



ADMINISTRATIVE PANEL DECISION

The Procter & Gamble Company v. Marchex Sales, Inc
Case No. D2012-2179

1. The Parties

The Complainant is The Procter & Gamble Company of Cincinnati, Ohio, United States of America, represented by Keating Muething & Klekamp PLL, United States of America.

The Respondent is Marchex Sales, Inc of Las Vegas, Nevada, United States of America, represented by John Berryhill, Ph.d., Esq., United States of America.

2. The Domain Name and Registrar

The disputed domain name <swash.com> is registered with eNom (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 2, 2012. On November 5, 2012, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 5, 2012, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the disputed domain name.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced November 9, 2012. In accordance with the Rules, paragraph 5(a), the due date for the Response was November 29, 2012. The Response was filed with the Center on November 29, 2012.

The Center appointed Dennis A. Foster, Andrew F. Christie and Tony Willoughby as panelists in this matter on January 10, 2013. The Panel finds that it was properly constituted. Each member of 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.

On January 23, 2013, the Panel issued Administrative Panel Procedural Order No. 1, that requested the Complainant to file an Additional Submission to address certain facts in the Complaint and the Response. The due date for this Additional Submission was January 31, 2013, and on that date the Complainant filed an Additional Submission. The Respondent was allowed to respond to the Complainant's Additional Submission, and the due date for this response was February 8, 2013. The Respondent filed its Additional Submission responding to the Complainant's Additional Submission on February 8, 2013. The Panel took both Additional Submissions into consideration in deliberating its Decision.

4. Factual Background

The Complainant is a United States of America ("USA") company that manufactures and sells many consumer products, including household cleaning and washing products. One brand under which the Complainant has produced such goods is the dictionary word "Swash", and the Complainant has registered its SWASH trademark with, among other authorities, the United States Patent and Trademark Office ("USPTO") (Registration No. 3568231; registered January 27, 2009) and the European Union's Office for Harmonization in the Internal Market ("OHIM") (Registration No. 6492177; registered November 6, 2008). Indirectly, through a subsidiary or associated company, the Complainant also appears to have an interest in a WIPO international registration of the mark under the Madrid System, which was acquired in 2008. The original owner of that registration, the German company Henkel, registered the mark in 1993.

The Respondent is the owner of the disputed domain name <swash.com>. The disputed domain name was registered on March 2, 2000, and acquired by the Respondent in 2004. Prior to initiation of these proceedings, the disputed domain name resolved to a website that provided links to third-party websites that offered cleaning/washing products. Presently, the name hosts a website that provides links to third-party websites of a more general nature.

5. Parties' Contentions

A. Complainant

- The Complainant is a United States of America company that manufactures and distributes on a global basis numerous goods, including household cleaning and washing products, under famous brand names. One such brand name is "Swash".
- The Complainant has obtained trademark registrations for the SWASH trademark throughout the world, including under the Madrid System, and with the OHIM, and USPTO. The earliest such registration, under the Madrid System, occurred in 1993.
- Over the past four years, the Complainant has earned more than USD 40 million in SWASH product sales and has spent in excess of USD 4 million in research, development and advertising pertaining to those products.
- The Respondent is possibly a provider of digital call marketing services and analytics, but may also have some connection with another company that is a domain name reseller and broker.
- The Complainant learned of the Respondent's registration of the disputed domain name on or about May 1, 2012, and attempted after that date to obtain ownership of that name in exchange for the Respondent's out-of-pocket registration and transfer costs. The Respondent failed to respond to that offer. However, the Respondent did alter the website hosted by the disputed domain name to offer generic third-party links as opposed to the earlier offering of third-party links that referred only to cleaning products.
- In April 2012, after the Complainant's domain vendor inquired, the Respondent solicited an offer for purchase of the disputed domain name. In October, that vendor offered USD 600 for the name, to which the

Respondent countered at USD 30,000.

