



URS FINAL DETERMINATION

3S-Smart Software Solutions GmbH v. 盛旭 et al.

Claim Number: FA1806001793177

DOMAIN NAME

<codesys.xyz>

PARTIES

Complainant: 3S-Smart Software Solutions GmbH of Kempten, Germany.

Complainant Representative: VKK Patentanwälte of Kempten, Germany.

Respondent: 注册人 / 盛旭 of 北京市, 北京市, International, CN.

盛旭 of , International, CN.

首席工程师 of 深圳, China.

REGISTRIES and REGISTRARS

Registries: XYZ.COM LLC

Registrars: Xin Net Technology Corporation

EXAMINER

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Examiner in this proceeding.

David L. Kreider, as Examiner. The Examiner speaks fluently and reads Chinese as a second language.

PROCEDURAL HISTORY

Complainant submitted: June 22, 2018

Commencement: June 22, 2018

Default Decision Date: July 9, 2018

Response Date: August 6, 2018

Having reviewed the communications records, the Examiner finds that the FORUM has discharged its responsibility under URS Procedure Paragraphs 3 and 4 and Rule 4 of the Rules for the Uniform Rapid Suspension System (the "Rules").

RELIEF SOUGHT

Complainant requests that the domain name be suspended for the life of the registration.

STANDARD OF REVIEW

Clear and convincing evidence.

FINDINGS and DISCUSSION

The Respondent submitted a Response written in Chinese on August 6, 2018, after a Default Decision had been rendered by another Examiner. The Respondent asserts that it had not received notice of these URS proceedings and, thus, had been afforded no opportunity to present its case. The Examiner has fully considered the Respondent's Response and finds the Respondent's arguments to be wholly without merit, for the reasons explained below.

URS Procedure 1.2.6, requires Complainant to prove, by clear and convincing evidence, each of the following three elements to obtain an order that a domain name should be suspended.

[URS 1.2.6.1] The registered domain name(s) is/are 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.

Determined: Finding for Complainant

With the exception of the addition of the gTLD “.xyz”, the disputed domain name is identical to Complainant's registered international trademark <CODESYS>.

[URS 1.2.6.2] Registrant has no legitimate right or interest to the domain name.

Determined: Finding for Complainant

Prima facie complainant has established Respondent has not right or legitimate interest in the domain name. The Complainant did not license the Respondent to use the domain name and there is nothing to suggest that the Respondent is commonly known by that name.

[URS 1.2.6.3] The domain name(s) was/were registered and is being used in bad faith.

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other online 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.

Determined: Finding for Complainant

Complainant has established *prima facie* that Respondent knew, by clicking on "Acknowledge Claim" that Complainant claims rights in its <CODESYS> trademark.

The Respondent primary defense is that the Claimant has no legal right or interest in the CODESYS trademark under the laws of the PRC. The Claimant is not required to demonstrate that it enjoys rights to its trademark under PRC law specifically, however, because the jurisdiction(s) where the trademark is valid is not considered relevant to an examiner's assessment under the first element. *See, e.g.,* WIPO Jurisprudential Overview [of the UDRP] 3.0.

The Respondent alleges that it intended that its website would provide a platform for the promotion and exchange of technology. Respondent's Chinese website invites users to download CODESYS related development software on a platform for CODESYS software development that promises: "a safe haven in a noisy world".

This Examiner finds that the Respondent had actual knowledge of Complainant's legal rights in the <CODESYS> trademark when it registered the Disputed Domain Name, and that the Respondent registered and is using the Disputed Domain Name to disrupt Complainant's business.

FINDING OF ABUSE or MATERIAL FALSEHOOD

In support of its assertion that the Claimant's URS claim is abusive or materially false, the Respondent sole evidence is a fuzzy screen shot in Chinese of what purports to be an application for the registration of the CODESYS mark dated December 22, 2010, bearing the notation "refused, dismissed or invalidated".

The Claimant's evidence shows, and this Examiner finds, that Claimant registered its CODESYS trademark in Germany on February 11, 2003, and subsequently registered the Mark in numerous other countries.

Respondent's claim of abuse or material falsehood are, therefore, without merit.

DETERMINATION

After reviewing the parties' submissions, the Examiner determines that the Complainant has demonstrated all three elements of the URS by a standard of clear and convincing evidence; the Examiner hereby Orders the following domain names be SUSPENDED for the duration of the registration.

<codesys.xyz>

The Examiner further finds the Complaint was brought in an abuse of the administrative proceeding or with material falsehoods as explained above. Complainant is reminded of URS Procedure 11 when making future filings.

David L. Kreider, Examiner

Dated: August 11, 2018