

ADMINISTRATIVE PANEL DECISION

Swiss Life AG and Swiss Life Intellectual Property Management AG v.
Mathias Ebert
Case No. D2022-1266

1. The Parties

The Complainants are Swiss Life AG (Complainant 1), Switzerland, and Swiss Life Intellectual Property Management AG (Complainant 2), Switzerland, (collectively referred as the “Complainant”) together represented by FMP Fuhrer Marbach & Partners, Switzerland.

The Respondent is Mathias Ebert, Germany.

2. The Domain Name and Registrar

The disputed domain name <swisslifeassets.com> (the “Domain Name”) is registered with RegistryGate GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2022. On April 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on April 21, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on April 21, 2022.

On April 21, 2022, the Center transmitted an email in English and German to the Parties regarding the language of the proceeding. The Complainant translated the Complaint on April 11, 2022. The Respondent did not comment on the language of the proceeding.

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 May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 14, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on June 22, 2022. 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 part of the "Swiss Life" Group. This is the largest life insurance company in Switzerland and is one of the leading comprehensive life and pensions and financial service providers in Europe. The company was founded in 1857 in Zurich as the "Schweizerische Lebensversicherungs und Rentenanstalt cooperative". Complainant 2 is a subsidiary of Complainant 1 and is responsible for managing all intellectual property owned by the "Swiss Life" group.

The Complainants have documented that Complainant 2 is the owner of *inter alia* the following European Union Trade Mark ("EUTM") and international trademark registrations (hereinafter jointly referred to as: the "Trademarks"):

- Swiss trademark registration No. 491528 for SWISS LIFE registered on November 15, 2001, for goods Class 11;



- EUTM registration No. 003438413 for SWISS LIFE registered on October 20, 2006, for goods and services in Classes 9, 16, 35, 26, 38, 41, 42, and 44;



- International trademark registration No. 1138782 for SWISS LIFE ASSET MANAGERS registered on November 11, 2012, for services in Class 36, and with designation of *inter alia* Germany and France.

Further, the Complainants are the holder of *inter alia* the following domain names:

- <swisslife.ch>;
- <swisslife.com>.

The Domain Name was registered on April 6, 2022. The Domain Name resolved to a website mimicking the Complainant's official website and reproducing the Complainants' trademarks. Currently, the Domain Name does not resolve to an active website.

5. Parties' Contentions

A. Language of the proceedings

Panels have recognized that a preliminary determination by the WIPO Center may be necessary where a party requests for the proceeding to be administered in a language other than that of the registration agreement. In the case at hand, the language of the registration agreement was German but the Complaint was initially filed in English; the Complainants translated the Complaint into German.

The Panel acknowledges that the WIPO Center notified both parties in German and English language of the discrepancy between the language of the registration agreement and the Complaint.

Paragraph 10 of the UDRP Rules vests the Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. The Respondent did not reply to the Center's emails, as it did not actively participate in these proceedings.

Against this background, the Panel also notes that i) English is a common business language ii) the address displayed in the disputed domain name website appears to be located in the United Kingdom, including a phone number with the United Kingdom country code iii) the gTLD ".com" has a supranational character.

The Panel would have accepted a Response in English or German, but no Response was submitted. Taking account of the Panel's ability to understand both languages at issue and further taking into account the interest of fairness and to preserve continuity in the case, the Panel decides English to be the language of the present proceeding.

B. Complainant

With the Complaint, the Complainants seek that the Domain Name is transferred to the Complainants. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Trademarks of the Complainants, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainants, the Domain Name is confusingly similar to the Trademarks. The Trademarks are incorporated in the Domain Name leading to a confusing similarity with the famous Trademarks of the Complainants, The element "assets" merely is a descriptive and generic term and does not contribute to the overall impression of the Domain Name. Consumers will assume that there are economic, legal, or other ties between the Complainants and the Respondent.

Secondly, according to the Complainants, the Respondent has no rights or legitimate interests in the Domain Name. The Complainants have never authorized, licensed, permitted, or otherwise consented to the Respondent's use of the Trademarks in the Domain Name. According to the Complainants, the Respondent is therefore deliberately creating confusion with the Complainants' business, reproducing the Complainants' Trademarks without authorization, taking ownership of its services and tricking Internet users into thinking they have arrived at the Complainants' website or that the Respondent is associated with the Complainants.

Lastly, according to the Complainants, the Respondent has registered and uses the Domain Name in bad faith. The Respondent deliberately reproduces the Trademarks and uses logos which are almost identical with the logos and trademarks used by the Complainants. The Respondent uses the unlawful impersonation in an attempt to defraud people seeking advice in financial and insurance matters. According to the Complainants, the Respondent will trick victims into financial transactions by pretending to the victims that they are in negotiations with the Swiss Life Group about investments. The Complainants add that the Respondent registered the Domain Name merely for commercial gain with a view to carrying out fraudulent activities and taking advantage of the Complainants' rights. Furthermore, according to the Complainants, the Respondent's use of Trademarks in the Domain Name must be considered as opportunistic bad faith, because this use is obviously connected with the Complainant's well-known and/or famous Trademarks in the field of life and health insurances.

C. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainants' undisputed factual presentations.

For the Complainants to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainants. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainants to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainants have rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that Complainant 2 is registered as the owners of the Trademarks. Consequently, the Panel finds that the Complainants have proven that the Complainants have rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement, and may as such be disregarded by the Panel (see section 1.11.1 of the [WIPO Overview 3.0](#)). Furthermore, the Panel finds that the descriptive element "assets" does not prevent a finding of confusing similarity.

The Panel notes that the Complaint is filed jointly by Complainant 1 and Complainant 2. The Complainants are part of the same group of companies, where Complainant 2 is a subsidiary of Complainant 1. A trademark owner's affiliate such as a subsidiary of a parent company, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint (see Section 1.4 of the [WIPO Overview 3.0](#)).

Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainants must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainants. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainants have substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to address the *prima facie* case thus established by the Complainants. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present. Moreover, the reproduction of the official Complainant's website and trademarks cannot attribute any rights or legitimate interest to the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainants and have been used for many years. The Complainants' rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character of the Trademarks that is confirmed by the record before it, the Panel agrees with the Complainants that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainants' activities and its Trademarks under which the Complainants are doing business. This is reinforced by the fact that at the time of filing the Complaint, the Domain Name resolved to a website purportedly offering similar services to those of the Complainants on which signs similar to the Trademarks were depicted. In combination with the reputation of the Trademarks that are incorporated in their entirety in the Domain Name, this suggests that the Domain Name was registered in recognition of the similarity between the Domain Name and the Complainant's Trademarks, in an attempt of the Respondent to attract, for commercial gain, Internet users to its website by creating a likelihood confusion with the Complainant's Trademarks.

Further, even if the current inactive page is taken into account, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the well-known character of the Trademarks, the lack of any rights or legitimate interest in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks.

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name signals an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainants (section 3.2.1, [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Domain Name <swisslifeassets.com> be transferred to the Complainant .

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: July 26, 2022