

ADMINISTRATIVE PANEL DECISION

Accor and Soluxury HMC v. 夏荣富 (xia rong fu), 深圳市索菲特家具有限公司 (shen zhen shi suo fei te jia ju you xian gong si)

Case No. D2022-1421

1. The Parties

The Complainants are Accor and Soluxury HMC, France, represented by Dreyfus & associés, France.

The Respondent is 夏荣富 (xia rong fu), 深圳市索菲特家具有限公司 (shen zhen shi suo fei te jia ju you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <sz-sofitel.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainants on April 22, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on April 27, 2022.

On April 22, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 27, 2022, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended 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 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on April 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 20, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on June 13, 2022. 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

Founded in 1967, the Complainant Accor is a global hotel operator headquartered in France, and operates more than 5,100 hotels in 110 countries. The Complainant Soluxury HMC is a wholly-owned subsidiary of the Complainant Accor. Both Complainants are hereinafter referred to as "the Complainant" unless specified otherwise. The Complainant's mark SOFITEL is the Complainant's luxury hotel brand dating back to 1964, with a presence in five continents, with 120 hotels in 49 countries.

The Complainant provides evidence that the Complainant Soluxury HMC owns a trademark portfolio protecting the mark SOFITEL, including, but not limited to international trademark registration number 863332 for the word mark SOFITEL, registered on August 26, 2005 and designating, *inter alia*, Australia, China and the United States of America, and international trademark registration number 939096 for the device mark SOFITEL, registered on August 30, 2007 and designating, *inter alia*, Australia, China, and the European Union. The Complainant also owns a portfolio of domain name registrations, including for <sofitel.com>, registered on April 11, 1997, which it uses to host its official website, promoting and offering its services to Internet users.

The disputed domain name was registered on January 29, 2021, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directed to a website operated by the Respondent, offering products and services related to movable and fixed furniture for star hotels, luxury villas, etc. However, the Panel notes that on the date of this Decision, the disputed domain name resolves to an inactive website.

The Complainant also provides evidence that it attempted to settle this matter amicably by sending a blocking request to the Registrar on March 24, 2021 and by sending a cease-and-desist letter to the Respondent on May 19, 2021, to which it received no answer.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for SOFITEL, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive and well known, and submits, *inter alia*, company and marketing information as well as evidence regarding its trademark and domain name portfolio. The Complainant also refers to previous UDRP decisions where the panels have recognized that the Complainant's trademark SOFITEL is well known, *e.g.*, *Accor and SoLuxury HMC v. Chenqin*, WIPO Case No. [D2018-1623](#). The Complainant particularly contends that that the Respondent cannot assert that it was using, or had made demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services as the disputed domain name directed to a website indicating false and misleading information of a commercial nature. Furthermore,

the Complainant also contends that in the absence of any license or permission from the Complainant to use the widely-known trademark SOFITEL, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed. Furthermore, the Complainant refers to the goodwill and renown of its trademarks worldwide, and argues that it is not possible to conceive a plausible circumstance in which Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights. Finally, the Complainant essentially argues that the Respondent's use of the SOFITEL trademark in the disputed domain name does not confer any rights or legitimate interests on it, and constitutes registration and use in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant Soluxury HMC.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in a timely manner in Chinese and English to present its comments on the language of the proceeding and its response on the merits in either Chinese or English, but chose not to do so); the fact that the disputed domain name contains the Complainant's trademark in its entirety; the fact that the disputed domain name is written in Latin letters and not in Chinese characters and that the website linked to the disputed domain name contained words in both Chinese and English before it was taken offline; and, finally, the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and has decided that the language of this administrative proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

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

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it has valid rights in the marks SOFITEL based on its intensive use and longstanding registration of the same as trademarks in various jurisdictions.

As to confusing similarity of the disputed domain name with the Complainant's marks, the Panel considers that the disputed domain name consists of the combination of two elements, being the Complainant's SOFITEL trademark preceded by the term "sz", which could be an abbreviation for the Chinese city of Shenzhen or Suzhou, connected by a hyphen. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), section 1.8, "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." The Panel concludes that the disputed domain name contains the entirety of the Complainant's SOFITEL trademark, which remains easily recognizable in the disputed domain name. The Panel considers that the addition of the term "sz" therefore does not prevent a finding of confusing similarity. The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (.com in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1. Finally, the Panel finds that the hyphen may be disregarded as it is considered merely as a punctuation mark (see also *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark, and that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, the Respondent is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Moreover, upon review of the facts, the Complainant provides evidence that the disputed domain name, containing the SOFITEL mark in its entirety, directed to an active website, aimed at commercial gain, on which information regarding the products and services of the company Shenzhen Sofitel Furniture Co., Ltd. (which is presumably the Respondent) were provided, which ostensibly provides movable and fixed furniture for star hotels, luxury villas, etc. Although the Respondent presented itself as Shenzhen Sofitel Furniture Co., Ltd. on the website while the registrant organization confirmed by the Registrar being "深圳市索菲特家具有限公司 (shen zhen shi suo fei te jia ju you xian gong si)", there is no evidence on record showing that the Respondent is commonly known by the disputed domain name. Further, the Respondent claimed to be associated with Sofitel France founded in 1964 on the website. The Complainant asserts that the company Sofitel France does not exist in France and the Respondent did not rebut the Complainant's assertion. In this regard, the Panel finds that the Respondent's choice of "Sofitel" in the disputed domain name is most likely to take advantage of the goodwill of the Complainant's well-known SOFITEL trademarks for commercial gain. Such use of the disputed domain name does not confer any rights or legitimate interests in the disputed domain name on the Respondent.

Furthermore, the Panel finds that the nature of the disputed domain name, incorporating the Complainant's trademark for SOFITEL in its entirety combined with the commonly used abbreviation for the Chinese city Shenzhen or Suzhou, namely "sz-", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview](#)

[3.0](#), section 2.5.1).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name was most likely intended to take unfair advantage of the Complainant's internationally well-known and prior registered trademarks for SOFITEL, by using such mark in its entirety in the disputed domain name to mislead and divert Internet users to the commercial website hosted at the disputed domain name. Moreover, given the distinctiveness and international fame of the Complainant's trademarks, and the Respondent purports to provide movable and fixed furniture for star hotels, the Panel finds that it is more likely than not that the registration of the disputed domain name targeted such trademarks, and that the Respondent therefore knew, or at least should have known, of the existence of the Complainant's trademarks. In the Panel's view, the preceding elements establish the bad faith of the Respondent in registering the disputed domain name.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website, aimed at commercial gain, on which information regarding the products and services of the company Shenzhen Sofitel Furniture Co., Ltd. (which is presumably the Respondent) were provided, which ostensibly provides movable and fixed furniture for star hotels, luxury villas, etc. In the Panel's view, this shows on balance that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its 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 its website. Such registration and use of the disputed domain name constitutes bad faith under paragraph 4(b)(iv) of the Policy.

However, on the date of this Decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding." The Panel has reviewed all elements of this case, and attributes particular relevance to the fact that the disputed domain name contains the entirety of the Complainant's trademarks, to the high degree of distinctiveness and well-established fame of the Complainant's trademarks, to the fact that the Respondent chose to ignore the Complainant's cease-and-desist letter, and to the unlikelihood of any good faith use to which the disputed domain name may be put by the Respondent. In these circumstances, the Panel considers that the current passive holding of the disputed domain name by the Respondent does not prevent a finding of bad faith.

Finally, the Respondent failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <sz-sofitel.com> be transferred to the Complainant Soluxury HMC.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: June 27, 2022