

## **ADMINISTRATIVE PANEL DECISION**

Senwes Limited v. Ha Gwaza, Senwes Group  
Case No. D2022-0376

### **1. The Parties**

The Complainant is Senwes Limited, South Africa, represented by Adams & Adams, South Africa.

The Respondent is Ha Gwaza, Senwes Group, Germany.

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

The disputed domain name <senwesgroup.com> is registered with Wix.com Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 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 amended Complaint on February 11, 2022.

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 February 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on March 10, 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 part of an agricultural group that has traded in South Africa under the name “Senwes” for over 100 years. In 2021, the group’s turnover was some USD 496 million.

The Complainant owns a number of trade marks for SENWES including figurative South African trade mark no. 1997/07329 for the stylised word “Senwes” plus device, filed in 1997, in class 7, and figurative Zimbabwe trade mark no. 2012001261 for the stylised word “Senwes” plus device, registered in 2015, in class 7.

Since 1997, the Complainant has operated websites at “www.senwes.co.za” and “www.senwes.com”.

The disputed domain name was registered on December 30, 2021 in the name of “Ha Gwaza, Senwes Group”, with an address in Germany. As explained in detail below, the disputed domain name appears to have been used by the Company. In view of this, as well as their common use of the term “Senwes Group”, and the lack of any objection by the entity named as registrant of the disputed domain name, the Panel finds it appropriate to treat the Company interchangeably with the Respondent. References to “the Respondent” below should therefore be taken as including the Company, unless otherwise indicated.

As of January 14, 2022, there was a website at the disputed domain name, which was branded with a “Senwes Group Pty Ltd” logo and purported to offer tractors for sale.

On the same date, a customer of the Respondent forwarded to the Complainant an invoice that bore the “Senwes Group Pty Ltd” logo and listed a website and email address utilising the disputed domain name. The customer asked the Complainant to “confirm if the bank details are really for Senwes Group”.

On January 24, 2022, the Complainant was contacted by another Respondent customer who thought they had been dealing with the Complainant.

On January 24, 2022, the Complainant sent a cease and desist letter to the Company by email and courier. The courier later confirmed that the Company was not located at the business address shown on its invoice.

The Complainant asserts that at the same time it sent a demand letter to another entity in connection with infringement of the SENWES trade mark.

On January 26, 2022, the Complainant received an email communication from this entity, claiming that it was not their “intention to trade with a name that was already taken” or to infringe the Complainant’s rights, that this entity’s partner, “Senwes [G]roup”, had registered and verified the company before the partnership had been approved, that the board would look into an appropriate way forward “to protect both companies”, and that their company would stop “using the senwes group partnership” until further notice.

At some point following the Complainant’s letter, the content of the website at the disputed domain name was removed.

#### **5. Parties’ Contentions**

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

The following is a summary of the Complainant’s contentions.

The Complainant is a market leader in the agricultural sector in South Africa.

The Complainant has extensively promoted its SENWES mark, which has acquired significant goodwill and reputation and has become exclusively associated with the Complainant.

The disputed domain name is confusingly similar to the Complainant's SENWES trade mark, which it wholly incorporates. Not only is the additional term "group" a descriptive word, but its inclusion also renders the disputed domain name identical to the Complainant's trading name.

The Respondent lacks rights or legitimate interests in respect of the disputed domain name.

The Complainant has not authorised the Respondent to use its trade mark.

The Respondent has not made a *bona fide* offering under, or been commonly known by, the disputed domain name, as it selected the name in order to create a mistaken impression of identification or association with the Complainant, and the Respondent used the disputed domain name to offer identical goods to those of the Complainant.

The disputed domain name was registered and is being used in bad faith.

The Respondent cannot claim lack of knowledge of the Complainant's mark, given the extent of the Complainant's prior reputation and the fact that the Parties operate in the same industry.

The Respondent intentionally attempted to create a likelihood of confusion with the Complainant's mark. This is illustrated by the fact that the Respondent's conduct has caused actual confusion in the market.

The following factors are further indicators of bad faith: the use of false trading addresses on the Respondent's invoices and on the website at the disputed domain name; the Respondent's false claim to be registered as a credit provider; and the Respondent's removal of content following the Complainant's letter.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has established rights in the mark SENWES by virtue of its registered trade marks, as well as its unregistered trade mark rights deriving from its extensive and longstanding use of that mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the Complainant's distinctive trade mark is readily recognisable within the disputed domain name and, accordingly, the addition of the term "group" does not prevent a finding of confusing similarity.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

As explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, for reasons explained below the Panel considers that the Respondent has used the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services. Such use of the disputed domain name could not be said to be *bona fide*.

While the registrant organisation name "Senwes Group", and the Company name, comprise the disputed domain name, the Panel nonetheless considers that the Respondent cannot claim to have been "commonly known" by the disputed domain name under paragraph 4(c)(ii) of the Policy. This is because the circumstances indicate that the Respondent adopted the name "Senwes Group" specifically to take unfair advantage of the Complainant's rights. See further under section 6C below.

And there is no evidence that paragraph 4(c)(iii) of the Policy applies in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

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

In the Panel's view, it is obvious that the Respondent was aware of the Complainant when the Company was incorporated (in October 2021) and the disputed domain name was registered (in December 2021). Both names reflect the Complainant's highly distinctive name and trade mark.

Not only was the Complainant's business established over 100 years ago, the Respondent used the disputed domain name to offer some of the same kinds of goods as the Complainant although there is no other obvious connection between the disputed domain name and those goods.

The Panel further notes that: the Respondent stopped using the disputed domain name after being confronted by the Complainant; the Complainant has provided evidence that at least one of the business addresses used by the Company is false (for example, the address shown on the website at the disputed domain name); and there has been actual confusion on the part of at least two of the Company's customers who thought they had been dealing with the Complainant.

In these circumstances, the Panel has little difficulty in concluding that paragraph 4(b)(iv) of the Policy applies. By using the disputed domain name, comprising the Complainant's distinctive trade mark, in connection with products relating to the Complainant's industry, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

## **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, <senwesgroup.com>, be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: March 24, 2022