Decision for dispute CAC-UDRP-106206

Case number	CAC-UDRP-106206
Time of filing	2024-02-20 12:34:25
Domain names	patekphilippe.company

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	PATEK PHILIPPE SA GENEVE

Complainant representative

Organization	Cabinet Vidon, Marques & Juridique PI

Respondent

Name	steven williams

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the holder of several trademarks including the following:

- PATEK PHILIPPE, international wordmark mark No. 394802 registered on December 21, 1972 in classes 9, 14, 16 and 34;
- PATEK PHILIPPE, Swiss wordmark mark No. P-396660 registered on October 21, 1992, in classes 9, 14, 16 and 34;
- PATEK PHILIPPE, United States wordmark mark No. 6971424 registered on February 7, 2023 in classes 9, 16, 18, 25, 35, 37.

FACTUAL BACKGROUND

The Complainant, PATEK PHILIPPE SA GENEVE, is a luxury watch company, founded in 1839. The company maintains over 300 retail locations globally and a dozen distributors across the world.

The Complainant is the owner of the registered international wordmark PATEK PHILIPPE in several classes since 1972.

The Complainant also owns the domain names <patek.com> and <patekphilippe.com> leading to the Complainant's official website.

The disputed domain name <patekphilippe.company> was registered on May 24, 2021 and resolves to a parking page with pay-per-click links.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be identical to a trademark in which it has rights.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant:

- no authorization has been given to the Respondent, in any form, to use the "PATEK PHILIPPE" sign, nor to register a domain name including the Complainant's trademarks;
- the Respondent is not making any legitimate use of the disputed domain name as the latter resolves to a parking page with pay-per-click links;
- the fact that the Respondent chose to hide its identity is a proof of a use without bona fide of the domain name.

Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that:

- the Respondent knew or should have known about the complainant's trademark rights, due to its distinctiveness, its wide scope of activities and renown;
- the choice of the extension ".company" participates to the Respondent's bad faith in the course of the registration, as it let the consumers believe that it has been registered by the Complainant himself;
- the disputed domain name leads to a parking page including PPC links, which is an indication in favour of Respondent's bad faith;

a search within the UDRP Decision databases (CAC and WIPO) enables to identify three cases, in which respondent is identified as "Steven Williams". Transfer of the domain name has been decided in all three cases. The fact that the name used by the Registrant is quite common does not enable to affirm with certainty the same person is behind the three identified cases and the present one. However, at least, it constitutes a serious indication of pattern of conduct insofar as the name and the country mentioned in these three decisions are identical to those of the Respondent.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 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 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 Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant shows to be the holder of the registered PATEK PHILIPPE wordmark, which is used in connection with the Complainant's luxury watches business, it is established that there is a trademark in which the Complainant has rights.

The Panel observes that the disputed domain name incorporates the Complainant's PATEK PHILIPPE trademark in its entirety.

Moreover, it is well established that the Top-Level Domains ("TLDs") such as ".company" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of production to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is known as "Steven Williams". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, when the TLD is descriptive of, or relates to, goods or services, a geographic region, or other terms associated with the Complainant, the respondent's selection of such TLD would tend to support a finding that the Respondent obtained the domain name to take advantage of the Complainant's mark and as such that the Respondent lacks rights or legitimate interests in the domain name (see section 2.14.1 WIPO Overview 3.0).

The disputed domain name incorporates the Complainant's PATEK PHILIPPE trademark in its entirety, merely adding the TLD ".company". In the Panel's view, this combination may even increase the risk of confusion with the Complainant as it can easily be considered as referring to Complainant itself.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

In the instant case, the Panel considers that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name resolves to a parking page containing pay-per-click ("PPC") links such as "Montre femme", which is French for the nouns "watch woman".

Given the distinctive character of the Complainant's mark, and the Complainant's luxury watch business, the Panel finds that such sponsored links (to website offering watches and jewellery for sale) may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a bona fide offering of goods or services (see section 2.9 of the WIPO Overview 3.0)

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is

being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's filling for the PATEK PHILIPPE trademark when it registered the disputed domain name as:

- the disputed domain name incorporates the Complainant's distinctive and well known PATEK PHILIPPE trademark in its entirety;
- the disputed domain name incorporates a TLD that can easily be considered as referring to Complainant himself;
- some of the Complainant's marks predate the registration of the disputed domain name by more than 45 years.

In the circumstances of the present case, the Panel's considers the fact that the disputed domain name resolves to a parking page containing PPC links in connection with the Complainant's business, indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the disputed domain name that is confusingly similar to the Complainant's trademark to obtain click-through-revenue constitutes bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the disputed domain name under its control (see section 3.5 of the WIPO Overview 3.0).

Furthermore, the Complainant shows several UDRP decision in which the respondent is identified as "Steven Williams" resident of the United States and in which the respondent has demonstrated bad faith (see Fenix International Limited v. Steven Williams, onlyfansdates, WIPO Case No. D2023-2518, Taojing International Limited, Zenni Optical, Inc. v. Registration Private, Domains By Proxy, LLC / Steven Williams, WIPO Case No. D2021-2859 and Darden Concepts, Inc. v. Registration Private, Domains By Proxy, LLC / Steven Williams, WIPO Case No. D2021-2460). As stated by the Complainant, the name "Steven Williams" used by the Respondent is quite common in the United States and does not enable to affirm with certainty the same person is behind the cases showed by the Complainant and the Respondent in the present Complaint. In the absence of a response, the use of this common name serves as an indication of a pattern of bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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. **patekphilippe.company**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2024-04-02

Publish the Decision