# Decision for dispute CAC-UDRP-106187

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| Case number | CAC-UDRP-106187 |
| Time of filing | 2024-02-01 11:16:40 |
| Domain names | patekphillipe.com |

## Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

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| Organization | PATEK PHILIPPE SA GENEVE |

## Complainant representative

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| Organization | Cabinet Vidon, Marques & Juridique PI |

## Respondent

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| Name | Markus Tamm |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides relevant evidence, that it owns a large portfolio of trademarks that consist of or include “PATEK PHILIPPE,” including Int’l Reg. No. 394,802 for PATEK PHILIPPE (registered December 21, 1972) and Swiss Reg. No. 06393/1992 for PATEK PHILIPPE (filed August 28, 1992) (the “PATEK PHILIPPE Trademark”).

FACTUAL BACKGROUND

Complainant states that it was founded in 1839 and is “one of the most recognized companies in the history of Swiss watchmaking industry” and that it “maintains over 300 retail locations globally and a dozen distributors across Asia, Europe, North and South America, Pacific.”

The Disputed Domain Name was created on June 15, 2001. As described by Complainant, the Disputed Domain Name is not being used in connection with an active website; however, a screenshot provided by Complainant shows that the Disputed Domain Name is being used in connection with what appears to be a monetized parking, or pay-per-click (“PPC”) page, with links labelled “Patek Phillippe Watches,” “Phillippe Patek Watches,” and “Patek Phillippe.”

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the PATEK PHILIPPE Trademark because, inter alia, the top-level domain .com is irrelevant, "the addition or the deletion of duplicate letters do not prevent a finding of confusing similarity under the UDRP rules," and "[t]his assertion is even more true here insofar the element 'PHILIPPE' may have many alternative spellings."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, Complainant has "given no authorization to the Defendant, in any form, to use the sign 'PATEK', nor to register a domain name including their trademarks"; "the domain name does not lead to any active website"; and the Disputed Domain Name "doesn't refer[] to [Respondent's] identity, and [Respondent] is not commonly known by the Disputed Domain Name."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "Respondent knew, or at least should have known, about the complainant's trademark rights, due to its wide scope of activities and its renown"; "a mail server has been configured" for the Disputed Domain Name, indicating that "[i]t is most plausible that the contested domain name has been reserved for phishing purposes"; Respondent has lost at least three previous decisions under the Policy and is the registrant of at least three other domain names that contain "famous trademarks or at least trademarks known by a public at large."

No administratively compliant response has been filed.

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RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP).

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NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the UDRP).

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BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the UDRP).

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PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

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PRINCIPAL REASONS FOR THE DECISION

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the PATEK PHILIPPE Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the PATEK PHILIPPE Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "patekphillipe") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11.1.

Here, the Disputed Domain Name contains the PATEK PHILIPPE Trademark (and only the PATEK PHILIPPE Trademark) in its entirety, simply adding an extra letter "l" and deleting one letter "p". As set forth in section 1.9 of WIPO Overview 3.0: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly

similar to the relevant mark for purposes of the first element."

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, inter alia, Complainant has "given no authorization to the Defendant, in any form, to use the sign 'PATEK', nor to register a domain name including their trademarks"; "the domain name does not lead to any active website"; and the Disputed Domain Name "doesn't refer[] to [Respondent's] identity, and [Respondent] is not commonly known by the Disputed Domain Name."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that Complainant has established its prima facie case and, without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has 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 the registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has 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 the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's 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 the registrant's website or location or of a product or service on the registrant's website or location.

WIPO Overview 3.0, section 3.1.3, states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Further, numerous panels under the UDRP have found the registration and use of a domain name that is confusingly similar to a complainant's trademark to constitute bad faith pursuant to paragraph 4(b)(iv) of the UDRP where, as here, the domain name is associated with a monetized parking page that could be construed as associated with the complainant. See, e.g., Wal-Mart Stores, Inc. v. Whois Privacy, Inc., WIPO Case No. D2005 0850; Columbia Pictures Industries, Inc. v. North West Enterprise, Inc., WIPO Case No. D2006-0951; and Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service, WIPO Case No. D2011-1753.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **patekphillipe.com** : Transferred

## PANELLISTS

| Name | **Douglas Isenberg** |
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DATE OF PANEL DECISION 2024-03-09

Publish the Decision