

## **ADMINISTRATIVE PANEL DECISION**

Swiss Life AG and Swiss Life Intellectual Property Management AG v. Shashi Shankar Yadav

Case No. D2022-3202

### **1. The Parties**

The Complainants are Swiss Life AG (the “First Complainant”) and Swiss Life Intellectual Property Management AG (the “Second Complainant”), Switzerland, represented by FMP Fuhrer Marbach & Partners, Switzerland.

The Respondent is Shashi Shankar Yadav, Switzerland.

### **2. The Domain Name and Registrar**

The disputed domain name <swisslifecare.com> is registered with FastDomain, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 2022, 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 September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. An informal communication was received on September 4, 2022 from an individual on behalf of a purported company Swiss Life Care Surgical House Pvt. Ltd. On September 7, 2022, the Complainant submitted a supplemental filing in reply to the September 4, 2022 communication. The Center notified the Commencement of Panel Appointment Process to the Parties on September 22, 2022.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on October 7, 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.

On October 26, 2022, the Panel issued a Procedural Order to the Parties, inviting the Complainants to provide some clarification as to the evidence submitted, and respectively the Respondent to provide some additional information in relation to the activities carried out under the disputed domain name and the relations between the Respondent and Swiss Life Care Surgical House Pvt. Ltd. The Complainants submitted the additional evidence requested on October 27, 2022. The Respondent submitted a communication on November 1, 2022, as reflected in the Parties' Contentions section hereunder, however, Swiss Life Care Surgical House Pvt. Ltd. provided no further communications or evidence.

#### **4. Factual Background**

SWISS LIFE stands for one of Switzerland's largest life insurance companies and one of Europe's leading comprehensive life and pensions and financial solutions providers.

In 2019, the group generated a total turnover of more than CHF 23 billion and had around 9,300 employees (FTE) and 14,000 consultants, serving more than four million customers.

According to ADV Ratings 2019, the Complainants' group figures among the 15 largest European insurance companies according to their assets and is the fourth largest insurance company by market value. In Forbes' list of the World's Best Regarded Companies 2019, the Complainants' group even ranks 125th, ahead of other famous companies such as the Volkswagen Group (no. 144), Swatch Group (no. 164), or Pfizer (no. 171).

The Second Complainant holds numerous trademarks consisting of the term SWISS LIFE on worldwide basis, such as:

- Swiss trademark no. 491528, registered on November 15, 2001, in classes 9, 16, 35, 36, 38, 41, and 42;
- Swiss trademark no. 436709, registered on February 12, 1997, in class 36;
- European Union Trade Mark no. 003438413, registered on October 20, 2006, in classes 9, 16, 35, 36, 38, 41, 42, and 44;
- French trademark no. 99823895, registered on November 18, 1999, in class 36;
- United Kingdom trademark no. UK00001504597, registered on May 27, 1994, in class 36;
- Indian trademark no. 1730726, registered on September 11, 2008, in class 36; and
- Spanish trademark no. M1622040, registered on March 6, 1991, in class 36.

The Complainants contend the SWISS LIFE trademark regularly ranks among the 50 most valuable trademarks of Switzerland, with an estimated value between CHF 250-300 millions.

The Complainants' group owns numerous domain names linked to websites so as to offer and market their insurance products and services consisting of the SWISS LIFE trademark such as, among others, <swisslife.be>, <swisslife.at>, <swisslife.li>, <swisslife.lu>, <swisslife.sk>, <swisslife.swiss>, <swisslife.fr>, <swisslife.sg>, <swisslife.hk>, <swisslife.com>, <swisslife.insurances>, <swisslife.shop>, <swisslife.site>, <swisslife.select>, and <swisslife.select>.

The term SWISS LIFE is not only the Complainants' umbrella brand, but also the distinctive part of its more than 100 subsidiaries in Switzerland, as well as internationally.

The disputed domain name was registered on April 19, 2022. At that time, the disputed domain name was passively held and did not lead to any active website. On July 12, 2022, the disputed domain name led to a website merely stating "coming soon". On August 30, 2022, the disputed domain name did not lead to any active website. The disputed domain name would only seem to have led to an active website after the filing of the Complaint, it resolves to a website under construction, purporting to sell multiple medical devices.

