

ADMINISTRATIVE PANEL DECISION

Dr. Ing. h.c. F. Porsche AG v. EUROPORSCHKE Kft
Case No. D2023-4317

1. The Parties

The Complainant is Dr. Ing. h.c. F. Porsche AG, Germany, represented by UNIT4 IP Rechtsanwälte, Stolz Stelzenmüller Weiser Grohmann Partnerschaft mbB, Germany.

The Respondent is EUROPORSCHKE Kft, Hungary.

2. The Domain Names and Registrar

The disputed domain names <europorsche.com> and <porsche-javitas.com> are registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unidentified) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 amendment to the Complaint on October 25, 2023.

The Center verified that the Complaint together with the amendment to 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 October 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2023. The Respondent did not submit formal any response, but several automated communications were sent in response to the Center’s communications. Accordingly, the Center notified the Commencement of Panel Appointment Process on November 16, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 21, 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 is a manufacturer of sport cars and is using "Porsche" as a prominent and distinctive part of its company name/trade name for 75 years. The Complainant's cars are distributed and the corresponding services are provided worldwide through a group of international companies responsible for certain regions, through a network covering, *inter alia*, Europe (including Hungary) and the United States of America ("US").

The Complainant owns numerous worldwide trademark registrations consisting of or incorporating the word "Porsche", such as the following:

- the European Union trademark registration number 000073098 for PORSCHE figurative mark, filed on April 1, 1996, and registered on December 12, 2020, covering goods and services in Nice classes 3, 8, 9, 12, 14, 16, 18, 21, 24, 25, 28, 34, 35, 36, 37, 39, and 42;
- the European Union trademark registration number 011737368 for the word PORSCHE, filed on April 15, 2013, and registered on August 26, 2013, covering goods and services in Nice classes 1, 2, 4, 5, 6, 7, 10, 11, 13, 15, 17, 19, 20, 22, 23, 26, 27, 29, 30, 31, 32, 33, 38, 40, 41, 43, 44, and 45; and
- the European Union trademark registration number 018117298 for the word PORSCHE, filed on August 29, 2019, and registered on January 9, 2020, covering goods and services in Nice classes 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 16, 18, 20, 21, 24, 25, 26, 27, 28, 33, 34, 35, 36, 37, 39, 41, 42, and 43.

The Complainant holds domain names reflecting its trademark, such as <porsche.com> (registered since 1996 and resolving to its main website), <euro-porsche.com>, and <porsche-service.com>.

The disputed domain name <europorsche.com> was registered on May 16, 2017, and the disputed domain name <porsche-javitas.com> was registered on July 7, 2011.

At the time of filing the Complaint, both disputed domain names were used to redirect on a third website, with no content displayed.

According to Annex 14 to the Complaint and unrebutted by the Respondent, the Respondent EUROPORSCHE Kft, has changed its name on February 2, 2023, following a cease-and-desist letter from the Complainant, to EP Motorport Kft.

Further, according to Annex 15 to the Complaint and unrebutted by the Respondent, a representative of the Respondent filed to register a Hungarian trademark application for the EUROPORSCHE figurative mark, application that the Complainant successfully opposed and the relevant decision issued by the Hungarian Intellectual Property Office has become final on March 25, 2022.

According to information available in Annex 14 to the Complaint, containing an excerpt from the Commercial Companies Registry, the Respondent's primary business activity is maintenance and repair of motor vehicles.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its world-famous trademark PORSCHE being formed of the mark with additional descriptive or geographical terms, "euro" from Europe and "javitas" meaning "spare parts" in Hungarian; that the Respondent has no rights or legitimate interests in the disputed domain names; and that the Respondent registered and is using the disputed domain names in bad faith. Further evidence of bad faith are, the concealment of the Respondent's true identity and the fact that the Complainant's name and marks are world-famous and have a strong reputation worldwide.

According to the Complainant's allegations, several letters were exchanged between parties for the transfer of the disputed domain names, however no transfer was actually made.

B. Respondent

The Respondent did not reply to the Complainant's contentions, except for the several automated communications to the Center's communications.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are 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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 recognizable 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, ("euro" and "javitas", respectively) 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.

Based on the available record, 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. Neither the Respondent’s disclosed name (EUROPORSCHKE Kft) nor trademark application for the figurative mark EUROPORSCHKE assist the Respondent in this matter, particularly in view of the Complainant’s successful opposition to the Respondent’s mark and the fact that the Respondent has apparently changed its name to EP Motorport Kft, which bears no resemblance to either disputed domain name.

Furthermore, the composition of the disputed domain names (being a well-known trademark and a geographic or a descriptive term related to the goods provided under the Complainant’s trademark) carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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 disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant uses in commerce the PORSCHE trademark and trade name for 75 years, its mark is well-known worldwide, and the Respondent is apparently involved in a vehicle related business.

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 found that the non-use of a domain name (including a blank, error or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names do not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness

and international reputation of the Complainant's trademark and tradename, the composition of the disputed domain names, the Respondent's failure to provide any response and its use of privacy service, as well as the implausibility of any good faith use of the disputed domain names by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <europorsche.com> and <porsche-javitas.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: December 5, 2023