

URS DISPUTE

Dispute number: **4523F044**
Determination: **DEFAULT**

I. PARTIES

Complainant: **MA BOUTIQUE O NATUREL**
135 AVENUE ANDRÉ AMPÈRE ESPACE CÃZANNE, 13290 AIX-EN-PROVENCE

Complainant's Authorized Repr.: **INLEX IP EXPERTISE**
TETYANA DELORY
5 RUE FEYDEAU, 75002 PARIS, FRANCE

Respondent: **REDACTED FOR PRIVACY REDACTED FOR PRIVACY**

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

Domain name: **onateraproducts.blog**
registry domain id: d_00d8719a_8e530dcaab694e5d8b2beb4383a04f3a_217.26.48.101
ascio technologies, inc. danmark - filial af ascio technologies,

III. PROCEDURAL HISTORY

Complaint Submitted: 2019-03-25 15:28
Lock of the Domain name(s): 2019-03-28 14:05
Notice of Complaint: 2019-03-28 18:38
Default Date: 2019-04-12 00:01
Notice of Default: 2019-04-12 13:14
Panel Appointed: 2019-04-12 13:14
Default Determination issued: 2019-04-15 16:06

IV. EXAMINER

Examiner's Name: **Nathalie Dreyfus**
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 to be the owner of several trademarks registrations for the "ONATERA" sign. Complainant asserts that the trademarks correspond to the Complainant's trading name and institutional brand and are widely used in France and in Europe in relation to a wide range of natural and organic products such as vitamins, food supplements, dietary products, beauty product and essential oils. Complainant argues to be known under the ONATERA since 2015 and that it is the French e-commerce leader in the field of natural and organic products with a growing activity. Complaint asserts that its trademarks are reproduced in the disputed domain name. Complainant further asserts that the gTLD <.blog> does not prevent the risk of likelihood of confusion.

Complainant argues that 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.

Complainant further argues that the domain name was registered and used in bad faith with the purpose of disrupting the business of a competitor. By using the domain names, Complainant states that the Respondent intentionally attempted to attract Internet users for commercial gain.

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 this Determination is written in English.

D. Findings of Fact

The Disputed Domain Name <onateraproducts.blog> was registered on January 10, 2019. The website is not functioning, yet email servers are configured for the disputed domain name which causes a risk of phishing scheme.

The Complainant has shown trademark rights over the "ONATERA" sign.

Complainant registered the domain name <onatera.com> on December 21, 2015 and said domain name is linked to the Complainant's official website.

E. Reasoning

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

The Complainant has shown rights on the following trademarks:

- The French trademark ONATERA, No. 4246325 filed on February 4, 2016 and registered on July 22, 2016 in classes 5 and 35
- The International trademark ONATERA, No.1318513 registered on June 24, 2016 in classes 5 and 35 and designating European Union and Switzerland
- The French trademark ONATERA, No.4316028 filed on November 21, 2016 and registered on March 17, 2017 on in classes 5 and 35

- The International trademark ONATERA, No. 1369590 registered on June 30, 2017 in class 35 and designating European Union and Switzerland

The Disputed Domain Name reproduces entirely the Complainant's trademarks. The mere addition of the word "produits", which means products in French, does not prevent the likelihood of confusion. It even adds likelihood of confusion because the word is related to Complainant's business. Moreover, the gTLD ".blog" does not prevent the likelihood of confusion. Furthermore, it enhances the risk of confusion because the Complainant's official website includes a blog section.

In these circumstances, the Examiner finds that the requirements of 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)

Complainant argues that Respondent has not been authorized by the Complainant to use the ONATERA sign or to register the domain name and that there is no business relationship between them.

Complainant argues that the Complainant's representative requested the Registrar to communicate a cease and desist letter to the Respondent and subsequently received a phone call from a person who introduced herself as Ms. Ariane MORESI residing in Switzerland. She indicated that she appears as registrant of the disputed domain name, but she did not actually register this domain name and that its identity had been misused.

Respondent 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.

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(s) was(were) registered and is(are) being used in bad faith

The Disputed Domain Name incorporates the Complainant's ONATERA with the mere addition of the word "produits", which means products in French, exactly referring to the Complainant's activity.

Complainant further argues that the domain names resolves to a holding page and consequently deprived of any real and substantial offer. The domain name reproduces the Complainant's ONATERA trademark thus internet users can believe that the website associated to the disputed domain name belongs to the Complainant. Complainant argues that the customer may incorrectly believe that the site <onateraproduits.blog> is one of Complainant's website but not functioning.

In addition, email servers are configured for the disputed domain name which causes a risk of phishing.

Had the Respondent done a trademark's search or even a google search at the time it registered the Disputed Domain Name, the Respondent would have received notice of the Complainant's trademark registrations.

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 these trademarks. The concept of a domain name being used in bad faith is not limited to positive actions since inaction is within the concept. Indeed, it is possible for inactivity by the Respondent to amount to the Disputed Domain Name being used in bad faith.

As a consequence, the Examiner finds that the domain name was registered in bad faith.

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**

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 **Proceeds to the Determination**

E. Publication

Publication **Publish the Determination**

SIGNATURE

Name **Dreyfus**

Surname **Nathalie**