

ADMINISTRATIVE PANEL DECISION

Ralf Bohle GmbH v. ChenNuannuan, ChenNuannuan
Case No. D2023-2978

1. The Parties

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

The Respondent is ChenNuannuan, ChenNuannuan, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 2023, 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 July 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 18, 2023.

The Center appointed Geert Glas as the sole panelist in this matter on August 28, 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.

4. Factual Background

The Complainant, Ralph Bohle GmbH, is a German company specialized in the manufacturing of tires and other equipment and parts for bicycles and wheelchairs.

The Complainant owns a substantial portfolio of SCHWALBE trademarks. Among others, the Complainant registered the following international and European Union trademarks:

-  International trademark, registration no. 719983, registered on May 19, 1999, in classes 9 and 12;
- SCHWALBE: International trademark, registration no. 1171528, registered on July 17, 2013, in class 12;
- SCHWALBE: European Union trademark, registration no. 011061322, registered on December 18, 2012, in classes 8, 9 and 12.

The Complainant also owns the domain name <schwalbe.com>, which is registered on October 24, 1995, as well as a series of other domain names including the term “schwalbe”.

The disputed domain name <schwalbesoldes.com> was first registered on April 10, 2023.

The Registrar's Whois database does not indicate the identity of the Respondent for the Domain Name, hiding behind the shield of a privacy service. Upon request from the Center, the Registrar identified the Respondent as ChenNuannuan, ChenNuannuan.

It appears from the screenshots attached as an exhibit to the Complaint that the Domain Name resolved to a website on which the Respondent was commercializing SCHWALBE branded goods and which reproduced the Schwalbe logo. The website content was taken down after the Complainant had contacted the Registrar.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant requests that the Domain Name be transferred to it on the following grounds:

(i) the Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the Domain Name contains its trademark SCHWALBE, which has to be considered distinctive and well-known as confirmed in *Ralf Bohle GmbH v. Liu Zhongsen*, WIPO Case No. [D2023-1211](#).

The Complainant also contends that the addition of the term “soldes”, meaning “sales” in French, would not prevent a finding of confusing similarity. All the more, because the Complainant is active on the French market through its subsidiary Schwalbe France SARL. The Complainant further contends that such addition is causing likelihood of confusion for ordinary Internet users, who might believe that the Domain Name is related to or in some way associated with the Complainant and its products.

(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name since the Respondent (i) is not affiliated with the Complainant, (ii) is not using the Domain Name in connection with a *bona fide* offering of goods or services, (iii) is not commonly known by SCHWALBE nor SCHWALBESOLDES, and (iv) has not been authorised by the Complainant to use the SCHWALBE trademark.

(iii) The Domain Name was registered and is being used in bad faith.

The Complainant contends that the Respondent could not have been unaware of its trademark. All the more, because the webpage to which the Domain Name resolved reproduced a variation of the Complainant's trademark and showed images of the Complainant's products. In addition, it appears from the screenshots attached as an exhibit to the Complaint that an Internet search of the keyword "schwalbe" leads to the Complainant and its activity. The Complainant claims that it is the Respondent's duty to verify that the registration of the Domain Name would not infringe the rights of any third party and the failure to do so is a contributory factor to its bad faith (see *Nike, Inc. v. B.B. de Boer*, WIPO Case No. [D2000-1397](#); *Carolina Herrera, Ltd. v. Alberto Rincon Garcia*, WIPO Case No. [D2002-0806](#); and *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*, WIPO Case No. [D2008-0226](#)).

The Complainant therefore contends that the Respondent has chosen the Domain Name to use it for selling products under the SCHWALBE trademark, in order to make a commercial gain and to disrupt the Complainant's activity.

The Complainant adds that the website to which the Domain Name resolved is used to attract Internet users for commercial gain by creating a likelihood of confusion through the use of the SCHWALBE trademark without any authorization.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it is the owner of international, and European Union trademarks consisting of the word "Schwalbe", which satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2).

