse of proceedings            **Not finds**

Ban from utilization of URS

**D. Suspension or Termination**

If legal proceedings were initiated by a Party or the Parties prior to or during the URS proceeding, the Examiner may order the suspension or termination of the URS dispute or decide to proceed to the Determination

URS proceeding                                **Proceeds to the Determination**

**E. Publication**

Publication                                        **Publish the Determination**

**SIGNATURE**

Name                                                **Nathalie**

Surname                                            **Dreyfus**