

ADMINISTRATIVE PANEL DECISION

InterContinental Hotels Group PLC, Six Continents Limited v. Mark Harris Case No. D2022-2445

1. The Parties

The Complainants are InterContinental Hotels Group PLC and Six Continents Limited, United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Mark Harris, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <sixssenses.net> (the “Disputed Domain Name”) is registered with Gandi SAS (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 7, 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 Complainant on July 7, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 8, 2022.

The Center verified that the Complaint together with the amendment to 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 July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on August 9, 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, InterContinental Hotels Group PLC., (“IHC”) is one of the world’s largest hotel groups. The Complainant, Six Continents Limited (“Six Continents”), is a wholly owned subsidiary of IHC, and operates more than 1,400 hotel rooms in its own right and owns a portfolio of trademark registrations for the mark SIX SENSES, and variations of it, in numerous countries including United States Registration No. 4551528 registered on June 17, 2014. Both Complainants will be referred to as “the Complainant” throughout the decision.

The Complainant owns numerous domain names that comprise or contain the trademark SIX SENSES, including the domain name <sixsenses.com>.

The Disputed Domain Name was registered on June 14, 2022 and resolves to an inactive webpage with an error message. The Disputed Domain Name has been used to send fraudulent email.

5. Parties’ Contentions

A. Complainant

The Complainant cites its Australian Registered Trade Mark No. 1016645 registered on August 20, 2004, and numerous other registrations around the world for the mark SIX SENSES, as *prima facie* evidence of ownership.

The Complainant submits that its rights in the mark SIX SENSES predate the Respondent’s registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the SIX SENSES trademark, simply adding an extra letter “s” in the middle and that the generic Top-Level Domain (“gTLD”) “.net” is viewed as a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it resolves to an inactive webpage with an error message so the Respondent has no legitimate interest in or legitimate *bona fide* business purpose for using the Disputed Domain Name. The Complainant also states that there is no business or legal relationship between the Complainant and the Respondent, and that the Respondent is not known by the name “Six Senses”.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules and submits that the Respondent had used the Disputed Domain Name in fraudulent phishing “by sending emails via <@sixssenses.net>” to impersonate the Complainant which constitutes bad faith use.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Complainant has produced evidence to demonstrate that it has registered trademark rights in the mark SIX SENSES in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the SIX SENSES trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant’s trademark SIX SENSES; (b) with an additional letter “s” between the two words (c) followed by the gTLD “.net”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. (See section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: “sixssenses.”

As the relevant mark is recognizable in the Disputed Domain Name, in line with previous UDRP decisions, this Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s SIX SENSES trademark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the additional letter “s” interposed between the two words does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant’s trademark as a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name resolved to an inactive website; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name SIX SENSES, and has not been commonly known by the name SIX SENSES; and (iii) the Respondent is using the Disputed Domain Name in connection with a scam that impersonates the Complainant.

The Panel notes the evidence that the Disputed Domain Name in this proceeding was used to send an email to the Complainant on June 20, 2022 purporting to emanate from the Complainant's President. Panels have categorically held that the use of a Disputed Domain Name for illegal activity such as phishing can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13).

The Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that the Complainant must also demonstrate is that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, this Panel infers that the Respondent knew, or should have known, that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's widely used trademark (see *InterContinental Hotels Group PLC, and Six Continents Limited v. Privacy service provided by Withheld for Privacy ehf / Tony Carter*, WIPO Case No. [D2022-1913](#) ("their trademark is a known trademark within the hotel industry"); *InterContinental Hotels Group PLC, Six Continents Limited v. Privacy Service provided by Withheld for Privacy ehf / Nicholas Jaar*, WIPO Case No. [D2022-1579](#) ("the composition of the Domain Name clearly referencing the Complainant's widely used mark makes it clear that the Respondent registered the Domain Name with the Complainant in mind").

This Panel accepts, as the basis of a further finding of bad faith, the Complainant's uncontested submission (citing *Research In Motion Limited v. Dustin Picov*, WIPO Case No. [D2001-0492](#)) that "the Disputed Domain Name is 'so obviously connected with' Complainant, Respondent's actions suggest 'opportunistic bad faith' in violation of the Policy" (see: *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#) (which held that the domain name in question was "so obviously connected with the Complainant and its products that its very use by someone with no connection with Complainant suggests opportunistic bad faith").

Further, a gap of several years between registration of a complainant's trademark and respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration (see *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Disputed Domain Name was registered more than 18 years after the Complainant established registered trademark rights in the SIX SENSES mark.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name does not currently resolve to an active website. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the 'passive holding' doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the implausibility of any good faith use to which the domain name may be put" (See [WIPO Overview 3.0](#), section 3.3). This Panel notes that the evidence is that three of these factors are present in this proceeding. This Panel finds that use of the Disputed Domain Name to resolve to a passive website is also evidence of bad faith.

There is also evidence that the Disputed Domain name has been used for fraud or phishing to impersonate the President of the Complainant. Past panels have held that the use of a domain name for per se

illegitimate activity such as phishing is considered to be evidence of bad faith (see [WIPO Overview 3.0](#) at Section 3.1.4). In support of this contention is a copy of an email putatively from the President of the Complainant from the email address. The Complainant's submissions include uncontested evidence that a DNS 'mail exchange' (MX) record has been activated, allowing email to be routed to a mail server, in further evidence of bad faith under the policy in view of the increased risk of fraud or phishing (see: *Drägerwerk AG & Co. KGaA v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / BLACK ROSES*, WIPO Case No. [D2020-3167](#) ("Furthermore, the certificate and the MX record relating to the disputed domain name suggest that it is or was possibly used for email communication. Under these circumstances, the Panel considers it likely that the Respondent intended to use the disputed domain name as a support for a potential fraudulent email scheme, namely to impersonate the Complainant and extract personal or financial data from persons believing that the communication comes from the Complainant"). This Panel accepts the uncontested evidence support a finding of bad faith.

In the absence of any evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has taken the Complainant's trademark SIX SENSES and incorporated a version of it with the letter "s" interposed between the two words that comprise the trade mark, in the Disputed Domain Name, without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <sixssenses.net> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: August 23, 2022