

## **ADMINISTRATIVE PANEL DECISION**

Accor v. John Smith; Gorkem Atalay, a; Orhan Alish Yusein, Orhan Alish Yusein; and atakan ar\u0131k  
Case No. D2023-2369

### **1. The Parties**

The Complainant is Accor, France, represented by SANTARELLI, France.

The Respondents are John Smith, Türkiye; Gorkem Atalay, a, North Macedonia; Orhan Alish Yusein, Orhan Alish Yusein, Bulgaria; and, atakan ar\u0131k, Türkiye.

### **2. The Domain Names and Registrar**

The disputed domain names <mercurecasino.app>, <mercurecasinogir.com>, <mercurecasinogiris.com>, <mercurecasinosgiris.com>, and <mercuretv.live> are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2023. On June 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 2, 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 June 6, 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. No Response was filed with the Center. The Respondent Orhan Alish Yusein, Orhan Alish Yusein sent two informal communications to the Center on June 9, 2023 and June 27, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 18, 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 multinational hospitality company, established in 110 countries, which owns and operates hotels under the MERCURE trademark. Said mark is in force for multiple jurisdictions worldwide, including Bulgaria, North Macedonia, and Türkiye, where the Respondents appear to be located. For example, the Complainant is the owner of the following registered trademarks:

Bulgaria Registered Trademark number 162249 for the mark MERCURE, registered on September 16, 2021, for various hotel services in Class 43;

International Registered Trademark number 403334 for the mark MERCURE, registered on December 14, 1973, designating North Macedonia since October 8, 2015, registered for “All hotel and catering services” in Class 42;

International Registered Trademark number 615787 for the mark MERCURE, registered on December 20, 1993, designating Türkiye since March 10, 2005, registered in Classes 8, 16, and 42, notably for “hotel and restaurant services”; and

Türkiye Registered Trademark number 2012 09017 registered on March 27, 2013, in Class 43, for “hotel services”, in respect of the following “m Mercure” device:



The Complainant operates in 5,300 locations, with a total capacity of 777,714 rooms. It operates in multiple segments, namely luxury, premium, midscale, and economy. The Complainant acquired the MERCURE hotel brand in 1975. Casinos exist within or next to some of the Complainant’s hotels, such as the MERCURE Hotel in Namur, Belgium.

The disputed domain names were registered as follows:

<mercurecasino.app> was registered on December 26, 2022;  
<mercurecasinogir.com> was registered on October 31, 2022;  
<mercurecasinogiris.com> was registered on July 18, 2022;  
<mercurecasinosgiris.com> was registered on January 23, 2023; and  
<mercuretv.live> was registered on Aug 22, 2022

The registrant of <mercurecasino.app> is John Smith;  
The registrant of <mercurecasinogir.com> is Gorkem Atalay, a;  
The registrant of <mercurecasinogiris.com> is Orhan Alish Yusein, Orhan Alish Yusein; and  
The registrant of <mercurecasinosgiris.com> and <mercuretv.live> is atakan ar\u0131k.

All but one of the websites associated with the disputed domain names feature an “M Mercure” or “M” logo:



They also share a color scheme of white, black, and gold, are delegated via nameservers associated with the <cloudflare.com> domain name, and appear to offer gaming and casino services. The outlier in these respects is the website associated with the disputed domain name <mercurecasinosgiris.com>, which features a white color scheme, is delegated via the domain name <dns-parking.com>, and has the appearance of being partially incomplete. All of the websites associated with the disputed domain names feature the Turkish language exclusively or substantially.

## 5. Parties' Contentions

### A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The disputed domain names reproduce the Complainant's trademark in its entirety. It is added to generic terms, "casino(s)", "tv" and/or "giris" / "gir", the latter two words meaning connection, login or enter in Turkish. These words and/or the Top-Level Domains do not prevent any likelihood of confusion with the Complainant's trademark. Such composition may lead Internet users to believe that the disputed domain names are managed by the Complainant or will lead a user to an official account promoting the Complainant's hotels or its services, including casinos or dedicated TV services.

Rights and legitimate interests

The Complainant has given no authorization to the Respondents to permit the registration of the disputed domain names. The Respondents are not affiliated with the Complainant in any way and have not been authorized by the Complainant either to use and register the Complainant's trademark, or to seek registration of any domain name incorporating this trademark. The Respondents are not known by the brand "Mercure". In the absence of any license or permission from the Complainant to use such a widely known trademark, no actual or contemplated rights or legitimate interests could reasonably be claimed by the Respondents regarding the disputed domain names.

The Respondents are not making fair use of the disputed domain names. An intent to make commercial gains is displayed. Internet users will be led to believe that the disputed domain names and associated websites are endorsed by or related to the Complainant and that they will direct them to an official site of the Complainant's hotels or casinos therein. This cannot constitute a *bona fide* offering of goods or services.

