

## **ADMINISTRATIVE PANEL DECISION**

Inventio AG v. Shanna Brooks

Case No. D2022-2107

### **1. The Parties**

The Complainant is Inventio AG, Switzerland, internally represented.

The Respondent is Shanna Brooks, Nigeria.

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

The disputed domain name <schindlen.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 10, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 11, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 12, 2022.

The Center appointed Jane Lambert as the sole panelist in this matter on August 1, 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 a wholly owned subsidiary of Schindler Holding AG. It has brought these proceedings because it holds the intellectual property rights of its holding company and fellow subsidiaries (“the Schindler group”) including their trade marks.

With a turnover of over CHF 11.2 billion, the Schindler group is one of the world’s leading suppliers of escalators, lifts, moving walkways and the like. It is also a major maintenance contractor. It has over 1,000 branches in more than 100 countries employing approximately 69,000 staff.

A mark combining the word SCHINDLER with a ring and triangle device and the date of the business’s founding was registered for Switzerland in 1925. There are now some 2,500 trade mark registrations of or incorporating the word SCHINDLER in over 150 countries. For the purpose of these proceedings, the Complainant relies on the word mark SCHINDLER, which was registered on May 1, 2015 for a wide range of goods and services in classes 6, 7, 9, 37, 38, 42 and 45 under international registration number WO1265628.

Nothing is known of the Respondent other than the information that she supplied to the Registrar upon the registration of the disputed domain name. The disputed domain name was created on May 3, 2022, and has been used for a fraudulent email scheme.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant requests an order for the disputed domain name to be transferred to it on the grounds that:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
- (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.

As to the first ground, the Complainant says that it is the registered proprietor of the above mentioned international trade mark SCHINDLER, which has been confirmed in a large number of cases that it has brought under the Policy. The disputed domain name is confusingly similar to that mark differing only in the final consonant “N” instead of “R”.

As to the second ground, the Respondent is not using the disputed domain name for any *bona fide* offering of goods or services or for any legitimate non-commercial purposes. The disputed domain name does not resolve to an active website. The Complainant has not licensed the Respondent to use its trade marks. There is no evidence that the Respondent is known by the disputed domain name. On the contrary, the Respondent has used the disputed domain name in a phishing attack, which was held in *Kimley-Horn and Associates, Inc. v. Abraham Hashim*, WIPO Case No. [DCO2019-0017](#) to preclude any rights or legitimate interests in a disputed domain name.

As to the third ground, the Respondent says that the disputed domain name was used for a phishing attack on May 6, 2022 in which the disputed domain name was used as an email address. The attack was mounted immediately after the registration of the disputed domain name inferring that it was registered as well as used in bad faith.

## B. Respondent

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

## 6. Discussion and Findings

The agreement for the registration of the disputed domain name incorporated the following provision from the Policy:

"You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
  - (ii) you have no rights or legitimate interests in respect of the domain name; and
  - (iii) your domain name has been registered and is being used in bad faith.
- In the administrative proceeding, the complainant must prove that each of these three elements are present."

### A. Identical or Confusingly Similar

The Panel finds that the first element is present.

The Complainant has registered the word SCHINDLER as an international trade mark for a wide range of goods and services under registration number WO1265628. That is a trade mark in which the Complainant has rights. The disputed domain name differs from the trade mark only by the substitution of the letter "R" for the letter "N". This difference is not enough to prevent the disputed domain name from being confusingly similar to the Complainant's trade mark and can be considered as a case of typosquatting. (See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

Accordingly, the Panel finds the disputed domain name confusingly similar to the SCHINDLER trade mark in which the Complainant has rights and the Complainant has thus satisfied its burden under Paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Panel finds that the second element is present.

Section 2.1 of the [WIPO Overview 3.0](#) offers the following guidance:

"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."

Paragraph 4(c) of the Policy provides a number of circumstances that could establish rights or legitimate interests in a domain name. The Complainant has found no evidence that any of those circumstances apply for this case in particular. The Complainant adds that it has never licensed the Respondent to register or use the disputed domain name. In view of the international registration of the SCHINDLER mark in 150 countries and the goodwill likely to accrue to the mark by virtue of its turnover, such registration and use

would have required a license. The use of the disputed domain name for an email in a phishing attack also requires an explanation. The Respondent has been offered an opportunity to respond to that evidence but has not made use of it.

The Panel holds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interest in the disputed domain name. The burden of production has shifted to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. The Respondent has failed to discharge that burden.

The Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

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

The Panel finds that the third element is missing,

Paragraph 4(b) of the Policy lists a number of circumstances which if found to be present, shall be evidence of the registration and use of a domain name in bad faith. The subparagraph makes it clear that the list is not exhaustive and that it applies to other similarly reprehensible conduct.

The Complainant has submitted that the use of a disputed domain name as an email address for a phishing attack amounts to use in bad faith. It has also argued that such use immediately after registration infers that the registration was also in bad faith. See section 3.4 of the [WIPO Overview 3.0](#).

In the absence of any evidence or explanation from the Respondent, the Panel concludes that the disputed domain name was registered and used in bad faith, and the Complainant has satisfied paragraph 4(a)(iii) 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 <schindlen.com> be transferred to the Complainant.

*/Jane Lambert/*

**Jane Lambert**

Sole Panelist

Date: August 15, 2022