

## ADMINISTRATIVE PANEL DECISION

Omega SA and Swatch AG v. Mbofung Xavier, Samuel Ambara, yiwei liu, sirajeddine abdelali, hu lu, theones theones, DANCEL MARK JOSEPH DALISTAN, 唐平 (tang ping), dachuan, da chuan, Yu Qi Yi, Lin Xiao, de hi, and Li Li  
Case No. D2023-3771

### 1. The Parties

The Complainants are Omega SA and Swatch AG, Switzerland, internally represented.

The Respondents are Mbofung Xavier, Samuel Ambara, yiwei liu, sirajeddine abdelali, hu lu, theones theones, DANCEL MARK JOSEPH DALISTAN, 唐平 (tang ping), dachuan, da chuan, Yu Qi Yi, Lin Xiao, de hi, and Li Li, located in Cameroon, the United States of America, China, Morocco, Japan, and the Philippines, respectively.

### 2. The Domain Names and Registrars

The disputed domain names <jswatch.shop>, <sswatchclub.shop>, <swatchclubtg.shop>, <swatch-lines.shop>, <swatchmalls.com>, <swatchomegalimited.shop>, <swatch-svip.shop>, <swatch-vips.club> and <swatch-vips.live> are registered with GoDaddy.com, LLC; the disputed domain names <omegaxswatch-eu.com> and <xswatchofficial.com> are registered with Launchpad.com Inc.; the disputed domain name <omegaxwatch.shop> is registered with Sav.com, LLC; the disputed domain names <omg-earth.com> and <swoswatch.com> are registered with NameSilo, LLC; the disputed domain name <oxsmoonswatchph.com> is registered with Squarespace Domains II LLC<sup>1</sup>; the disputed domain names <swatch-cg.com>, <swatchhk-jp.com>, <swatchja-jp.com>, <swatch-j.co>, <swatch-j.live>, <swatch-jn.com>, <swatch-jpn.live>, <swatch-jpn.shop>, <swatch-jpn.xyz>, <swatch-jps.shop>, <swatch-ol.com>, <swatchthk.com>, <swatch-tyo.co>, <swatch-tyo.com>, <swatch-tyo.store> and <vipomega.com> are registered with NameCheap, Inc.; and the disputed domain name <swatch-ja.store> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (collectively, the “Registrars”, and individually, the “Registrar”, as the case may be).

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<sup>1</sup> The Complaint was filed identifying the registrar as Google LLC for the disputed domain name <oxsmoonswatchph.com>. On October 30, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II LLC following a purchase agreement. Google LLC has confirmed that both Squarespace Domains II LLC and Google LLC will comply with the UDRP and the Decision will be implemented.

### 3. Procedural History

The Complaint was filed in English against 50 domain names with the WIPO Arbitration and Mediation Center (the "Center") on September 8, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 11 and September 12, 2023, the Registrars transmitted by email to the Center respectively their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, et al.) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 21, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint in English on September 27, 2023, requesting to withdraw six domain names from the proceeding. In response to the Center's email pointing out discrepancies in relation to the Registrars in the amended Complaint, the Complainant filed a second amended Complaint in English on October 9, 2023.

On September 21, 2023, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding, in respect of the disputed domain name <swatch-ja.store>. On September 21, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

On November 8 and November 13, 2023, the Complainant submitted requests to withdraw 12 further domain names in total from the proceeding.

Prior to the appointment of the Panel, the registrations for six of the disputed domain names (i.e., <swatch-jpn.live>, <swatch-jpn.shop>, <swatch-jpn.xyz>, <swatch-jps.shop>, <swatchthk.com> and <vipomega.com>) (the "Expired Domain Names") expired.

The Center verified that the Complaint together with the amended Complaints 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 proceeding commenced on October 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 23, 2023. On November 23, 2023, one Respondent ("Shopify") sent an informal email to the Center.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 1, 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.

On December 1, 2023, the Complainant submitted a request to withdraw the Expired Domain Names from the proceeding. On the same day, Shopify sent an informal email to the Center.