Registered and used in bad faith

The websites associated with the disputed domain names promote the Respondent's "Mercurecasino" system and reproduce the Complainant's MERCURE trademark. By using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to the Respondents' websites, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondents' websites.

The Respondents' logotype appearing on the websites associated with the disputed domain names <mercurecasino.app>, <mercurecasinogir.com>, <mercurecasinogiris.com>, and <mercuretv.live> is very close to the "M" logotype used by the Complainant in relation to its MERCURE trademark. This can be no coincidence.

The Complainant believes that the Respondents are behind the registration of some 265 domain names all including "mercure", or "mercure" with "casino", since January 2022, including the disputed domain names. Some of these redirect to online gaming websites sharing the same logotype as the majority of the disputed domain names in the present case. While all such domain names are registered, only a few are active at

any one time. A link on the website associated with the disputed domain name <mercuretv.live> suggests that it was intended to redirect to one of the other disputed domain names, namely <mercurecasinosgiris.com> but instead links to the website for the domain name <mercurecasino426.com> which itself specifies that “Our next address will be ‘mercurecasino427.com’ and the ranking will continue this way”. Many of these 265 domain names were registered within a short space of time in January 2023, suggesting that they were probably registered by the Respondents. The cascading link redirection and the fact that the active website is regularly moving from one domain name to another, but always showing the Complainant’s logotype and trademark MERCURE in relation with online gaming and casino services, clearly shows that the Respondents have registered and are using the disputed domain names in bad faith. Furthermore, the use of the registrant names “atakan ar\u0131k” and “John Smith” also suggest that the Respondents concerned are using false names.

## **B. Respondent**

The Respondents did not reply to the Complainant’s contentions. Informal communications were received from the Respondent named Orhan Alish Yusein, Orhan Alish Yusein (the registrant of <mercurecasinosgiris.com>) on June 9, 2023, and on June 27, 2023. These did not contain any substantive Response. The second such email contained a question as to whether the writer should transfer the disputed domain name concerned but there have been no further communications and no such transfer has been effected.

## **6. Discussion and Findings**

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

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### **A. Preliminary issue: Consolidation of Complaints against Multiple Registrants**

The Complainant has not directly requested that its Complaints against the various registrants should be consolidated, although its discussion of the fact that there appears to be some connection between the registrants amounts to a *de facto* request therefor. Paragraph 10(e) of the Rules provides that a panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and the Rules. In a case where the holders of the domain names concerned have different names, consolidation may be appropriate where the particular circumstances of the case indicate that common control is being exercised over the domain names, or over the websites to which said domain names resolve, provided also that such consolidation would be fair and equitable to all parties and is procedurally efficient (see section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and the cases cited there).

Common control may be indicated where various commonalities are present among the domain names concerned. This may include shared registrant data, such as administrative or technical contacts, postal addresses, telephone numbers, or email addresses. A proximity in the dates of registration may be relevant. Equally, shared technical arrangements and configurations may be relevant, such as common webserver IP addresses, nameservers, registrars, or web hosting arrangements. Finally, commonalities of use indicating a sufficient unity of interests may be of significance, such as similar activities and designs among the websites associated with the domain names concerned. Where sufficient commonalities are found, the domain name

holders concerned may essentially be treated as a single domain name holder for purposes of paragraph 3(c) of the Rules.

In the present case, the Panel has no hesitation in finding that there are sufficient commonalities between the entities behind the disputed domain names, reasonably indicating that they are likely to be under common control. All were registered in a relatively short space of time, between August 2022 and January 2023. All were registered with the same Registrar. The associated websites all make exclusive or substantial use of the Turkish language. All but one of the disputed domain names are delegated to nameservers from the same hosting provider. All but one of the associated websites share the same color scheme of white, black, and gold. They feature the same logotype. Insofar as there is an outlier, this is <mercurecasinosgiris.com>, which is partially incomplete, features a different color scheme, does not use the logotype, and is delegated to different nameservers. However, this disputed domain name is strongly linked to the others in that the registrant name and contact address is identical to that of <mercuretv.live>, and the website associated with <mercuretv.live> specifically references <mercurecasinosgiris.com> as the intended destination of a hyperlink, even though the link itself is not completed.

Given the general thrust of the Complainant's submissions regarding apparent commonalities between the disputed domain names, it must also be noted that none of the registrants (including the registrant who engaged in informal communications with the Center) have asserted their independence from the others.

In all of these circumstances, the Panel determines that it is appropriate to consolidate the multiple registrants of all of the disputed domain names in this case.

