



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

URS DISPUTE NO. CCB18C9E

Determination DEFAULT

I. PARTIES

Complainant(s): Wray Ward, LLC (US)

Complainant(s)'s authorized representative(s): Mullen Coughlin, LLC (US)

Respondent(s): Privacy service provided by Withheld for Privacy ehf (IS)

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

Domain Name(s): WRAYWARD.LIFE

Registry Operator: Binky Moon, LLC

Registrar: NameCheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2022-03-16 20:10

Lock of the domain name(s): 2022-03-19 21:40

Notice of Complaint: 2022-03-21 15:40

Default Date: 2022-04-05 00:00

Notice of Default: 2022-04-05 15:39

Panel Appointed: 2022-04-05 15:56

Default Determination issued: 2022-04-06 09:29

IV. EXAMINER

Examiner's Name: Nathalie Dreyfus

The Examiner certifies that she has acted independently and impartially and to the best of her knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

V. RELIEF SOUGHT

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

Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

Complainant claims to be the holder of the WRAY WARD service mark, to have used said service mark approximately for the last 16 years in relation to the following services in (International Class 035): advertising services; marketing services; marketing research services; marketing plan development services; advertising and marketing, namely, promoting or advertising the goods and services of others, strategic planning for marketing communications including identifying target audience, category identifiers, competitors, industry climate, brand differentiators, brand architecture, development of marketing communications and marketing communications planning; marketing consulting, namely, development of marketing campaigns for others; development of marketing strategies and concepts; Consultation services, namely, creative and strategic consultation regarding development and production of marketing campaigns for others.

In addition, Complainant claims to own the domain name <wrayward.com>, registered on February 2nd, 2006.

Complainant asserts that the disputed domain name is confusingly similar to its service mark since it reproduces in its entirety the WRAY WARD sign, with the mere addition of the gTLD <.life>.

Complainant further alleges that Respondent is not affiliated with or authorized by Complainant to register the disputed domain name and use its service mark. The latter contends that Respondent has no prior right or legitimate interests in the disputed domain name. Complainant states that Respondent has no right to use said service mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods or services of such other persons, to cause confusion or mistake, or to deceive.

Further, Complainant claims that the disputed domain name was registered in bad faith, as it was primarily registered for the purpose of disrupting the business of a competitor.

Finally, Complainant argues that the domain name is being used in bad faith given Respondent intentionally attempted to attract for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with Complainant's trademark/service mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

B. Respondent:

Respondent did not reply to 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.

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:

Complainant contends having rights in the "WRAY WARD" name since it has been using the service mark for over 16 years.



In addition, Complainant registered the domain name <wrayward.com> on February 2nd, 2006.

E. Reasoning:

Despite the Respondent has defaulted, to succeed, URS Procedure 1.2.6 requires the Complainant to make a *prima facie* case for each of the following three elements:

- 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.

Under Paragraph 8.2 of the URS Procedure the burden of proof shall be clear and convincing evidence.

To conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS) (Paragraph 8.3 of the URS Procedure).

If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS (Paragraph 8.4 of the URS Procedure).

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

Under paragraph 1.2.6 (i) the Complaint shall contain “*An indication of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely: 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.*

a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce – was submitted to, and validated by, the Trademark Clearinghouse)

b. Proof of use may also be submitted directly with the URS Complaint.”

Complainant claims to have right to the service mark “WRAY WARD”.

However, Complainant has only provided with its Complaint a screenshot of its official website <https://wrayward.com/solutions> which does not sufficiently show valid service mark. This document does not show valid national or regional registration and its current use. This document also does not show that the sign “WRAY WARD” is specifically protected by a statute or treaty in effect at the time the URS Complaint is filed.

The Examiner does not have to evaluate if registration of the sign “WRAY WARD” is in current use.

Therefore, the Examiner finds that the requirements of Paragraph 1.2.6 (i) of the URS Procedure have not been satisfied, and does not have to assess the following points, since the three requirements are cumulative.

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

As the first requirement has not been satisfied, the Examiner does not have to decide on this second requirement.

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

As the first requirement has not been satisfied, the Examiner does not have to decide on this third requirement.

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(s): WRAYWARD.LIFE unlocks and returns to the full control of Respondent

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Nathalie

Surname: Dreyfus

Date: 2022-04-06