

## **ADMINISTRATIVE PANEL DECISION**

Swissbit AG v. YOUNES HAFRI

Case No. DIO2023-0031

### **1. The Parties**

The Complainant is Swissbit AG, Switzerland, represented Ronzani Schlauri Attorneys, Switzerland.

The Respondent is YOUNES HAFRI, Switzerland.

### **2. The Domain Name and Registrar**

The disputed domain name <swissbit.io> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2023. On August 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2023, 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 (SwissBit Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 17, 2023 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 18, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 21, 2023.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on October 19, 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 a Swiss company whose purpose is the development, production, marketing, trade, distribution, service and financing in the field of digitalization, electronics, communication and information technology. The Complainant provides IT solutions.

The Complainant is the owner of the following trademark registrations for SWISSBIT:

- Swiss trademark registration No. P-490619, registered on October 22, 2001, in classes 9 and 42; and
- International trademark registration No. 771368, registered on November 13, 2001, in classes 9 and 42.

The Complainant is also the owner of the domain name <swissbit.com>.

The disputed domain name was registered on March 18, 2022.

At the time of filing of the Complaint, the disputed domain name resolved to an active website, purportedly offering, automated portfolio management services in the field of cryptocurrencies. On such website, the Respondent presented itself as “SwissBit, Inc.”, a company based in Switzerland. However, the only entries for “SwissBit” in the Swiss registry of companies correspond to the Complainant SwissBit AG and its holding company Swissbit Holding AG (where “AG” is the German abbreviation for “Ltd”). Furthermore, certain pages of the Respondent’s website contained a copyright notice in the name of Aleph Archives Ltd<sup>1</sup>.

#### **5. Parties’ Contentions**

##### **A. Complainant**

According to the Complainant, the disputed domain name is identical to its trademark SWISSBIT, which it incorporates in its entirety.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent has not used the disputed domain name in connection with noncommercial or fair use. According to the Complainant, the Respondent does not have any rights preceding those of the Complainant to the name “SWISSBIT” or to the disputed domain name. The Respondent is neither affiliated with the Complainant nor authorized by it in any way to use the trademark SWISSBIT.

Finally, according to the Complainant, the Respondent has registered and used the disputed domain name in bad faith. The Complainant asserts in this respect that the Respondent has provided incorrect and misleading information about itself, its business, its business name, its relationship to Switzerland, and thereby has taken measures that created a likelihood of confusion with the goods, works, services and the business operations of the Complainant. According to the Complainant, the Respondent did not only infringe the Complainant’s trademarks, but also misappropriated the designation SWISSBIT in violation of unfair competition law.

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<sup>1</sup> Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered or is being used in bad faith.

### **A. Identical or Confusingly Similar**

The disputed domain name is identical to the Complainant's SWISSBIT trademark. It is well established that ".io", as a country code Top-Level Domain ("ccTLD") suffix, is disregarded in the assessment of identity or confusing similarity between a domain name and a complainant's trademark.

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Based on the information submitted by the Complainant, the Respondent does not appear to have rights or legitimate interests in respect of the disputed domain name, nor has the Complainant granted to the Respondent an authorization to use the disputed domain name.

Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name. As mentioned, there is no entry in the Swiss registry of companies of a company named Swissbit, Inc., except for the Complainant and its holding company.

Finally, the Respondent did not file a response to the Complaint. The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b).

In view of the above, 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, and that the Respondent's silence fails to rebut such *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

### **C. Registered or Used in Bad Faith**

Given the fact that both the Respondent and the Complainant are based in Switzerland and that the trademark SWISSBIT of the Complainant has been used before the registration of the disputed domain name, the Panel finds it unlikely that the disputed domain name was chosen independently without reference to the Complainant's trademark. The Panel therefore accepts the possibility that the Respondent was aware of the existence of the Complainant and of its SWISSBIT trademark at the time of the registration of the disputed domain name.

Furthermore, the following elements suggest that the disputed domain name has been used by the Respondent in bad faith. Firstly, the Respondent presented itself as a company named “SwissBit, Inc.”, based in Switzerland, when in fact there is no registration for such company (other than the registration corresponding to the Complainant and its holding company). Secondly, certain pages of the Respondent’s website – including the privacy page referring to “SwissBit, Inc.” – contained a copyright notice in the name of “Aleph Archives Ltd”. This further suggests that “SwissBit” is not the name of the Respondent and that the Respondent was seeking to create confusion with the Complainant’s business.

By using the disputed domain name in such manner, the Panel finds that the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users to his or her website by creating a likelihood of confusion with the Complainant’s mark as to the source and affiliation of this website. Such behavior constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 <swissbit.io> be transferred to the Complainant.

*/Anne-Virginie La Spada/*

**Anne-Virginie La Spada**

Sole Panelist

Date: November 3, 2023