ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

EXPERT DECISION

Spa Solutions GmbH v. POGO Le suisse, Sky-Pergola Sàrl
Case No. DCH2026-0008

1. The Parties

The Claimant is Spa Solutions GmbH, Switzerland, internally represented.

The Respondents are POGO Le Suisse and Sky-Pergola Sàrl,[1] Switzerland, internally represented.

2. The Domain Name

The dispute concerns the domain name <sky-pergola.ch> (the "disputed domain name").

3. Procedural History

The Request was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 30, 2026. On June 30, 2026, the Center transmitted by email to SWITCH, the ".ch" and ".li" registry, a request for verification in connection with the disputed domain name. On July 1, 2026, SWITCH transmitted by email to the Center its verification response disclosing the Respondent that is listed as the holder of the domain name and providing the relevant contact details. In response to a notification by the Center that the Request was administratively deficient, the Claimant filed an amended Request on July 2, 2026. The Center verified that the Request together with the amended Request satisfied the formal requirements of the Rules of procedure for dispute resolution procedures for ".ch" and ".li" domain names (the "Rules of Procedure"), adopted by SWITCH, on January 1, 2020.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondents of the Request, and the Dispute resolution procedure commenced on July 15, 2026. In accordance with the Rules of Procedure, paragraph 15(a), the due date for Response was August 4, 2026.

[1] Based on a number of factors, including: (1) the fact that both Respondents are located in adjacent municipalities of the agglomeration; and (2) the fact that the Respondent "POGO Le Suisse" is the registrant of record of the disputed domain name and the Respondent "Sky-Pergola Sàrl" is the operator and beneficial user of the disputed domain name as claimed by the Claimant in its Request and as confirmed by the Respondent "Sky-Pergola Sàrl" in its Response where it explains that the disputed domain name was registered on its behalf and for its benefit, the Claimant believes that it is procedurally efficient to permit the consolidation of the Respondents in this matter. Based on the available record, the Expert finds that the disputed domain name is subject to common control and the consolidation would be fair and equitable to all parties. Hereinafter, the Expert will refer to the Respondents as "the Respondent".

The Respondent filed a Response, and expressed its readiness to participate in the conciliation on August 4, 2026.

In accordance with Rules of Procedure, paragraph 17, the Conciliation conference took place by telephone on three occasions: August 25, September 7, and September 29, 2026. The Conciliation conference did not result in a settlement between the parties.

On September 29, 2026, the Center notified the Claimant accordingly, who on October 1, 2026, made an application for the continuation of the Dispute resolution proceedings in accordance with specified in paragraph 19 of the Rules of procedure and paid the required fees.

On October 14, 2026, the Center appointed Andrea Mondini as Expert in this case. The Expert finds that it was properly appointed. In accordance with Rules of Procedure, paragraph 4, the above Expert has declared his independence of the parties.

4. Factual Background

The Claimant is a Swiss company founded in 2020 which provides louvered roof pergolas.

The Claimant owns the Swiss trademark registration no. 827272 for the word mark SKY PERGOLA which was filed on November 20, 2024, and registered on February 26, 2025, for goods in class 37 (covering conservatories and greenhouses).

The Claimant owns the domain name <skypergola.ch> which was registered on July 19, 2023, and resolves to its official website.

The Respondent was founded on March 26, 2025.

The disputed domain name was registered on January 22, 2025.

The disputed domain name resolves to a website offering for sale pergolas.

5. Parties' Contentions

A. The Claimant

The Claimant contends in essence that it is the owner of the trademark SKY PERGOLA in Switzerland and that the allocation and use of the disputed domain name by the Respondent, to offer for sale pergolas infringes such trademark rights and violates Art. 3 of the Swiss Unfair Competition Act.

The Claimant further contends that the Respondent acts in bad faith because ignored two cease-and-desist letters sent by the Claimant.

B. The Respondent

The Respondent filed a response on August 4, 2026.

The Respondent explained that an IT specialist registered the disputed domain name on behalf and for the benefit of the company "Sky-Pergola Sàrl" using the designation "POGO le suisse".

In its response, the Respondent contends in essence that it was not aware of the Claimant and its products, but independently chose the disputed domain name without any intent to copy the Claimant or benefit from its reputation. Rather, the choice was inspired by the name of an establishment called "Sky Bar". The combination of the words "sky" and "pergola" is descriptive for this type of products.

