

ADMINISTRATIVE PANEL DECISION

Sandals Resorts International 2000 Inc. v. Alan Wolach
Case No. D2023-2141

1. The Parties

The Complainant is Sandals Resorts International 2000 Inc., Panama, represented by Dechert, United Kingdom.

The Respondent is Alan Wolach, Mexico.

2. The Domain Name and Registrar

The disputed domain name <beaches.vacations> 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 May 15, 2023. On May 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2023, 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 amended Complaint on May 26, 2023.

The Center verified that the Complaint, together with the amended 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 May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Response was filed with the Center on June 20, 2023, based on the Respondent’s Whols-registered address and time zone.

The Center appointed John Swinson as the sole panelist in this matter on July 17, 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 an international holiday resort operator. The Complainant operates resorts named BEACHES RESORTS in Providenciales (Turks & Caicos), Negril (Jamaica), and Ocho Rios (Jamaica). The Complainant has won many awards for operating family-friendly resorts.

The Complainant promotes its resorts on a website at the domain name <beaches.com>. This domain name was created in 1995.

The Complainant and its corporate group own an international portfolio of trademark registrations for BEACHES, including for example Mexican trademark registration number 226816 with a registration date of November 29, 1995.

The disputed domain name was registered on March 20, 2023.

Little information is known about the Respondent. According to the Registrar's records, the Respondent has an address in Mexico. A person with the same name from Mexico was unsuccessful in a prior dispute under the Policy, but little information is given about the Respondent in that decision. See *Société Air France v. PrivacyDotLink Customer 559587 / Alan Wolach*, WIPO Case No. [D2016-0802](#).

At the present time, the disputed domain name resolves to a website with pay-per-click (PPC) links that are generated by the Sedo system. The links include text such as "Beach Hotel", "Beach Resort", "Orlando Attractions", and "Accommodation".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name incorporates the Complainant's trademark in its entirety and adds the generic Top-Level Domain ("gTLD") ".vacations" which is descriptive of the Complainant's services.

The Complainant also notes that the Complainant and its predecessor-in-title have been successful in prior disputes under the policy, including disputes involving the BEACHES trademark where it was found to have substantial reputation and goodwill. See, for example, *Gorstew Limited v. Media Insight*, WIPO Case No. [D2006-1467](#).

There is no obvious reason why the disputed domain name has been selected by the Respondent, leading to the suggestion that it was selected to trade off the reputation of the Complainant's trademark.

B. Respondent

The Respondent submitted a short, informal Response. In total, the Response is as follows:

"I consider that the domain that is under my legitime (sic) property beaches.vacations is a generic name registered with a gTLD generic domain name extension. I bought the domain legally and the word beaches is

a public word that everybody can use and is listed in the dictionary. I understand that the word beaches is registered as a trademark but they don't have the rights to take it because is generic and for public of use (Example of generic words: nature, earth, mountain, ocean, street, car, blue, sand etc). I strongly condemn the udrp that they are taking against my domain name because is legitimate and will be used in good faith.”

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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Respondent is not using (and there is no evidence that the Respondent has demonstrable preparations to use) the disputed domain name in connection with a *bona fide* offering of goods or services. At present, the disputed domain name resolves to webpage with PPC links relating to beach vacations, but also to accommodation generally, vacations not at the beach, and other services. Some of these services likely compete with the Complainant's services. Use of a domain name to resolve to a website that generates revenue through PPC links advertising good or services competitive of those offered by the complainant is generally not considered a *bona fide* offering of goods or services under the Policy. See, for example, *BioMérieux v. Robert Sloan*, WIPO Case No. [D2019-2865](#), and [WIPO Overview 3.0](#), section 2.9.

Section 2.9 of [WIPO Overview 3.0](#) also states that "Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark".

In the present case, the PPC links include links such as "Orlando Attractions" and "Accommodation" and links about Bangkok. Orlando is a location in Florida that is not near the beach. Bangkok is about 150 km from the beach. "Accommodation" is a general term that is not necessarily associated with the beach. Accordingly, it is apparent that the PPC links do not genuinely relate to "beaches".

The Respondent states that he intends to use the disputed domain name in good faith but provides no details or evidence of such intended use. See WIPO Overview 2.10.1 stating "merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice." On the evidence before the Panel, the disputed domain name has not otherwise been used by the Respondent.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant provided evidence of its long-standing trademark registration including in Mexico (where the Respondent is located) and of the Complainant's reputation in the region. Contrast *Legally Co v. Domain Administrator, NameFind LLC*, WIPO Case No. [D2018-1958](#).

The Respondent does not assert that he was unaware of the Complainant or the Complainant's well-known BEACHES trademark when he registered the disputed domain name. The Respondent provides no real details of why he registered the disputed domain name or his plans for the disputed domain name.

The Respondent states that BEACHES is a dictionary term. However, this alone does not prove that the Respondent acted in good faith. Many trademarks are also dictionary terms, such as APPLE, ORANGE, CANON, FOX, and SKY. To succeed on this line of argument, the Respondent must at least demonstrate,

by evidence, that he registered the disputed domain name because of its dictionary meaning and that he will use it for that meaning, and not because of the trademark rights of the Complainant.

Here, the Respondent registered “beaches”, which is the plural of the dictionary word “beach”. The Respondent provided no explanation for why he registered “beaches” in the plural rather than “beach”. The disputed domain name is identical to the Complainant’s trademark and is not identical to the dictionary word “beach”. The Complainant asserts that the Respondent registered the disputed domain name knowing of the Complainant and because of the Complainant’s reputation. The Respondent does not address this in his Response.

Where it is unclear why a domain name was initially registered and the domain name is subsequently used to attract Internet users by creating a likelihood of confusion with a complainant’s mark, panels have found that paragraph 4(b)(iv) of the Policy, read in light of paragraph 4(a)(ii), can support an inference of bad faith registration for the respondent to rebut. In short, paragraph 4(b)(iv) provides an evidentiary presumption of bad faith registration where there is evidence of a certain kind of bad faith use. See *Pixers Ltd. v. Whois Privacy Corp.*, WIPO Case No. [D2015-1171](#), as quoted in *VIOOH Limited v. Qing Shui*, WIPO Case No. [DCO2022-0017](#); and *Carvana, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-2191](#).

Here, the key evidence before the Panel is the Respondent’s use of the disputed domain name for PPC advertising. The use of the disputed domain name to generate PPC revenue by advertising competitors of the Complainant – some of whom are not at the beach, which squarely calls into question any claim that the disputed domain name was registered because of its value as the dictionary word “beaches” as opposed to the relevant mark – or general travel services (such as online travel agencies) is evidence of bad faith for purposes of the Policy. See, for example, *Tadım Gıda Maddeleri Sanayi ve A.Ş. v. Reserved for Customers, MustNeed.com*, WIPO Case No. [D2017-0936](#). The Respondent has provided no good faith evidence to respond to this evidence of bad faith use.

The Panel finds, based on the evidence before the Panel, that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <beaches.vacations> be transferred to the Complainant.

/John Swinson/
John Swinson
Sole Panelist
Date: July 31, 2023