

ADMINISTRATIVE PANEL DECISION

Accor v. 雪林

Case No. D2022-5013

1. The Parties

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

The Respondent is 雪林, Hong Kong, China.

2. The Domain Names and Registrar

The disputed domain names <allaccor-agent.com>, <allaccoragent.com>, <allaccortourism-au.com>, and <allaccortourism.com> are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 28, 2022. On December 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 4, 2023, 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 January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 3, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on February 15, 2023. 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 well-known French based group dedicated for decades to operating worldwide hotels, resorts, and vacation properties under different brands including ACCOR. The group is notably present in China.

The Complainant also operates the ALL - Accor Live Limitless loyalty program, which offers its clients experiences and rewards with promotional offers and discounts in its hotels.

The Complainant owns a number of trademarks formed with ACCOR including:

- French Trademark No. 4464429 for ACCOR (device), registered on June 26, 2018, and covering services in classes 35, 36, 38, 39, 41, 42, 43, and 44;
- 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 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 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.

In addition, the Complainant owns and uses for its official Internet presence the domain names <accor.com>, registered on February 23, 1998; and <allaccor.com>, registered on October 25, 2018.

The disputed domain names were registered at the following dates:

<allaccortourism-au.com> on November 4, 2022;
<allaccortourism.com> on November 10, 2022;
<allaccoragent.com> on November 18, 2022; and
<allaccor-agent.com> on November 23, 2022.

They resolve to inactive pages.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant alleges that the disputed domain names are virtually identical or at least confusingly similar to the Complainant's trademarks ACCOR and ALL, and to its official domain names <allaccor.com> and <accor.com>. The disputed domain names reproduce the Complainant's well-known trademarks ACCOR and ALL entirely combined with the terms "tourism" or "agent" directly targeting the Complainant's field of activity. Additionally, the disputed domain name <allaccortourism-au.com> is only adding "au" as a suffix to the Complainant's trademarks, these two letters referring to Australia contributes to the likelihood that consumers will believe that the services offered originate from an Australian based affiliate of the Complainant. Finally, the adjunction of a generic Top-Level Domain ("gTLD") such as ".com" is insufficient to avoid a finding of confusing similarity.

Secondly, the Complainant mentions that the Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its well-known 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 names as the ACCOR and ALL trademarks precede the registration of the disputed domain names for years. In addition, the Respondent has not made any reasonable and demonstrable preparations to use the disputed domain names.

Thirdly, the Complainant states that the disputed domain names were registered and are being used in bad faith. The worldwide reputation of the Complainant (also in China where the Respondent is based) and its well-known trademarks could not be ignored by the Respondent when registering the disputed domain names. The disputed domain names imitate both of the Complainant's trademarks ACCOR and ALL which demonstrates that the Respondent knew of their existence. Furthermore, the Complainant's trademarks significantly predate the registration date of the disputed domain names and a quick Internet search would have shown their existence to the Respondent. The absence of license or permission to use the Complainant's well-known trademarks is an indication of bad faith use. In addition, the disputed domain names are likely to interfere with the Complainant's operations and business. Finally, the Complainant underlines that passive holding does not prevent a finding a bad faith depending on the circumstances like in this case.

For the above-mentioned reasons, the Complainant requests transfer of the disputed domain names in its favour.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Complainant has shown to have obtained trademark rights in ACCOR and ALL in many jurisdictions including in China where the Respondent is based.

According to section 1.7 of the 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 complainant's trademark and the disputed domain name. This test

typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademarks ACCOR and ALL since they contain these marks in their entirety. The addition of the term "tourism", "au", or "agent" in the disputed domain names does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

Furthermore, the gTLD ".com" is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain names.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient statements in order to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain names.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks. There is no evidence showing that the Respondent would be commonly known by the disputed domain names or that a legitimate business would be run by the Respondent under the disputed domain names.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain names on the part of the Respondent in the proceeding.

As already stated before, nothing is contained in the case file which would show that the Respondent has made a legitimate noncommercial or fair use of the disputed domain names or that the Respondent has any rights or legitimate interests in the disputed domain names. All of the disputed domain names resolve to inactive websites.

Furthermore, the disputed domain names combine both trademarks ACCOR and ALL in their entirety with the additional term "tourism", "au", or "agent" which carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain names.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the holder has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain names were registered and are being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's trademark ACCOR and the combination of both marks ACCOR and ALL owned and widely used by the Complainant, it is inconceivable to the Panel that the Respondent registered the disputed domain names without prior knowledge of the Complainant and the Complainant's marks. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain names that he or she chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain names were registered in bad faith.

The disputed domain names currently resolve to inactive websites.

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 name 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 names 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 names. The trademarks of the Complainant are widely used and known. The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain names and the Panel

does not find any such use plausible. The silence of the Respondent in the proceeding is an additional evidence of bad faith in these circumstances.

Moreover, previous UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark (particularly domain names incorporating the mark plus a descriptive term) 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 Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain names.

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 names <allaccor-agent.com>, <allaccoragent.com>, <allaccortourism-au.com>, and <allaccortourism.com> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: March 2, 2023