

ADMINISTRATIVE PANEL DECISION

OMEGA SA, SWATCH AG v. SXXX SXXX, Zheng Zheng, Lin Xiao
Case No. D2024-0168

1. The Parties

The Complainants are OMEGA SA and SWATCH AG, Switzerland, represented by The Swatch Group AG, Switzerland.

The First Respondent is SXXX SXXX, Afghanistan.

The Second Respondent is Zheng Zheng, China.

The Third Respondent is Lin Xiao, China.

2. The Domain Names and Registrars

The disputed domain names <omegaswatch.club>, <omegaswatch.com>, <omegaswatch.vip>, and <swatchshop.shop> are registered with GoDaddy.com, LLC (the “First Registrar”).

The disputed domain name <swatchworldonline.shop> is registered with NameCheap, Inc. (the “Second Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2024. On January 16, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 16 and 17, 2024, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents ((Redacted) and (Redacted), Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on January 17, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainants 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 Complainants filed an amended Complaint on January 21, 2024.

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 Respondents of the Complaint, and the proceedings commenced on January 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 11, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on February 23, 2024.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on February 29, 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 Complainants are two sister companies, wholly owned subsidiaries of The Swatch Group Ltd.

OMEGA SA (the First Complainant), is a watchmaker, founded in 1848, especially involved in sports timekeeping and producer of the “Speedmaster” watch, also called “Moonwatch” worn on each of NASA’s piloted missions, including all six moon landings. The First Complainant is the owner of several registered trademarks incorporating the sign OMEGA (the OMEGA Trademarks), including the following:

- the international semi-figurative trademark **OMEGA** No. 132141, registered on August 11, 1947, and regularly renewed for products and services in classes 4, 8 and 14;
- the international wordmark OMEGA No. 765501, registered on September 24, 2001, and regularly renewed for products and services in class 14;

- the Chinese semi-figurative trademark  **OMEGA** No. 28865, registered on February 15, 1981, and regularly renewed for products and services in class 14.

SWATCH AG (the Second Complainant) is also a watchmaker, one of the most famous industry leaders in wristwatches. The Second Complainant is the owner of several registered trademarks incorporating the sign SWATCH (the SWATCH Trademarks), including the following:

- the international wordmark SWATCH No. 506123, registered on September 9, 1986, and regularly renewed for products and services in class 14;
- the Chinese wordmark SWATCH No. 232954, registered on September 15, 1985, and regularly renewed for products and services in class 14;
- the European Union wordmark SWATCH No. 000226050, registered on October 2, 1998, and regularly renewed for products and services in class 14.

The Second Complainant also promotes its products and services on the Internet, on its website available at the domain name <swatch.com> and on e-commerce shops available at the sub-domain <shop.swatch.com>.

The disputed domain names have been registered at the following dates:

- <omegaswatch.com> on December 11, 2023, by an individual located in China;
- <swatchworldonline.shop> on December 17, 2023, by an individual that has falsified its information, located in Afghanistan;
- <omegaswatch.club> on December 25, 2023, by an individual located in China;

- <swatchshop.shop> on December 26, 2023, by an individual located in China; and
- <omegaswatch.vip> on January 3, 2024, by an individual located in China.

The disputed domain names resolve or resolved to websites impersonating the Complainants and offering to sell their products.

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.

Notably, the Complainants allege that given the close legal relationship between the Complainants, and the fact that they are represented by a single authorized representative and have a "common grievance", consolidation of the Complaint is appropriate. The Complainants also ask for the consolidation of multiple domains and multiple Respondents because the disputed domain names have, without any reasonable doubt been registered by the same individual/entity. The Complainants argue that all the disputed domain names have been linked to essentially identical websites, have been registered at only two registrars, within one month, by (reportedly) two individuals located in China and one with falsified information indicating a residence in Afghanistan.

Then, the Complainants contend that the disputed domain names are identical or confusingly similar to trademarks in which the Complainants have rights. The Complainants argue that three of them (<omegaswatch.com>, <omegaswatch.vip> and <omegaswatch.club>) are essentially identical to the OMEGA Trademarks and SWATCH Trademarks that they incorporate without any distinguishing elements. Then the Complainants add that the disputed domain names <swatchshop.shop> and <swatchworldonline.shop> are also essentially identical to the SWATCH Trademark which is recognizable and combined with the term "shop" or "online" which are insufficient to dispel the confusing similarity. The Complainants conclude that all the disputed domain names are confusingly similar under the Policy.