The Domain Name incorporates the Complainant's SCHWALBE trademark in its entirety followed by the term "soldes".

Several UDRP panel decisions have stated that wholly incorporating a complainant's registered trademark in a domain name may be sufficient to establish confusing similarity even when another term is added to the trademark (See, e.g., *GA Modeline S.A v. Mark O'Flynn*, WIPO Case No. [D2000-1424](#); *Viacom International Inc. v. Erwin Tan*, WIPO Case No. [D2001-1440](#); and *eBay Inc. v. ebayMoving / Izik Apo*, WIPO Case No. [D2006-1307](#)).

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements (See [WIPO Overview 3.0](#), section 1.8).

Accordingly, the Panel finds that the first element under paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, the consensus view is that, once the complainant has made a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Dow Jones & Company, Inc., (First Complainant) and Dow Jones LP (Second Complainant) v. The Hephzibah Intro-Net Project Limited (Respondent)*, WIPO Case No. [D2000-0704](#); and the [WIPO Overview 3.0](#), section 2.1).

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Indeed, based on the evidence submitted by the Complainant, the Panel finds that it does not appear that the Respondent (i) has made a legitimate non-commercial or fair use of the Domain Name, (ii) has used the Domain Name in relation with a *bona fide* offering of goods or services, or (iii) has been authorised by the Complainants to use the SCHWALBE trademark or (iv) has been commonly known by the Domain Name.

More specifically, the Complainant has provided evidence that the Domain Name previously resolved to a web store allegedly selling the Complainant's trademarked goods and displaying a variation of the Complainant's logo. Further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's previous use of the Domain Name to host an impersonating web store does not amount to a *bona fide* offering nor a noncommercial fair use. Moreover, the composition of the Domain Name combining the Complainant's trademark and the term "soldes", meaning "sales" in French, carries a risk of implied affiliation, see section 2.5.1 of the [WIPO Overview 3.0](#).

Given that the Respondent did not reply to the Complainant's contentions and did not present any plausible explanation for its use of the Complainant's SCHWALBE trademark, the Panel considers that the Complainant has satisfied their burden of proof under this element of the Policy.

Accordingly, the Panel finds that the second element under paragraph 4(a) (ii) of the Policy has been established in respect of the Domain Name.

C. Registered and Used in Bad Faith

The Panel turns to the question of whether the Domain Name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy describes some circumstances which, if found to exist, will be evidence of the registration and use of the domain name in bad faith. They are presented in the alternative and consist of a not exhaustive list of circumstances of bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

(a) Registered in bad faith

The Complainant has been benefitting from trademark protection for its SCHWALBE trademark for more than two decades, while the registration of the Domain Name has just occurred.

Considering that the Respondent registered the Domain Name composed of the SCHWALBE trademark and the addition of the word "soldes" which is related to e-commerce and the activities of the Complainant; and the webpage to which the Domain Name resolved showed images of the Complainant's products, the Panel is of the opinion that the Respondent could not have been unaware of the SCHWALBE trademark and of the Complainant's rights in this trademark when registering the Domain Name.

(b) Used in bad faith

It appears from the screenshots attached as an exhibit to the Complaint that the Domain Name was used for a website offering, under the SCHWALBE trademark, bicycle tires, parts and other equipment for bicycles, at heavily discounted prices. For this reason, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (See *e.g.*, *Groupe Partouche v. Madarin Data LTD, Pousaz Raymond*, WIPO Case No. [D2010-1649](#); *Claudie Pierlot v. Yinglong Ma*, WIPO Case No. [D2018-2466](#); and *Caterpillar, Inc. v. Dirk Dohmen*, WIPO Case No. [D2016-0138](#)). Moreover, the Panel finds that the addition of the word "soldes" to the Domain Name serves to attract potential Internet users and to heighten potential Internet user confusion with the Complainant's services.

Consequently, the Panel finds that the Respondent registered and used the Domain Name in bad faith.

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, <schwalbesoldes.com> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: September 12, 2023