## **5. Parties' Contentions**

### **A. Complainants**

The Complainants first argue that the disputed domain name is confusingly similar to its SWISS LIFE trademark as it entirely incorporates such trademark, and that the mere addition of the term "care" will be understood as a reference to the additional care services provided by the Complainants' group.

The Complainants further consider that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Taking into account the well-known character of the SWISS LIFE trademark, one cannot imagine any proper justification as to why the Respondent would be entitled to register a domain name containing the Complainants' SWISS LIFE trademark. The Complainants have never authorized or licensed the Respondent to do so.

Finally, the Complainants consider that the disputed domain name was registered and is being used in bad faith. The Respondent has no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, which is held passively. The well-known status of the SWISS LIFE trademark makes it clear that the Respondent was well aware of the Complainants' trademark when it registered the disputed domain name, and makes it hard to imagine that any use resulting therefrom could take place in good faith.

In response to the email received on September 4, 2022, the Complainants argue that, in contradiction to what the email's expedient seems to argue, there was no website attached to the disputed domain name at the time of filing the Complaint, which was inaccessible as of August 30, 2022.

In response to the Procedural Order of October 26, 2022, the Complainants provided further evidence to support their contentions that the disputed domain name was not used prior to the filing of a dispute, and that the alleged subsequent use is not credible and most likely feigned in reply to the filing of a UDRP dispute, thus supporting an inference of bad faith. The Complainants further allege that there is no comprehensible reason why medical devices should be offered under the sign "Swiss Life" or "Swiss Life Care", since names such as "Medical Care" or "Swiss Medical Devices" would be much more suited.

### **B. Respondent**

The Respondent did not formally reply to the Complainants' contentions.

On September 4, 2022, upon receipt of the Complaint, an individual sent an email to the Center in which he argued to be the Managing Director of Swiss Life Care Surgical House Pvt. Ltd., a company seated in Nepal. In that letter, the individual claimed to have legitimately chosen the disputed domain name so as to offer in Nepal medical devices manufactured in Switzerland, which would enjoy a strong quality reputation for its customers. The Respondent only financed the renewal of the disputed domain name, which was already registered in 2020, but is not involved in the business of Swiss Life Care Surgical House Pvt. Ltd.

On November 1, 2022, after having been invited by the Procedural Order to submit additional information in relation to the activities carried out by Swiss Life Care Surgical House Pvt. Ltd, notably in relation to the disputed domain name, the Respondent merely responded in an email stating that he had no relation with

the disputed domain name or Swiss Life Care Surgical House Pvt. Ltd. and had only registered the disputed domain name to help one of his friends. Swiss Life Care Surgical House Pvt. Ltd. did not reply to the Procedural Order and thus provided no further explanation or evidence of its alleged business operations in Nepal, clarification or evidence regarding the exact date of registration of the disputed domain name, or clarification or evidence regarding the relationship between the Respondent and Swiss Life Care Surgical House Pvt. Ltd.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “[...] decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Pursuant to paragraph 4(a) of the Policy, the Complainants must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trademark or a service mark in which the Complainants have rights;
- (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 in bad faith.

### **A. Procedural Matter – Supplemental Filings**

The Center received three supplemental filings in this proceeding. The first by the Complainant in reply to the September 4, 2022 communication by Swiss Life Care Surgical House Pvt. Ltd. The second and third being the Complainant and Respondent replies to the Panel’s Procedural Order.

Pursuant to paragraphs 10 and 12 of the Rules, the panel has the authority to determine the admissibility, relevance, materiality and weight of the evidence, and request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel (see, e.g., section 4.6 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Noting the relevance of the first supplemental filing and that the Complainant would have been unaware of the existence of the purported company Swiss Life Care Surgical House Pvt. Ltd. at the time of filing the Complaint, the Panel finds it appropriate to consider the first supplemental filing despite its unsolicited nature. The second and third supplemental filings were in reply to the Panel’s Procedural Order, which the Panel determined was appropriate and necessary in this case, and so these filings will be considered as well.

### **B. Procedural Matter – Respondent Identity**

On August 30, 2022, the Registrar confirmed the registrant of the disputed domain name to be “Shashi Shankar Yadav”. On September 4, 2022, an individual sent a communication from an email account that was not confirmed by the Registrar or directly associated with the disputed domain name. The communication indicated that the true owner of the disputed domain name was “Swiss Life Care Surgical House Pvt. Ltd.”, and that Shashi Shankar Yadav was merely involved to facilitate the renewal of the disputed domain name. On November 1, 2022, the Respondent sent an email communication via the registrant email address confirmed by the Registrar stating that he had no relation with the disputed domain name or Swiss Life Care Surgical House Pvt. Ltd. and had only registered the disputed domain name to help

one of his friends. No relevant evidence was provided in either communication regarding the actual registration of the disputed domain name, despite being requested in the Procedural Order.

