



URS | DETERMINATION

(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. 7B10562D

Determination DEFAULT

I. PARTIES

Complainant: Sovenca S.I., Alfredo Postigo, SP
Complainant's authorized representative(s): Maria Alicia Izquierdo Blanco, SP

Respondent: Gareth Walker, USUK Ltd

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

Domain Name(s): flossy.shoes
Registry Operator: Binky Galley, LLC (Donuts Inc.)
Registrar: Paragon Internet Group Ltd t/a Paragon

III. PROCEDURAL HISTORY

Complaint submitted: 2016-06-06 14:01
Lock of the domain name(s): 2016-06-07 22:40
Notice of Complaint: 2016-06-08 17:33, received on 2016-06-10 13:18
Default Date: 2016-06-24 00:00
Default notice: 2016-06-24 09:26

IV. EXAMINER

Examiner's Name: Alejandro Touriño Pena

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 contends to be the owner of several trademark registrations for FLOSSY which are identical to the disputed domain. In particular, the Complainant is, among others, owner of the following trademarks:

- Community TM 10820561 FLOSSY
- Community TM 11860186 FLOSSY
- International TM 609304 FLOSSY
- Spanish TM 1243099 FLOSSY
- Spanish TM 2987557 FLOSSY
- Spanish TM 3061338 FLOSSY

The Complainant contends that the disputed domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant.

Also, on the Complainant's point of view, the domain name was registered in order to prevent the Complainant from reflecting the trademark in the disputed domain name.

The 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 disputed domain name being identical to the Complainant's trademarks, Internet users can believe that the website at the disputed domain name belongs to the Complainant, the extension ".shoes" enhancing the risk of confusion since the products distributed by the Complainant, which are covered by the trademark registrations, are shoes.

Finally, the Complainant contends to have sent several warning letters and reminders to the Respondent regarding this matter without any response.

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.

D. Findings of fact:

The domain name <flossy.shoes> was registered on April 4, 2014. The domain name in question resolves to the website <cheapflossys.co.uk>, where products under the trademark of the Complainant are apparently offered.



The complainant has proved to have trademark rights in the trademark FLOSSY by submitting copy of certificate of registrations of international trademark, community trademarks and Spanish trademarks 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

The Complainant is the owner of several trademark registrations for the term FLOSSY, including international trademark, community trademarks and Spanish trademarks to cover goods and services in classes 10, 18, 25 and 35, since 1993.

Of such trademarks, international registration no. 609304 and Spanish registrations no. 1243099 and 2987557 are word marks.

According to Paragraph 1.2.1.6 of URS Procedure, the Complainant shall rely on and shall prove that the registered domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use.

Therefore, for the purpose of this URS proceeding, the Examiner will take into consideration only the word trademarks of the Complainant.

The Complainant has referred to the notoriety of the trademark FLOSSY as an evidence of the extended and well-known use of the trademark in commerce.

The domain name is identical to the Complainant's trademark. The gTLD <.shoes> can even add likelihood of confusion since the Complainant manufactures and sells shoes.

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

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

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 Complainant indeed asserts that it has not authorized the Respondent nor granted the Respondent a license or permission to register the disputed domain name or use its trademarks. In addition, 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 corroborate with the indication of the absence of any right or legitimate interest.

On top of that, the Complainant has provided screen shots of the fact that the domain name <flossy.shoes> resolves to the website <cheapflossys.co.uk>, where products under the trademark of the Complainant are apparently offered with no express authorization by the Complainant to do so has been granted.

In 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 that the requirements of Paragraph 1.2.6 (ii) of the URS Procedure have been satisfied.

3. The domain name was registered and is 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.

Among them, it seems clear in the Examiner's view that in the case at hand the Respondent had necessarily constructive knowledge of the Complainant's trademarks when registering the disputed domain name. Indeed, the disputed domain name incorporates the Complainant's FLOSSY trademark in its entirety without other word or letter and the TLD .shoes identifies the products that the Complainant's manufactures and sells.

In addition, by means of redirecting the users to the domain name <cheapflossys.co.uk>, where products under the trademark of the Complainant are offered, it clearly appears that the Respondent had perfect knowledge of the Complainant's trademarks.

Such use in the Examiner's point of view may create a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of his website and therefore does not qualify as a bona fide use.

Moreover, the disputed domain name being identical to the Complainant's name and trademarks, Internet users may legitimately believe that the website at the disputed domain name belongs to the Complainant, the TLD <.shoes> enhancing the risk of confusion since those are the products manufactured by the Complainant.

In the absence of any explanation from the Complainant, the Examiner finds more likely than not that the Respondent intentionally registered a domain name identical to the Complainant's trademarks to benefit from the good will associated with said trademarks.



In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (iii) of the URS Procedure have been satisfied.

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: 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: Alejandro

Surname: Touriño

Date: June 29, 2016