

ADMINISTRATIVE PANEL DECISION

Swiss Life AG and Swiss Life Intellectual Property Management AG v. Global Domain Privacy Services Inc. / Abdelghani kharchich
Case No. D2022-0177

1. The Parties

The Complainants are Swiss Life AG and Swiss Life Intellectual Property Management AG (collectively “the Complainant”), Switzerland, represented by Fuhrer Marbach & Partner, Switzerland.

The Respondent is Global Domain Privacy Services Inc., Panama / Abdelghani kharchich, Morocco, self-represented.

2. The Domain Name and Registrar

The disputed domain name <swisslife.top> (the “Domain Name”) is registered with URL Solutions, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2022. On January 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 21, 2022 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 amendment to the Complaint on January 22, 2022.

The Center verified that the Complaint together with the amendment to the 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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Response was filed with the Center on January 24, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on February 22, 2022. 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 an insurance, pension and financial services company headquartered in Switzerland with international operations.

The Complainant is the owner of a large trade mark portfolio for SWISS LIFE. The Complainant's SWISS LIFE trade marks include the following trade mark which predates the registration of the Domain Name:

- European Union Trade Mark SWISS LIFE, registration no. 003438413, registered on October 20, 2006.

The Complainant is also the owner of several domain names reflecting its trade mark including <swisslife.com> and <swisslife.ch>.

The Domain Name was registered on December 25, 2021 and the Domain Name does not resolve to any website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to the Complainant's SWISS LIFE trade marks as at the second level the Domain Name reproduces the Complainant's entire SWISS LIFE trade mark and the generic Top-Level Domain ("gTLD") ".top" should be disregarded for the purposes of assessing confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant contends that the Respondent cannot provide any justification as to why it would be entitled to register a domain name containing the Complainant's SWISS LIFE trade mark. The Complainant adds that, in any case, the Complainant did not give any permission to the Respondent or any third party to use its SWISS LIFE trade mark for the registration and/or use of the Domain Name. The Complainant concludes by arguing that the Respondent is illegally capitalizing upon and taking advantage of the SWISS LIFE trade mark and it is highly likely that sooner or later fraudulent activities will be carried out via the Domain Name.

The Complainant asserts that the Domain Name was registered and is being used in bad faith. The Complainant bases its claim on the following arguments:

- the lack of apparent use of the Domain Name;
- the well-known status of the Complainant's trade mark; and
- the nature of the Domain Name reproducing the entirety of the Complainant's trade mark making it implausible that the Respondent could possibly use the Domain Name other than in bad faith.

The Complainant adds that the Respondent registered the Domain Name merely for commercial gain with a view to carrying out fraudulent activities and taking unfair advantage of the Complainant's rights in the famous SWISS LIFE trade mark by misleading Internet users to believe that the Domain Name is operated by or authorized by the Complainant.

B. Respondent

The Respondent has sent a brief email communication dated January 24, 2022 to the Center in which the Respondent has essentially declared that (i) the Domain Name has nothing to do with the Complainant's SWISS LIFE trade mark, (ii) the Domain Name is not used in any way related to the Complainant, (iii) the Respondent did not buy the Domain Name to resell it, (iv) the Domain Name is not registered under the gTLD ".com" or ".net", (v) the Domain Name is used as a hostname for the Respondent's own application and (vi) the Respondent considers that it is entitled to register any domain name in any event.

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in SWISS LIFE, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark SWISS LIFE in which the Complainant has rights.

At the second level, the Domain Name only consists of the trade mark SWISS LIFE. Then there is the addition of the gTLD ".top". As is generally accepted, the addition of a gTLD such as ".top" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is identical to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent'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

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the registrant does not have rights or legitimate interests in the domain name, the burden of production shifts to the registrant to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

There is no indication that the Respondent has any rights in respect of the trade mark SWISS LIFE and the Complainant declared that the Respondent had not been granted any authorization, even indirectly, to use its SWISS LIFE trade mark in the Domain Name.

The absence of use of the Domain Name cannot be considered *bona fide*, legitimate or fair given the thoroughly substantiated renown of the Complainant's SWISS LIFE trade mark.

Having considered the very short Response sent by the Respondent, the Panel does not see any credible explanation as to how the Respondent could possibly justify having rights or legitimate interests in respect of the Domain Name. There is no evidence or explanation offered by the Respondent as to the alleged use of the Domain Name as a hostname for the Respondent's own application and how this should constitute a valid justification for identically reproducing the Complainant's SWISS LIFE trade mark in the Domain Name.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark 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 trade mark 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 [the respondent's] website or other online 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.

The Domain Name reproduces the exact SWISS LIFE trade mark of the Complainant and this cannot be a coincidence.

This is even more likely given (i) the significant renown of the SWISS LIFE trade mark, as evidenced extensively in the Complaint, (ii) the fact that the trade mark of the Complainant is reproduced identically in the Domain Name and (iii) the fact that the Domain Name was registered relatively recently and many years after the registration of many SWISS LIFE trade marks.

Finally, the fact that the Respondent provided an erroneous postal address for registration of the Domain Name can only be seen as a further circumstance materializing the Respondent's bad faith.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint, the documentary evidence provided by the Complainant and the Response submitted by the Respondent, the Panel is satisfied that the Domain Name is used in bad faith.

The Domain Name appears to be passively held. Passive use itself would not cure the Respondent's bad faith given the overall circumstances here, specifically the significant renown of the Complainant's SWISS LIFE trade mark.

Further, the Panel finds that the Response further incriminates the Respondent as it does not offer any credible explanation as to how the Respondent could possibly be seen as using the Domain Name in good faith. There is no explanation offered by the Respondent as to the alleged use of the Domain Name as a hostname for the Respondent's own application and how this should constitute a valid justification for identically reproducing the Complainant's SWISS LIFE in the Domain Name. In addition, the Panel finds it very telling that the Respondent chose to explain that (i) essentially it is not that serious as the Domain Name is not registered under the ".com" or ".net" gTLDs and (ii) that after all the Respondent is free to register any domain name.

Thus, the Panel finds that the Domain Name is being used in bad faith.

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 Domain Name, <swisslife.top>, be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: March 8, 2022