- The disputed domain name, <swash.com>, is identical to the Complainant's SWASH mark.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant, and has received no permission or authorization from the Complainant to use the SWASH mark in any manner. The Respondent has not been known as "swash" or the disputed domain name.
- The Respondent is using the disputed domain name neither in a legitimate noncommercial or fair use manner, nor in connection with a *bona fide* offering of goods or services. The Respondent uses the name to host a website that furnishes links to third-party websites for which the Respondent receives pay-per-click ("PPC") revenue. The links found at the website do not relate to the dictionary definition of "swash", but rather conform to the cleaning-product connotation of "swash" as suggested by the Complainant's use of its SWASH trademark.
- The disputed domain name was registered and is being used in bad faith. The Respondent is using the disputed domain name for commercial gain in the form of pay-per-click ("PPC") fees that are generated on the basis of Internet user confusion of the name with the Complainant's SWASH trademark. Moreover, the Respondent's failure to respond to the Complainant's communications is indicative of bad faith. Finally, the Respondent's attempt to collect a purchase price of USD 30,000 for the disputed domain name is consistent with bad faith registration and use.
- Though the disputed domain name was registered in 2000, the Complainant's discovery of that registration and this Complaint are not pre-empted by the doctrine of laches, as that doctrine is inapplicable to UDRP Policy cases.

B. Respondent

- The Complainant presents no evidence that it actually sells products under the SWASH trademark. In actuality, the available online evidence indicates that the Complainant discontinued sales under the "Swash" brand name soon after beginning trial marketing in 2007 in the state of Ohio, United States of America.
- The Respondent concedes that the Complainant has sufficient rights in the SWASH trademark for Policy purposes due to the Complainant's registration of that mark with the USPTO. However, there is insufficient evidence to conclude that a prior registration, a Madrid filing with the WIPO for the SWASH mark, is actually owned by the Complainant. In any event, the latter registration is irrelevant in confirming any trademark rights to the Complainant.
- The Respondent's connection to a company involved in domain name acquisition and reselling is not hidden by the Respondent and not pertinent to this case.
- The Respondent maintains a portfolio of domain names composed of simple words, short phrases, and other descriptive or common terms for the purpose of providing keyword advertising in relation to the meaning of the words used in those domain names.
- "Swash" is a descriptive word that relates to washing generally – and washing in turbulent water specifically – and the Respondent has used the disputed domain name, assigned to the Respondent in 2004, to provide links to websites that offer washing and laundry products.
- The Respondent denies changing its website found at the disputed domain name in response to communications from the Complainant. Rather, possible changes in offerings may be due to "drift" caused by the Respondent's use of an automated link selection system.
- Bad faith is a question of intent. Respondent did not acquire the disputed domain name in bad faith

because at the time of that acquisition, and for many years thereafter, the Complainant produced no products under its SWASH trademark. Thus, as the senior party in respect of rights, Respondent could not have intended to trade unfairly on the reputation of the Complainant's mark.

-There was no intent by the Respondent to cause consumer confusion, because the Complainant did not use its trademark at the time of the disputed domain name registration and does not use the trademark presently.

- The Respondent's asking price for the disputed domain name, in response to a third-party inquiry made years after acquisition of the name, does not meet the requirements for a finding of bad faith under the Policy. There is no evidence that the Respondent's primary purpose in acquisition was to extort money from the Complainant.

- The Complainant's delay of eleven years after registration of the disputed domain name to file the Complaint demonstrates that such registration in no way caused a disruption to the Complainant's business.

C. Complainant's Additional Submission

- The Complainant sold SWASH brand products from 2009 through 2012, with total sales of approximately USD 60,000. The SWASH products are currently available through major marketing websites. The Complainant was mistaken when it claimed in the Complaint that it had had USD 40,000,000 in sales during the past four years.

- The Complainant acquired the 1993 Madrid System WIPO trademark registration for SWASH from a third party, Henkel AG & Co. ("Henkel"), in September 2008. There has never been any ownership connection between the Complainant and Henkel.

- Though valid in many other countries, the 1993 WIPO SWASH registration was never valid in the United States of America.

D. Respondent's Additional Submission

- The Complainant does not specify exactly what products it sells under the SWASH trademark. Information found at the Complainant's domain name, <swashandgo.com>, indicates that the Complainant does not sell cleaning preparation products under that mark.

