



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

URS DISPUTE NO. CA51FD9A

Determination DEFAULT

I. PARTIES

Complainant: Aymerich Inver SL (Spain)

Complainant's authorized representative(s): Maria Cristina Martinez-Tercero, Padima Team SLP (Spain)

Respondent: WhoisGuard Protected - WhoisGuard, Inc. (Panama)

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

Domain Name(s): MUSTANGVENTA.ONLINE

Registry Operator: DotOnline Inc.

Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2018-09-24 18:51

Lock of the domain name(s): 2018-09-25 15:31

Notice of Complaint: 2018-09-25 16:39

Default Date: 2018-10-10 00:01

Default Notice: 2018-10-10 11:54

Panel appointed: 2018-10-10 11:56

IV. EXAMINER

Examiner's Name: Rodolfo C. Rivas Rea

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 is owner of various “MUSTANG” trademarks in Spain, Europe and other countries.

The Complaint alleges that the use of the sign “MUSTANG” or a variation of it as a trademark, is an infringement of the Complainant’s trademark rights. Furthermore, the use of the Complainant’s trademark in the domain name in dispute will make consumers believe that said website resolving from the disputed domain name is an official MUSTANG website and therefore, is a fraud.

The Complainant contends that the website resolving from the domain name <mustangventa.online> is a fraud page that reproduces without consent the Complainant’s trademark and pictures. Furthermore, the website resolving from the domain name in dispute is using the brand “MUSTANG” to manufacture, distribute, export and/or offer MUSTANG shoes in Spain and in other countries. The Complainant states further that the photographs that appear on this website resolving from the domain name in dispute are owned by the Complainant.

In addition, the Complainant alleges that the webpage resolving from the domain name in dispute is trying to appear as a legal ecommerce site, but the Complainant has not authorized either the domain name in dispute or the content of the website resolving from the domain name in dispute.

The Complainant states that all this together with the offer of MUSTANG products and the use of photographs owned by the Complainant is a clear infringement of the Complainant’s trademarks “MUSTANG”, an abuse of the use of the domain name in dispute and a fraud to the consumer.

B. Respondent:

Respondent did not submit a Response.

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

D. Findings of fact:

The domain name in dispute <mustangventa.online> was registered by the Respondent on September 18, 2018.

The Complainant is owner of the following trademarks:

- Spanish Trademark “M MUSTANG” (mixed mark) registration no. M2693838(3), registered on 10/02/2006.



- Spanish Trademark “MUSTANG KIDS” (mixed mark) registration no. M3629036(X), registered on 08/09/2016.
- Spanish Trademark “MUSTANG” (mixed mark) registration no. M2833241(5), registered on 30/05/2008.
- Spanish Trademark “MUSTANG” (word mark) registration no. M2673834(1), registered on 11/10/2005.

E. Reasoning:

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

The Complainant has proven with evidence on record that it owns various trademark registrations, specifically a word mark registration for “Mustang” since 2005 and which appears to be currently in use, as per the record. Having established this, we now turn to the analysis of the domain name in dispute. In this regard, the Complainant alleges that the totality of the trademark is incorporated in the domain name in dispute. Additionally, the domain name in dispute also includes a word “venta” in Spanish, followed by gTLD “.online”. The gTLD has been widely acknowledged to have little bearing in the analysis pertinent to the first requirement of the URS Procedure.

Being that the domain name in dispute includes the totality of the trademark “Mustang”, plus the word “venta”, which in this case does not add any distinctive characteristics that would dispel a finding of confusingly similarity between the trademark and the domain name, the Examiner finds that the domain name in dispute is confusingly similar to the word mark.

Based on the above and the evidence on record, the Examiner finds that the requirements set forth under Paragraph 1.2.6 (i) of the URS Procedure have been satisfied.

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

The Complainant states that it has not authorized the Respondent to use the trademark “MUSTANG”, and that there is no business relationship between them. Furthermore, the evidence on record shows no evidence that Respondent is commonly known by the domain name in dispute.

Since no Response was submitted in this proceeding, the Respondent has failed to justify any rights or legitimate interests in the domain name in dispute.

Additionally, as per the evidence on record and looking at the broader context of the case, namely, the content of the website, it is apparent that the Respondent not only did not have any right or legitimate interest in the domain name in dispute, but was instead trading off the Complainant’s reputation. Please see the third element below for a more complete analysis of this.

Based on the above, the Examiner finds that the Respondent lacks any rights or legitimate interests with respect to the domain name in dispute as per the requirements set forth under Paragraph 1.2.6 (ii) of the URS Procedure.

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

The evidence on record indicates that the domain name in dispute resolves to a website that reproduces elements and the look and feel (digital trade-dress) of the Complainant website's, including the appearance of providing the same services as the Complainant. This indicates that the registration of the domain name in dispute was done for no other reason than to deceive consumers, by giving the appearance that the website that resolves from accessing the domain name in dispute belongs to the Complainant, which as per the evidence on record is not the case.

This conduct of the Respondent in this case is precisely the type of conducts the URS aims to be curb, namely the one described under Paragraph 1.2.6.3.d of the URS Procedure: "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".

Based on the above and the evidence on record, the Examiner finds that the domain name in dispute was registered and has been used by the Respondent in bad faith, as per the requirements set forth under Paragraph 1.2.6 (ii) of the URS Procedure.

4. Abusive Complaint

The Examiner finds that the complaint is not abusive and it did not contain deliberate material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name(s): MUSTANGVENTA.ONLINE 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: Rodolfo C.
Surname: Rivas Rea
Date: 11 October 2018