

ADMINISTRATIVE PANEL DECISION

Swedbank AB v. Givi Fomin

Case No. D2022-4239

1. The Parties

The Complainant is Swedbank AB, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Givi Fomin, Azerbaijan.

2. The Domain Name and Registrar

The disputed domain name <pay-swedbank.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 2022, 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 (Domain Admin, Whoisprotection.cc, Malaysia) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 2022, 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 November 14, 2022.

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 November 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 9, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on January 9, 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 an internationally active company providing financial services as a bank. It is based in Sweden with roots dating back to the year 1820.

The Complainant is the proprietor of a large number of longstanding trademark registrations in numerous jurisdictions for its SWEDBANK word mark, including the Swedish Trademark No. 188279, registered on September 23, 1983, for services in class 36; and the European Union Trademark No. 004897567, registered on March 5, 2007, for goods in class 9 and 16, and for services in class 35, 36, and 42 (Annex 1 to the Complaint).

The Complainant is also the registrant of numerous domain names containing its SWEDBANK mark, including <swedbank.com> and <swedbank.net> (Annex 7 to the Complaint).

The Respondent is reportedly an individual from Azerbaijan.

The disputed domain name was registered on August 24, 2022.

At one time, the disputed domain name resolved to a website prominently featuring the Complainant's SWEDBANK trademark and creating the (false) impression that Internet users may use this website to log-in to their bank account at the Complainant (Annex 3.1 to the Complaint). Also, the Respondent apparently configured MX records for the disputed domain name, which enabled the Respondent to send and receive emails using the disputed domain name (Annex 3.3 to the Complaint).

At the time of the decision, the disputed domain name does not resolve to an active website.

On September 22, 27, and October 3, 2022, the Complainant sent cease-and-desist letters to the Respondent and tried to solve the dispute amicably by requesting a transfer of the disputed domain name (Annex 10 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its SWEDBANK trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the SWEDBANK trademark, which has been first registered many years ago.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's SWEDBANK trademark. The disputed domain name fully comprises the SWEDBANK trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. In the present case, the mere addition of the dictionary term "pay" and a hyphen, does, in view of the Panel, not serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's SWEDBANK trademark.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's SWEDBANK trademark in a confusingly similar way within the disputed domain name.

In the absence of a Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name.

There is particularly no doubt that the Respondent was well aware of the Complainant and its SWEDBANK trademark before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its business among Internet users. Also, the Panel notes that the nature of the disputed domain name carries a significant risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, such implied affiliation was clearly the intent of the Respondent, seeing as the disputed domain name was used to impersonate the Complainant, which amounts to an illicit use that can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

Bearing all this in mind, the Panel does also not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users for illegitimate purposes, particularly for the following reasons.

At the date of registration of the disputed domain name, the Respondent was apparently well aware of the Complainant and its SWEDBANK trademark. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

Additionally, the Panel finds that the Respondent is using the disputed domain name in bad faith. The Panel particularly notes that previously, the disputed domain name resolved to a website purporting to be operated by the Complainant, probably for the purpose of phishing or other fraudulent activities (Annex 10 to the Complaint).

Also, the Panel believes that the activated MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name, even if no longer associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, probably for fraudulent activities.

All in all, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain name that would be in good faith, except with an authorization of the Complainant.

The fact that the disputed domain name does not currently resolve to an active website does not change the Panel's findings in this respect.

Taking these facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 <pay-swedbank.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: January 23, 2023