## **B. Identical or Confusingly Similar**

The first element assessment under the Policy is typically conducted in two parts. First, the Complainant must demonstrate that it possesses UDRP-relevant rights in a trademark. Secondly, the disputed domain names must be compared to any such trademark on an individual basis, in order to assess identity or confusing similarity. The comparison is usually made on a relatively straightforward side-by-side basis, typically disregarding the Top-Level Domain concerned as being primarily required for technical reasons. On the basis of such a comparison, if the disputed domain names are alphanumerically identical to the trademark, identity will generally be found. If the trademark is otherwise identifiable in the disputed domain names, confusing similarity will usually be found.

The Panel finds that the Complainant has UDRP-relevant rights in its MERCURE registered trademark as outlined in the factual background section above. Comparing this to each of the disputed domain names, it may be seen that all of these reproduce the Complainant's mark in its entirety, coupled with the words "casino(s)", "tv" or "giris" / "gir", these latter two being a Turkish translation of the word "login" or similar. The addition of these words would not prevent a finding of confusing similarity under the Policy (see section 1.8 of the [WIPO Overview 3.0](#)) and the Complainant's mark is fully recognizable in each of the disputed domain names.

In all of the above circumstances, the Panel finds that each of the disputed domain names is confusingly similar to a trademark in which the Complainant has rights and therefore that the Complainant has carried its burden in terms of the requirements of paragraph 4(a)(i) of the Policy.

## **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain names:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (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.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights to or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that no authorization has been provided to the Respondents permitting the registration of the disputed domain names, that the Respondents are not affiliated with the Complainant in any way, that the Respondents are not known by the term “mercure”, and that no actual or contemplated rights or legitimate interests could reasonably be claimed by the Respondents.

The burden of production, therefore, shifts to the Respondents to bring forth evidence of any rights or legitimate interests, which they might have in the disputed domain names. The Respondents have not engaged with the administrative proceeding, and there are no submissions or evidence available to the Panel, which might have supported any claim of rights or legitimate interests that they might have made in respect of the disputed domain names. The use to which the disputed domain names are currently being put appears to take unfair advantage of the Complainant’s rights in its MERCURE trademark. In particular, there is a substantial similarity between the Complainant’s stylized “M” logo and the logo used by the Respondents on the various active websites. This seems to the Panel to be beyond a coincidence, and, on the balance of probabilities, is intended to suggest that the websites associated with the disputed domain names are endorsed by or related to the Complainant, and lead to an official site of the Complainant’s hotels or casinos. Such use cannot confer rights or legitimate interests upon the Respondents, and the Panel cannot conceive of any rights or legitimate interests, which they might have claimed in the disputed domain names, had any of them participated in the administrative proceeding.

In all of these circumstances, the Panel finds that the Respondents have failed to rebut the Complainant’s *prima facie* case that they have no rights to or legitimate interests in the disputed domain names, and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

#### **D. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(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 online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the Complainant focuses its submissions on paragraph 4(b)(iv) of the Policy. It is clear to the Panel that the Respondents' use of the disputed domain names unfairly targets the Complainant's rights in its MERCURE trademark. The use of “mercure” in the disputed domain names coupled with a suspiciously similar logotype on the majority of the associated websites suggests to the Panel that the Respondents intended to create a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the associated websites. The disputed domain names, which are evidently engaged in commercial activity, seek to attract Internet users who will believe that they are linked to official websites of the Complainant that promote or are related to casinos in or near the Complainant's hotels or to related TV services. The single outlier disputed domain name, <mercurecasinosgiris.com>, was evidently intended to be part of the pattern formed by the other disputed domain names, based upon the link on the website associated with <mercuretv.live>, but for some reason the related website has not been fully configured by the Respondents.

Given the above-described composition and use of the disputed domain names, the fact that the Complainant's brand is prominent and in very widespread use, and that its trademarks are registered in all of the locations in which the Respondents have provided contact details, the Panel finds on the balance of probabilities that the disputed domain names were more probably than not registered in the knowledge of the Complainant's rights and with intent to target these.

As far as the Panel is concerned, the Complainant's submissions raise a case to answer the question of registration and use in bad faith. The Respondents have failed to provide a substantive response to the Complainant's case and have put forward no evidence of actual or contemplated good faith use in respect of the disputed domain names. In the absence of such, the Panel has been unable to identify any factors in the present record, which suggest a good faith motivation on the part of the Respondents in connection with the registration and use of the disputed domain names.

In all of the above circumstances, the Panel finds that the disputed domain names have been registered and are being used in bad faith and therefore that the Complainant has carried its burden in terms of 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 names <mercurecasino.app>, <mercurecasinogir.com>, <mercurecasinogiris.com>, <mercurecasinosgiris.com>, and <mercuretv.live> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: August 1, 2023