



URS DEFAULT DETERMINATION

Dart Industries, Inc. v. Jun Ying Cao

Claim Number: FA2001001881341

DOMAIN NAME

<rosatupperware.icu>

PARTIES

Complainant: Dart Industries, Inc. of Orlando, Florida, United States of America.

Complainant's Representative: Fross Zelnick Lehrman & Zissu, P.C. of New York, New York, United States of America.

Respondent: Jun Ying Cao of Lin Yi Shi, Shan Dong, International, CN.

Respondent's Representative: None.

REGISTRIES and REGISTRARS

Registries: ShortDot SA

Registrars: West263 International Limited

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.

PROCEDURAL HISTORY

Complaint submitted: January 30, 2020

Commencement: January 31, 2020

Default Date: February 17, 2020

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

Complainant, a subsidiary of Tupperware Brands Corporation, has continuously used the trademark TUPPERWARE for containers for household or kitchen use and related goods and services for more than 60 years. Complainant owns many trademark registrations for the TUPPERWARE mark around the world, including U.S. Reg. No. 2,820,832. Past panels have held that registration of a mark with the USPTO is sufficient to establish a registrant's rights in a mark. *See T-Mobile USA, Inc. dba MetroPCS v. Ryan G Foo / PPA Media Services, FA 1627542* (Forum Aug. 9, 2015).

Complainant avers that it has never granted any license or other permission to Respondent to use TUPPERWARE either as a trademark or as part of a domain name. Respondent is not named or commonly known as "Tupperware" or "Rosa Tupperware". Respondent has no connection to the Complainant, its goods or services, moreover, Respondent's only use of the Disputed Domain Name

<rosatupperware.icu> is in connection with a Chinese language website that links to several different pornographic websites.

Even though the Respondent has defaulted, URS Procedure 1.2.6, requires Complainant to make a *prima facie* case, proven by clear and convincing evidence, for each of the following three elements to obtain an order that a domain name should be suspended.

1.2.6.1. 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.

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

The Panel finds that the Disputed Domain Name <rosatupperware.icu> is identical to Complainant's registered TUPPERWARE Mark, as the Complainant's TUPPERWARE Mark is incorporated in its entirety at the second-level in the domain name. The top-level suffix "icu" need not be considered for purposes of the confusing similarity test, as it is a technical requirement of registration.

Complainant has no business relationship whatsoever with Respondent and has not licensed or otherwise permitted the Respondent to use the TUPPERWARE Marks or to apply for any domain name incorporating the TUPPERWARE Marks.

Prior URS panelists have held that use of a domain name to redirect traffic to pornographic websites is “neither a bona fide offering of goods or services with regard to Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use with regard to Policy ¶ 4(c)(iii), because Respondent is diverting Internet users to its website for commercial gain.” *See McDermott Will & Emery LLP v. yoyo.email et al.*, NAF Claim No. 1564796; *Deutsche Lufthansa AG v. N/A et al.*, NAF Claim No. 1671370; *Weetabix Limited v. The Click Tanzania*, NAF Claim No. 1700065 (“The domain name resolves to an advertising site, which includes adult and pornographic images, and contains Complainant’s famous trademark, which clearly constitutes bad faith.”).

On the above facts, the Panel finds that Respondent registered and is using the Disputed Domain Name in bad faith.

DETERMINATION

After reviewing the Complainant’s 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 that the following domain name be SUSPENDED for the duration of the registration.

<rosatupperware.icu>



David L. Kreider, Esq.
Panelist

David L. Kreider, Examiner

Dated: February 17, 2020