

ADMINISTRATIVE PANEL DECISION

Dr. Ing. h.c. F. Porsche AG v. dan sight
Case No. D2023-0693

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 dan sight, United States of America.

2. The Domain Name and Registrar

The disputed domain name <porsche-ipo.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 February 15, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 16, 2023 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 February 21, 2023.

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 February 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 22, 2023.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on April 3, 2023. 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 has been a manufacturer of sports cars for more than 70 years, using “Porsche” as the prominent and distinctive part in its trade name. The name “Porsche” is known throughout the world and enjoys a reputation of highest quality and excellent performance.

The Complainant is the owner of the trademark PORSCHE (“PORSCHE trademark”), including:

- European Union Trade Mark registration PORSCHE No. 000073098, registered on December 12, 2000;
- European Union Trade Mark registration PORSCHE No. 018117298, registered on January 9, 2020;
- International Registration PORSCHE No. 562572, registered on October 27, 1990;
- International Registration PORSCHE No. 639048, registered on March 13, 1995;
- International Registration PORSCHE No. 640976, registered on July 13, 1995;
- International Registration PORSCHE No. 657048, registered on January 27, 1996;
- International Registration PORSCHE No. 179928, registered on October 8, 1954;
- Indian Trademark registration PORSCHE No. 502424, registered on November 15, 1994; and
- United States Registration PORSCHE No. 618933, registered on January 10, 1956.

The Complainant is also owner of numerous domain names including the PORSCHE trademark, *inter alia* the domain name <porsche.com>.

The Respondent registered the disputed domain name on April 6, 2022. Currently, an error page appears when accessing the website. Pursuant to the evidence provided by the Complainant, and as further described below, the disputed domain name has been used for a fraudulent email scheme.

5. Parties' Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the Complainant's PORSCHE trademark. The Complainant's rights in its PORSCHE trademark predate the Respondent's registration of the disputed domain name. The disputed domain name includes the entire PORSCHE trademark, with only the addition of a descriptive term “ipo”, which is the common abbreviation for “Initial Public Offering”, *i.e.* the first public offer of securities of a company, and the generic Top-Level Domain (“gTLD”) “.com”. The inclusion of a descriptive term, such as “ipo”, to a recognized mark creates a confusing similarity between the disputed domain name and the PORSCHE trademark.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no relationship between the Complainant and the Respondent giving rise to any license, permission, or other right by the Respondent could own or use any domain name incorporating the Complainant's PORSCHE trademark. The Respondent has never been given permission by the Complainant to use the Complainant's PORSCHE trademark for any purpose. Furthermore, the Respondent is not commonly known by the disputed domain name. Instead, the disputed domain name evidently points to and is exclusively associated with the world-

famous Complainant. Neither is there any use nor are there any preparations to use the disputed domain name with a *bona fide* offering of goods or services. The disputed domain name has never resolved to an active website. Instead, it is being used for sending fraudulent emails to consumers in Germany from the email address “[...]@porsche-ipo.com”, which incorporates the disputed domain name.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The Respondent must have known about the Complainant and his world-famous name and PORSCHE trademarks, which have enjoyed a great reputation worldwide for more than 70 years. The Respondent accordingly must also always have been aware that he has no rights or legitimate interests in the disputed domain name at all. The disputed domain name cannot have been registered without knowledge of the Complainant’s famous trademarks and it is impossible that the disputed domain name was registered and has been used in any other way than in bad faith for profit by deceiving Internet users and collect sensitive data, apparently with fraudulent Intent and/or by selling this domain name for a price by far exceeding the costs related to the domain. The disputed domain name is clearly and intentionally misleading the public, as it is exclusively associated with the Complainant. It is beyond doubt that the public expects an official domain/website of the Complainant under the disputed domain name, which is not the case. As the disputed domain name has never resolved to an active website, the Respondent is clearly engaged in bad faith passive holding of the disputed domain name. Furthermore, the disputed domain name is used for sending fraudulent emails, which are intended to deceive consumers. It is thus evident that the disputed domain name must have been registered primarily for the purpose of disrupting the business of the Complainant and to mislead Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation and/or endorsement of the Respondent’s domain. Accordingly, the disputed domain name was registered and is being used in bad faith and in a highly abusive manner, as it has never resolved to an active website and is being used for fraudulent emails.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

It has been a consensus view in previous UDRP decisions that a respondent’s default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service 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.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of several trademarks containing the term "PORSCHE". Suitable evidence was submitted. Consequently, the Panel finds that the Complainant has proven that it has rights in the PORSCHE trademark.

The disputed domain name contains the PORSCHE trademark entirely with the addition of the term "ipo", a hyphen and the gTLD ".com". Section 1.8 of [WIPO Overview 3.0](#) states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements." Further, section 1.11.1 of [WIPO Overview 3.0](#) states: "The applicable TLD in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." The gTLD ".com" will therefore be discounted in the Panel's consideration of confusing similarity. Furthermore, the addition of a hyphen does not prevent a finding of identity or confusing similarity (see *The Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. [D2000-0038](#)). The Panel finds that the relevant trademark PORSCHE within the disputed domain name is recognizable, so that the additional elements do not prevent a finding of confusing similarity.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#), states, "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".

According to the Complainant, the Complainant has not authorized the Respondent to use the Complainant's trademark, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Further, the Respondent has not attempted to justify why the disputed domain name was registered.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant, which cannot constitute fair use (see [WIPO Overview 3.0](#), section 2.5.1). Such risk was clearly the intent of the Respondent given the fraudulent email scheme behind the disputed domain name whereby the Respondent sought to impersonate the Complainant. Prior panels have held that the use of a domain name for illegal activity, such as fraud, can never confer rights or legitimate interests upon a respondent (see [WIPO Overview](#), section 2.13).

Accordingly, the Panel finds that the Complainant has made a *prima facie* showing of the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair

advantage of or otherwise abuses a complainant's mark". Section 3.2.2 of the [WIPO Overview 3.0](#) reads: "Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

Considering the reputation and public presence of the Complainant, it is unlikely that the Respondent had no knowledge of the PORSCHE trademark. The incorporation of the PORSCHE trademark within the disputed domain name indicates the Respondent's actual awareness of and intent to target the Complainant. Further, the Complainant gave evidence that the Respondent created and used the email address "[...].@porsche-ipo.com" associated with the disputed domain for fraudulent purposes and to mislead the public. Evidently, given the impersonating nature of the use, the Respondent was aware of and intentionally registered the disputed domain name to target the Complainant. In light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract Internet users to its website or associated email address or affect the commercial activities of the Complainant by creating a likelihood of confusion with the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <porsche-ipo.com>, be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: April 17, 2023