



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

URS DISPUTE NO. B9F32441

Determination DEFAULT

I. PARTIES

Complainant(s): Molicopi, SL (SP)

Complainant(s)'s authorized representative(s): Padima Team, SLP (SP)

Respondent(s): WhoisGuard Protected, WhoisGuard, Inc. (PA)

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

Domain Name(s): PKES.ONLINE

Registry Operator: DotOnline Inc.

Registrar: NameCheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2020-10-26 17:29

Lock of the domain name(s): 2020-10-27 12:08

Notice of Complaint: 2020-10-27 12:28

Default Date: 2020-11-11 00:00

Notice of Default: 2020-11-11 16:14

Panel Appointed: 2020-11-11 16:17

Default Determination issued: 2020-11-16 07:30

IV. EXAMINER

Examiner's Name: Alejandro Touriño

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, MOLICOPI, S.L., contends to be the owner of several trademark registrations for PIKOLINOS. In particular, the Complainant is, among others, owner of the following word trademarks:

- EU trademark n° 009426776 "PIKOLINOS" registered in classes 3, 9, 10, 14, 16, 18, 25, 26 and 35.
- EU trademark n° 017687559 "PIKOLINOS NATURALLY GOOD" registered in classes 25 and 35.
- EU trademark n° 003813177 "PIKOLINOS" registered and in classes 3, 35 and 39.
- Spanish trademark n° 3086158 "PIKOLINOS" registered and in classes 18, 25 and 35.

The Complainant asserts that the disputed domain name was registered primarily for the purpose of disrupting the business of the Complainant and to intentionally attempt to attract for commercial gain Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademark.

Additionally, the Complainant suggests that the sign "pkcs" is a slight variation of PIKOLINOS trademark. Moreover, the content of the domain name reproduces PIKOLINOS logo and images and offer PIKOLINOS' products. The website <<https://www.pkcs.online>> is a fraud webpage that reproduces, without consent, the Complainant's trademark and pictures. Furthermore, the website uses the brand PIKOLINOS to manufacture, distribute, export and/or offer PIKOLINOS products in some countries.

Also, according to the Complainant's testimonial, several clients have informed the latter that they have been defrauded by the Respondent, having believed that the website under the disputed domain name was the official website of PIKOLINOS or -at least- an authorized one.

B. Respondent:

The Respondent did not reply to the Complaint.

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 domain name <pkcs.online> was registered on November 16, 2019. The domain name in question resolves to a website where products under the trademark of the Complainant are apparently offered.

The complainant has trademark rights in the trademark PIKOLINOS by submitting copy of community trademark registration and Spanish registrations as annexes to the Complaint.

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.

The Respondent did not reply to the Complainant's contentions. However, a Respondent's default does not automatically result in a decision in favour of the Complainant. Indeed, in spite of Respondent's default, URS Procedure requires the Complainant to succeed to establish that each of the three following conditions under Paragraph 1.2.6 of the URS Procedure are satisfied:

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

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

URS Procedure Rule 1.2.6.1 requires a showing that the registered 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. Rule 1.2.6.1 can be shown by demonstrating evidence of use (e.g., a declaration, a specimen of current use in commerce validated by the Trademark Clearinghouse) or proof submitted with the URS complaint.

Further to the Complainant's contentions, the Examiner finds that the Complainant is owner of several trademarks containing the term PIKOLINOS. However, in the Examiner's view the Complainant has not proved that the domain name is identical or confusingly similar to the word mark PIKOLINOS for which the Complainant holds valid EU and Spanish registrations and that are in current use. In fact, it is the Examiner's opinion that the sign "pkcs" is not identical or confusingly similar to PIKOLINOS trademark as requested by the URS Procedure Rules. Indeed, the abbreviation term "pkcs" means "children" in Spanish language, so that no right may be claimed neither by the Complainant nor by any third party over said generic term.

As a consequence, the Examiner finds that the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1.

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

As the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1, the Examiner shall not need to rule on the Complainant's contentions with regards to URS Procedure Rule 1.2.6.2.

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

As the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1, the Examiner shall not need to rule on the Complainant's contentions with regards to URS Procedure Rule 1.2.6.3.

4. Abusive Complaint

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

VIII. DETERMINATION

A. Demonstration of URS elements

Not demonstrated

B. Complaint and remedy

Complaint: Rejects

Domain Name: Unlocks and returns to the full control of the Registrant

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Alejandro

Surname: Touriño

Date: November 16, 2020