



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

**URS DISPUTE NO. F52833A5**

Determination DEFAULT

**I. PARTIES**

Complainant: Orange Brand Services Limited, UK  
Complainant's authorized representative(s): Taylor Wessing LLP, UK

Respondent: Arvind Seth

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

Domain Name(s): orangemoney.cash  
Registry Operator: Delta Lake, LLC (Donuts Inc.)  
Registrar: GoDaddy.com LLC

**III. PROCEDURAL HISTORY**

Complaint submitted: 2016-07-07 13:52  
Lock of the domain name(s): 2016-07-11 19:05  
Notice of Complaint: 2016-07-18 16:39  
Default Date: 2016-08-02 00:00  
Default notice: 2016-08-02 11:50

**IV. EXAMINER**

Examiner's Name: Amarjit Singh

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 in the present proceedings is Orange Brand Services Limited a limited liability company.

The Complainant asserts that it is part of the Orange Group telecommunications conglomerate. It provides a broad range of services, including financial and banking services.

The Complainant further asserts that it first registered “Orange” as a trademark in 1994, it is ranked the 54<sup>th</sup> most valuable brand in the world by BrandFinance Global 500 2016. The Complainant owns over 3,000 trade marks for the word ORANGE and variations of the mark.

The disputed domain name was registered on 30<sup>th</sup> July 2015. It offers various financial transaction services on its website that are the same as or similar to those offered by the complainant and protected by the marks.

## **B. Respondent**

The Respondent did not file its Response to the complaint as notified by the Provider.

## **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.

Para. 9(d) URS Rules provides that in absence of a Response, the language of the Determination shall be English.

## **D. Findings of fact:**

The Domain Name <orangemoney.cash> was registered on 30<sup>th</sup> July 2015 by the Respondent. The complainant is registered proprietor of the trademark “ORANGE” in India vide registration no. 642868 in class 9.

The Complainant’s trademark application in respect of the mark “ORANGE MONEY” (application no. 3175123) is pending before the Indian Trademark Registry which was filed on 2<sup>nd</sup> February 2016 with a claim of proposed use.

The complainant also holds registration in respect of the mark “ORANGE CASH” in classes 9, 16, 37 & 38 in EU vide registration no. 01126448.

## **E. Reasoning:**

The Examiner shall make a Determination of a Complaint in accordance with URS Procedure, URS Rules and any rules and principles of law that he/she deems applicable.

The Examiner shall determine the admissibility, relevance, materiality and weight of the evidence.



For the Complainant to succeed, it must establish that each of the three conditions under the URS Procedure 1.2.6 are satisfied.

The burden of proof shall be clear and convincing evidence.

The Complainant shall present adequate evidence to substantiate its trademark rights in the domain name(s) (e.g. evidence of a trademark registration) and evidence that the domain name(s) was(were) registered and is(are) being used in bad faith in violation of the URS.

If the Complainant does not meet its burden of proof or genuine issues of material fact remain in regards to any of the elements, the Complaint shall be rejected.

If evidence is presented or available to the Examiner that the use of the domain name in question is a non-infringing use or fair use of the trademark, the Complaint shall be dismissed.

If there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint shall be denied.

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

The Domain Name <orangemoney.cash> was registered on 30<sup>th</sup> July 2015 by the Respondent. The Complainant is registered proprietor of the trademark “ORANGE” in India vide registration no. 642868 in class 9.

The Complainant’s trademark application in respect of the mark “ORANGE MONEY” (application no. 3175123) is pending before the Indian Trademark Registry which was filed on 02.02.2016 with a claim of proposed use.

The Complainant also holds registration in respect of the mark “ORANGE CASH” in classes 9, 16, 37 & 38 in EU vide registration no. 01126448.

The domain name <orangemoney.cash> is identical and/or confusingly similar to the trademark for which the complainant holds registration.

In addition to the registration of the trade/service mark, URS Rules and Procedure also put the burden on the Complainant to provide evidence of use of the mark in respect of goods or services by way of declaration and specimen of current use in commerce OR by including a relevant SMD (Signed Mark Data) from the Trademark Clearinghouse.

The Complainant has provided screenshot of the website hosted on domain name <orangecash.fr> to demonstrate the use of the mark by the complainant.

