

ADMINISTRATIVE PANEL DECISION

OMEGA SA, SWATCH AG v. Soulimane El Maimouni
Case No. D2024-2747

1. The Parties

Complainants are OMEGA SA, Switzerland (“Complainant No. 1”) and SWATCH AG, Switzerland (“Complainant No. 2”) (together “Complainants”), internally represented.

Respondent is Soulimane El Maimouni, Morocco.

2. The Domain Name and Registrar

The disputed domain name <moon-swatch.com> is registered with DropCatch.com 1192 LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2024. On July 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 2024, 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 (Redacted for Privacy, NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to Complainants on July 12, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint on July 12, 2024.

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 Respondent of the Complaint, and the proceedings commenced on July 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. Respondent did not submit a formal Response. However, Respondent sent several informal emails on July 12, July 15, and July 16, 2024. Accordingly, the Center notified the Commencement of Panel Appointment Process on August 8, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on August 13, 2024. 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

Complainants are companies organized under the laws of Switzerland which both belong to the same group of companies known as “Swatch”, which is active in the watches industry, and are fully owned by the same parent company, The Swatch Group Ltd., Switzerland.

Complainants have demonstrated that Complainant No. 1 is the producer of the undisputedly worldwide famous “Speedmaster” watch, worn by Neil Armstrong and Buzz Aldrin on the lunar surface in 1969, which is why it is commonly called “Moonwatch”. Moreover, Complainants have evidenced that Complainant No. 1 is the registered owner, inter alia, of the following trademark relating to its MOONWATCH brand:

- Word mark MOONWATCH, World Intellectual Property Organization (WIPO), registration number: 1180215, registration date: August 16, 2013, status: active.

In addition, Complainants have demonstrated that Complainant No. 2 since at least as early as 1983 has been trading watches under the SWATCH brand. Also, Complainants have evidenced that Complainant No. 2 is the registered owner of the following trademark relating to the MOONSWATCH brand, namely:

- Word mark MOONSWATCH, World Intellectual Property Organization (WIPO), registration number: 1759320, registration date: August 28, 2023, status: active.

On March 24, 2022, Complainants officially announced a joint collaboration and launched their bioceramic “Moonwatch” collection, combining the famous MOONWATCH and SWATCH brand.

Respondent, according to the disclosed WhoIs information for the disputed domain name, is located in Morocco. The disputed domain name was registered on July 2, 2024. By the time of the rendering of this decision, the disputed domain name resolves to a typical parking website provided by the Registrar, where it is offered for online sale. In this context, Complainants have demonstrated that at some point before the filing of the Complaint, Respondent offered the disputed domain name online for a sales price of USD 28,193, which, after the filing of the Complaint, was increased to USD 99,888.

Complainants request that the disputed domain name be transferred to Complainants.

5. Parties’ Contentions

A. Complainants

Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainants contend that Complainant No. 2 has meanwhile become one of the most famous industry leaders in wristwatches and that its SWATCH brand is distinctive and famous worldwide.

Complainants submit that the disputed domain name is identical with Complainant No. 2’s MOONSWATCH trademark (being an exact match thereof) and is at least confusingly similar to Complainant No. 1’s MOONWATCH trademark (being a mere combination of said trademark and Complainant No. 2’s SWATCH trademark). Moreover, Complainants assert that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) there are no signs that Respondent has been commonly known by the disputed domain name, and Respondent is not in any way related to Complainants or their business

activities, nor have Complainants granted a license or have authorized Respondent to use their trademarks or apply for registration of the disputed domain name, and (2) Respondent is trying to coerce Complainants into acquiring the disputed domain name from Respondent for a monetary consideration in vast excess of Respondent's out-of-pocket costs for acquiring the very same. Finally, Complainants argue that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent, in response of the overwhelming demand for Complainants' MOONSWATCH products and monumental success of their joint collaboration under such brand, has leapt at the opportunity and registered a domain name incorporating the MOONSWATCH trademark with the sole purpose of selling the disputed domain name to Complainants in vast excess of Respondent's out-of-pocket costs, and (2) Respondent incessantly approached Complainants' parent company, including the sending of several unsolicited emails personally addressed to the parent company's CEO, offering the disputed domain name for sale for a consideration of USD 1,200 and EUR 1,000 respectively, which is still in clear excess of Respondent's out-of-pocket costs for acquiring the disputed domain name.

