

## **ADMINISTRATIVE PANEL DECISION**

Ralf Bohle GmbH v. Milen Radumilo, Milen Radumilo  
Case No. D2023-4899

### **1. The Parties**

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

Respondent is Milen Radumilo, Romania.

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

The Disputed Domain Name <schwablebigapplebend.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 November 24, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 27, 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 (Contact Privacy Inc. Customer 0169771167) and contact information in the Complaint. The Center sent an email communication to Complainant on December 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 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 Respondent of the Complaint, and the proceedings commenced on December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 3, 2024.

The Center appointed Richard Page as the sole panelist in this matter on January 22, 2024. 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**

Complainant is a German manufacturer of tires and other equipment and parts for bicycles and wheelchairs. Complainant has been headquartered in Reichshof, Germany since 1995. Its predecessor company started as a family business in 1922, run by Ralf Bohle's father and uncle. Ralf Bohle (after whom the company is named) joined the company in 1955.

Complainant started manufacturing bicycle tires in 1973 under its brand name SCHWALBE, which brand name became renowned in the field of pneumatic tires and parts for bicycles and wheelchairs. Complainant markets its SCHWALBE products in more than 40 countries around the world, and, besides Germany, it has international affiliates in the United Kingdom, the Netherlands, France, Italy and the United States of America. SCHWALBE products also include BIG APPLE tires for bicycles and e-bikes, which are extra wide tires, designed for comfort and speed in combination with modern design and safe performance, with a puncture resistant layer.

Complainant is the owner of several registrations for the SCHWALBE Mark, including without limitation:

International Registration No. 719983 for SCHWALBE registered on May 19, 1999, in classes 9 and 12;

International Registration No. 1117528 for SCHWALBE registered on July 17, 2013 in class 12; and

European Union Trademark Registration No. 011061322 for SCHWALBE registered on December 18, 2012, in classes 8, 9, and 12.

In addition, Complainant protected the BIG APPLE tire brand as a trademark (the "BIG APPLE Mark") in various territories, including without limitation: German Trademark Registration No. 30113553 for BIG APPLE registered on April 23, 2001, in class 12.

In addition, Complainant is the registrant of numerous domain names, many of which incorporate the SCHWALBE Mark. These domain names include, without limitation, Complainant's official website at <schwalbe.com> which was registered on October 24, 1995.

Complainant registered its first of the BIG APPLE and SCHWALBE Marks more than 22 and 25 years ago respectively, while actively using its SCHWALBE Mark for almost 50 years, hence Complainant has gained global fame. Consequently, the public has learned to associate the goods and services offered under the SCHWALBE Mark and the BIG APPLE Mark with Complainant. The SCHWALBE Mark has significant global reach and decades of market presence and has gained well-known status.

The Disputed Domain Name contains the entirety of the SCHWALBE Mark with the transposition of two letters into "Schwable". The Disputed Domain Name also includes the additional term of "Big Apple" which refers to a valuable product of Complainant and the additional term "bend".

Before starting the present proceeding, Complainant made efforts to resolve this matter and to minimize the risk of potential abuse. On October 24, 2023, Complainant sent a takedown notice to the mailing service provider requesting that the mail service for the Disputed Domain Name be suspended, in order to prevent the risk of abuse associated with the Disputed Domain Name. The mailing service provider gave no substantive response, instead directing Complainant to UDRP proceedings. On October 23, 2023, Complainant also sent a request for the revealing of registrant's identity to the Registrar, in order to obtain the information needed to contact the registrant of the Disputed Domain Name, and again prevent the risk of

abuse associated with this Disputed Domain Name. No response was received, despite numerous reminders. Complainant also made efforts to contact Respondent on October 23, 2023 and October 25, 2023 using the email address indicated in the Whois records and the registrant's suggested contract form. No response was received.

Respondent is not affiliated with Complainant in any way and has not been authorized by Complainant to use or to register its SCHWALBE Mark or its BIG APPLE Mark or to seek registration of any domain name incorporating said marks.

The Disputed Domain Name was registered on September 25, 2023, and resolves to a parking page with sponsored links (pay-per-click of PPC), displaying various links advertising e-bike tires, bike tires and wheelchair tires, with a displayed link to a GoDaddy webpage on which Internet users can purchase the Disputed Domain Name. Complainant has also noticed that email servers linked to the Disputed Domain Name reproduce the SCHWALBE Mark and BIG APPLE Mark.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Complainant contends that the use of a parking page is not a *bona fide* sale of goods or services in connection with or a legitimate use of the Disputed Domain Name.

Complainant further contends that Respondent has not been commonly known by the Disputed Domain Name.

Complainant alleges that Respondent's email servers (MX Records) are configured in respect to the Disputed Domain Name. Even though the mailing service provider gave a formulaic response claiming that the MX traffic "is only received and not sent," this could not be verified by Complainant. Thus, there is a real danger that Internet users will receive emails from address with extensions "@schwablebigapplebend.com" on the assumption that they are communication directly with Complainant or an entity affiliated with Complainant. In that sense, Respondent is using such email addresses to impersonate Complainant and Internet users are being tricked into disclosing their personal data and sensitive information (e.g., social security numbers and bank account numbers). An illegal use such as this type of phishing can never confer legitimate right. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.13.

Complainant asserts that Respondent knew or should have known of Complainant's trademark right at the time it registered the Disputed Domain Name. [WIPO Overview 3.0](#), section 3.2.2. Complainant's well-known mark had been used globally for almost 50 years and it is difficult to imagine Respondent did not have Complainant in mind when registering the Disputed Domain Name. Namely, the registration of the Disputed Domain Name occurred 27 years after the registration of the <schwalbe.com> domain name and the earliest SCHWALBE Mark registration predates Respondent's registration of the Disputed Domain Name by 24 years. Moreover, Respondent used not one, but two, of Complainant's trademarks in the Disputed Domain Name.

### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See [WIPO Overview 3.0](#), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the SCHWALBE Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

### 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 Complainant’s SCHWALBE Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.2.1 states that registration is *prima facie* evidence of Complainant having enforceable rights in the SCHWALBE Mark.

Complainant has shown rights in respect of the SCHWALBE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the SCHWALBE Mark is recognizable within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the SCHWALBE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of other terms here, “big apple” and “bend” does not prevent a finding of confusing similarity between the Disputed Domain Name and the SCHWALBE Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Also see [WIPO Overview 3.0](#), section 1.11.1 which instructs that gTLDs such as “.com” may be disregarded for purposes of assessing confusing similarity.

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 Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of the Disputed Domain Name for illegal activity here, claimed as phishing can never confer rights or legitimate interests on a Respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Disputed Domain Name in bad faith.

In the present case, the Panel notes that Respondent (i) attempted to attract, for commercial gain, Internet users to its website by using the Disputed Domain Name which is confusingly similar to the SCHWALBE Mark in violation of paragraph 4(b)(iv) of the Policy. Respondent also (ii) configured email servers linked to the disputed domain name, and (iii) knew or should have known that Complainant had rights in the SCHWALBE Mark.

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

Having reviewed the record, the Panel finds Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

The Panel finds that 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 Name <schwablebigapplebend.com> be transferred to Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: January 29, 2024