

## **ADMINISTRATIVE PANEL DECISION**

### **Swiss Bankers Association (SwissBanking) v. Williams Akor Case No. D2023-3346**

#### **1. The Parties**

The Complainant is Swiss Bankers Association (SwissBanking), Switzerland, represented by FMP Fuhrer Marbach & Partners, Switzerland.

The Respondent is Williams Akor, Ghana.

#### **2. The Domain Name and Registrar**

The disputed domain name <swisbanking.com> is registered with NameCheap, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 7, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 18, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on September 22, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is the Swiss financial association of Switzerland's banks founded in 1912. As the umbrella association it brings together some 260 member-institutions and more than 11,000 individual members from the various bank categories and other financial services providers. The Complainant represents Switzerland's financial center's interests vis-à-vis politicians, authorities, and the general public.

The Complainant uses the short name SwissBanking both as moniker for its association and as logo in the sense of an unregistered service mark to designate its activities since 2010.

The Complainant has its website at "www.swissbanking.ch". Further, the Complainant owns the domain name <swissbanking.com>, which automatically redirects to "www.swissbanking.ch".

The Complainant owns the Swiss Trademark Registration No. 604220 for SWISSBANKING|FUTURE trademark, registered on August 20, 2010.

The disputed domain name was registered on December 6, 2018, and resolved to a website prominently featuring part of the Complainant's trademark SWISSBANKING|FUTURE, falsely pretending to be the Complainant's website and copying the old version of the Complainant's official website. At the time of the decision in the present case the disputed domain name does not resolve to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly with the Complainant's registered trademark SWISSBANKING|FUTURE. Leaving away the separator "|" and the additional term "future" does not contribute to the overall impression of the disputed domain name. Thus, consumers are confused as far as they will expect that the disputed domain name is one of the domain names owned by the Complainant.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant's trademark, tradename and moniker has reached the status a highly reputable short name/moniker for the Complainant as an organization but also for the sort of activities it stands for in Switzerland and abroad. Thus, it is impossible that there is a misunderstanding or that the Respondent is in any way entitled to use the sign SWISSBANKING, in particular in view of the lack of regulatory permissions. Further, the Respondent cannot provide any proper justification as to why it would be entitled to register a domain name containing an almost identical second level domain name like the one used by the Complainant. Thus, the Respondent is clearly illegally capitalizing upon and taking advantage of the Complainant's trademark and moniker and it is highly likely that sooner or later fraudulent activities will be carried out over the domain in dispute. The Complainant has never authorized the Respondent to use the Complainant's trademark.

The disputed domain name was registered and is being used in bad faith. The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is a significant factor to consider that the disputed domain name was registered in bad faith. The Respondent must clearly have had the Complainant and its rights in its trademark in mind when registering the disputed domain name, given the overall content of the website under the Respondent's disputed domain name. The Respondent registered the disputed domain name merely for commercial gain with a view to carrying out fraudulent activities and taking unfair advantage of the Complainant's trademark rights, by confusing Internet users into believing that the disputed domain name was operated by or authorized by the Complainant.

## B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the dominant part of the mark SWISSBANKING|FUTURE is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel also finds the disputed domain name consists of intentional misspelling of the Complainant's trademark, thus it is confusingly similar to the Complainant's trademark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Panel finds that in the present case the disputed domain name resolving to a website impersonating the Complainant confirms the Respondent does not have rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant uses the moniker SwissBanking as part of its registered name as an association formally since 2010, now for more than twenty years. In the present case, the Panel notes that the Respondent placed at the disputed domain name impersonating the Complainant, which confirms the Respondent was well aware of the Complainant and its trademark rights when registering the disputed domain name, which is bad faith. [WIPO Overview 3.0](#), section 3.2.2.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.1.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name to place a website impersonating the Complainant constitutes bad faith under the Policy.

According to section 3.1 of the [WIPO Overview 3.0](#) bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the respondent's website or location or of a product or service on the respondent's website or location.

In this regard, the Panel finds that at least the third and the fourth of the above scenarios apply to the present case confirming the Respondent's bad faith.

Although at the time of this decision the disputed domain name resolves to an inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <swisbanking.com>, be transferred to the Complainant.

*/Taras Kyslyy/*

**Taras Kyslyy**

Sole Panelist

Date: October 4, 2023