

## **ADMINISTRATIVE PANEL DECISION**

Diamond Resorts Holdings, LLC v. Guadalupe Bautista Molina  
Case No. D2022-1624

### **1. The Parties**

The Complainant is Diamond Resorts Holdings, LLC, United States of America (“U.S.”), represented by Jackson Walker, LLP, U.S.

The Respondent is Guadalupe Bautista Molina, Mexico.

### **2. The Domain Name and Registrar**

The disputed domain name <diamondhotelsand-resorts.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 2022, 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.

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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2022.

The Center appointed Gustavo P. Giay as the sole panelist in this matter on June 24, 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**

The Complainant, Diamond Resorts Holdings, LLC, was founded in 1992 and is a leader in the vacation ownership and timeshare industry, with a network of over 350 vacation destinations in more than 30 countries. Since its foundation, the Complainant has used the trademark DIAMOND RESORTS in connection with its goods and services.

The Complainant owns a family of trademarks in connection with these goods and services, including its marks DIAMOND RESORTS and DIAMOND RESORTS INTERNATIONAL (collectively the DIAMOND RESORT Marks) for which it owns several trademark registrations in jurisdictions such as the U.S., Canada, and Mexico, including the following:

U.S. Trademark Registration No. 2,432,190 DIAMOND RESORTS INTERNATIONAL, registered on February 27, 2001, in class 36;

U.S. Trademark Registration No. 2,411,329 DIAMOND RESORTS INTERNATIONAL, registered on December 5, 2006, in class 42;

U.S. Trademark Registration No. 3,746,815 DIAMOND RESORTS, registered on February 9, 2010, in class 36; and

U.S. Trademark Registration No. 5,710,959 DIAMOND RESORTS, registered on March 26, 2019, in classes 35, 36, and 43.

The Complainant conducts its Internet activities under its DIAMOND RESORT Marks through its domain names, particularly “www.diamondresorts.com”.

The disputed domain name was registered on July 10, 2020, and since the filing of the Complaint, resolves to a website with limited content, namely: “Index of/ Name Last modified Site Description cgi/ 2021-11-16 20:37” – and that is all.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims that the disputed domain name is confusingly similar with the DIAMOND RESORT Marks, in which the Complainant has rights, and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The Complainant has never consented to the Respondents use of the DIAMOND RESORT Marks and there is no affiliation or connection between the Complainant and the Respondent.

The Respondent does not hold any property rights in or to any registered trademark for DIAMOND RESORTS or to any other similar name, term, phrase, symbol, device or combination of the foregoing.

The Respondent has never been known by the disputed domain name or by any other name that incorporates or is similar to the DIAMOND RESORT Marks, which are uniquely associated with the Complainant. The Respondent has been using that association to pass itself off as the Complainant and perpetuate fraud.

The disputed domain name was registered and has been used in bad faith. The Complainant has received consumer reports of being misled into believing that the disputed domain name and or associated webmail is affiliated with the Complainant in connection with and advance-fee scam involving timeshares. Copies of consumer reports were attached as Annex 7-A and Annex 7-B to the Complaint. For example, an imposter

defrauded a Complainant's customer via email using "[...]"@diamondhotelsand-resorts.com" email address designated to impersonate a legitimate Diamond Resorts employee. The email claims to provide the victim with instructions on how to complete a transfer of their vacation membership, which include instructions to wire payment to the imposter to complete the transfer. Due to the convincing nature of the Respondent's fraudulent scheme, the victim made the requested payment of USD 40,480.

The Complainant provides a further similar example of fraudulent email using the disputed domain name in which the victim made the requested payment of USD 47,250.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

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

### **A. Identical or Confusingly Similar**

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's DIAMOND RESORTS Marks.

The disputed domain name incorporates the Complainant's trademark DIAMOND RESORTS in its entirety with the inclusion of the terms "hotel" and also "and", which certainly do not prevent a finding of confusing similarity.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the DIAMOND RESORTS Marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

## B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by sending fraudulent email communications.

Moreover, as established in section 2.13 of [WIPO Overview 3.0](#): "Panels have categorically held that the use of a domain name for illegal activity (e.g., [...] impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

## C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's DIAMOND RESORTS Marks mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name. The Complainant has submitted evidence to support that the DIAMOND RESORTS Marks are widely known and registered and used many years before the Respondent registered the disputed domain name. The Respondent, when registering the disputed domain name, has targeted the

Complainant's DIAMOND RESORTS Marks with the intention to confuse Internet users and capitalize on the fame of the Complainant's name and trademark for its own monetary benefit.

The Respondent used the disputed domain name to send fraudulent emails to confuse Internet users, and to make them think that the person sending such emails is connected to the Complainant. The Complainant has proved that the disputed domain name has been used to send various emails to Complainant's customers who have been lured to make wire transfers to the imposter thinking that they were made to the Complainant. Section 3.1.4 of [WIPO Overview 3.0](#) provides that use of a domain name for phishing is manifestly considered bad faith.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)). The Panel finds that the Respondent has registered and uses the disputed domain intentionally to attempt to attract for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's widely used DIAMOND RESORT Marks as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under paragraph 4(b)(iv) of 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, <diamondhotelsand-resorts.com>, be transferred to the Complainant.

*/Gustavo P. Giay/*

**Gustavo P. Giay**

Sole Panelist

Date: July 8, 2022