



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

URS DISPUTE NO. D5C230DE

Determination DEFAULT

I. PARTIES

Complainant: Sks365 Malta Ltd., MT
Complainant's authorized representative(s): Fabio Maggesi, IT

Respondent: Mansour Ben Khamsa, TN

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

Domain Name(s): planetwin365.paris
Registry Operator: City of Paris
Registrar: 1&1 Internet AG

III. PROCEDURAL HISTORY

Complaint submitted: 2016-12-06 11:27
Lock of the domain name(s): 2016-12-06 17:50
Notice of Complaint: 2016-12-07 19:16
Default Date: 2016-12-22 00:00
Default notice: 2016-12-22 10:51

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

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 asserts to be the owner of the European Union Trademark for the “planet win 365” sign, which is identical to the disputed domain name. The Complainant further asserts that the gTLD <.paris> enhances the likelihood of confusion as Internet users could be led to believe that the corresponding website relates to a specific business matter of the Complainant in Paris.

From the Complainant’s point of view, the Respondent does not have any right or legitimate interest in the disputed domain name as the Respondent was not authorized by the Complainant to register the disputed domain name.

Finally, the Complainant puts forward that the disputed domain name was registered and is being used in bad faith on the ground that, by using the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

B. Respondent:

The Respondent did not reply to the 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.

Paragraph 9(d) of the URS Rules provides that “*in absence of a Response, the language of the Determination shall be English*”. Therefore, the language of the present Determination shall be English.

D. Findings of fact:

The disputed domain name was registered on January 30, 2016. The website at the disputed domain name points towards a webpage entitled “Check your bet results” which is dedicated to betting services.

The Complainant has not shown to be currently holding trademark rights on the sign “planet win 365”. As a matter of fact, the Complainant has not provided any evidence of any transfer of rights with regards to the European Union Trademark No. 008729791 “planet win 365”. In that regard, the total transfer recordal application provided as evidence by the Complainant is irrelevant as (i) it does not prove that said application was upheld by the EUIPO and (ii) the current listed owner of said trademark is not the Complainant, according to the official trademark database of the EUIPO.

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 favor of the complainant. Although, the Examiner may draw appropriate inferences from a respondent's default, Paragraph 12 of the URS Rules requires the Examiner to review the Complaint for a *prima facie* case, including complete and appropriate evidence.

For the Complainant to succeed, it must 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 in the domain name;
- That the domain was registered and is being used in bad faith.

At the same time, in accordance with Paragraph 12(f) of the URS Rules, *"if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules, the URS Procedure or the Provider's Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate"*.

The Examiner finds that in this case there are no such exceptional circumstances. Consequently, failure on the part of the Respondent to file a response to the Complaint allows an inference that the Complainant's reasonable allegations are true. It may also allow the Examiner to infer that the Respondent does not deny the facts that the Complainant asserts.

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

URS Procedure Rule 1.2.6.1 requires a showing 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. Rule 1.2.6.1 can be shown by demonstrating evidence of use (e.g., a declaration, a specimen of current use in commerce validated by the Trademark Clearinghouse) or proof submitted with the URS complaint.

In spite of the Complainant's contentions, the Examiner finds that the Complainant does not own the European Union trademark No. 008729791 "planet win 365". As a matter of fact, the Complainant is not the initial owner of said trademark and has failed to demonstrate that said trademark has been transferred to them. In that regard, the total transfer recordal application provided as evidence by the Complainant is irrelevant as (i) it does not prove that said application was upheld by the EUIPO and (ii) the current listed owner of said trademark is not the Complainant, according to the official trademark database of the EUIPO.

Furthermore, the Examiner finds that the Complainant has not provided any element aimed at showing that it owns said trademark as a result of validation through court proceedings or that said trademark is protected by a statute or a treaty in effect at the time the URS complaint was filed.

Finally, according to URS Procedure Rule 9.1, the evidence submitted with the Complaint shall serve as sole record used by the Examiner to make a Determination. Therefore, the

Examiner shall not carry out any further research as to the current ownership of the European Trademark No. 008729791 “planet win 365”.

As a consequence, the Examiner finds that the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1.

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

As the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1, the Examiner shall not need to rule on the Complainant’s contentions with regards to URS Procedure Rule 1.2.6.2.

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

As the Complainant has failed to satisfy the requirements of the URS Procedure Rule 1.2.6.1, the Examiner shall not need to rule on the Complainant’s contentions with regards to URS Procedure Rule 1.2.6.3.

4. Abusive Complaint

According to paragraph 11 of the URS Procedure Rules, a Complaint may be deemed abusive if the Examiner determines that the Complaint:

- was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
- the claims or other assertions were not warranted by any existing law or the URS standards, or the factual contentions lacked any evidentiary support.

An Examiner may find that the Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.

However, the dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing of an abusive complaint.

In the present case, based on the evidence provided by the Complainant, the Examiner finds that the Complainant has actually filed a total transfer recordal application with regards to the European Trademark No. 008729791 “planet win 365”. Moreover, said application was filed with the EUIPO on September 30, 2016. Taking into account that the Complaint was filed on December 6, 2016, the Examiner finds unlikely that the Complainant filed said application for the sole purposes of claiming false trademark rights in the present Complaint.

As a result, the Examiner finds that the Complaint was not filed abusively.

VIII. DETERMINATION

A. Demonstration of URS elements

Not demonstrated

B. Complaint and remedy



Complaint: Rejects

Domain Name(s): Unlocks and returns to the full control of the Registrant

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Nathalie

Surname: Dreyfus

Date: December 28, 2016