

ADMINISTRATIVE PANEL DECISION

Ralf Bohle GmbH v. Domain Administrator, Sugarcane Internet

Nigeria Limited

Case No. D2023-4928

1. The Parties

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

The Respondent is Domain Administrator, Sugarcane Internet Nigeria Limited, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <schwalbtires.com> is registered with Cosmotown, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 27, 2023. On November 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 December 4, 2023.

The Center verified that the Complaint 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 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. However, automatic replies were received by the Respondent on December 4, 2023, and January 11, 2024. Accordingly, the Center notified the Respondent's default on January 4, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on January 17, 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

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 its brand name SCHWALBE, which brand name became renowned in the field of pneumatic tires and parts for bicycles and wheelchairs. By the day of submission of this Complaint, the Complainant's Schwalbe products are present in more than 40 countries around the world with international affiliates in the United Kingdom, Netherlands (Kingdom of the), France, Italy and the United States of America. The Complainant owns various trade mark registrations that contain its SCHWALBE mark including International Registration No. 1171528 for the trade mark SCHWALBE registered on July 17, 2013. It also owns numerous domain name registrations that incorporate the SCHWALBE mark, including its main domain name registration at <schwalbe.com> from which it operates its main website.

The disputed domain name was registered on September 18, 2023, and since the time when the Complainant became aware of its existence, resolves to a pay-per-click webpage presenting advertising links for tires for bikes and e-bikes. It appears that email servers ("MX Records") are configured on the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it owns registered trade mark rights for its SCHWALBE mark as set out above and that the disputed domain name incorporates the term "schwalb" in full and that this is clearly a misspelling of the Complainant's SCHWALBE trade mark. The Complainant says that the addition of the word "tires" does not prevent a finding of confusing similarity of the disputed domain name.

The Complainant has submitted that the Respondent is not affiliated with the Complainant in any way and has not been authorised by the Complainant to use and register a domain name which is highly similar to its trade mark. To the best of the Complainant's knowledge, the Respondent has not been commonly known by the name "schwalb" nor "schwalbtires". In addition, says the Complainant, the Respondent has not demonstrated use of the disputed domain name in connection with a bona fide offering of goods or services. Ever since the Complainant became aware of the disputed domain name it has resolved to a pay-per-click ("PPC") webpage presenting advertising links. Therefore, it is clear, says the Complainant, that the Respondent has no intention of developing a legitimate activity through the disputed domain name and that the Respondent registered the disputed domain name for the sole purpose of taking unfair advantage of the Complainant's reputation and disrupting its business.

The Complainant also underlines that MX Records are configured in respect of the disputed domain name. Thus, it says there is a real possibility that Internet users were receiving emails from the email addresses with extensions "@schwalbtires.com" on the assumption that they were communicating directly with the Complainant or an entity affiliated with this company.

The Complainant submits the registration of the disputed domain name occurred 27 years after the registration of the domain name which resolves to the official website of the Complainant, and that the earliest SCHWALBE trade mark registration predates the Respondent's domain registration by many years.

It also says that the Respondent has used the misspelt version of the Complainant's trade mark in the disputed domain name along the term "tires" which confirms that the Respondent had the Complainant and its trade mark in mind when it registered the disputed domain name.

In terms of use in bad faith the Complainant submits that the disputed domain name resolves to a parking page containing PPC links including for bicycle tyre and e-bike tyre products in competition with the Complainant's products and that this amounts to the Respondent registering the disputed domain name primarily with an intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of website or of a product or service on website in accordance with Paragraph 4(b)(iv) of Policy.

The Complainant also notes that email servers are in this case configured to the disputed domain name. It notes that previous panels have found that configuration of MX Records on the disputed domain name constitute use in bad faith since it represents a real risk that the Respondent may be engaged in a phishing scheme, aimed at deceiving Internet users into believing that they were dealing with the Complainant.

