Decision for dispute CAC-UDRP-106215

Case number	CAC-UDRP-106215
Time of filing	2024-02-06 12:16:54
Domain names	patekphillipe.org

Case administrator

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

Complainant

Organization	PATEK PHILIPPE SA GENEVE

Complainant representative

Organization	Cabinet Vidon, Marques & Juridique PI

Respondent

Name	James Bono

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has adduced evidence showing that it is the owner of two trademarks:

- International trademark PATEK PHILIPPE No. 394802, registered on 21 December 1972 in Nice Classification classes 9, 14, 16 and 34 on the basis of a Swiss registration, trademark No. 261026 dated 21 September 1972;

- Swiss trademark P-396660 for the same name and in the same classes, dated 28 August 1992 and stating that it is a renewed deposit of the Swiss trademark No. 261026.

The Complainant also adduced evidence showing it is registrant of two domain names:

- <patek.com>, registered on 7 March 1996;

- <patekphilippe.com>, registered on the same date.

This evidence was accompanied by web-archive screenshots from which it can be inferred that the websites associated with these domain names have been in continuous use since at least 1998.

Lastly, the Complainant adduced a business registration certificate issued to it by the Geneva Register of Commerce for Patel Philippe SA Genève. It shows that the company was registered on 27 February 1901, thereby endowing the Complainant with rights to use its company name.

In addition to the above, the Complainant submitted a six-page list to the Panel of further national trademarks it claims to hold. The Panel takes due note of this list for indicative purposes whilst observing that no documentary proof supported its contents apart from that in relation to the two trademarks already mentioned.

The Respondent registered the disputed domain name <patekphillipe.org> on 5 December 2016 according to the Registrar Verification performed by the CAC Case Administrator.

FACTUAL BACKGROUND

The Complainant, Patek Philippe SA Genève, is one of the most widely recognized companies in the history of the Swiss watchmaking industry, and has received awards for its innovations and designs on many occasions. The business itself was founded in 1839. The name “PATEK PHILIPPE” originates from the names of two of the founders: Antoine Norbert de Patek and Jean-Adrien Philippe. The firm has risen to the top of the luxury watch industry under the PATEK PHILIPPE trademark. As one of the last independent, family-owned, watch manufacturers in Geneva, the Complainant offers high-end watches and accessories to connoisseurs around the world. It has over 300 retail locations globally and a dozen distributors across Asia, Europe, the Americas, and the Pacific and other regions.

The PATEK PHILIPPE trademark used to designate the Complainant’s goods is famous worldwide for leadership in the field of high-end watchmaking, as shown in press articles adduced by the Complainant.

As to the disputed domain name <patekphillipe.org>, it nearly identically reproduces the entire trademark PATEK PHILIPPE in the form “PATEKPHILIPPE” as incorporated in the stem of one of the Complainant’s <.com> domain names for which it has provided evidence. The difference lies solely in the addition one letter, "L", deletion of one letter, "P", and use of the TLD designator <.org> instead of <.com>.

The Complainant included in its evidence an extract from an online encyclopaedia for the name “Philip” which shows that, alongside the form “Philippe” that is used in the Complainant’s name and brand, variants in use include examples that add an “L” and delete a “P”, as in the composition of the disputed domain name.

It also provided printout evidence of the website to which the disputed domain name resolves and screenshot evidence of a DNS-analysis service provider's output to show that incoming e-mails to the disputed domain name's MX server are re-directed. The Panel's scrutiny of the website evidence confirms that it promotes gambling services; it also observed that the website purports to claim copyright in the name of the Complainant, using a further misspelling of the Complainant's brand. Under its general powers, the Panel further confirmed with the aid of an online translator that the language of the site is Indonesian, that is, the language of the country of the Respondent as given in the contact details upon registration of the disputed domain name.

