

ADMINISTRATIVE PANEL DECISION

Ralf Bohle GmbH v. Liu Zhongsen

Case No. D2023-0131

1. The Parties

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

The Respondent is Liu Zhongsen, China.

2. The Domain Name and Registrar

The disputed domain name <schwalbevelo.com> 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 January 11, 2023. On January 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Whois Agent, Domain Protection Services, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 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 amended Complaint on January 17, 2023.

The Center verified that the Complaint together with the amended 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 January 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on February 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 German manufacturer of tires and other equipment and parts for bicycles and wheelchairs.

The Complainant is the owner of numerous trademark registrations worldwide for its SCHWALBE mark, including the following:

- International Registration No. 719983 for trademark  registered on May 19, 1999, duly renewed and covering goods and services in classes 9 and 12;
- International Registration No. 1171528 for trademark SCHWALBE registered on July 17, 2013 and covering goods and services in class 12;
- European Union Trademark Registration No. 011061322 for trademark SCHWALBE registered on December 18, 2012, duly renewed and covering goods and services in classes 8, 9 and 12;
- United States Trademark Registration No. 2482677 for trademark  *Schwalbe* registered on August 28, 2001, duly renewed and covering goods and services in class 12;
- German Trademark Registration No. 39822240 for trademark SCHWALBE registered on June 17, 1998, duly renewed and covering goods and services in class 9.

The disputed domain name was registered on November 10, 2022.

5. Parties' Contentions

A. Complainant

The Complainant is headquartered in Reichshof, Germany since 1995. The predecessor company started as a family business in 1922, run by Ralf Bohle's father and uncle, and Ralf Bohle (after whom the company is named) joined the company in 1955.

The Complainant started manufacturing bicycle tires in 1973 under its brand name SCHWALBE, which brand name became renowned in the field of pneumatic tires and parts for bicycles and wheelchairs. By the day of submission of this Complaint, the Complainant is with its SCHWALBE products present in the market in more than 40 countries around the world, and, besides Germany, it has international affiliates in the United Kingdom, Netherlands, France, Italy, and the United States of America.

The disputed domain name redirects to an active website seemingly offering SCHWALBE trademarked bicycle tires, parts and other equipment for bicycles, at heavily discounted prices. In the website's home page there is a SCHWALBE logo which is identical to the mark that is used at the Complainant's official website.

The Complainant sent a takedown notice to the hosting service provider requesting that the website on the disputed domain name be suspended, in order to prevent the risk of abuse associated with the disputed domain name.

The Complainant also sent a request for revealing of registrant's identity to the Registrar with which the disputed domain name is registered.

The Complainant also made efforts on December 28, 2022, and January 3, 2023, to contact the Respondent by using the Registrar's suggested contact form indicated in the WhoIs records. No response was received.

The disputed domain name incorporates the Complainant's trademark SCHWALBE in its entirety with the additional term "velo", corresponding to the non-accented version of the French word "vélo", meaning "bicycle" in English.

The additional term is closely related to the Complainant's business activity, since the Complainant is a world-famous manufacturer of pneumatic tires and other equipment which are used on a bicycle (vélo) and on wheelchairs. French is the language in question in this case, as France is a territory where the SCHWALBE trademark is represented through its subsidiary Schwalbe France SARL, and is also a nation of impressive cycling tradition, notably hosting the globally renown Tour de France multiple-stage bicycle race.

The disputed domain name is confusingly similar to the SCHWALBE trademark in which the Complainant has rights.

The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use and register its SCHWALBE trademark or to seek registration of any domain name incorporating said mark.

The Respondent did not demonstrate use of the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant has never concluded any agreement, gave any license or otherwise authorized or allowed the Respondent to use its SCHWALBE trademark and logo in any way.

To the best of the Complainant's knowledge, the Respondent has not been commonly known by the name "schwalbe" nor "schwalbevelo".

The Respondent in any event is not authorized or licensed to use the SCHWALBE trademark, nor to seek registration of any domain name incorporating such trademark.

The Complainant has never authorized the Respondent to offer for sale and sell the Complainant's products. All products on the website had been offered for sale at a heavily discounted price, and the Respondent had masked its identity, which circumstances suggest Respondent's illegal activity in the form of selling counterfeit goods.

The Respondent employs a privacy shield to prevent the Complainant and the Panel from knowing the identity of the actual registrant of the disputed domain name.

The Respondent registered the disputed domain name in bad faith.

The Respondent's registration of the disputed domain name was made primarily with intention to attract, for commercial gain, Internet users to website by creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is 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 respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks SCHWALBE on the basis of its multiple trademark registrations including its international trademark registrations, and those in the United States of America, the European Union, and Germany. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1).

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of the [WIPO Overview 3.0](#).

The Respondent's incorporation of the Complainant's SCHWALBE trademark in full in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark. Mere addition of the term "velo" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's SCHWALBE mark because the Complainant's SCHWALBE mark remains clearly recognizable in the disputed domain name.

As noted in [WIPO Overview 3.0](#), section 1.8: "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."

Furthermore, the addition of the generic Top-Level Domain "gTLD" ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain name because the Respondent's name is "Liu Zhongsen" which has no apparent connection with the SCHWALBE trademark.

The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to a commercial website that allegedly offers the Complainant's goods at disproportionately discounted prices, without any disclaimer as to the relation with or authorization of the Complainant, exacerbating the user confusion as to the website's affiliation to the Complainant. Such use for deliberately attracting Internet users to its website in the

mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

The Panel concludes that the Respondent deliberately chose to include the Complainant's SCHWALBE trademark in the disputed domain name, in order to achieve commercial gain by misleading third parties, and that such use cannot be considered as a legitimate noncommercial or fair use.

The Panel further finds that the disputed domain name carries a risk of implied affiliation with the Complainant. The additional term "velo", corresponding to the non-accented version of the French word "vélo", meaning "bicycle" in English, is closely related to the Complainant's business activity, since the Complainant is a world-famous manufacturer of pneumatic tires and other equipment which are used on a bicycle (vélo) and on wheelchairs. See section 2.5.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) 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; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent knew or should have known of the Complainant's mark SCHWALBE considering the global renown of the Complainant's prior mark and the website content targeting the Complainant's logos and products.

The Panel takes note of the construction of the disputed domain name, which combines the SCHWALBE mark with the term "velo" that is descriptive of the Complainant's goods, as well as the fact that the disputed domain name directs to a website that contains the Complainant's logo and allegedly offers the Complainant's trademarked goods.

The Panel is satisfied that by directing the disputed domain name to a commercial website allegedly offering the Complainant's goods, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the

source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

The Complainant points out that the Respondent is hiding its identity behind a Whois privacy wall. It is well-established that this, too, can be a further indicator of bad faith in certain circumstances. Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the inherently misleading disputed domain name. Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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 <schwalbevelo.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: March 7, 2023