



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

URS DISPUTE NO. B9D93C56

Determination DEFAULT

I. PARTIES

Complainant: SES-IMAGOTAG (FR)
Complainant's authorized representative: Domgate (FR)

Respondent: eLead Resources, Inc. (US)

(collectively, "the Parties")

II. THE DOMAIN NAME, REGISTRY OPERATOR AND REGISTRAR

Domain Name: SES-IMAGOTAG.STORE ("the disputed domain name")
Registry Operator: Radix FZC
Registrar: Go Daddy, LLC

III. PROCEDURAL HISTORY

Complaint submitted: 2023-05-16 10:05
Lock of the domain name(s): 2023-05-17 13:05
Notice of Complaint: 2023-05-18 11:25
Default Date: 2023-06-02 00:00
Notice of Default: 2023-06-02 11:39
Panel Appointed: 2023-06-02 11:42
Default Determination issued: 2023-06-02 12:40

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 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 not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Disputed domain name

The disputed domain name <ses-imagotag.store> was registered on 16 March 2023 and, currently, does not resolve to an active website (“the Respondent’s website”).

B. Complainant:

B.1 Trade mark standing

For the purposes of this URS dispute, the Complainant relies on the following registered trade marks, amongst others:

- US trade mark registration no. 5263448, registered on 8 January 2016, for the figurative mark SES IMAGOTAG, in classes 6, 9, 19, 20, 35 and 42 of the Nice Classification;
- EU trade mark registration no. 014999131, registered on 7 June 2016, for the figurative mark SES IMAGOTAG, in classes 6, 9, 20, 35 and 42 of the Nice Classification

(collectively or individually, “the Complainant’s trade mark”; “the Complainant’s trade mark SES IMAGOTAG”; or “the trade mark SES IMAGOTAG” interchangeably).

In addition to the above trade marks and many others, the Complainant also owns numerous domain names which reflect the mark SES IMAGOTAG, most notably <sesimagotag.com> (registered in 2015).

B.2 Background History

The Complainant is a French global leader in smart digital labels and retail IoT solutions for physical retail, serving many hundreds of retailers across Europe, Asia and America. It is currently listed on the Euronext Paris stock exchange.

The Group SES (Store Electronic Systems) was founded in 1992 and has growth exponentially ever since, the Complainant reaching a turnover in excess of €423m in 2021.

The Complainant seeks to obtain the suspension of the disputed domain name on the grounds set out 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 well-known Complainant’s trade mark SES IMAGOTAG in its entirety; that the Top-Level Domain (“the TLD”) <.store> has no bearing on the confusing similarity test; instead, the TLD is all the more apt to induce confusion among Internet users, in so far as it may misleadingly evoke the Complainant’s offering of products through the Respondent’s website.

ii. Respondent has no rights or legitimate interests to the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Neither licence nor permission of any kind has been given to the Respondent to make any use of the Complainant’s trade mark SES IMAGOTAG. Moreover,



the Respondent is not known by the disputed domain name or the term “ses imagotag” as an individual, business, or other organisation.

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

Registration

The Complainant’s rights in SES IMAGOTAG largely predates the registration of the disputed domain name. The well-known trade mark SES IMAGOTAG being fully incorporated into the domain name string, it is inconceivable that the Respondent was unaware of the Complainant’s trade mark at the time of registering the disputed domain name.

Use

The Complainant states that the Respondent’s website is currently inactive. Nonetheless, the Complainant submits (and provides evidence thereof) that the Respondent’s website had been active previously, at which time it resolved to a parked page featuring pay-per-click (PPC) advertisement for goods and services unrelated to the Complainant’s business segment. The Complainant argues that the Respondent has attempted to obtain a commercial gain with such use. Furthermore, the Respondent has failed to respond to the Complainant’s cease and desist letter prior to the commencement of this URS Procedure.

C. Respondent:

The Respondent did not reply to the Complaint.

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 Procedure Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

E. Findings of fact:

The disputed domain name was registered on 16 March 2023.

The disputed domain name does not currently resolve to an active website.

The Complainant has, to the satisfaction of the Examiner, adduced proof that the Complainant has trade mark rights in “SES IMAGOTAG”.