On December 6, 2023, following the Panel's instruction, the Center issued Administrative Panel Procedural Order No. 1, inviting the Respondent to comment on the Complainant's withdrawal request by December 11, 2023. No comments were received from the Respondents in relation to the withdrawal request. On December 11, 2023, Shopify sent an informal email to the Center.

## 4. Factual Background

### A. The Complainants

The Complainants are watch manufacturers headquartered in Switzerland, and wholly owned subsidiaries of The Swatch Group Ltd.

The Complainant Omega SA, founded in 1848, is the owner of numerous registrations for the trade mark OMEGA in jurisdictions worldwide, including International registration No. 132141, with a registration dated of August 11, 1947.

The Complainant Omega SA is also the owner of International registration No. 1180215 for the trade mark MOONWATCH, with a registration dated of August 16, 2013.

The Complainant Swatch AG, founded in 1983, is the owner of numerous registrations for the trade mark SWATCH in jurisdictions worldwide, including International registration No. 506123, with a registration dated of September 9, 1986.

### B. The Respondents

The Respondents are apparently located in Cameroon, the United States of America, China, Morocco, Japan and the Philippines, respectively.

### C. The Disputed Domain Names

The disputed domain names were registered on the following dates:

<jswatch.shop>	February 11, 2023
<omegaxswatch-eu.com>	June 24, 2023
<omegaxwatch.shop>	March 18, 2023
<omg-earth.com>	March 10, 2023
<oxsmoonswatchph.com>	December 14, 2022
<sswatchclub.shop>	August 9, 2023
<swatch-cg.com>	August 4, 2023
<swatchclubtg.shop>	July 19, 2023
<swatchhk-jp.com>	July 7, 2023
<swatch-j.co>	July 15, 2023
<swatch-j.live>	July 15, 2023
<swatch-ja.store>	August 2, 2023
<swatchja-jp.com>	June 20, 2023
<swatch-jn.com>	July 6, 2023
<swatch-lines.shop>	November 9, 2022
<swatchmalls.com>	May 14, 2023
<swatch-ol.com>	August 5, 2023
<swatchomegalimited.shop>	May 11, 2023
<swatch-svip.shop>	November 1, 2022
<swatch-tyo.co>	July 24, 2023
<swatch-tyo.com>	July 24, 2023
<swatch-tyo.store>	July 24, 2023
<swatch-vips.club>	November 15, 2022
<swatch-vips.live>	November 16, 2022
<swoswatch.com>	June 15, 2023
<xswatchofficial.com>	November 5, 2022
<swatch-jpn.live>	November 24, 2022
<swatch-jpn.shop>	November 24, 2022

<swatch-jpn.xyz>	November 24, 2022
<swatch-jps.shop>	November 7, 2022
<swatchthk.com>	November 28, 2022
<vipomega.com>	November 30, 2022

#### **D. Use of the Disputed Domain Names**

The disputed domain name <jswatch.shop> is resolved to a Japanese language website offering the Complainants' watches for sale at discounted prices.

The disputed domain names <sswatchclub.shop> and <swatchmalls.com> are resolved to English language websites with nonsensical placeholder content and no reference to watches.

The disputed domain names <swatchclubtg.shop>, <swatch-j.co>, <swatch-j.live>, <swatch-jn.com>, <swatch-ol.com>, <swatch-tyo.co>, <swatch-tyo.com>, <swatch-tyo.store>, <swatch-vips.club> and <swatch-vips.live> are resolved to websites that have been blocked on the basis of potential illegal activity.<sup>2</sup>

The disputed domain names <omegaxswatch-eu.com> and <xswatchofficial.com> are resolved to English language websites impersonating the Complainants' official bioceramic Moonswatch selection website.

The disputed domain name <swoswatch.com> is resolved to a Thai language website offering the Complainants' watches for sale at discounted prices.

The disputed domain name <oxsmoonswatchph.com> is resolved to an English language website targeting customers in the Philippines and offering the Complainants' watches for sale at discounted prices, in Pesos.

