

ADMINISTRATIVE PANEL DECISION

Rixos Hospitality B.V. v. Vjacheslav Hotin
Case No. D2022-3787

1. The Parties

The Complainant is Rixos Hospitality B.V., Netherlands, represented by Thomsen Trampedach GmbH, Denmark.

The Respondent is Vjacheslav Hotin, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <rixos-sochi.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 October 11, 2022. On October 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 October 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 18, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on November 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

Complainant is the owner and operator of a chain of luxury hotels and resorts. Complainant operates premium resorts and city hotels in key regions featuring wellness and spa centers, wedding halls, restaurants and bars. Complainant operates 30 luxury resorts across. Specifically, Complainant currently owns and administrates eleven resorts in Türkiye; seven in the United Arab Emirates; four in Egypt; five in Kazakhstan; one in Croatia; one in Qatar; and one in Russian Federation (the). Specifically in the Russian Federation, Complainant established their 5-stars hotel Rixos Krasnaya Polyana Sochi in the year 2013. The Rixos Krasnaya Polyana Sochi hotel is located on the mountains surrounding Sochi, location of the 2014 Winter Olympics.

Complainant owns several registered trademarks for the term RIXOS in more than 80 countries, including the European Union (Reg. No. 1223248, registered on June 26, 2014).

The Complainant uses the domain name <rixossochi.com>.

The disputed domain name was registered on November 3, 2021. Until February 10, 2022, the disputed domain was used to impersonate the official online presence of Complainant, by displaying their logo and pictures of Rixos Krasnaya Polyana Sochi hotel.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical to the RIXOS trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

According to the Complaint, the Respondent demonstrated its awareness of the Complainant's rights in the RIXOS trademark firstly by associating the terms "rixos" and "sochi" at the disputed domain, in clear reference to Complainant's hotel located in Russia; then, by associating a website impersonating Rixos Krasnaya Polyana Sochi to the disputed domain name. The fraudulent website included the RIXOS trademark and pictures of the Rixos Krasnaya Polyana Sochi hotel. The described use of the Complainant's trademark at the disputed domain name proves that Respondent had full knowledge of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the disputed domain name is identical or confusingly similar to 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid RIXOS trademark registrations. The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the RIXOS trademark in its entirety with the addition of the term "sochi".

As numerous UDRP panels have held, where at least a dominant feature of the relevant trademark is recognizable in the domain name, it is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. The addition of the geographic term "sochi" does not prevent the finding of confusing similarity.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

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

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name. The Respondent is using the disputed domain name to impersonate the Complainant business which cannot be considered a *bona fide* offer of goods or services.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case.

The disputed domain name is composed of the Complainant's distinctive RIXOS mark along with a geographical term where the Complainant provides services under its mark. Accordingly, the construction of the disputed domain name carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use. Coupled together with the impersonating nature of the content found at the disputed domain name, which is further described below, it is clear that the Respondent's intent was to mislead Internet users expecting to find the Complainant, which cannot confer on the Respondent any rights or legitimate interests.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

According to the Complaint, the Respondent demonstrated its awareness of Complainant's rights in the RIXOS trademark firstly by associating the terms "Rixos" and "Sochi" at the disputed domain, in clear reference to Complainant's hotel located in Russia; then, by associating a website impersonating Rixos Krasnaya Polyana Sochi to the disputed domain. The website included the RIXOS trademark and pictures of the Rixos Krasnaya Polyana Sochi hotel. The described use of Complainant's trademark at the disputed domain name proves that Respondent had full knowledge of Complainant's trademark. The design of the website associated with the disputed domain name, which included Complainant's name, trademark logo, and pictures of their Russian hotel, may have given users the false impression that the disputed domain name is licensed, sponsored, or otherwise approved by Complainant.

The Panel finds that such behavior is evidence of bad faith.

In light of the evidence, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to her website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and services and products offered on it under paragraph 4(b)(iv) of the Policy.

Therefore, the Panel concludes that the Complainant has made out its case that the disputed domain name was registered and used in bad faith and has satisfied the third limb of the Policy under paragraphs 4(b)(iii) and 4(b)(iv).

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 <rixos-sochi.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: December 8, 2022