- Under its own theories, the Complainant was itself engaged in cybersquatting because it claims to have registered its <swashandgo.com> domain name in 2007 before it had obtained the 1993 WIPO trademark registration from Henkel, a non-affiliated party, in 2008.

- It is not credible that the Complainant only recently learned of the disputed domain name because the Complainant certainly must have known that <swash.com> was registered when the Complainant registered <swashandgo.com> in 2007.

- The sales data submitted by the Complainant in its Additional Submission is misleading and may result to some extent from double counting.

- The Complainant does not claim that Henkel was making any use of the SWASH trademark before its acquisition by the Complainant, and evidence suggests that Henkel was not using the mark in commerce – and no goodwill had attached to it – immediately prior to such acquisition. The Complainant also failed to produce for the Panel an assignment document to support its claim of acquisition.

- The Respondent draws to the Panel's attention the existence of a more recent trade mark application for the word SWASH filed by the Complainant in September 2011 on an intent-to-use basis, the opposition period for which expired shortly before the launch of this Complaint. The specification of goods reads "An appliance for domestic use in the nature of a garment steamer for the purpose of removing wrinkles and

odors from clothing and linen". The Respondent contends that the Complainant's motivation for seeking to obtain the disputed domain name stems from this new commercial interest in respect of the mark and owes nothing to any prior goodwill.

- The Respondent believes that the Complainant's conduct in this proceeding requires that the Panel issue an abuse of the UDRP ruling under paragraph 15(e) of the Rules.

6. Discussion and Findings

Pursuant to paragraphs 4(a)(i)–(iii) of the UDRP, the Panel may find in favor of the Complainant and award the Complainant a transfer of the disputed domain name, <swash.com>, provided that the Complainant demonstrates the following:

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

A. Identical or Confusingly Similar

By supplying the Panel with evidence (Complaint, Annex C) of its SWASH trademark registrations with the USPTO and OHIM, the Complainant has convinced the Panel that it has rights in that mark that satisfy the requirements of UDRP paragraph 4(a)(i). See, *The Schneider Group, Inc. v. Jack Mann*, WIPO Case No. D2010-0448 ("The Panel finds that Complainant has established rights in the PROTEK mark under Policy paragraph 4(a)(i) through its registration with the USPTO."); and *Petróleo Brasileiro S.A. v. seong-chea park*, NAF Claim No. 1239919 ("Complainant has established rights in the PETROBRAS mark through its registration with the OHIM pursuant to Policy [paragraph] 4(a)(i).").

Upon simple visual inspection, the Panel determines that the disputed domain name, <swash.com>, is identical to the Complainant's SWASH trademark. The inclusion of the generic top-level domain, ".com", in the disputed domain name is deemed by the Panel to be inconsequential in making such a determination. See, *Luxair SA v. Puma Industrial Co., Ltd*, WIPO Case No. D2009-0162 (where the panel found <luxair.com> to be identical to the LUXAIR mark); *SCOLA v. Brian Wick d/b/a CheapYellowPages.com*, NAF Claim No. 1115109 (finding the disputed domain name, <scola.com>, to be identical to the mark SCOLA); and *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. D2002-1064 ("When comparing a disputed domain name and a trademark, the addition of the '.com' suffix is irrelevant for determining whether the domain name is identical or confusingly similar to the trademark.")

As a result, the Panel finds that the Complainant has satisfied the first element of the Policy.

However, the Panel notes that it can only determine that the Complainant has trademark rights by registration beginning with the European Union OHIM registration in 2008 and in the USA in 2009. Based on the information the Complainant has provided, the Panel is unable to determine with any confidence the scope and extent of the 1993 WIPO registration. And in any case, according to the Complainant's own Supplemental Filing, the 1993 WIPO filing was never valid in the USA, the domicile of the Complainant and the Respondent, and the mutual jurisdiction for these proceedings.