B. Respondent

Respondent did not formally reply to Complainants' contentions, but sent several informal emails on July 12, July 15, and July 16, 2024. In his email of July 15 in particular, Respondent admitted that he acquired the disputed domain name for resale purposes, through a platform specializing in selling expired domain names, and that he would like to sell the disputed domain name to Complainants through amicable negotiations.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainants carry the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainants have rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Consolidation of Complainants

As regards the two Complainants, given that they belong to the same SWATCH group of companies and are both fully owned by the same The Swatch Group Ltd. parent company, noting also that they both own trademark rights which are reflected in the disputed domain name (MOONWATCH and MOONSWATCH, respectively), Complainants obviously have a specific common grievance against Respondents, why it is appropriate in the case at hand and in line with the UDRP precedent to accept this Complaint filed by multiple complainants (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1).

Having said so, the Panel comes to the following finding:

B. Identical or Confusingly Similar

First, 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 Complainants' MOONSWATCH and MOONWATCH trademarks and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Complainants have shown rights in respect of their MOONSWATCH and MOONWATCH trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Moreover, the entirety of both trademarks is reproduced within the disputed domain name, in the case of the MOONWATCH trademark thereby simply adding a letter "s". Accordingly, the disputed domain name is identical to Complainant No.2's

MOONSWATCH trademark and at least confusingly similar to Complainant No. 1's MOONWATCH trademark or the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel, therefore, finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainants have established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainants' prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Respondent has not been authorized to use either of Complainants' MOONSWATCH or MOONWATCH trademarks, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the terms "moonswatch" and/or "moonwatch" on its own. Finally, Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather to offer it on the Internet and directly to Complainants' parent company for a sales price in the range of USD 1,200 up to USD 99,888. UDRP panels have recognized that holding a domain name for resale consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP (see [WIPO Overview 3.0](#), section 2.1), but have also found that the mere registration of such a domain name does not by itself automatically confer rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.10.1). In this case, given that the disputed domain name incorporates the undisputedly famous MOONWATCH trademark as well as the newly created MOONSWATCH trademark in their entirety, the disputed domain name carries, as such, a high risk of implied affiliation with Complainants and their trademarks which is why offering the disputed domain name for online sale cannot constitute fair use and, thus, cannot confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel, therefore, finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

Finally, 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.

The circumstances to this case leave no doubts whatsoever that Respondent was fully aware of Complainants' rights in its undisputedly famous MOONWATCH trademark as well as the newly created MOONSWATCH trademark when registering the disputed domain name and that the latter clearly is directed thereto, which is, among others, demonstrated by the fact that Respondent incessantly approached

Complainants' parent company, including the sending of several unsolicited emails personally addressed to the parent company's CEO, offering the disputed domain name for sale for a consideration of USD 1,200 and EUR 1,000 respectively. Moreover, the fact that the disputed domain name is used by Respondent for no other purpose but to be offered to both Complainants and on the Internet for sales prices in the range of USD 1,200 up to USD 99,888 is a clear indication that Respondent registered the disputed domain name primarily for the purpose of selling it to Complainant in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name (absent any evidence from Respondent to the contrary). Such circumstances are evidence of registration and use of the disputed domain names in bad faith within the meaning of paragraph 4(b)(i) of the Policy.

The Panel therefore finds that Complainants have established the third element of the Policy, too.

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, <moon-swatch.com>, be transferred to Complainants.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: August 21, 2024