



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

**URS DISPUTE NO. B072D547**

Determination DEFAULT

**I. PARTIES**

Complainant: Morinaga and Co Ltd (JP)  
Complainant's authorized representative: IP Twins (FR)

Respondent: Whois Agent, Netlify Inc (US)

(collectively referred to as 'the Parties')

**II. THE DOMAIN NAME, REGISTRY OPERATOR AND REGISTRAR**

Domain Name: HICHEWSOL.XYZ ('the disputed domain name')  
Registry Operator: Xyz.com, LLC  
Registrar: Name.com, Inc.

**III. PROCEDURAL HISTORY**

Complaint submitted: 2024-06-04 16:37  
Lock of the domain name(s): 2024-06-09 23:57  
Notice of Complaint: 2024-06-10 09:27  
Default Date: 2024-06-25 00:00  
Notice of Default: 2024-06-25 18:09  
Panel Appointed: 2024-06-25 18:09  
Default Determination issued: 2024-06-27 14:08

**IV. EXAMINER**

Examiner's Name: Gustavo Moser

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 URS administrative proceeding.

**V. RELIEF SOUGHT**

The Complainant requests that the disputed domain name be suspended for the balance of the registration period.

The Respondent has failed to serve a Response.

**VI. STANDARD OF REVIEW**

Clear and convincing evidence.

## **VII. DISCUSSIONS AND FINDINGS**

### **A. Disputed domain name**

The disputed domain name <hichewsol.xyz> was registered on 22 April 2024.

At the time of writing, the disputed domain name resolves to an active website, the particulars of which are discussed in the section ‘F. Reasoning’ below (for present purposes, ‘the Respondent’s website’).

### **B. Complainant**

#### **B.1 Trade mark standing**

For the purposes of this URS administrative proceeding, the Complainant relies on the following registered trade marks:

- EU trade mark registration no. 003488152, filed on 30 October 2003, for the figurative mark HI-CHEW, in class 30 of the Nice Classification; and
- US trade mark registration no. 003488152, filed on 20 March 2015, for the combined mark HI-CHEW, in class 30 of the Nice Classification

(collectively or individually referred to as ‘the Complainant’s trade mark’, ‘the Complainant’s trade mark HI-CHEW’, or ‘the trade mark HI-CHEW’).

#### **B.2 Complainant’s Factual Allegations**

The Complainant is a global confectionary company founded in 1899 and headquartered in Tokyo, Japan. It commercialises HI-CHEW candy and other confectionaries under the brand HI-CHEW worldwide, as well as through its official website at <[www.hi-chew.com](http://www.hi-chew.com)>.

The Complainant seeks to obtain the suspension of the disputed domain name on the grounds advanced in section B.3 below.

#### **B.3 URS grounds**

##### **i. The disputed domain name is identical or confusingly similar to a word mark**

The Complainant submits that the disputed domain name incorporates the Complainant’s trade mark, and that the adjoint term ‘sol’ does not dispel the likelihood of confusion with the Complainant’s trade mark. Likewise, the Top-Level Domain <.xyz> is typically disregarded in the test for identity or confusion. In addition, the term ‘hi-chew’ for candies and confectionaries is arbitrary and, therefore, is given strong protection.

##### **ii. Respondent has no rights or legitimate interests in respect to the disputed domain name**

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent’s website is not used in connection with a bona fide offering of goods and services; instead, the Respondent’s website contains the Complainant’s trade mark HI-CHEW as well the Complainant’s copyrighted materials. Furthermore, the Respondent is not known, as an individual or organisation, by the disputed domain name nor by the trade mark HI-CHEW or the term ‘hichewsol’.



### **iii. The disputed domain name was registered and is being used in bad faith**

The Complainant submits that the disputed domain name was registered and is being used in bad faith to the extent that the Respondent's website uses the Complainant's copyrighted materials and Complainant's trade mark HI-CHEW.

### **C. Respondent**

The Respondent has defaulted in this URS administrative proceeding and therefore has failed to advance any substantive case on the merits.

### **D. 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.

### **E. Findings of fact**

The disputed domain name <hichewsol.xyz> was registered on 22 April 2024.

