

ADMINISTRATIVE PANEL DECISION

Schott AG v. James More

Case No. D2024-3374

1. The Parties

The Complainant is Schott AG, Germany, represented by Studio Barbero S.p.A., Italy.

The Respondent is James More, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <sch0tt.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 19, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 20, 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 amendment to the Complaint on August 21, 2024.

The Center verified that the Complaint together with the amendment to 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 August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 17, 2024.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on September 24, 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 factual findings pertinent to the decision in this case are that:

- (1) the Complainant is a German company with a global business in glass and material technology trading under the name, SCHOTT;
- (2) the Complainant is the owner of, *inter alia*, German Trademark Reg. No. 1031287, registered March 26, 1982, for the trademark, SCHOTT;
- (3) the disputed domain name was registered on June 11, 2024, using a privacy service to shield the name of the Respondent;
- (4) the disputed domain name is currently inactive but previously resolved to a Registrar maintained parking page with pay-per-click ("PPC") links named "Scuola Italia" (Italian school), "Corsi Universitari" (University courses) and "Scuola Serale" (Night school);
- (5) the disputed domain name was used to generate an email address, used to send emails to customers of the Complainant asking them to change the bank account details of the Complainant for the purpose of future payments; and
- (6) there is no relationship between the Parties and the Complainant has not authorized the Respondent to use its trademark or to register any domain name incorporating that mark.

5. Parties' Contentions

A. Complainant

The Complainant asserts trademark rights in SCHOTT. It holds national registrations for that trademark and submits that the disputed domain name is confusingly similar to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name because it has no trademark rights; it is not known by the disputed domain name; and use of the disputed domain name has not been bona fide since it has resolved to a website with links to third parties having no connection with the Complainant's business and has additionally been associated with an email address used to perpetrate a fraud on the Complainant's customers.

The Complainant alleges that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant accordingly requests the Panel to order transfer of the disputed domain name.

B. Respondent

The Respondent did not submit a Response.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trademark rights. It is accepted that a trademark registered with a national authority is evidence of trademark rights for the purposes of the Policy.¹ The Panel finds that the Complainant's has trademark rights in SCHOTT since it provides proof of registration of that name with the German Patent and Trademark Office, a national authority.

For the purposes of comparing the disputed domain name with the trademark, the generic Top-Level Domain ("gTLD") ".com" can be disregarded.² The standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. The disputed domain name merely substitutes the number "0" for the letter "O" in the trademark. The term "sch0tt" would be recognized as a trivial alteration of the trademark. The Panel finds that the disputed domain name is confusingly similar to the trademark.³

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant may first make out a *prima facie* case, after which the burden of production shifts to the Respondent to rebut such *prima facie* case by providing evidence demonstrating rights or legitimate interests in the disputed domain name.⁴

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain

¹See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

²See section 1.11.1 of the [WIPO Overview 3.0](#).

³See section 1.7 and 1.9 of the [WIPO Overview 3.0](#).

⁴See section 2.1 of the [WIPO Overview 3.0](#); see also *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Respondent's name does not suggest that the Respondent might be commonly known by the disputed domain name, and the Panel finds no other evidence that the Respondent might be known by the disputed domain name. Further, the Complainant states that there is no association between the Parties and the Panel finds that there is nothing to contradict that claim. There is no evidence that the Respondent has any trademark rights.

The disputed domain name is no longer used in either of the ways already described. It no longer resolves to an active website and the email address previously based on the name is no longer operative. The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name because panelists tend to assess rights or legitimate interests taking account of the circumstances prevailing at the time of the filing of the complaint⁵ and here there is no use to form the basis of rights or a legitimate interest.

Alternatively, taking the prior use into account, the disputed domain name resolved to a website as described with links to school and university courses, being services wholly unrelated to the Complainant's business under the trademark. Countless decisions under the Policy have held that such use does not give rise to either rights or a legitimate interest in a domain name corresponding with another's trademark.⁶ Further, the fraudulent emails used the name of an employee of the Complainant in their attempt to deceive the Complainant's customers and divert payments away from the Complainant. Clearly, such use could never give rise to rights or a legitimate interest.⁷

In failing to reply to the Complainant's contentions the Respondent has not rebutted that *prima facie* case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out circumstances, which shall be evidence of the registration and use of a domain name in bad faith. They are:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

⁵ See section 2.11 of the [WIPO Overview 3.0](#).

⁶ See section 2.9 of the [WIPO Overview 3.0](#).

⁷ See section 2.13 of the [WIPO Overview 3.0](#).

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that the prior use of the disputed domain name is caught by paragraph 4(b)(iv) above. The Panel has already found the disputed domain name to be confusingly similar to the trademark for the purposes of the Policy.

Further, the Panel finds that the use of the disputed domain name has been for commercial gain, most likely by way of PPC revenue as alleged by the Complainant. Additionally, the intention of commercial gain is established by the fraudulent emails attempting to divert money from the Complainant's customers to, presumably, the Respondent. In terms of paragraph 4(b)(iv), the Panel finds that the Respondent has used the disputed domain name intending to attract Internet users to its webpage or online location for commercial gain by causing a likelihood of confusion as to the source or endorsement of that webpage or location.

The Panel finds that the Complainant has satisfied the third and final element 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 <sch0tt.com> be transferred to the Complainant.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: October 7, 2024