The disputed domain names <swatchhk-jp.com> and <swatchja-jp.com> are resolved to Japanese language websites offering the Complainants' watches for sale at discounted prices, but with a different layout to the website to which the disputed domain name <jswatch.shop> is resolved.

The disputed domain names <swatch-lines.shop> and <swatch-svip.shop> are resolved to Japanese language websites impersonating the Complainants' official bioceramic Moonswatch selection website.

The disputed domain names <omegaxwatch.com>, <swatch-cg.com>, <swatch-ja.store>, <swatchomegalimited-shop> and <omg-earth.com> are not resolved to any active website.

The Expired Domain Names <swatch-jpn.live>, <swatch-jpn.shop>, <swatch-jpn.xyz>, <swatchthk.com>, and <vipomega.com> are resolved to pay-per-click websites. The Expired Domain Name <swatch-jps.shop> is resolved to an inactive website.

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

#### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

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<sup>2</sup> Screenshots for each of the disputed domain names <swatchclubtg.shop>, <swatch-j.co>, <swatch-j.live>, <swatch-jn.com>, <swatch-ol.com>, <swatch-tyo.co>, <swatch-tyo.com>, <swatch-tyo.store>, <swatch-vips.club>, <swatch-vips.live>, <swatchomegalimited.shop> and <omg-earth.com> were not provided together with the Complaint, but such information is readily available as a matter of public record (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.8 – panels may undertake limited factual research into matters of public record).

## **B. Respondents**

The Respondents did not submit a formal Response to the Complainants' contentions. Shopify sent three informal emails to the Center on November 23, December 1, and December 11, 2023 as mentioned above.

## **6. Discussion and Findings**

### **6.1 Complainants' Withdrawal Request**

On December 1, 2023, the Complainants submitted a request to withdraw the six Expired Domain Names (i.e., <swatch-jpn.live>, <swatch-jpn.shop>, <swatch-jpn.xyz>, <swatch-jps.shop>, <swatchthk.com>, and <vipomega.com>). The Panel has issued the Procedural Order No.1 inviting the Respondents to comment on such request. None was received except for an informal email from Shopify. The Panel therefore orders the Expired Domain Names be removed from the proceeding and will only decide on the remaining disputed domain names.

### **6.2 Consolidation: Multiple Complainants**

Paragraph 10(e) of the Rules provides as follows: "A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules."

Past UDRP decisions suggest that a complaint may be brought by multiple complainants where (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and (ii) it would be equitable and procedurally efficient to permit the consolidation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.1).

In the present proceeding, the Complainants have requested consolidation, due to their close legal relationship (as mentioned above, both Complainants are wholly owned subsidiaries of The Swatch Group Ltd), and their specific common grievance against the Respondents.

The Respondent has not made any submissions on this issue.

The Panel finds that the Complainants, as related entities sharing the same principal place of business, have common grievances against the Respondents, and that it would be procedurally efficient and equitable for the Complainants to be consolidated.

In all the circumstances, the Panel therefore determines, under paragraph 10(e) of the Rules, that there be consolidation of the Complainants in this proceeding.

### **6.3 Consolidation: Multiple Respondents**

The second amended Complaint was filed in relation to nominally different domain name registrants. The Complainants allege that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainants request the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules, for in particular the following reasons:

- (i) The majority of the disputed domain names have been linked to identical websites impersonating the Complainants;
- (ii) The majority of the disputed domain names have been registered at three Registrars (NameSilo, LLC; GoDaddy.com; and Namecheap, Inc.); and

- (iii) The disputed domain names seem to be registered under various alias and use the similar naming patterns that incorporate the Complainants' marks.

The disputed domain name registrants did not comment on the Complainants' request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainants' request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

The Panel has carefully considered the Complainants' submissions regarding the consolidation request, the evidence on the record, and also the records referred to in Footnote 1 above.