PARTIES CONTENTIONS

Considering the evidence submitted that shows the disputed domain name is similar, to the point of near-identicality, to the PATEK PHILIPPE trademarks and the Complainant’s company name, the domain name therefore fulfils the UDRP requirement of being identical or confusingly similar to a trademark or service mark in which the Complainant has rights. In particular, confronted with the contested domain name -- and noting the variants that are in general use on “Philippe” in the Complainant’s mark as well as that mark’s inherent distinctiveness and worldwide fame -- there will certainly be consumers who will believe it is owned by the Complainant. The disputed domain name as a result is a classic example of typosquatting, i.e. targeting internet users who make typos whilst looking for the Complainant. Therefore, it creates the likelihood of confusion for consumers.

Nor does the Respondent have any rights or legitimate interest in respect of the disputed domain name for the purposes of the second UDRP requirement, since it is the Complainant which owns the trademark rights to PATEK PHILIPPE and it has granted no authorization to the Defendant in any form to use them. To the contrary, the Respondent is making illegitimate use of the disputed domain name by redirecting users to a website that promotes online gaming.

As to the third and final UDRP requirement, the Respondent’s registration and use of the disputed domain name are in bad faith because registration of such a domain name cannot be a coincidence; it is deliberate typosquatting for commercial gain, and this is confirmed by the use of the disputed domain name to redirect to a website for the promotion of gambling services. A likelihood of phishing is furthermore indicated by the redirection of e-mails, so providing plausible further grounds to infer bad faith use.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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 Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

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

The Panel notes that its résumé of the Parties' contentions includes for the Complainant only its arguments pertinent to reaching a decision in this proceeding; it omits in particular extensive references to past ADR Panels' Decisions that are invoked to support its contentions. The evidence supplied in this proceeding by the Complainant is sufficient to render such references redundant in view of the clear test that the UDRP itself provides.

PRINCIPAL REASONS FOR THE DECISION

The Panel takes note of the well-documented case presented by the Complainant to substantiate its own rights, to present the confusing similarity of the disputed domain name to its protected brand, to analyse the likely cognitive effect of the misspelling concerned upon consumers including with respect to establishing the Respondent's likely intention in registering the disputed domain name in this uncontested case, and to investigate the Respondent's making use of the disputed domain name by configuring DNS redirections from it to a website promoting gambling services and to another DNS server for e-mail purposes.

The Complainant has, by such compelling evidence with respect to all parts of the three-part cumulative UDRP test, established that the Respondent has engaged in typosquatting in order to extract, without right or legitimate interest, illegitimate commercial gain from the fame of the Complainant’s protected brand in bad faith.

In particular, the evidence shows a clear intention on the Respondent's part through registration and in practice to imitate and exploit the Complainant’s trademark. This has been done with no regard to the Complainant's rights. Nor is any right or legitimate interest apparent on the Respondent's side, notably bearing in mind the registration details revealed by the CAC Case Administrator's Registrar verification.

Indeed, whereas the disputed domain name is constructed to take advantage of a variant upon the subsidiary element "Philippe" in the Complainant's famous trademark for the purpose of registration, the Panel determined that even this variant itself was abandoned in favour of another variant in the purported assertion of copyright made in the text of the website to which the disputed domain name redirects. From this it is absolutely clear that the Complainant's famous brand is simply being misused as a mere device.

This much will probably also be obvious to most of the Complainant's actual or potential customers who are confused by the website element of the typosquatting scheme involved here. But, by employing a misspelling in the disputed domain name cognitively so close to the original, a greater risk is posed to the welfare of internet users by how recipients of e-mails employing the disputed domain name may be deceived into believing them to emanate from the Complainant.

The domain name abuse in this proceeding thus exemplifies the kinds of harm to rights holders and the internet-using public for which the UDRP exists to provide recourse.

The Complainant having satisfied all the requirements of the UDRP three-part cumulative test, the Panel ORDERS the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **patekphillipe.org**: Transferred

PANELLISTS

Name	**Kevin Madders**

DATE OF PANEL DECISION 2024-03-18

Publish the Decision