The Complainant also use domain names orange-money.com, orangemoneyonline.com, orangemoney.fr, orangesupercash.com, orangecash.fr, orangecash.co.uk and orangecash.es all registered and used well before the respondent registered the domain name.

The Examiner concludes that the Complainant has satisfied the first element of URS and concludes that the domain name is identical to the registration of domain name at issue.

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

The Respondent has no right or legitimate interest in the domain name.

The Respondent has not responded to the contentions raised by the Complainant in the Complaint and has also not shown any interest in representing.

The Respondent's Facebook page ([www.facebook.com/orangemoney.cash](http://www.facebook.com/orangemoney.cash)) was allegedly taken down for reasons of "violating facebook's community standards". The fact has not been disputed by the Respondent. However, Complainant has not established that the Facebook page was operated by Respondent in the instant matter.

The Complainant alleged that its Indian lawyers wrote to the Respondent on 26<sup>th</sup> February 2016 detailing its rights and objections, but received no reply. A former director of Orange Bullion Limited (associated with the use of the domain name and of which the Respondent is a director), Rocky Aggarwal, has said that the Respondent has defrauded him and ignores his communications. The fact has not been disputed by the Respondent.

The Respondent after having received letter of Complainant's lawyer, redirected the domain name to <pinkroute.in>, which clearly establishes that Respondent does not have any legitimate interest in the Domain Name.

Under these circumstances and representation of any evidence to the contrary by the Respondent, the Examiner finds that the Complainant has 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**

URS Procedure 1.2.6.3 identifies non exclusive list of circumstances that Examiner could consider as constituting bad faith:

- Circumstances indicating that the domain name(s) was/were registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration(s) 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 domain name(s).
- The domain name(s) was/were 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.
- The domain name(s) was/were registered primarily for the purpose of disrupting the business of a competitor.
- By using the domain name(s), the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent'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 the Respondent's web site or location or of a product or service on the Respondent's web site or location.

URS Procedure 5.7 sets out examples of circumstances demonstrating bona fide registration of the domain name(s):

- Before any notice to the Respondent of the dispute, there is evidence of Respondent's use of, or demonstrable preparations to use, the domain name(s) or a name corresponding to the domain name(s) in connection with a bona fide offering of goods or services.



- The Respondent (as an individual, business, or other organization) has been commonly known by the domain name(s), even if the Respondent has acquired no trademark or service mark rights.
- The Respondent is making a legitimate or fair use of the domain name(s), without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark(s) or service mark(s) at issue.

URS Procedure 5.8 sets out examples of defenses to the Complaint to demonstrate that the Respondent's use of the domain name is not in bad faith:

- The domain name is generic and descriptive and the Registrant is making fair use of it.
- The domain name(s) sites are operated solely in tribute to or in criticism of a person or business.
- Respondent's holding of the domain name(s) is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
- The domain name(s) is(are) not part of a wider pattern or series of abusive registrations because the domain name(s) is(are) of a significantly different type or character to other domain names registered by the Respondent.

URS Procedure 5.9 sets out other factors that the Examiner shall consider:

- Trading in domain name for profit, and holding a large portfolio of domain names, are themselves not indicia of a bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute.
- Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. In this connection the Examiner shall take into account the nature of the domain name(s), the nature of the advertising links on any parking page associated with the domain name and that the use of the domain name(s) is ultimately the Respondent's responsibility.)

The Respondent changed the website content hosted on domain name <orangemoney.cash> after having received letter of Complainant's lawyer. The content on the website has been replaced from "Orange Money" to "Pink Route". The Domain Name <orangemoney.cash> has been forwarded to <pinkroute.in>.

The domain name(s) was registered primarily for the purpose of disrupting the business of Complainant. By using the domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent'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 the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The said act establishes the bad faith intention of the Respondent in the instant case.

Under the circumstances, Examiner finds that the Domain Name has been used by the Respondent in bad faith.

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

The Examiner finds that complaint is neither abusive nor contained a deliberate material falsehood.

## **VIII. DETERMINATION**

### A. Demonstration of URS elements

Demonstrated

### B. Complaint and remedy

Complaint: Accepted

Domain Name(s): <orangemoney.cash> Suspends for the balance of the registration period.

### C. Abuse of proceedings

Finding of abuse of proceedings: Not Found

### D. Publication

Publication: Publish the Determination

## **SIGNATURE**

Name: Amarjit

Surname: Singh

Date: August 5, 2016