The Complainant submits that the Respondent is a notorious cyber squatter and has been a respondent in many previous UDRP proceedings. Some of those decisions include: – *Accor v. Privacy Protection/ Domain Administrator, Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2021-1954](#); *Blackbaud, Inc. v. Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2022-0860](#); *Muitas Ltd v. Domain Administrator, Sugarcane Internet Nigeria Limited and Milen Radumilo*, WIPO Case No. [D2022-4978](#); *Sandals Resorts International 2000 Inc. v. Domain Administrator, Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2023-0308](#).

Given the Respondent's history of bad faith registration of well-known trade marks, the Complainant says that it leaves no doubt in respect of bad faith registration in this case as well and that it is clear that the Respondent's behavior constitutes a pattern of bad faith conduct of preventing trade mark holders from reflecting their mark in a corresponding domain name as indicated in Paragraph 4(b)(ii) of the Policy.

Finally, the Complainant noted that the Respondent used a privacy service to mask its identity and failed to respond to the Complainants' pre-action correspondence.

B. Respondent

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

6. Discussion and Findings

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognisable within the disputed domain name even if it has been misspelt by the omission of an "e". Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7

Although the addition of other terms, in this case the word “tires” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 name. 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 name such as those enumerated in the Policy or otherwise. As discussed under Part C below this is a blatant case of typosquatting which is entirely inconsistent with the Respondent having rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The registration of the disputed domain name occurred many years after the registration of the Complainant’s main domain name (which resolves to the official website of the Complainant) and also many years after the Complainant’s SCHWALBE trade mark registration. SCHWALBE is a distinctive mark that appears to have developed a very strong following in many countries in relation to the Complainant’s tyre products. It is apparent that the Respondent has engaged in typosquatting by using a misspelt version of the Complainant’s trade mark in the disputed domain name and then added the term “tires” which strongly suggests that the Respondent had the Complainant and its trade mark in mind when it registered the disputed domain name. The Panel finds that it is more likely than not that the Respondent was aware of the Complainant’s SCHWALBE mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case the Respondent has used the disputed domain name, containing a misspelt but wholly recognisable version of the Complainant’s trade mark, to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s SCHWALBE mark and diverting them in each case to a website which contains PPC links for what appear to be competing tyre products. This is obviously for the commercial benefit of the Respondent and amounts to conduct that satisfies the requirements of paragraph 4(b)(iv) of the Policy, which is evidence of registration and use of the disputed domain name in bad faith.

This is a blatant case of typosquatting by the Respondent who appears to be a serial cyberquatter. The Panel notes that the Respondent has been involved as respondent in numerous prior cases of cybersquatting in which panels have found bad faith and transferred the domain name in question. These include: *Accor v. Privacy Protection/ Domain Administrator, Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2021-1954](#); *Blackbaud, Inc. v. Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2022-0860](#); *Muitas Ltd v. Domain Administrator, Sugarcane Internet Nigeria Limited and Milen Radumilo*, WIPO Case No. [D2022-4978](#) and *Sandals Resorts International 2000 Inc. v. Domain Administrator, Sugarcane Internet Nigeria Limited*, WIPO Case No. [D2023-0308](#).

This pattern of conduct of cybersquatting by the Respondent amounts to a pattern of bad faith conduct of preventing trade mark holders from reflecting their mark in a corresponding domain name in terms of paragraph 4(b)(ii) of the Policy which is also evidence of registration and use of the disputed domain name in bad faith.

Finally, the Panel notes that the Respondent failed to respond to the Complainant's pre-action correspondence and in the circumstances appears to have used a privacy service to try to mask its identity and that MX Records are configured in respect of the disputed domain name which may be indicative of the Respondent seeking to misrepresent itself to Internet users, although there is no evidence of actual examples of misrepresentation on the record. These actions only tend to reinforce the Panel's view of the Respondent's bad faith.

The Panel therefore 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 name <schwalbtires.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: January 31, 2024