

ADMINISTRATIVE PANEL DECISION

Ralf Bohle GmbH v. Yaxian Zhan

Case No. D2024-3245

1. The Parties

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

The Respondent is Yaxian Zhan, China.

2. The Domain Name and Registrar

The disputed domain name <schwalbeuk.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 9, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.



The Center verified that the 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 August 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 2, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on September 6, 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

Headquartered in Reichshof, Germany since 1995, the Complainant is a German manufacturer of tires and other equipment and parts for bicycles and wheelchairs. The predecessor company started manufacturing bicycle tires in 1973 under its brand name SCHWALBE, which became well known in the field of pneumatic tires and parts for bicycles and wheelchairs. The Complainant and its SCHWALBE products are present in the market 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 United States”).

The Complainant is the owner of a number of trademark registrations for SCHWALBE in various countries and classes, including, inter alia, International Trademark Registration No. 719983 for the figurative mark  in Classes 9 and 12 registered on May 19, 1999, International Trademark Registration No. 1171528 for SCHWALBE in Class 12 registered on July 17, 2013, the United States Trademark Registration No. 2482677 for the figurative mark  *Schwalbe* in Class 12 registered on August 28, 2001, German Trademark Registration No. 39822240 for SCHWALBE in Classes 9 and 12 registered on June 17, 1998, and the United Kingdom Trademark Registration No. UK00911061322 for SCHWALBE in Classes 8, 9 and 12 registered on December 18, 2012 (the “Complainant’s Trademark”),

The Complainant’s Trademark is also fully incorporated in its domain names, including, inter alia, <schwalbe.com>, <schwalbetires.us>, <schwalbe.nl>, <schwalbe.it>, <schwalbe.fr>, <schwalbe.eu> and <schwalbe.bike> (the “Complainant’s Domain Name”).

The Disputed Domain Name was registered by the Respondent on June 26, 2024, which is more than 20 years after the Complainant’s Trademark was first registered. According to the Complainant, the Disputed Domain Name previously resolved to an active website that seemed to offer various bicycle tires, parts and other equipment for bicycles, including SCHWALBE branded products. At the time of the filing of the Complaint, the Complainant claimed that the Disputed Domain Name resolved to an inactive webpage. However, the Panel notes at the time of giving this decision, that the Disputed Domain Name resolves to an active website that purportedly offer various bicycle tires, parts and other equipment for bicycles of multiple brands, including the SCHWALBE brand (the “Respondent’s Website”).

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:

(a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Disputed Domain Name reproduces the Complainant’s Trademark in its entirety, with the only difference between the Disputed Domain Name and the Complainant’s Trademark being the additions of the geographical term “uk” and the generic Top-Level Domain “.com” should not prevent a finding of confusing similarity, and may be disregarded. Therefore, the Disputed Domain Name is confusingly similar to the Complainant’s Trademark.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence to show that the Respondent used or has made preparations to use the Disputed Domain Name, or a name corresponding to the Disputed Domain Name, in connection with a bona fide offering of goods and services, or for a legitimate noncommercial or fair use. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or the Complainant’s Trademark. Moreover, the Respondent is not affiliated with the Complainant in any way, and the Complainant has not licensed or authorised the Respondent to use the Complainant’s Trademark. Further, the Respondent’s fraudulent use

of the Complainant's Trademark on the Respondent's Website in connection with the sale of suspected counterfeit goods constitutes illegal activity that cannot be considered as legitimate noncommercial or fair use without the intent for commercial gain.

(c) The Respondent has registered the Disputed Domain Name and is using it in bad faith. Given the history of the SCHWALBE brand and the goodwill and reputation that the Complainant has acquired in the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Disputed Domain Name is used with the primary intention to capitalise and to disrupt the Complainant's business by virtue of the association between the Disputed Domain Name and the Complainant's Trademark. The Disputed Domain Name resolves to an active website that offers tires and other bicycle equipment including heavily discounted SCHWALBE branded products, which may possibly be counterfeit goods, without the authorisation of the Complainant. Therefore, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent 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 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 Complainant's Trademark is reproduced within the Disputed Domain Name. To the extent that design (or figurative/stylised) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.10. Furthermore, it is also well established that the generic Top-Level Domain, ".com" in this case, may be disregarded for the purposes of assessing confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.11.1. Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, in this case, "uk", 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 Complainant's Trademark 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.

In the present case, the Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent’s failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become commonly known by the Disputed Domain Name. There is no evidence to suggest that the Respondent’s use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

The composition of the Disputed Domain Name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The Respondent would likely not have adopted the Complainant’s Trademark if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant, especially when the Disputed Domain Name reproduces the Complainant’s Trademark in its entirety and the Respondent purportedly offered to sell SCHWALBE branded products on the Respondent’s Website. However, the Panel notes the website also offers similar products for sale under other brands. Such use cannot constitute fair use under the *Ok! Data* test (see *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and [WIPO Overview 3.0](#), section 2.8).

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.

Considering the facts that Complainant’s branded products are offered for sale at discounted prices, the Respondent operates the Disputed Domain Name without authorisation, and the Respondent did not file any response, the Panel infers that the Complainant’s products are likely to be counterfeit. Panels have held that the use of a domain name for illegal activity such as in this case, sale of suspected counterfeit goods, 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 it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety together with a term referring to a country where the Complainant has business presence. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Although the Complainant noted that the Disputed Domain Name resolved to an inactive webpage, the Panel notes that it currently resolves to an active webpage offering products similar to the Complainant's products. 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. The Panel finds that the Respondent's reactivation of the Disputed Domain Name should be taken into consideration in a finding of bad faith under the Policy, and that the Respondent's registration and use of the Disputed Domain Name constitute bad faith under the paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity, such as in this case sale of suspected counterfeit goods, 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 Name 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 Name <schwalbeuk.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: September 20, 2024