B. Rights or Legitimate Interests

The Panel (by a majority) finds as follows on this issue. The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has rights in a trademark that is identical to the name and has alleged, without contradiction from the

Respondent, that there is no affiliation or license between them permitting use of the trademark. Moreover; the Respondent's name bears no resemblance to the disputed domain name, supporting the Complainant's contention that the Respondent is not commonly known as the disputed domain name as might sustain a possible claim by the Respondent under UDRP paragraph 4(c)(ii). Thus, it is incumbent upon the Respondent to come forward with affirmative evidence to convince the Panel that the Respondent does have rights or legitimate interests in the disputed domain name. See, *Philip Morris USA Inc. v. yfmg*, WIPO Case No. D2010-0058 ("Once the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name."); and *SCOLA v. Brian Wick d/b/a CheapYellowPages.com., supra* ("Once Complainant makes a *prima facie* case in support of its allegations, the burden of production shifts to Respondent to put forward some evidence to show that it does have rights or legitimate interests pursuant to Policy [paragraph] 4(a)(ii).")

In its rebuttal to the Complainant's *prima facie* case, the Respondent does not refer directly to any legitimizing criteria that might be found in UDRP paragraph 4(c), but chooses to rely instead on a doctrine accepted by many prior UDRP panels that respondents can have legitimate interests in disputed domain names composed of dictionary words, whether or not those names are identical or confusingly similar to an established trademark or service mark. For previous Policy decisions that support this proposition, see, *Gibson, LLC v. Jeanette Valencia*, WIPO Case No. D2010-0490; *Southwestern Association for Indian Arts, Inc. v. Indian Art of America and A. Mata*, WIPO Case No. D2009-1774; and *HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager*, WIPO Case No. D2007-0062. However, as a caveat to this general doctrine, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0") at section 2.2 notes that:

"Panels have recognized that mere registration of a domain name, even one that is comprised of a confirmed dictionary word or phrase (which may be generic with respect to certain goods or services), may not of itself confer rights or legitimate interests in the domain name. Normally, in order to find rights or legitimate interests in a domain name based on the generic or dictionary meaning of a word or phrase contained therein, the domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning (and not, for example, to trade off third-party rights in such word or phrase)".

In this case, the Respondent asserts that it is in the business of registering domain names composed of common words or short phrases for use in websites that provide keyword advertising relating to the meaning of those words or phrases. Thus, as "swash" is a dictionary word that alludes to "washing in turbulent water", and the website to which the disputed domain name initially resolved contained advertising links to third-party produced washing products, the Respondent possesses a legitimate interest in that name. The Respondent argues that it is irrelevant that those washing products might, as alleged by the Complainant, compete directly with products sold by the Complainant under the SWASH trademark because the Respondent began using the "swash" name in the USA before the Complainant.

However, the Panel is not entirely convinced by the Respondent's contentions and actions that it has used the disputed domain name for the name's dictionary meaning. The Complainant contends and provides evidence (Complaint, Annex F), which the Respondent does not contradict, that recently the website found at the disputed domain name has been changed to incorporate third-party links of a more general nature than those related solely to washing products. The Complainant asserts that this change resulted from its transfer demands directed at the Respondent, and reflects the illegitimacy of the Respondent's position. The Respondent contends that the change occurred as a natural "drift" occasioned by the Respondent's reliance on an automated link selection system. Both explanations undercut the Respondent's claim of rights or legitimate interests in the disputed domain name. The Complainant's explanation implies that the Respondent sought to mitigate an admitted infringement of the Complainant's trademark; the Respondent's explanation implies that the Respondent is not intent upon using dictionary-word domain names for their plain meaning because the Respondent is willing to rely on an automated service which it cannot control. In short, the Panel wonders how the Respondent can maintain that it has used or intends to use the disputed

domain name for its dictionary meaning when the Respondent concedes that it does not manage meaningfully the content placed on the website at the disputed domain name.

