



URS DEFAULT DETERMINATION

Whaleco Inc. v. Domains By Proxy, LLC
Claim Number: FA2310002067007

DOMAIN NAME

<temuaa.xyz>

PARTIES

Complainant: Whaleco Inc. of Boston, MA, United States of America
Complainant Representative: LexAnalytica, PC Perry Narancic of Palo Alto, CA, United States of America

Respondent: Domains By Proxy, LLC Registration Private of Tempe, AZ, US

REGISTRIES and REGISTRARS

Registries: XYZ.COM LLC
Registrars: GoDaddy.com, LLC

EXAMINER

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

David L. Kreider, as Examiner

PROCEDURAL HISTORY

Complainant Submitted: October 19, 2023

Commencement: October 20, 2023

Default Date: November 6, 2023

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

Findings of Fact: The Complainant, Whaleco Inc., has submitted the sworn declaration of its in-house counsel in support of its allegation that the Complainant owns a number of federal trademark registrations in the United States, including the word mark TEMU (Registration No. 7164306) and the TEMU logo (Registration No. 7145476) for online marketplace services (together, the "TEMU Marks"). The trademark registrations are in the name of "Five Bells, Inc., a Singapore corporation, whose connection with the Complainant is not apparent. The Respondent has not submitted a response and has not challenged the Complainant's evidence, which reflects that the Respondent is using the disputed domain name <temuaa.xyz> ("Domain Name") in connection with a website in Chinese offering competing TEMU goods to the Chinese market in bad faith and without the Complainant's authorization.

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.

[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

The Domain Name incorporates the Complainant's registered Marks in full, merely adding "aa", which does not distinguish the Domain Name.

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

Determined: Finding for Complainant

The Respondent is using the Domain Name to ride on the Complainant's good name and compete with the Complainant in the Chinese market.

[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 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.

Determined: Finding for Complainant

The 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.

FINDING OF ABUSE or MATERIAL FALSEHOOD

The Examiner may find that the Complaint was brought in an abuse of this proceeding or that it contained material falsehoods.

The Examiner finds as follows:

1. The Complaint was neither abusive nor contained material falsehoods.

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 name(s) be SUSPENDED for the duration of the registration:

1. temuaa.xyz

David L. Kreider
Examiner

Dated: November 6, 2023