

## **ADMINISTRATIVE PANEL DECISION**

Ralf Bohle GmbH v. Ye Junming

Case No. D2023-0896

### **1. The Parties**

The Complainant is Ralf Bohle GmbH, Germany, represented by MSA IP – Milojevic Sekulic & Associates, Serbia.

The Respondent is Ye Junming, China.

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

The disputed domain names <outletschwalbe.com> and <tyreschwalbe.com> are registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2023. On February 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 2, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Whols Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 6, 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 amended Complaint on March 11, 2023.

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 March 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on April 21, 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 is a German manufacturer of tires and other equipment and parts for bicycles and wheelchairs. It started manufacturing bicycle tires in 1973 under the trademark SCHWALBE. The Complainant is present in over 40 countries.

The Complainant is the owner of several SCHWALBE trademarks, including the following:

- International trademark SCHWALBE (design) no. 719983 registered since May 19, 1999, with effect in numerous countries;
- European Union trademark SCHWALBE (word) no. 11061322 registered since December 18, 2012.

The Complainant also operates its activities online, through several domain names, including <schwalbe.com>, which was registered in 1995.

The disputed domain names were registered on December 29, 2022, through a privacy service. According to the evidence provided by the Complainant, the disputed domain names resolved to active websites, both seemingly offering the Complainant's SCHWALBE brand bicycle tires, parts and other equipment for bicycles, at heavily discounted prices.

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

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

The disputed domain names are confusingly similar to the Complainant's marks.

The Respondent has no rights or legitimate interests in respect of the disputed domain names.

The disputed domain names were registered and are being used in bad faith.

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

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

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

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

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

Based on the evidence presented, the Panel finds that the Complainant has rights in the SCHWALBE mark.

The disputed domain names <outletschwalbe.com> and <tyreschwalbe.com> wholly incorporate the SCHWALBE mark as its main element. In addition, the disputed domain names incorporate the words "outlet" and "tyres". However, the addition of these terms does not avoid a finding of confusing similarity, and the Complainant's marks remain clearly recognizable within the disputed domain names. See [WIPO Overview 3.0](#), section 1.8.

The only additional element in the disputed domain names is a generic Top-Level Domain ("gTLD") extension (".com"). As a standard requirement of domain name registration, this element may be disregarded in the comparison with a mark for the purposes of the first element of paragraph 4(a) of the Policy unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

For the above reasons, the Panel finds that the disputed domain names are each confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first condition in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in the disputed domain names.

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. [WIPO Overview 3.0](#), section 2.1.

The Complainant has claimed, that at the time of filing the Complaint, the disputed domain names resolved to active websites both offering SCHWALBE mark bicycle tires, parts and other equipment for bicycles, at heavily discounted prices.

The Panel finds that the Complainant has therefore established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor made demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain names. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain names.

As stated above, the disputed domain names are being used for an online store offering, at heavily discounted prices, bicycle tires, parts and other equipment for bicycles, using the Complainant's mark.

Furthermore, the composition of the disputed domain names, comprising the Complainant's SCHWALBE marks in their entirety plus the generic term "tyres" and "outlet", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

- the Respondent registered two domain names the same day that incorporate the SCHWALBE mark in its entirety with the addition of the terms "outlet" and "tyre" being this last one a term closely related to the Complainant products;
- by reproducing the Complainant's registered trademark in the disputed domain names and the content of the websites, the Respondent is clearly suggesting to any Internet user visiting the websites that the Complainant (or an affiliated dealer of the Complainant) is the source of the websites, which it is not. This suggestion is further supported by the Respondent's use of the Complainant's official product images; and
- the Respondent has defaulted.

As a result, there is no doubt that the Respondent knew about the existence of the Complainant and its trademarks. In the circumstances, the Panel finds that the Respondent registered the disputed domain names in bad faith.

With respect to bad faith use, the Panel finds that the disputed domain names are being used for an online store purportedly offering the Complainant products using the Complainant's mark, which reflects the Respondent's awareness of and intent to target the Complainant.

Therefore, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or location or of a product or service on the Respondent's websites or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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 names <outletschwalbe.com> and <tyreschwalbe.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date May 5, 2023.