

ADMINISTRATIVE PANEL DECISION

Six Continents Hotels, Inc. v. Md BelayetHossain, winux soft LTD
(www.winuxsoftltd.com)
Case No. D2022-3087

1. The Parties

The Complainant is Six Continents Hotels, Inc., United States of America (“US”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, US.

The Respondent is Md BelayetHossain, winux soft LTD (www.winuxsoftltd.com), Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <holidayinnresortbd.com> (the “Disputed Domain Name”) 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 August 20, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 23, 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 August 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2022. The Response was filed with the Center on September 4, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 5, 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 is a company within the InterContinental Hotels Group (“IHG”). Companies within the IHG own, manage, lease or franchise, through various subsidiaries, 5,994 hotels and 884,484 guest rooms in nearly 100 countries and territories around the world.

IHG owns a portfolio of hotel brands including Holiday Inn Hotels, Holiday Inn Club Vacations, and Holiday Inn Express. The Complainant’s Holiday Inn brand was founded in 1952 and today is used worldwide in connection with 1,178 hotels offering 212,038 rooms.

The Complainant, or its affiliates, owns approximately 1,390 registrations in at least 170 countries or regions worldwide for trademarks that consist of, or contain, the mark HOLIDAY INN, including for example US trademark registration number 0,592,539 for the words HOLIDAY INN, registered on July 13, 1954. These trademarks are referred to as the HOLIDAY INN trademark in this decision. It also owns over 200 trademarks which are for or include the words HOLIDAY INN RESORTS, including for example US trademark registration number 3,331,904, registered on November 6, 2007. These trademarks are referred to as the HOLIDAY INN RESORTS trademark in this decision,

The Complainant owns more than a thousand domain names including the mark HOLIDAY INN, including <holidayinn.com> which was registered on March 21, 1995.

The Disputed Domain Name was registered on June 8, 2019. It does not at present resolve to an active website. The filed evidence shows that in the past it has been redirected to a third party website which provides booking services for hotels in Bangladesh. The Complainant has at least one hotel in Bangladesh using the HOLIDAY INN Trademark (the “Holiday Inn Dhaka City Centre”).

5. Parties’ Contentions

A. Complainant

The Complainant’s case is set out in considerable detail and cites numerous previous UDRP decisions. The Panel does not consider it necessary to repeat everything the Complainant has said. Its contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to both the HOLIDAY INN and HOLIDAY INN RESORTS Trademarks. The letters “bd” presumably referring to Bangladesh do not distinguish the Disputed Domain Name

The Respondent has no rights or legitimate interests in the term HOLIDAY INN or HOLIDAY INN RESORTS. By using the Disputed Domain Name in connection with a website that offers hotel booking services in Bangladesh (a service that competes with the Complainant’s offering of hotel services, including in Bangladesh,) the Respondent is not engaged in a *bona fide* offering of goods or services under the Policy – and, therefore, the Respondent cannot demonstrate rights or legitimate interests under paragraph 4(c)(i) of the Policy.

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. It says the case is the same as *Six Continents Hotels, Inc., v. Bunjong Chaiviriyawong*, WIPO Case No. [D2013-1942](#), where the panel found “Concerning the use of the disputed domain name, the Complainant has proven to the satisfaction of the Panel that the disputed domain name resolves to a web page that advertises and offers hotel services in competition with the Complainant. In the Panel’s opinion the Respondent, by such use, intentionally attempted to attract Internet users, expecting to reach the website corresponding to the Complainant’s services and to obtain information about the Complainant’s activity, to services related to another hotel, by creating a likelihood of confusion with the Complainant’s trademark and business, and damaging the Complainant’s business”.

B. Respondent

The Response that has been filed uses the online template provided by the Center. This has been completed in a manner which provides no real information. The Respondent has also made an entry in the section concerning consent to transfer, but the Panel is unsure what the entry means (it simply says “The Respondent consents to the remedy requested by the Complainant and agrees to the disputed domain name(s)”) so the Panel intends to assume the Respondent is not consenting to transfer. The Response in substance says “As a response to the complain about domain ‘holidayinnresortbd.com’, we want to inform you that, we have no intention to attract for commercial gain, Internet users to our web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of our web site or location or of a product or service on our web site or location. We are using the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark(s) or service mark(s) at issue with the Complainant’s [sic]”.

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the HOLIDAY INN trademark and the HOLIDAY INN RESORTS trademark. The Panel finds the Disputed Domain Name is confusingly similar to each of these trademarks. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662). It is established that, where a mark is recognizable within a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).

It is also established that the addition of terms do not prevent a finding of confusing similarity under the first element (*PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. [D2006-0189](#), [WIPO Overview 3.0](#), section 1.8).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, 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 the respondent 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 or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the HOLIDAY INN trademark or the HOLIDAY INN RESORTS trademark. The Complainant has prior rights in the HOLIDAY INN trademark and the HOLIDAY INN RESORTS trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Taking into consideration the composition of the disputed domain name, the Panel takes note of the additional term "resort", descriptive of the services offered under the Complainant's mark, and the additional letters "bd", presumably in reference to "Bangladesh" wherein the Complainant operates at least one hotel under its trademark, and the Panel finds that such terms coupled together with the Complainant's HOLIDAY INN trademark are such to carry a risk of implied affiliation that cannot constitute fair use, particularly given the redirection of the disputed domain name to competing commercial services. See [WIPO Overview 3.0](#), sections 2.5.1 and 2.5.3.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the fact that the Disputed Domain Name was redirected to a website which provided services which compete with the Complainant leads the Panel to conclude the registration and use were in bad faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances the Panel agrees with the Complainant that factor (iv) applies as the Respondent was seeking to achieve commercial gain by diverting customers looking for the Complainant's services to a competing website. The Panel also notes that although the Respondent has filed a Response it has not provided anything more than a bare assertion that its actions are not within the terms of paragraph 4(b) of the Policy, and has not presented any case of good faith that it might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <holidayinnresortbd.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: October 19, 2022