The Complainants stated that the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainants explain that there are no signs that the Respondents have been commonly known by the disputed domain names and that the Complainants have not granted a license or authorized them to use their trademarks or apply for registration of the disputed domain names. The Complainants also add that the Respondents do not make a fair use of the disputed domain names. The Complainants consider that the Respondents are not making any noncommercial or fair use of the disputed domain names.

Finally, the Complainants assert that the disputed domain names were registered and are used in bad faith. The Complainants indicate that in March 2022, they have officially announced a collaboration and launched a collection of watches combining their brands. The Complainants explain that these products, which are produced in limited quantity, are exclusively sold in the Second Complainant's physical stores. The Complainants argue that the Respondents have leaped at the opportunity and opened online stores impersonating the Complainants and claiming to sell said watches for discounted prices. The Complainants add that the Respondents also create confusion by wrongly making visitors of its websites believe to be endorsed and/or otherwise affiliated with the Complainants by using the Complainants' official logos prominently displayed on its websites, by including misleading statements such as "© SWATCH AG", and, further, by slavishly copying the Complainants' copyright protected material. The Complainants consider that the Respondents' sole intention is to mislead internet users, to fraud consumers and to siphon off the Complainants' success and commercial goodwill. The Complainants conclude that the Respondents have clearly registered and are using the disputed domain names in bad faith under the Policy.

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Complainants

The Complainants request the consolidation of the Complaint, pursuant to paragraph 10(e) of the Rules.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (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.

As regards specific common grievance against the Respondents, the Panel notes that the disputed domain names identified in the Complaint all include the main trademarks of each of the Complainants (OMEGA Trademarks and SWATCH Trademarks). Moreover, the Panel notes that the Complainants are two sister companies, wholly owned subsidiaries of The Swatch Group Ltd which represents them in the proceeding. Therefore, the Panel finds that given the close legal relationship between the Complainants, consolidation of this Complaint is appropriate.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different Complainants (referred to below as "the Complainant") in a single proceeding.

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain names' registrants did not comment on the Complainant's 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 Complainant's 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel finds that the Complainant has established more likely than not that the five disputed domain names are subject to common ownership or control:

- all of them have been registered over the same period, between December 11, 2023, and January 3, 2024;
- each of the disputed domain names incorporates the OMEGA Trademarks and/or the SWATCH Trademarks of the Complainant in their entirety;
- all of them impersonate the Complainant and pretend to sell the Complainant's products and have been used to divert Internet users from the Complainant; and,

- the disclosed contact details for two of the Respondents were apparently incomplete or fake, the Center not being able to send its written communication to the incomplete Respondent details in Afghanistan and the courier not being able to deliver the Center's written communication to the details disclosed for Lin Xiao. Lastly, the Respondent Zheng Zheng has already been subject to a nearly identical UDRP proceeding involving the Complainants and was similarly found to have acted in a common scheme targeting the Complainants along with other incomplete or fake registrant details (*Blancpain SA, Omega SA, Swatch AG v. Dirk Scheidt, hu luo, lewansi, XU euni, Zheng Zheng*, WIPO Case No. [D2023-5177](#)).

The Respondents had the opportunity but did not respond to the Complaint.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different domain name registrants (referred to as "the Respondent") in a single proceeding.

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 entirety of the marks are reproduced within 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, "shop" in the disputed domain name <swatchshop.shop> or "world" and "online" in the disputed domain name <swatchworldonline.shop> 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.

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, claimed sale of counterfeit goods and impersonation/passing off the Complainant, 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 a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered the disputed domain names well after the registration of the OMEGA Trademarks and SWATCH Trademarks. The Panel notes that the Respondent must have had the Complainant in mind when registering the disputed domain names, since the websites to which the disputed domain names revert or have reverted, all impersonate the Complainant in order to mislead Internet users. Moreover, the registration of the disputed domain names was done through the use of multiple fake contact details, likely in an attempt to frustrate consolidation, and also illustrates a pattern of bad faith registrations given the multiple disputed domain names at issue here and the Respondent's role in the nearly identical UDRP proceeding, *Blancpain SA, Omega SA, Swatch AG v. Dirk Scheidt, hu luo, lewansi, XU euni, Zheng Zheng, supra*. Accordingly, the Respondent's registration of the disputed domain names is 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, claimed sale of counterfeit goods and impersonation/passing off the Complainant constitutes bad faith. [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 constitutes bad faith under the Policy.

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 <omegaswatch.club>, <omegaswatch.com>, <omegaswatch.vip>, <swatchshop.shop>, and <swatchworldonline.shop> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: March 19, 2024