

URS DISPUTE

Dispute number: **2E20D745**
Determination **DEFAULT**

I. PARTIES

Complainant: Diadora Spa
Enrico Moretti Polegato
Via Montello, 80 I-31031 Caerano di San Marco

Complainant's Authorized Repr.: Convey Srl
Michele Provera
Via Sagra di San Michele, 27 â€” 10139 Torino

Respondent: **N/A N/A**

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

Domain name: **diadoran.online**
radix fzc
5.255.62.145
namesilo llc

Domain name: **diadoraon.online**
radix fzc
5.255.62.153
namesilo llc

Domain name: **diadoras.online**
radix fzc
23.252.66.42
namesilo llc

III. PROCEDURAL HISTORY

Complaint Submitted: 2019-06-05 18:03
Lock of the Domain name(s): 2019-06-05 20:41
Notice of Complaint: 2019-06-06 16:03
Default Date: 2019-06-21 00:01
Notice of Default: 2019-06-21 14:06
Panel Appointed: 2019-06-21 17:47
Default Determination issued: 2019-06-22 11:26

IV. EXAMINER

Examiner's Name: **Paddy Tam**

The Examiner certifies that he/she has acted independently and impartially and to the best of his/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 filed a Response

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant

The Complainant is a legal corporate entity registered in Italy and has been an athletic footwear and apparel manufacturer since 1948 the year of foundation.

The Complainant is the owner of the trademark DIADORA with several international and national trademark registrations worldwide, including:

- European Union Trademark DIADORA (word trademark) N. 000339093 registered on January 7, 1999 in the classes 18, 25, 28
- Italian Trademark DIADORA (word trademark) N. 0000721535 registered on July 31, 1997 in the classes 3, 9, 12, 14, 16, 18, 25, 28
- U.S. Trademark DIADORA (word trademark) N. 2282558 registered on October 05, 1999 in the classes 18, 25, 28

The trademark DIADORA has also been registered as SMD file for the Trademark Clearinghouse.

The Complainant registered several domain names consisting of or comprising the trademark DIADORA under several different TLDs, including <diadora.com> redirected to the web site www.diadora.com.

The Complainant asserts the following regarding the Respondent:

1. The registered domain names are identical or confusingly similar to a word or mark [URS 1.2.6.1]: for which the Complainant holds a valid national or regional registration and that is in current use;
2. Registrant has no legitimate right or interest to the domain names; [URS 1.2.6.2]
3. The domain names were registered and is being used in bad faith. [URS 1.2.6.3]

B. Respondent

The Respondent did not file an official response within the deadline.

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

Multiple Respondents and Privacy or proxy service:

The Examiner notes that the SEE PRIVACYGUARDIAN.ORG is named as the Respondent on the Complaint Form and the Registry Operator confirmed SEE PRIVACYGUARDIAN.ORG is the Registrant Organization of the Disputed Domain Names. Despite SEE PRIVACYGUARDIAN.ORG might only be the name of the privacy or proxy service employed by the actual underlying Registrant of the Disputed Domain Names, due to lack of disclosure by the Registrar and the Respondent, the Examiner accepts that SEE PRIVACYGUARDIAN.ORG is the Respondent of the present case.

Language of the Determination: In absence of a Response, the language of the Determination shall be English. [URS Rules 9(d)]

D. Findings of Fact

The Registration Date of the Disputed Domain Names are as below:

<diadoran.online> : 2019-04-26
<diadoraon.online> : 2019-05-07
<diadoras.online>: 2019-03-27

Despite the Respondent has defaulted, the Examiner is still required to review the case on the merits of the claim. [URS 6.3]

E. Reasoning

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

To satisfy URS 1.2.6.1, a Complainant needs to prove its rights in a word mark and the domain name(s) is/are identical or confusingly similar to the word mark.

In the present case, the Examiner satisfies that the Complainant is a well-known athletic footwear and apparel manufacturer who also owns valid trademark registrations for DIADORA in different jurisdictions.

The Complainant claims that the Disputed Domain Names are confusingly similar to the DIADORA trademark and the additional letters "s", "n" and "on" that would not give any distinctive characteristics. The Examiner accepts that the additional letters do not alter the underlying trademark or negate the confusing similarity and they do not sufficiently differentiate the Disputed Domain Names from that trademark. In addition, the Examiner also finds that the ".online" generic top-level domain ("gTLD") does not reduce the likelihood of confusion.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.1.

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

To satisfy URS 1.2.6.2, the Complainant must first make a prima facie case that the Respondent lacks rights or legitimate interests in the domain name(s), and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests.

The Complainant asserts that the Respondent is not a licensee or authorized dealer of the Complainant nor has been authorized by the Complainant to use the trademark DIADORA in the Disputed Domain Names or in any other manner. The Complainant is not in possession of, nor aware of the existence of, any evidence demonstrating that the Respondent might be commonly known by the Domain Names or a name corresponding to the disputed Domain Names as an individual, business, or other organization.

The Examiner finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Names and the Respondent has not rebutted the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.2.

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

To satisfy URS 1.2.6.3, the Complainant must prove both the registration and use of the domain names are in bad faith.

The Complainant claims that the Respondent has demonstrated actual knowledge of the DIADORA trademark by reproducing the trademark on the website and capitalizes on the reputation of the DIADORA trademark by selling replicas of Complainant's athletic products. Furthermore, the Complainant also contends that the registration of the Disputed Domain Names prevented the Complainant from reflecting the mark in a corresponding domain name and is deems that the Respondent is engaged in a pattern of conduct.

Having reviewed the screenshots of the websites on the Disputed Domain Names, the Examiner is of the view that the Respondent has intentionally attempted to attract for commercial gain, Internet users to Registrant'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 Registrant's web site or location or of a product or service on that web site or location. In

the absence of any explanation from the Respondent, the Examiner agrees that the Respondent did have actual knowledge of the DIADORA trademark demonstrating the bad faith registration, and disrupts Complainant's business and attempted to commercially benefit off the DIADORA trademark in bad faith.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.3.

4. Abusive Complaint

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

VIII. DETERMINATION

A. Demonstration of URS elements

After reviewing the entire record of the URS proceeding and the Parties submissions, the Examiner shall determine if the Complainant has or has not demonstrated all three elements of the URS by a standard of clear and convincing evidence

Demonstration of URS elements **Demonstrated**

B. Complaint and remedy

The Examiner shall decide whether to accept or reject the Complaint and, therefore, order the domain name(s) be suspended for the balance of the registration period or be unlocked and returned to the full control of the Registrant

Complaint **Accepts**

Domain Name(s) **Suspends for the balance of the registration period**

C. Abuse of proceeding

The Examiner may find that a Complaint is abusive or contains deliberate material falsehood

Finding of abuse of proceedings **Not finds**

Ban from utilization of URS

D. Suspension or Termination

If legal proceedings were initiated by a Party or the Parties prior to or during the URS proceeding, the Examiner may order the suspension or termination of the URS dispute or decide to proceed to the Determination

URS proceeding

E. Publication

Publication **Publish the Determination**

SIGNATURE

Name **Paddy**

Surname **Tam**