The Panel believes that the Respondent's citation on its behalf of the prior UDRP case, *Advanced Drivers Education Products and Training, Inc v. MDNH, Inc. (Marchex)*, NAF Claim No. 567039, is misplaced. In that case, the panel found that the respondent used the disputed domain name, <teensmart.com>, for paid advertising links to websites of interest to teenagers, which aligns closely with the plain description suggested by that domain name. As the Respondent noted, that panel did conclude that "It is irrelevant that the site consists largely of paid advertising rather than original content." However, in the present case, the disputed domain name, <swash.com>, now resolves to an altered website that offers PPC links to third-party sites that are general in nature and have little to do with washing products or the plain meaning of "swash".

The foregoing analysis leads the Panel to conclude that the Respondent has failed to supply sufficient evidence for its contentions in rebuttal to the Complainant's *prima facie* case on this issue.

As a result, the Panel finds that the Complainant has satisfied the second element of the Policy.

A minority of the Panel does not agree with the Panel majority's finding on the Respondent's "Rights or Legitimate Interests". The Complainant has failed to satisfy the minority Panelist that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has been making *bona fide* commercial use of the disputed domain name for 8 years or more and there is nothing before the Panel to suggest that the Respondent's use of the disputed domain name has been in bad faith; nor has the Panel made any such finding. The Panel has found the Respondent to be the legitimate owner of the disputed domain name and in the view of the minority Panelist a legitimate owner of a domain name, which has been making continuous *bona fide* commercial use of the domain name over such an extensive period has a legitimate interest in respect of it. However, due to the finding regarding bad faith below, the division amongst the Panel on this issue is not critical to the outcome of this case.

C. Registered and Used in Bad Faith

In order for the Complainant to obtain a finding of bad faith under the UDRP, paragraphs 4(b)(i-iv), it must prove that the Respondent registered and is using the disputed domain name in bad faith. UDRP paragraph 4a(iii); see also, *Mile, Inc. v. Michael Burg*, WIPO Case No. D2010-2011.

In this case, there is no evidence in the record to suggest that the Respondent acquired the disputed domain name later than 2004. The Complainant, in its Complaint and Additional Submission, furnishes no evidence that it sold products under its SWASH trademark prior to 2009. Moreover, the Complainant has not proved any registration for the SWASH trademark before 2008. In view of the sequence of these dates, the Panel agrees with the Respondent that, when it acquired the disputed domain name <swash.com> in 2004, it cannot have been aware of the Complainant's then non-existent rights in the SWASH mark. Furthermore, as the Complainant has also admitted that the third party 1993 WIPO registration for that mark was not valid in the USA – the domicile of the Respondent – the Panel finds that it is also very unlikely that the Respondent would have been aware of that registration at all. This lack of opportunity for actual, or even constructive, knowledge on the part of Respondent concerning ownership of the SWASH trademark leads the Panel to conclude that there is no evidence that the Respondent registered and is using the disputed domain name in bad faith. Since the Respondent had no knowledge of any Complainant rights in the disputed domain name, the Respondent was not using the disputed domain in bad faith when it connected the disputed domain name to web sites related to the word "swash" and later to general interest websites. The Panel believes that this is not a UDRP paragraphs 4(b)(i-iv) bad faith scenario and that this is not even a close call. See, *Dreamgirls, Inc. v. Dreamgirls Entertainment*, WIPO Case No. D2006-0609 ("Bad faith registration cannot be found if the Domain Name was registered before Complainant acquired trademark rights"); and *Digital Vision, Ltd. v. Advanced Chemill Systems*, WIPO Case No. D2001-0827.

As a result, the Panel finds that the Complainant has failed to satisfy the third element of the Policy with regard to bad faith.

7. Reverse Domain Name Hijacking

The Respondent has requested that the Panel issue a finding of abuse of this UDRP proceeding or “reverse domain name hijacking” per the UDRP Rules at paragraph 15(e). The Panel notes that panels do not usually issue such a finding in a case where a complainant has prevailed with respect to two (in the present case not unanimously) of the three elements required under the Policy. See, for example, *National Trust for Historic Preservation v. Barry Preston*, WIPO Case No. D2005-0424 (“Inasmuch as the Panel has found that the Complainant has incontestable rights in its HISTORIC HOTELS OF AMERICA mark, and that the disputed domain name is confusingly similar to that mark, the Panel finds the Respondent’s claim of reverse domain name hijacking unpersuasive.”); *Globosat Programadora Ltda. v. J. Almeida*, WIPO Case No. D2005-0199; and *Interep National Radio Sales, Inc. v. Internet Domain Names, Inc.*, WIPO Case No. D2000-0174.

