

## Uniform Rapid Suspension (URS) Checklist: Meeting the 'Clear and Convincing' Evidence Burden in a Proceeding

**NOTE:** The following definitions might be helpful when reading this checklist:

- **Complainant:** the party initiating a complaint concerning a domain-name registration;
- **Registrant:** an individual or entity who registers a domain name;
- **Respondent:** the registrant or holder of the domain name and responsible entity of the registrations against which the complaint is filed.<sup>1</sup>

The [Uniform Rapid Suspension \(URS\) system](#) is a domain name dispute resolution mechanism for generic top-level domains (gTLDs). It is designed to provide trademark holders with a quick and low-cost process to suspend domain names and combat cybersquatting. Note that the Uniform Domain Name Dispute-Resolution Policy (UDRP) is also used for the resolution of disputes regarding the registration of domain names that infringe trademark rights. If you have received a UDRP complaint, click [here](#).

In a URS proceeding, the burden of proof for the complainant is to demonstrate the respondent's bad faith registration and use of the domain name by "clear and convincing evidence," which means that the complainant must present evidence that is highly and substantially more likely to be true than untrue. This standard is more difficult to meet than the "preponderance of the evidence" standard, but it does not require proof beyond a reasonable doubt.

It is essential to make a compelling and well-organized case to meet the "clear and convincing" burden of proof in a URS proceeding. To meet this requirement, the complainant must present strong and compelling evidence that establishes the following three elements:

- **Bad Faith Registration:** The complainant must prove that the respondent registered the domain name in bad faith. This means showing that the respondent had the intent to profit from the complainant's trademark or engage in other malicious activities. To establish bad faith registration, the complainant can provide evidence such as:
  - The respondent's knowledge of the complainant's trademark and evidence of the distinctiveness, strength, and notoriety of complainant's trademark
  - Proof of a pattern of abusive domain name registrations by the respondent
  - Any communication or conduct by the respondent indicating bad faith
- **Bad Faith Use:** The complainant must also demonstrate that the respondent is using the domain name in bad faith. This typically involves showing that the respondent is using the domain to divert Internet traffic for commercial gain, confuse consumers, or tarnish the complainant's trademark. Evidence of bad faith use can include:
  - Use of the domain name for phishing, counterfeiting, or other fraudulent activities
  - Attempts to sell the domain name to the complainant or a competitor for an inflated price, however a party must show that the registrant registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant

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<sup>1</sup> Note that the Registrant and Respondent are often the same.

- Use of the domain name to host a website that infringes on the complainant's rights
- **Confusing Similarity:** The complainant must establish that the domain name in question is confusingly similar to a trademark or service mark in which the complainant has rights. The registration of that trademark must predate the respondent's ownership of the domain name. This element typically requires demonstrating that the domain name is identical or very similar to the complainant's trademark. The complainant's use of the registered trademark can be shown by:
  - Demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse (TMCH)<sup>2</sup>
  - Submitting proof of use directly with the URS complaint

In summary, the trademark holder must prevail on all three of the elements listed above to succeed in a URS proceeding. If a complainant fails on even one element, the arbitration examiner is required to issue a decision in favor of the respondent, allowing the registrant to keep the disputed domain name. As such, the complainant must present adequate evidence to substantiate its trademark rights in the domain name and the necessary bad faith by the respondent.

The following checklist is intended to assist URS parties, practitioners, and examiners. When determining whether the complainant has met the “clear and convincing” burden of proof, the examiner will consider the following materials:

- Copies of complainant's trademark registrations or other evidence of trademark rights
- Screenshots and other documentation showing the respondent's use of the domain name or planned use in the future (e.g., preparations to open a business or create an organization)
- Evidence of the respondent's previous abusive domain name registrations or bad faith activities
- Any correspondence or communications between the parties related to the domain name

Regarding the Response, the examiner will consider:

- Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the registrant has acquired no trademark or service mark rights; or

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<sup>2</sup> The Trademark Clearinghouse (TMCH) is a database of verified trademark information from around the world. For additional details about the TMCH, please see: <https://www.trademark-clearinghouse.com/>

- Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Such claims, if found by the examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the registrant.
- Evidence by the respondent that the domain name is a generic or descriptive term and the registrant is making fair use of it.
- The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the examiner to be fair use.
- Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing parties and that is still in effect.
- The domain name is not part of a wider pattern or series of abusive registrations because the domain name is of a significantly different type or character to other domain names registered by the registrant.