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 provides the following threshold for the Complainant to meet in order to be entitled to relief:

1. The disputed domain name is identical or confusingly similar to a word mark;
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 URS test under this ground provides for a juxtaposing approach, according to which the textual, auditory, and visual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

Nevertheless, to achieve success, the Complainant must first of all provide evidence that it owns rights in a trade mark, following which the Examiner shall assess the degree of similarity between the trade mark and the disputed domain name.

The Panel is satisfied that the Complainant has owned registered trade mark rights in "SES IMAGOTAG" since 2016 as supported by its submission into evidence of screenshots from the websites of the trade mark offices referencing the particulars of the Complainant's trademark registrations.

The disputed domain name <ses-imagotag.store> was registered on 16 March 2023.

The disputed domain name wholly incorporates the Complainant's trade mark SES IMAGOTAG in its string, such that the Examiner has no difficulty in recognising the Complainant's trade mark SES IMAGOTAG within the disputed domain name.

The Examiner reminds the Parties that TLD suffixes (<.store> in this matter) are typically disregarded in the assessment of this URS Procedure ground for being part of the anatomy of a domain name (see, for comparative analysis, WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 1.11 ("WIPO Jurisprudential Overview 3.0")). In this particular case, the Examiner accepts the Complainant's interpretation that the TLD may enhance confusion among Internet users, to the extent that the TLD may well evoke the Complainant's offering of products through the Respondent's website.

Accordingly, the Examiner finds that the disputed domain name is confusingly similar to the Complainant's trade mark, the result of which being 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 second ground of the URS Procedure provides that the Respondent shall demonstrate that it has rights or legitimate interests in the dispute domain name. It therefore falls on the Complainant the burden to rebut any such allegations.



Notwithstanding the above, the Respondent did not submit a Response in this URS dispute. Therefore, the Examiner will proceed to determine the dispute on the basis of the available evidence.

The Examiner notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant further argues that the Respondent is not known by the disputed domain name, and there is no evidence to the contrary on the record.

The Complainant has provided robust evidence to support its contentions, the contents of which remained unchallenged by the Respondent.

In addition, in the Examiner's view, the choice of a domain name which incorporates a complainant's trade mark wholly (as in this case) or virtually wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests.

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence adduced by the Complainant in this URS dispute, 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

In order to meet the third requirement under the URS Procedure, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith. The URS Procedure, in paragraph 1.2.6.3, enumerates non-exhaustive circumstances which would evidence bad faith registration and use of the disputed domain name by the Respondent, as follows:

- a. Circumstances indicating that the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed 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 the Respondent's out-of-pocket costs directly related to the disputed domain name;
- b. The disputed domain name was registered in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct;
- c. The disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; and
- 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 looked at the overall composite picture of events and finds it, collectively, to be sufficient to give rise to a finding of bad faith registration and use of the disputed domain name by the Respondent, for the following reasons:

- The disputed domain name <ses-imagotag.store> wholly incorporates the Complainant's trade mark SES IMAGOTAG. The TLD <.store> contributes to enhance the confusion, in so far as it may well trigger an inference of association with the Complainant;
- There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in 2023. The Complainant has been in operation years before, including through the use of the domain name <ses-imagotag.com>, which was registered in 2015. The Examiner does not view favourably the Respondent's behaviour at all, and finds that the Respondent was likely well aware of the Complainant given the totality of evidence presented in support of the Complainant's case;
- The Respondent has not provided a Response within the time prescribed under the URS Rules, or at all, and has thus failed to offer any explanation or justification for the matters raised by the Complainant in the context of this URS dispute. The Examiner is empowered to draw adverse inferences by such failure (URS Rules paragraph 12);
- The Respondent has failed to respond to the Complainant's cease and desist letter prior to the Complainant commencing this URS Procedure, and has shown an overall disinterest in defending the Complainant's claim;
- There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant, and the Complainant in any event firmly denies any association;
- The Respondent's website does not currently resolve to an active website. However, the Complainant has provided documentary proof that the Respondent's website had previously resolved to a parked page featuring pay-per-click (PPC) advertisement for goods and services unrelated to the Complainant's business segment. On balance, the Respondent's behaviour would therefore fall into the remit of circumstance .d of paragraph 1.2.6.3 of the URS Procedure;
- The implausibility of any good faith use to which the disputed domain name may be put; and
- Taken the above together, the overall unlikelihood of any good faith use of the disputed domain name.

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: SES-IMAGOTAG.STORE 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: 2023-06-02