

URS DISPUTE

Dispute number: **369B0FE1**
Determination **DEFAULT**

I. PARTIES

Complainant: Dpdgroup International Services Gmbh
Wailandtrasse 1, 63741 Aschaffenburg, GERMANY

Complainant's Authorized Repr.: **INLex Ip Expertise**
Elodie ROCHOUX
5 rue Feydeau, 75002 Paris, FRANCE

Respondent: **WhoisGuard Protected**

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

Domain name: **dpd.solutions**
donuts (id: 3d1da56ce0564e9eaf9af53237593685-donuts)
185.35.138.145
namecheap

III. PROCEDURAL HISTORY

Complaint Submitted: 2017-08-21 15:00
Lock of the Domain name(s): 2017-08-25 20:26
Notice of Complaint: 2017-09-04 11:52
Default Date: 2017-09-19 00:01
Notice of Default: 2017-09-19 18:04
Panel Appointed: 2017-09-19 18:16
Default Determination issued: 2017-09-20 16:00

IV. EXAMINER

Examiner's Name: **Rodolfo Carlos Rivas Rea**
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 states that the Disputed Domain Name is identical to the Complainant's trademarks, as it identically reproduces the only or dominant element "DPD".

The Respondent has no rights or legitimate interests on the Disputed Domain Name, as per the Complainant, as the Respondent has chosen to remain anonymous, has not been authorized by the Complainant to use the name DPD and there is no business relationship between them.

1. The domain name was registered in bad faith.

According to the Complainant, the delivery services developed by the Complainant are widely known under the sign DPD. Its company name is DPDgroup International Services GmbH & Co. KG. Back in 2014, the Complainant has decided to change the way it is externally identified, amongst others through new brands for the Group, as well as a new slogan. Therefore, in the view of the Complainant, and due to the massive use and trademark protection coverage, the Respondent could not ignore the Complainant's rights.

The Complainant also alleges that the Respondent is more than aware of the Complainant's rights, as the Respondent reproduces many of them within the website associated with the Disputed Domain Name, including the Cube device, which colors have merely been inverted, and "DPD" in its new stylized typology.

In the view of the Complainant, this shows that the registration was fraudulent and made with the intention to benefit from the attractive power of the Complainant's widely known name and trademarks.

2. The Disputed Domain Name is used in bad faith and disturbs the Complainant's business, through usurping its identity

The Complainant alleges that the Disputed Domain Name being identical to the Complainant's rights, and the associated website being providing identical services, namely delivery services, the Internet users can believe that the associated website www.dpd.solutions belongs to the Complainant, and that the latter is operating the services mentioned within the website.

With this website, the Respondent is trying to drive the Complainant customer's attention to its own website, according to the Complainant. In addition, the Complainant, through its representative, tried to reach the Respondent to have the infringement cease, unsuccessfully.

All this, in the view of the Complainant show that the registration of the domain name <dpd.solutions> and the creation of the currently associated website is constitutive of identity theft, in addition to being counterfeiting infringements. All the above are necessarily harmful for the Complainant, which client are directed to the fraudulent website and Disputed Domain Name, thinking to be in relation with the official DPD entity.

B. Respondent

Respondent has not submitted a Response.

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 absence of a Response, the language of the Determination shall be English, as per paragraph 9(d) URS Rules.

D. Findings of Fact

The Disputed Domain Name <dpd.solutions> was registered on March 31, 2017 by the Respondent. The Complainant

owns several French, European and International trademarks composed of the denomination "DPD", and notably:

- International trademark "DPD" (stylized writing) n° 1217471, registered on March 28, 2014 in classes 9, 16, 35, 39 and 42.
- International trademark « DPD GROUP » (and device) n° 1271522, registered on August 25, 2015 in class 39.

The trademarks "DPD" are widely used in relation to parcel and postal services. The Complainant is actually one the leaders in the field of delivery services, with a presence in Europe and worldwide, and about 60.000 experts delivering more than 4 million parcels per day.

E. Reasoning

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

The first question we have to address is whether the trademark giving standing to the Complainant is enough for a URS proceeding, that is, does a mark, for this case, consisting of only figurative elements and stylized letters amount to what should be considered "word mark" under the URS? This question has been asked before, specifically in the case FA1604001672049 involving the domain name <sanofi.xin>, where the Panelists found that "the use of the words "word mark" in URS 1.2.6.1 does not specifically exclude trademarks which are combined of a word element and a graphical element, provided the word element is clear, and sufficiently distinct and separate from the graphical element." The Examiner is persuaded by this, and believes that in this case, the word element is clearly separated from the device element showing "DPD" as the predominant element.

Additionally, and taking into account a holistic analysis of the case, it is clear that the broader case context, specifically the website content, which is clearly trading off the Complainant's reputation, supports a finding of confusing similarity. A more complete analysis of this follows below.

Having said this, the Disputed Domain Name is identical to Complainant's trademark, as it reproduces the totality of the predominant element of the mark "DPD". Additionally, it is widely acknowledge that the gTLD, ".solutions" in this case, does not have a bearing in the analysis under the first requirement of the URS Procedure.

Under these circumstances, the Examiner finds that the requirements set forth under Paragraph 1.2.6 (i) of the URS Procedure have been satisfied.

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

There is no evidence in the file to indicate that Respondent is commonly known by the Disputed Domain Name. Furthermore, as no Response was submitted in this proceeding, the Respondent has failed to justify any rights or legitimate interests in the Disputed Domain Name.

Additionally, the Complainant has stated that the Respondent has not been authorized by the Complainant to use the dominant element of the mark, ie. "DPD", and that there is no business relationship between them.

Under these circumstances, and in the absence of evidence to the contrary in the file, the Examiner hereby finds that the Respondent does not have rights or legitimate interests with respect to the Disputed Domain Name as per the requirements set forth under Paragraph 1.2.6 (ii) of the URS Procedure.

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

The Disputed Domain Name resolves to website that reproduces dominant elements from the Complainant website's digital trade-dress, which includes the look and feel and the apparent services provided by the Complainant. This leads the Examiner to determine that the registration of the Disputed Domain Name was made with the clear intention of deceiving the consumers, through identity theft of the Complainant's name and business.

This conduct falls squarely under a circumstance enumerated under the URS Procedure, which demonstrate bad faith registration and use by the Registrant, namely, "by using the domain name Registrant 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" (Paragraph 1.2.6.3.d of the URS Procedure).

Under these circumstances, the Examiner finds that the Disputed Domain Name was registered and has been used by the Respondent in bad faith, as per the requirements set forth under Paragraph 1.2.6 (ii) of the URS Procedure.

4. Abusive Complaint

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

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 [Rodolfo Carlos](#)

Surname [RIVAS REA](#)