

## **ADMINISTRATIVE PANEL DECISION**

The Swatch Group AG, Swatch AG v. Name Redacted  
Case No. D2022-4622

### **1. The Parties**

The Complainants are The Swatch Group AG and Swatch AG, Switzerland, internally represented.

The Respondent is Name Redacted<sup>1</sup>.

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

The disputed domain name <swatchgroup.online> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 6, 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 December 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 29, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on January 4, 2023.

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<sup>1</sup> See comments under section 6.B below

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 Complainants are leading designers, manufacturers, sellers and retailers of wristwatches. The Complainants also produce apparel, sunglasses and other items. The Complainants hold SWATCH branded retail stores through North America, Europe, the Middle East, Africa, Central and South America, Asia and Australia.

The SWATCH marks are extensively promoted, including on various social media platforms. Major sporting events around the world are sponsored by the Complainants.

The Complainants hold worldwide trademark registrations for SWATCH and SWATCH GROUP, such as the following:

- the European Union Trade Mark registration number 00226316 for the mark SWATCH (stylized), filed on April 15, 1996 and registered on November 12, 1998, covering goods in Nice class 14; and
- the International Trademark Registration number 1187122 for the mark SWATCH GROUP (word) registered on September 18, 2013, covering services in Nice classes 35, 36, 37, 38, 39, 41, 42, 43 and 45.

The Complainants hold domain names reflecting the marks SWATCH and SWATCH GROUP, such as <swatch.com> and <swatchgroup.com>.

The disputed domain name was registered on November 20, 2022, and, at the time of filing the Complaint, it resolved to an inactive website.

The Respondent is an individual whose identity was initially protected by a privacy shield. After receiving the Center's email communication informing with regard to the underlying registrant revealed by the Registrar's verification response, in its Amended Complaint, the Complainant claimed identity theft and requested the Center to redact the name of the named Respondent in order to avert reputational damage to the Complainant's The Swatch Group AG's Chief Financial Officer.

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

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

The Complainants contend that the disputed domain name is identical to the SWATCH GROUP trademark and it is confusingly similar to the SWATCH trademark, domain names and the Complainants' company name; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainants request the transfer of the disputed domain name to them.

In its amended Complaint, the Complainants state that the supposed registrant is the victim of an identity theft because the Respondent is usurping the identity of its Chief Financial Officer.

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

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

### A. Preliminary Procedural Issue 1. Consolidation of the Complainants

The Complaint is submitted by both, The Swatch Group AG and Swatch AG as the Complainants.

According to the evidence provided in the Complaint, the first Complainant, The Swatch Group AG is the parent company of the second Complainant, Swatch AG.

Both Complainants own trademarks and domain names for SWATCH and SWATCH GROUP.

Accordingly, the evidence shows that the Complainants have a common grievance against the Respondent by virtue of having common legal interest, and, based on the evidence before it, the Panel find it equitable and procedurally efficient to permit consolidation of multiple Complainants, pursuant to the Rules, paragraph 10(e) and section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

### B. Preliminary Procedural Issue 2. Respondent and Redaction of Respondent's Identity

The Complainants, in the Amended Complaint, request that the name of the person who was identified by the Registrar as the actual registrant of the disputed domain name should not appear in the proceedings because said person is in reality not the actual holder and registrant of the disputed domain name. As the Complainants argue, the supposed registrant is the victim of an identity theft and his reputation could be damaged if his name appears as the Respondent's name in these proceedings because it is in fact the Chief Financial Officer of the Complainant The Swatch Group AG.

Under paragraph 4(j) of the Policy the Panel has the power to determine to redact portions of its decision in exceptional circumstances. The practical result of the exercise of this power is that the provider, in this case the Center, will not publish on the Internet the full decision, but will redact the portion determined by the Panel to be redacted.

As decided in a previous case, *Ingenico Group v. Contact Privacy Inc. Customer 1245626487 / Name Redacted*, WIPO Case No. [D2019-2899](#), this Panel also agrees that "(t)he alleged identity theft is therefore (as between the Parties) a non-contested fact, and it appears to be more than plausible that the individual identified as the registrant of the domain names in dispute is not the actual registrant and that his name has been instrumentalized by a third party to pursue illicit purposes".

The Panel has therefore decided that in all the circumstances this is an exceptional case and that it is appropriate to redact the registrant's name and information from the Panel's decision. See also *Lutosa v. Name Redacted*, WIPO Case No. [D2021-0809](#); *Accenture Global Services Limited v. Domains by Proxy, LLC / Name Redacted*, WIPO Case No. [D2013-2099](#); *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#); and *Siemens AG, Siemens Trademark GmbH & Co. KG v. NAME REDACTED*, WIPO Case No. [D2022-1632](#).

### **C. Identical or Confusingly Similar**

The Panel finds that the Complainants hold right in the SWATCH and SWATCH GROUP trademarks.

The disputed domain name reproduces the trademark SWATCH GROUP exactly and incorporates in its entirety the trademark SWATCH.

It is well established in decisions under the UDRP that the generic Top-Level Domain (“gTLD”) (e.g., “.com”, “.site”, “.online”, “.shop”) is typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is identical to the trademark SWATCH GROUP and confusingly similar to the trademark SWATCH, pursuant to the Policy, paragraph 4(a)(i).

### **D. Rights or Legitimate Interests**

The Complainants assert that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the marks SWATCH / SWATCH GROUP, that the Respondent is not commonly known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, “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”. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant’s contentions to advance a claim to any rights or legitimate interests in the disputed domain name.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name. The disputed domain name is kept inactive and this, together with the other circumstances in this case, does not amount to a *bona fide* or legitimate use.

In addition, and without prejudice to the above, UDRP panels have found that domain names identical or highly similar to a complainant’s trademark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

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

The Complainant has held registered trademark rights in SWATCH and SWATCH GROUP since at least 1985 and the trademark is famous worldwide. See also *SWATCH AG v. Boomjin Jeong*, WIPO Case No. [D2018-2627](#); and *Swatch Ltd. v. Uli Kumli, Social-Media. Club*, WIPO Case No. [D2016-2338](#).

The disputed domain name was created in 2022 and reproduces the Complainant’s well-known mark SWATCH GROUP. Furthermore, as shown above, the disputed domain name was registered under the name of one of the Complainant’s directors.

Such conduct leads to infer that the Respondent had previous knowledge of the Complainants, their staff, and that at the time of registering the disputed domain name, it targeted the Complainants.

Panels additionally view the provision of false contact information (or an additional privacy or proxy service) as an indication of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

In addition, the non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and used the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

## **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 <swatchgroup.online> be transferred to the Complainants.

For purposes of properly executing this order, the Panel also directs the Registrar's attention to Annex 1 hereto that identifies the entity listed as registrant of the disputed domain name in the formal record of registration, and orders that the disputed domain name, <swatchgroup.online>, be transferred from that entity to the Complainants.

The Panel directs the Center that Annex 1 shall not be published along with this Decision.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: January 18, 2023