However, the Panel does not believe that the present Case represents a normal circumstance. The Panel notes that the Complainant, The Procter & Gamble Company, is a premier marketer and advertiser of consumer products in the United States of America and in many other countries. It is impossible to believe that the Complainant, who employs ultra-sophisticated marketing methods, was not aware that the disputed domain name, <swash.com>, had been registered and used by other entities for some years when the Complainant introduced its SWASH product line in 2009.

The Complainant and its legal counsel are not strangers to the UDRP process. See, *P&G Prestige Products, Inc. v. Ryogo Sugai*, WIPO Case No. D2009-1098; *The Procter & Gamble Company v. Richard Jones*, NAF Claim No. 1266787; *The Procter & Gamble Company v. William Vaughan, River Cruise Investments Ltd.*, WIPO Case No. D2008-1164; *The Procter & Gamble Company, P&G Hair Care, LLC v. Domain Admin*, WIPO Case No. D2007-1040; *Procter & Gamble Pharmaceuticals, Inc. v. Johnny Carpela*, NAF Claim No. 625591; *The Procter & Gamble Company v. Hong Gil Dong*, NAF Claim No. 572962; *et cetera*. Therefore, the Panel (by a majority) concludes that the Complainant must have known that, once the relevant facts of this case were uncovered, a UDRP panel could not possibly find that the disputed domain name was registered in bad faith. To have filed the Complaint at this relatively late date – more than eleven years after the registration of the disputed domain name and several years after its acquisition by the Respondent – seems a grotesquely unfair attempt to wrest ownership of the disputed domain name from the owner. See, *Proto Software, Inc. v. Vertical Axis, Inc/PROTO.COM*, WIPO Case No. D2006-0905 (“The Panel considers that the Complainant is represented by Counsel who even on a rudimentary examination of the Policy and its application in this area should have appreciated that the Complaint could not succeed where the Respondent’s domain name had been registered three years prior to filing a trademark application or actual use of the mark.”); and *carsales.com.au Limited v. Alton L. Flanders*, WIPO Case No. D2004-0047 (“In the Panel’s view a finding of reverse domain name hijacking is warranted if the Complainant knew or should have known at the time it filed the Complaint that it could not prove one of the essential elements required by the Policy.”)

The entire Panel finds it more extraordinary still that in its Complaint the Complainant represented the SWASH brand to be a worldwide brand of longstanding with multi-million dollar sales, stating that over the last 4 years alone the brand had gained sales of over USD 40,000,000. When this was challenged by the Respondent, the Complainant was forced to admit that the brand had only been on the market for 4 years, that sales had been restricted to the USA and that sales over those four years had totaled under USD 60,000. Had the Respondent failed to respond, there is a very real risk that the Panel, relying upon the 1993 International registration and the substantial sales volumes claimed for the brand, would have found in favor of the Complainant. This Complaint fell very far short of what the Panel was entitled to expect from a Complainant of this stature.

In all of the circumstances present here, the Panel finds that the Complainant has abused the process in an attempt at reverse domain name hijacking in contravention of the UDRP Rules at paragraph 15(e). The Panel majority also finds the Complainant has attempted reverse domain name hijacking because it must have known that the Respondent did not know of (nor had any reason to be aware of) any relevant trade mark rights in the SWASH name when the Respondent registered the disputed domain name in 2004.

For completeness, the Panel acknowledges the Respondent's contention as to the Complainant's true motivation behind this administrative proceeding (see paragraph 5D above), but does not regard it as necessary or appropriate that it should address the point.

8. Decision

For the foregoing reasons, the Complaint is denied. The Panel also makes a finding of reverse domain name hijacking against the Complainant.

Dennis A. Foster
Presiding Panelist

Andrew F. Christie
Panelist

Tony Willoughby
Panelist
Date: February 22, 2012