In all the circumstances, the Panel is unable to conclude that (1) the corresponding websites are subject to common control; and (2) that consolidation would be fair and equitable to all Parties, for the following reasons:

- (i) The disputed domain names have been registered on a wide range of dates;
- (ii) The disputed domain names have been registered with seven different Registrars;
- (iii) The disputed domain names have been registered by 13 nominally different registrants with addresses in six different countries (Cameroon, the United States of America, China, Morocco, Japan, and the Philippines);
- (iv) The content of the websites to which each of the disputed domain names is resolved is not, as asserted by the Complainant, identical. Whilst there are certain similarities with respect to small groups of disputed domain names registered by nominally the same registrant, there are a number of significant differences both in terms of website content and website language, and, furthermore, certain of the disputed domain names have not been used in respect of active websites, or, alternatively, have been blocked.

Accordingly, the Panel will proceed to issue this Decision in respect of the disputed domain names <swatch-lines.shop>, <swatch-svip.shop>, <swatch-vips.club> and <swatch-vips.live>, each of which has been registered by nominally the same registrant – yiwei lu – with the same registrant address and contact details, and with the same Regi–trar - GoDaddy.com, LLC.

The Complainants' request for consolidation with respect to the remaining disputed domain names (i.e., <jswatch.shop>, <omegaxswatch-eu.com>, <omegaxwatch.shop>, <omg-earth.com>, <oxsmoonswatchph.com>, <swatch-cg.com>, <swatchclubtg.shop>, <swatchhk-jp.com>, <swatchja-jp.com>, <swatch-ja.store>, <swatch-j.co>, <swatch-j.live>, <swatch-jn.com>, <swatchmalls.com>, <swatch-ol.com>, <swatchomegalimited.shop>, <swatch-tyo.co>, <swatch-tyo.com>, <swatch-tyo.store>, <swoswatch.com>, <xswatchofficial.com>, and <sswatchclub.shop> is refused, without prejudice to the Complainants' rights to issue separate proceedings under the Policy in respect of each of those domain names.

#### **6.4 Language of the Proceeding**

As the language of the Registration Agreements in respect of each of the disputed domain names <swatch-lines.shop>, <swatch-svip.shop>, <swatch-vips.club> and <swatch-vips.live> is English, and in light of the Panel's determination above in respect of the Complainants' consolidation request, it is not necessary for the Panel to make any determination with respect to the language of the proceeding.

## 6.5 Substantive Elements of the Policy

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview Overview 3.0, section 1.7.

Based on the available record, the Panel finds the Complainant Swatch AG has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, a hyphen, "lines", "svip", and "vips") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

### 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 a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has 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 such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off) or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, in respect of the disputed domain names <swatch-lines.shop> and <swatch-svip.shop>, impersonation/passing off; and, in respect of the disputed domain names <swatch-vips.club> and <swatch-vips.live>, websites that have been blocked on the basis of illegal activity). [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names <swatch-lines.shop>, <swatch-svip.shop>, <swatch-vips.club>, and <swatch-vips.live> constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <swatch-lines.shop>, <swatch-svip.shop>, <swatch-vips.club> and <swatch-vips.live> be transferred to the Complainant.

The Complainants' request for consolidation with respect to the disputed domain names <jswatch.shop>, <omegaxswatch-eu.com>, <omegaxwatch.shop>, <omg-earth.com>, <oxsmoonswatchph.com>, <swatch-cg.com>, <swatchclubtg.shop>, <swatchhk-jp.com>, <swatchja-jp.com>, <swatch-ja.store>, <swatch-j.co>, <swatch-j.live>, <swatch-jn.com>, <swatchmalls.com>, <swatch-ol.com>, <swatchomegalimited.shop>, <swatch-tyo.co>, <swatch-tyo.com>, <swatch-tyo.store>, <swoswatch.com>, <sswatchclub.shop>, and <xswatchofficial.com> is refused, without prejudice to the Complainants' rights to issue separate proceedings under the Policy in respect of each of those domain names.

The Panel makes an order with respect to the Expired Domain Names <swatch-jpn.live>, <swatch-jpn.shop>, <swatch-jpn.xyz>, <swatch-jps.shop>, <swatchthk.com>, and <vipomega.com> to remove these Expired Domain Names from the proceeding, as requested by the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Date: December 22, 2023