

ADMINISTRATIVE PANEL DECISION

Federation of the Swiss Watch Industry FH v. Farrukh Hussain, Web Solution Provider

Case No. D2024-2446

1. The Parties

The Complainant is Federation of the Swiss Watch Industry FH, Switzerland, internally represented.

The Respondent is Farrukh Hussain, Web Solution Provider, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <fhs-swiss.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 2024, 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 June 18, 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 the Respondent of the Complaint, and the proceedings commenced on June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent sent communications to the Center and the Complainant on June 24 and July 15, 2024. The Complainant sent communications to the Center and the Respondent on June 26, June 28 and July 8, 2024. The Respondent did not submit any formal response.

Accordingly, the Center notified the commencement of Panel's appointment process on July 15, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 22, 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

The Complainant is a non-profit association registered upon the Swiss commercial register. It represents the Swiss watch industry in Switzerland and abroad and comprises approximately 500 members, comprising approximately 90% of the Swiss watch industry.

The Complainant is known in Switzerland as "Fédération de l'industrie horlogère Suisse FH", which name is commonly abbreviated to "FH".

The Complainant is the owner of various certification trademark registrations for the mark SWISS. Those registrations include, for example, United States of America ("United States") certification trademark registration number 3047277 for the word mark SWISS, registered on January 24, 2006 for goods and services including "horological and chronometric instruments, namely, watches, clocks and their component parts and fittings thereof."

The Complainant is also the owner of figurative trademarks including a device comprising stylized watch hands in the ten-past-two position (the "Device Mark"). Those registrations include International trademark registration number 837288 for the Device Mark, registered on October 19, 2004 in International Classes 16, 35 and 42.

The Complainant has operated a website at "www.fhs.swiss" since December 11, 2015.

The disputed domain name was registered on November 10, 2019.

The Complainant exhibits evidence that the disputed domain name has resolved to a website (which is now suspended) the appearance of which was virtually identical to the Complainant's own website at "www.fhs.swiss". The source code of the website at the disputed domain name stated: "<!-- Mirrored from www.fhs.swiss/eng/homepage.html by HTTrack Website Copier/3.x [XR&CO'2014], Sun, 10 Nov 2019 20:27:36 GMT -->". The website included, therefore, the name of the Complainant, the Device Mark and the heading "Official website of the Swiss watch industry." A coding drawing of the Complainant's logo was present in the source code of the Complainant's official website, and was also reproduced in the source code of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant submits that it is a leading trade association with offices in Switzerland, New York and Tokyo. It states that its purpose is to represent and defend the Swiss watch industry, which employs over 57,000 people in Switzerland and exported more than CHF 26 billion worth of watches abroad in 2023.

The Complainant submits that its certification trademarks SWISS (and also SWISS MADE) designate products duly protected by Swiss law, which stipulates that watches marked with those labels must be manufactured in Switzerland according to stringent criteria.

The Complainant states that it uses the domain name <fhs.swiss> because “.swiss” domain names were required at the material time to comprise at least three characters before the top-level domain, and it therefore added the letter “S” (for “Swiss”) to its usual abbreviation “FH”.

The Complainant submits that the disputed domain name is confusingly similar to its trademark SWISS. It contends that the disputed domain name includes that trademark, which is readily recognizable within the disputed domain name, and that the addition of the letters “fhs” within the disputed domain name, which are commonly used to refer to the Complainant, do not prevent it from being confusingly similar to the trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its SWISS trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainant submits that, on the contrary, the Respondent has used the disputed domain name with the intention of deceiving Internet users into believing its website is owned or operated by the Complainant, for fraudulent purposes including “phishing”.

The Complainant submits that the disputed domain name was registered and has been used in bad faith.

The Complainant contends that, in view of its use of the disputed domain name, the Respondent was clearly aware of the Complainant and its website when it registered the disputed domain name.

The Complainant submits that the Respondent’s website is a direct copy of the Complainant’s own website, and exhibits source code which it submits makes clear that its own site has been “mirrored”. The Complainant contends in the circumstances that the Respondent can only have registered the disputed domain name and copied the Complainant’s website in order to deceive Internet users.

The Complainant contends that the Respondent’s website may be intended for “phishing” purposes, and states that its own, official, website has login boxes for completion by users. The Complainant submits that similar information could be harvested and monetized by the Respondent, although it is not clear from the evidence exhibited how the Respondent’s website would facilitate this.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in the proceeding. In its email dated June 24, 2024, the Respondent stated that it hosted the disputed domain name for an (unnamed) client and would close the relevant account if it breached the Respondent’s terms and conditions. In its email dated July 15, 2024, the Respondent stated that it was not the owner of the disputed domain name and asked to have its email address removed from the proceeding. Noting that the Respondent was confirmed by the Registrar as the registrant of the disputed domain name, and also the lack of any details or evidence as to the identity of its unnamed client, the Panel considers Farrukh Hussain, Web Solution Provider, as the Respondent in this proceeding. The Panel further notes that references to the registration and use by the Respondent shall be construed to include the final holder of the disputed domain name (if any).

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

(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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of trademark registrations for the mark SWISS. The disputed domain name wholly incorporates that trademark, prefaced by the letters “fhs” and a hyphen, which do not prevent the Complainant’s trademark from being recognizable within the disputed domain name, nor the disputed domain name from being confusingly similar to the Complainant’s trademark. Furthermore, the Panel notes the Complainant’s contention that the added letters “fhs” within the disputed domain name are commonly used to refer to the Complainant. In addition, the Panel takes note of the content of the website at the disputed domain name, which confirms the Panel’s finding of confusing similarity as it appears prima facie that the respondent seeks to target the Complainant’s trademark through the disputed domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant’s submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a formal Response in this proceeding and has not submitted any credible explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. Moreover, it is clear from the Respondent’s use of the disputed domain name, to “mirror” the Complainant’s official website, that the Respondent has used the disputed domain name for deceptive purposes, which cannot give rise to rights or legitimate interests on the part of the Respondent. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name not only incorporates the Complainant’s trademark SWISS, but also closely resembles the Complainant’s own domain name <fhs.swiss>. Based upon this, and also the Respondent’s use of the disputed domain name to replicate the Complainant’s website, the Panel finds that the Respondent was clearly aware of the Complainant and its trademark when it registered the disputed domain name, and that it did so for the purpose of taking unfair advantage of the goodwill attaching to that trademark.

The Panel finds the disputed domain name to be inherently misleading, as inevitably suggesting to Internet users that it is in some manner legitimately connected with the Complainant. Moreover, it is clear from the Respondent’s use of the disputed domain name, to “mirror” the Complainant’s website, that the Respondent’s intention was to impersonate the Complainant and to divert Internet users looking for the Complainant or its services to its own website. While it is unclear to the Panel whether the Respondent’s website was designed for “phishing” or other fraudulent purposes, the Panel infers in all the circumstances that its operation can only have been intended to provide commercial gain for the Respondent.

The Panel therefore finds that, by using the disputed domain name, 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 trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

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 <fhs-swiss.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 26, 2024