The Panel notes that the Rules define the Respondent as “the holder of a domain-name registration against which a complaint is initiated”.

On the evidence before the Panel, there is insufficient basis to confirm Swiss Life Care Surgical House Pvt. Ltd. should be considered as the Respondent for the purposes of this proceeding, rather than Shashi Shankar Yadav (the Respondent as per the registration details confirmed by the concerned Registrar). However, the Panel has taken all submissions in the case into consideration and notes that the substantive findings below apply regardless of the determination of the Respondent identity.

### **C. Identical or Confusingly Similar**

According to the Policy, paragraph 4(a)(i), the Complainants have to prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights.

The Second Complainant holds numerous SWISS LIFE trademarks throughout the world, in particular in Switzerland where both Parties are located.

UDRP panels widely agree that incorporating a trademark into a domain name can be sufficient to establish that the domain name is identical or confusingly similar to a registered trademark for purpose of the Policy (see, e.g., *Uniroyal Engineered Products, Inc. v. Nauga Network Services*, WIPO Case No. [D2000-0503](#); *Thaigem Global Marketing Limited v. Sanchai Aree*, WIPO Case No. [D2002-0358](#); and *F. Hoffmann-La Roche AG v. Relish Enterprises*, WIPO Case No. [D2007-1629](#)). Such happens to be the case here.

The applicable generic Top-Level Domain (“gTLD”), in the present case “.com”, is usually disregarded under the confusing similarity test and the addition of the term “care” does not prevent a find of confusing similarity (see, among others: *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *Inter-IKEA Systems B.V. v. Evezon Co. Ltd*, WIPO Case No. [D2000-0437](#); *Dell Computer Corporation v. MTO C.A. and Diabetes Education Long Life*, WIPO Case No. [D2002-0363](#)).

As a result, the Panel considers paragraph 4(a)(i) of the Policy to be satisfied.

### **D. Rights or Legitimate Interests**

According to the Policy, paragraph 4(a)(ii), the Complainants have to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

As the panel stated in *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#), demonstrating that the respondent has no rights or legitimate interests in the domain name “would require complainant to prove a negative, a difficult, if not impossible, task”. Thus, in that decision, the panel opined that “[w]here a complainant has asserted that the respondent has no rights or legitimate interests in respect of the domain name, it is incumbent upon the respondent to come forward with concrete evidence rebutting this assertion”. Following that decision, subsequent UDRP panels developed a consensus view that it is deemed sufficient for a complainant to make a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name. Once a *prima facie* case has been made, the burden of production shifts to the respondent to demonstrate its rights or legitimate interests. If it fails to do so, the complainant is deemed to have satisfied to paragraph 4(a)(ii) of the Policy (see, e.g., section 2.1 of [WIPO Overview 3.0](#)).

In the present case, the Complainants have rights in SWISS LIFE trademarks which amount to well-known trademarks. The Complainants have no business or other relationship with the Respondent. The Complainants thus has made a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name.

While the Respondent did not provide a formal response, the Center received an email on September 4, 2022 from an individual identifying himself as the Managing Director of Swiss Life Care Surgical House Pvt. Ltd., seated in Kathmandu, Nepal, explaining that the Respondent's sole role would have been to pay for the renewal of the disputed domain name. The explanations according to which such a company would have been created so as to sell to Nepalese customers Swiss made high quality medical equipment seems more than dubious. In spite of that person's allegation that the disputed domain name would have been registered in 2020 already, the disputed domain name appears to have been registered on April 19, 2022 and was inaccessible on August 30, 2022. The claimed Managing Director further provided a registration certificate of his company in Nepal, which was apparently incorporated on August 2, 2020.

While the Respondent and Swiss Life Care Surgical House Pvt. Ltd. were provided an opportunity by the Panel to provide additional information and evidence in relation to the activities of Swiss Life Care Surgical House Pvt. Ltd. and the disputed domain name, the Respondent neglected to do so, merely stating that he had nothing to do with that company and the disputed domain name. Swiss Life Care Surgical House Pvt. Ltd. did not reply to such opportunity to provide additional information and evidence.

