



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

**URS DISPUTE NO. E490E21C**

Determination DEFAULT

**I. PARTIES**

Complainant(s): Basic Trademark S.r.l. (IT)  
Complainant(s)'s authorized representative(s): Studio Sindico e Associate (IT)

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

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

Domain Name(s): SCARPERGA.SHOP  
Registry Operator: GMO Registry, Inc.  
Registrar: Namecheap, Inc.

**III. PROCEDURAL HISTORY**

Complaint submitted: 2021-07-23 11:40  
Lock of the domain name(s): 2021-07-26 03:40  
Notice of Complaint: 2021-07-26 09:52  
Default Date: 2021-08-10 00:00  
Notice of Default: 2021-08-10 10:03  
Panel Appointed: 2021-08-10 10:03  
Default Determination issued: 2021-08-12 17:11

**IV. EXAMINER**

Examiner's Name: Wilson Pinheiro Jabur

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 claims to be an Italian company that is a market leader in the design and marketing of clothing, footwear and accessories, notably sportswear and leisurewear which are sold under the SUPERGA trademark, extensively used all over the world.

According to the Complainant, its official website is available at <superga.com>, not having the Complainant authorized the Respondent or any third party to register the disputed domain name which is, in the Complainant's view, confusingly similar to the SUPERGA trademark, being it evident that SCARPERGA is not a fancy word but an attempt to combine SCARPE, a generic Italian noun that indicates footwear with the Complainant's well-known trademark SUPERGA, thus creating a neologism that recalls both the product and the trademark.

Furthermore, the Complainant asserts that the likelihood of confusion is reinforced given that the online shop available at the disputed domain name is very similar to the Complainant's official website available at <superga.com>, clearly depicting the Complainant's trademark as well as products for sale, having actual confusion already taken place amongst Complainant's consumers (Annexes to the Complaint).

In the Complainant's point of view the Respondent does not have any legitimate right or interest in the disputed domain name since the webpage that it resolves to is characterized by an attempt to pass off as the Complainant and leads to actual consumer confusion (Annex to the Complaint).

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that the Respondent, by using the disputed domain name, intentionally attempted to attract for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of its website.

### **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 disputed domain name <SCARPERGA.SHOP> was registered on April 8, 2021. The disputed domain name resolves to an active online shop that depicts the Complainant's trademark, products and similar look-and-feel of the Complainant's official webpage.

The Complainant has shown trademark rights over the expression "SUPERGA" duly registered in several jurisdictions around the world (Annexes to the Complaint).

### **E. Reasoning:**



In spite of Respondent's default, URS Procedure 1.2.6 requires the Complainant to make a *prima facie* case, showing clear and convincing evidence for each of the three elements so as to have the disputed domain name suspended.

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

The Complainant is the owner, among others, of the European Union trademark registration No. 003181492 for the word mark SUPERGA, registered on December 10, 2004, in classes 3, 9, 14, 16, 18 and 25.

The disputed domain name <SCARPERGA.SHOP> substitutes the letter "u" in the Complainant's SUPERGA trademark for "car", enabling the Internet user to read the generic Italian term "scarpe" that refers to footwear, the well-known Complainant's products, and the remainder of the Complainant's trademark. In addition to that, and as already pointed out, the online shop available at the disputed domain name clearly reproduces the Complainant's logo, products and is very similar to the Complainant's official website.

As previously recognized by past panels and summarized in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7 "[...] panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant", which is precisely the present case.

The Examiner thus finds that the complaint meets the requirement of the URS 1.2.6 (i).

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

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to the URS, any rights or legitimate interests in the disputed domain name. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, the use of the disputed domain name in connection with an online shop reproducing the Complainant's trademark and products, similar to the Complainant's official webpage and the actual consumer confusion that already took place cannot be considered a *bona fide* offering of goods or services under the Policy.

Also, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, corroborates with the indication of the absence of a right or legitimate interest.

Under these circumstances and absent evidence to the contrary, the Examiner finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name and has therefore met the requirement of the URS 1.2.6 (ii).

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

As seen above, the disputed domain name is being used in connection with an online shop reproducing the Complainant's logo and products what indicates undoubtful prior knowledge of the Complainant and its famous trademark.

Such use in this Examiner's point of view has already created actual confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website and therefore does not qualify as a *bona fide* use.

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

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

### **VIII. DETERMINATION**

#### A. Demonstration of URS elements

Demonstrated

#### B. Complaint and remedy

Complaint: Accepts

Domain Name(s): SCARPERGA.SHOP 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: Wilson

Surname: Pinheiro Jabur

Date: 2021-08-12