The Respondent confirms that it is in the business of selling and installing pergolas and that the website posted under the disputed domain name showcases his activities. However, the Respondent contends that a bioclimatic pergola is not, in every case, a greenhouse or wintergarden, and that it also offers other outdoor structures, such as zip screens, sliding glass panels and carports. The Respondent denies that it acted in bad faith, and asserts that a transfer is not an automatic consequence of an infringement, but that all specific circumstances must be considered

6. Discussion and Findings

According to the Rules of Procedure, paragraph 24(c), "the Expert shall grant the request if the allocation or use of the domain name constitutes a clear infringement of a Right in a distinctive sign which the Claimant owns under the laws of Switzerland".

The Rules of Procedure, paragraph 24(d) specify that "[i]n particular, a clear infringement of an intellectual property right exists when:

i. both the existence and the infringement of the claimed Right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and

ii. the Respondent has not conclusively pleaded and proven any relevant grounds for defence; and

iii. the infringement of the right justifies the transfer or revocation of the domain name, depending on the remedy requested in the request".

A. The Claimant has a right in a distinctive sign under the law of Switzerland

The Claimant has shown that it owns the Swiss trademark registration no. 827272 for the word mark SKY PERGOLA in class 37 for the construction of winter gardens and greenhouses.

The Respondent alleges that this trademark is descriptive. The Expert finds that this trademark is sufficiently distinctive for the claimed goods because the combination of the elements "sky" and "pergola" does not immediately describe the claimed goods. Indeed, the Swiss Institute for Intellectual Property, after having conducted an examination on absolute grounds, registered this trademark.[2]

Accordingly, the Claimant has provided sufficient evidence of rights in distinctive signs under the law of Switzerland in accordance with paragraph 24(d)(i) of the Rules of Procedure.

B. The allocation or use of the domain name constitutes a clear infringement of a Right in a distinctive sign which the Claimant owns under the law of Switzerland

A trademark registration confers on its owner the exclusive right to use the trademark to identify the goods or services for which it is claimed. The trademark owner may prohibit others from using a sign that is similar to his trademark and is used for the same or similar goods or services such that a likelihood of confusion results (Art. 13 para. 1 and Art. 3 para. 1 lit. c of the Swiss Trademark Act ("STA")).

The Claimant's trademark SKY PERGOLA was filed on November 20, 2024, and registered on February 26, 2025, in class 37 for the construction of conservatories and greenhouses. A registered trademark confers protection as of its filing date (Art. 6 STA).

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[2] The Expert notes that, having regard to the limited scope of proceedings under the Rules of Procedure, it is not for the Expert in these proceedings to determine the validity of a trademark. Any challenge to the validity of such trademark would more appropriately fall to be determined by the competent authorities.

The Respondent registered the disputed domain name on January 22, 2025, i.e. after the Claimant's trademark was filed. Therefore, the Claimant's trademark enjoys priority over the later registration and use of the disputed domain name.

The disputed domain name is highly similar to the Claimant's trademark. Moreover, the record shows that the disputed domain name is used to offer for sale goods that are similar to those covered by the Claimant's trademark registration and identical to those the Claimant sells on its official website <skypergola.ch>.

The Respondent contends that it was not aware of the Claimant and its products and that it did not intend to copy the Claimant's sign or take advantage of its reputation. This may be true, but is irrelevant, because the owner of prior trademark rights has the right to prohibit later users from committing any infringing use irrespective of whether they were aware of the existence of the trademark and/or whether they intended to infringe it (see e.g. BSK-MSchG Frick, Art. 55 no. 5).

In addition, according to the case law of the Swiss Federal Court, the use of a domain name that is identical or similar to a protected trademark in connection with a website offering identical or similar goods constitutes trademark infringement (see e.g. the decisions of the Swiss Federal Court 4C.31/2004 <riesen.ch> and 4C.341/2005 <swiss-life.ch>).

The Expert therefore concludes that the allocation and use of the disputed domain name constitutes a clear infringement of a right in a distinctive sign which the Claimant owns under the law of Switzerland.

Because a clear trademark infringement is established, there is no need to also discuss the unfair competition claims raised by the Claimant.

Considering that the disputed domain name is highly similar to the Claimant's trademark and domain name <skypergola.ch> and that the Respondent uses it to offer similar goods, the Expert holds that the infringement of the Claimant's trademark rights justifies the transfer of the disputed domain name.

6. Expert Decision

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the disputed domain name, <sky-pergola.ch>, be transferred to the Claimant.

Andrea Mondini
Expert
Dated: October 28, 2026