Insofar as a respondent's being commonly known by a domain name could give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent's claim to be commonly known by the domain name – independent of the domain name – is legitimate (see section 2.3 of [WIPO Overview 3.0](#)). The Respondent is clearly not commonly known by the disputed domain name. While Swiss Life Care Surgical House Pvt. Ltd. has put forward some limited evidence of a company registration in Nepal, such by itself would not necessarily result in a finding of rights or legitimate interests here. There is no evidence before the Panel of the actual operations of Swiss Life Care Surgical House Pvt. Ltd. or the recognition or use of this name by the relevant public. Moreover, Swiss Life Care Surgical House Pvt. Ltd. did not reply to the Panel's explicit request for further explanation and evidence of Swiss Life Care Surgical House Pvt. Ltd.'s use of the disputed domain name and its related business operations in Nepal. The Panel also finds it relevant that the disputed domain name does not incorporate the entirety of Swiss Life Care Surgical House Pvt. Ltd. name, omitting in particular the terms "Surgical House". In the full circumstances, including the absence of a full reply to the Panel's Procedural Order; the well-known nature of the Complainant's mark, registered long before the disputed domain name; the Respondent's location in Switzerland, where the Complainant's mark is particularly well-known; and the change in use of the disputed domain name discussed further below, the Panel finds it likely that the disputed domain name was not created independently, but rather with a thought to taking advantage of the reputation of the Complainant's trademark, which would not support a finding of rights or legitimate interests.

In addition, the evidence shows disputed domain name was passively held by the Respondent prior to the filing of the Complaint, which does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The change in use to a website under construction, purporting to sell multiple medical devices, after the filing of a dispute without further clarification or evidence does not rise to a *bona fide* offering of goods or services, noting in particular that such change appears to have occurred after the filing of the Complaint.

Consequently, in light of the above, the Panel considers paragraph 4(a)(ii) of the Policy to be fulfilled.

#### **E. Registered and Used in Bad Faith**

For a complaint to succeed, a panel must be satisfied that a domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Bad faith typically requires the Respondent to be aware of the Complainants' trademarks. In the present case, the Second Complainant is the owner of numerous SWISS LIFE trademarks, which enjoy a worldwide reputation. Considering the reputation of the SWISS LIFE trademarks, the Respondent, who is domiciled in Zurich, Switzerland, was obviously aware of these trademarks at the time he registered the disputed domain name (such appears to also be the case for Swiss Life Care Surgical House Pvt. Ltd. noting its apparent connection to the Respondent and interest in Swiss medical products and services). As a result, the Panel

holds that the disputed domain name was registered in bad faith.

Furthermore, the Respondent's registration of a well-known trademark such as SWISS LIFE may, in itself, be sufficient to consider that the disputed domain name is being used in bad faith (*Comerica Inc. v. Horoshiy, Inc.*, WIPO Case No. [D2004-0615](#)).

Based upon the overall circumstances of the case, namely the fact that the disputed domain name was passively held until very recently and then changed use after the filing of the Complaint to an unfinished and apparently pretextual website, and that the Respondent (and Swiss Life Care Surgical House Pvt. Ltd.) neglected to provide any relevant evidence or even a full reply to the Panel's Procedural Order despite being given the opportunity to do so, the Panel has no hesitation to consider that the disputed domain name is being used in bad faith.

In spite of the allegations raised in the email dated September 4, 2022, the record indicates the disputed domain name was registered on April 19, 2022, however, even if registered in 2020 as alleged by Swiss Life Care Surgical House Pvt. Ltd. both of these dates are long after the registration of the Complainants' trademark. Taking into account the well-known character and the worldwide reputation of the SWISS LIFE trademarks, one finds it impossible to imagine a registration and use of a domain name consisting of these terms in good faith, all the more by a respondent domiciled in Switzerland.

Consequently, on the record before the Panel and in the absence of evidence to the contrary, the Panel is of the opinion that the disputed domain name has been registered and is being used in bad faith under the paragraph 4(a)(iii) 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 <swisslifecare.com> be transferred to the Complainants.

*/Philippe Gilliéro/*

**Philippe Gilliéron**

Sole Panelist

Date: November 6, 2022