

## **ADMINISTRATIVE PANEL DECISION**

Dr. Ing. h.c. F. Porsche AG v. MR Martins  
Case No. D2022-2892

### **1. The Parties**

The Complainant is Dr. Ing. h.c. F. Porsche AG, Germany, represented by UNIT4 IP Rechtsanwälte, Stolz Stelzenmüller Weiser Grohmann Partnerschaft mbB Rechtsanwälte, Germany.

The Respondent is MR Martins, Thailand.

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

The disputed domain name <porsche-bangkok.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 5, 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 August 12, 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 August 16, 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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Respondent sent several brief email messages to the Center (on August 23, 2022 and another on September 1 and 24, 2022) but did not file a formal Response.

On September 13, 2022, the Center issued the Commencement of Panel Appointment Process email.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 28, 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 in the business of manufacturing sports cars. It owns the trademark PORSCHE that it has registered in many jurisdictions, including Thailand (Reg. No. 100823, registered on September 29, 1989).

According to the Whois records, the disputed domain name was registered on June 19, 2020. The Respondent has used the disputed domain name to set up a website, which the Complainant asserts “creates the false impression of being an official Porsche website run by an authorized Porsche dealer”. The Complainant asserts that the Respondent’s website intentionally misleads the public, is confusingly similar to the Complainant’s official website for Thailand, uses images copied from the official Porsche website, is structured the same way as the official website, and uses some of the same text as the official website. The Complainant points out that despite these similarities, the website does not contain any disclaimer nor any contact information referring to a third party (*i.e.*, does not contain information that makes it clear the website is associated with someone other than the Complainant).

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

The Respondent did not file a formal Response to the Complaint. However, as referenced above, several brief email messages were received by the Center from the Respondent. In the messages, the Respondent asked about what is required next in the proceedings and how to provide a Response. (The Center duly responded to each of such messages providing information about how to formally respond). The only assertion in the Respondent’s email messages resembling substantive argument is a statement in the September 1, 2022 message that “[w]e sell Porsche cars here in Thailand and they are jealous as we are doing good business so they want to pull the rug from under our feet!!” The Respondent submitted no evidence to support these assertions.

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service 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. The Panel finds that all three of these elements have been met in this case.

## A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the PORSCHE mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the PORSCHE mark in its entirety with the term “bangkok”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s PORSCHE mark. See [WIPO Overview 3.0](#), section 1.8. The PORSCHE mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

The Complainant has established this first element under the Policy.

## B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) there is not and never has been a business relationship between the Parties, (2) the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks, company name, texts/product descriptions and/or images, (3) the Respondent is not commonly known by the disputed domain name, and (4) there is no use of the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, according to the Complainant, the website at the disputed domain name deliberately misleads the public.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

To the extent that the Respondent might consider itself to be a reseller or distributor of the Complainant’s products, the Respondent has not established any rights or legitimate interests to use the disputed domain name, because the Respondent has not satisfied all of the requirements set forth in the so-called “*Oki Data* test” set forth in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Specifically, the Respondent does not “accurately disclose the registrant’s relationship with the trademark owner” (as the *Oki Data* test requires). The Respondent uses the PORSCHE word mark and logo as well as text and images copied from the Complainant’s own website, falsely suggesting that it is the trademark owner, or that the website is the official site. See *Dikar S. Coop and Blackpowder Products, Inc. v. Domain Administrator, See PrivacyGuardian.org / Brown Skirth*, WIPO Case No. [D2021-3752](#). In the case of *Philip Morris Products S.A. v. Saeed Farahani, Persian Art*, WIPO Case No. [D2022-0238](#), the panel found that the respondent therein lacked rights or legitimate interests in a disputed domain name. The respondent in that case stated it was a reseller of the complainant’s products, but the complainant denied that the respondent held such role. In the present case, the Respondent has not filed a formal response. But its website does state that it is an “Importer of Porsche to Thailand”. The Complainant asserts that it has not authorized the Respondent to act as a dealer. Perceiving no basis in the record to discredit the Complainant’s assertion on this point, the Panel finds that the *Oki Data* requirements are not met. Therefore, the application of such test provides no

reason to find that the Respondent has rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, incorporating the Complainant's well-known trademark and the geographic term "bangkok", carries a risk of implied affiliation and cannot constitute fair use under the circumstances here, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

Because the Complainant's PORSCHE mark is well-known, and because the website established at the disputed domain name uses content (including images, text, and logo) belonging to the Complainant, it is implausible to believe that the Respondent was not aware of the Complainant and its PORSCHE mark when it registered the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name. Bad faith use is clear from the Respondent's use of the disputed domain name to imitate the Complainant, clearly intending to attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion as to the source of the products promoted at the Respondent's website. For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

## **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 <porsche-bangkok.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: October 12, 2022