

ADMINISTRATIVE PANEL DECISION

Accor v. 雪林

Case No. D2022-4366

1. The Parties

The Complainant is Accor, France, represented by Dreyfus & associés, France.

The Respondent is 雪林, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <allaccor-tourism.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 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 December 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 22, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on December 29, 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 global hotel operator of economic, mid-scale, upscale, and luxury hospitality services.

The Complainant is the owner of the following trademark registrations:

- International Trademark No. 727696 for ACCOR, registered on December 28, 1999, designating *inter alia* China, and covering goods and services in classes 16, 39, and 42;
- International Trademark No. 1471895 for ACCOR (device), registered on December 24, 2018, designating *inter alia* China, and covering goods and services in classes 35, 36, 38, 39, 41, 42, 43, and 44;
- International Trademark No. 1472728 for ALL (device), registered on December 24, 2018, designating *inter alia* China, and covering services in classes 35, 36, 38, 39, 41, 42, 43, and 44; and
- International Trademark No. 1469600 for ALL ACCOR. LIVE LIMITLESS (device), registered on December 24, 2018, designating *inter alia* China, and covering services in classes 35, 36, 38, 39, 41, 42, 43, and 44.

The Complainant also owns the domain names <accor.com>, registered on February 23, 1998 and <allaccor.com>, registered on October 25, 2018.

The disputed domain name was registered on October 12, 2022 and at the time of drafting this Decision, it redirects to an inactive page, however, it used to resolve to a webpage requiring login credentials and reproducing the Complainant's logo.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

(1) The disputed domain name is virtually identical or at least confusingly similar to the Complainant's trademarks ACCOR and ALL, and to its official domain name <allaccor.com>. The disputed domain name reproduces the Complainant's trademarks ACCOR and ALL entirely combined with the term "tourism" intersected by a hyphen, which does not prevent any likelihood of confusion. The mere adjunction of a generic Top-Level Domain ("gTLD") such as ".com" is insufficient to avoid a finding of confusing similarity.

(2) The Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademarks. The Respondent cannot claim prior rights or legitimate interests in the disputed domain name as the ACCOR and ALL trademarks precedes the registration of the disputed domain name for years. The Respondent has not made any reasonable and demonstrable preparations to use the disputed domain name.

(3) Taking into account the worldwide reputation of the Complainant and its trademarks, the composition of the disputed domain name which imitates the Complainant's trademarks ACCOR and ALL, as well as the fact that the mentioned trademark significantly predates the registration date of the disputed domain name, it is likely to be believed that the Respondent registered the disputed domain name based on the notoriety and attractiveness of the Complainant's trademarks to divert Internet traffic to its website. Passive holding does not preclude a finding of bad faith in the circumstances of the case.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The onus of proving these elements is on the Complainant. Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The Respondent failed to submit a response in accordance with paragraph 5(a) of the Rules. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, the panel's decision shall be based upon the complaint.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has demonstrated ownership of its ACCOR and ALL trademarks. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the ACCOR and ALL marks. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel is also of the view that the disputed domain name is confusingly similar to the Complainant's trademarks because it reproduces the Complainant's trademarks ACCOR and ALL entirely combined with the term "tourism" intersected by a hyphen, which does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7 and 1.8. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademarks ACCOR and ALL.

The addition of the gTLD ".com" shall be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration. See [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks and that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of “proving a negative”, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

The Complainant made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests in the disputed domain name. The Panel has found out that the registration of the Complainant’s ACCOR and ALL trademarks preceded the registration of the disputed domain name for years. The Respondent is neither affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its trademarks ACCOR and ALL, or to seek registration of any domain name incorporating said trademarks. The Respondent is not commonly known by the disputed domain name or the name ACCOR or ALL, in accordance with paragraph 4(c)(ii) of the Policy. There is simply no evidence that the Respondent may be commonly known by the name ACCOR or ALL.

The disputed domain name currently resolves to an inactive webpage, but it used to resolve to a webpage requiring login credentials and reproducing the Complainant’s logo. According to this Panel, the Complainant also proved that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor is it using the disputed domain name in connection with a *bona fide* offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraphs 4(c)(i) and 4(c)(ii) of the Policy given that the website at the disputed domain name is not used legitimately by the Respondent.

The Respondent has not provided any rebuttal of the Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant has demonstrated the Respondent’s bad faith registration and use of the disputed domain name.

The Complainant holds multiple trademark registrations for the trademarks ACCOR and ALL including in China (where the Respondent is located), that predate the registration of the disputed domain name. Further, the Complainant asserts that it is well-known throughout the world, including in China. It should be also taken into account that prior UDRP panels have earlier acknowledged the Complainant’s worldwide reputation, making it unlikely that the Respondent was not aware of the Complainant’s rights in its trademarks (*Accor v. Xu Guo Xing*, WIPO Case No. [D2017-0192](#); *Accor v. Domains By Proxy, LLC / Abdulrahman Almarri*, WIPO Case No. [D2015-0777](#)). Hence, the Panel finds that the Respondent knew or should have known of the Complainant’s trademark and deliberately registered the confusingly similar disputed domain name (see section 3.2.2, [WIPO Overview 3.0](#)).

Furthermore, the Panel is also of the view that the disputed domain name used to resolve to a webpage requiring login credentials and reproducing the Complainant’s logo for the purpose of attracting Internet

users to the Respondent's website by creating a likelihood of confusion - or at least an impression of association – between ACCOR and ALL trademarks and the disputed domain name.

The disputed domain name currently resolves to an inactive website. It has been established in many UDRP cases that passive holding under the appropriate circumstances falls within the concept of a domain name being used in bad faith. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: “[w]hile 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademarks of the Complainant are distinctive and widely used. Previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that the Complainant has established its case under 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 <allaccor-tourism.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: January 12, 2023