The disputed domain name resolves to a website which uses the HI-CHEW trade mark for what appears to be a marketing campaign.

The Complainant has, to the satisfaction of the Examiner, adduced proof that the Complainant has trade mark rights in the term 'hi-chew'.

### **F. Reasoning**

Pursuant 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 rule and principles of law that the Examiner deems applicable.

Paragraph 1.2.6 of the URS Procedure sets out the grounds which the Complainant must establish to succeed:

1. The disputed domain name is identical or confusingly similar to a word mark:
  - (i) for which the Complainant holds a valid national or regional registration and that is in current use; or
  - (ii) that has been validated through court proceedings; or
  - (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed;
2. The Respondent has no rights or legitimate interests to the disputed domain name; and
3. The disputed domain name was registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the URS procedure is clear and convincing, which lays down the foundations for examiners to determine each of the three URS Procedure grounds.

### **1. The disputed domain name is identical or confusingly similar to a word mark**

The Examiner is satisfied that the Complainant has URS-relevant rights in the registered trade mark HI-CHEW since 2003, which is in current use, as supported by its submission into evidence of screenshots from the websites of the trade mark offices referencing the particulars of the Complainant's trade mark registrations.

The disputed domain name <hichewsol.xyz> incorporates the Complainant's trade mark HI-CHEW in its string. The adjacent word 'sol' has no bearing on the recognisability of the Complainant's trade mark. Moreover, TLD suffixes (in this case, <.xyz>), due to being a part of the domain name's anatomy, are typically immaterial to the assessment of identity or confusion under this URS Procedure ground.

Accordingly, the Examiner finds that the Complainant has succeeded under paragraph 1.2.6.1 of the URS Procedure.

### **2. Respondent has no rights or legitimate interests to the disputed domain name**

The Complainant must first make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name under the URS Procedure. Consequently, the burden of production shifts to the Respondent to come forward with evidence it has rights or legitimate interests.

There is no evidence of the Complainant's affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, there is no documentary proof of the Respondent being commonly known by the disputed domain name (as an individual, business, or other organisation).

The Respondent defaulted in this URS administrative proceeding, and has failed to refute the Complainant's *prima facie* case that it has met its burden under this URS Procedure ground. Instead, it appears that the Respondent has attempted to create a connection with, and take advantage from the goodwill and reputation associated with, the Complainant, as discussed in section F.3. below.

For the foregoing reasons, the Examiner finds that the Complainant has made a *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 1.2.6.2 of the URS Procedure.

### **3. The disputed domain name was registered and is being used in bad faith**

The Examiner notes a number of factors which point towards a finding of bad faith registration.

Firstly, the Complainant's trade mark HI-CHEW predates the registration of the disputed domain name by more than two decades. Secondly, the disputed domain name bears the trade mark HI-CHEW in its string, coupled with a generic term which is immaterial to affect the recognisability of the Complainant's trade mark. Furthermore, the disputed domain name is substantially similar to the Complainant's own domain name <hi-chew.com>, which was registered in 2001. The Examiner has therefore no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.



As regards the use in bad faith, the Complainant submits that the Respondent has engaged in the conduct d. set out in paragraph 1.2.6.3 of the URS Procedure, which provides as follows:

‘d. By using the domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent’s website or other on-line location, by creating a likelihood of confusion with the Complainant’s trade 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’.

The Examiner has considered the available record and found convincing evidence that the Respondent would have purposefully used the trade mark HI-CHEW on the Respondent’s website to deceive Internet users into a mistaken belief of affiliation or connection with the Complainant.

In view of the above, the Examiner finds that the Complainant has met the requirement under paragraph 1.2.6.3 of the URS Procedure.

#### **4. Abusive Complaint**

For the avoidance of doubt, the Examiner finds that the Complaint was not brought by the Complainant abusively nor does the Complaint contain any deliberate material falsehoods.

### **VIII. DETERMINATION**

#### A. Demonstration of URS elements

Demonstrated

#### B. Complaint and remedy

Complaint: Accepts

Domain Name: HICHEWSOL.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: Gustavo

Surname: Moser

Date: 2024-06-27