

## **ADMINISTRATIVE PANEL DECISION**

Accor v. Europe Consult

Case No. D2023-2422

### **1. The Parties**

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

Respondent is Europe Consult, Nepal.

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

The disputed domain name <accorhotels.live> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on June 7, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 7, 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 Respondent of the Complaint, and the proceedings commenced on June 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 30, 2023.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on July 7, 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

Complainant is the owner of registrations for the word, and word and device, trademark ACCOR, including as an International Trademark under the Madrid System, word mark registration number 480492, registration dated November 10, 1983, in international classes (ICs) 16, 39 and 42, covering, *inter alia*, hotel and restaurant services (designating, *inter alia*, Egypt, Germany, Iceland, Italy, and Morocco); word mark registration number 727696, registration dated December 28, 1999, in ICs 16, 39 and 42, covering, *inter alia*, hotel services, providing food and drinks (designating, *inter alia*, Poland, China, Russian Federation, Turkey and Viet Nam), and; word and device mark, registration number 1471895, registration dated December 24, 2018, in ICs 35, 36, 38, 39, 41, 42, 43, and 44, covering, *inter alia*, hotel services, restaurant services and business management (designating, *inter alia*, the European Union, Israel, Tunisia, the United States of America and Madagascar). Complainant also is the owner of registration for the word trademark ACCORHOTELS as an International Trademark under the Madrid System, registration number 1103847, registration dated December 12, 2011, in ICs 35, 39 and 43, covering, *inter alia*, hotel and restaurant services, and business advice services in connection with travel (designating, *inter alia*, Australia, China and Russian Federation).

Complainant is one of the world's leading owners and operators of hotels, and providers of hotel services, operating under brand names including Fairmont, Raffles, Swissôtel, Sofitel, Pullman, Novotel, Grand Mercure and Ibis. Complainant operates more than 5100 hotels in 110 countries. Complainant's principal commercial website prominently displays the word, and word and device, trademark ACCOR. Complainant maintains a customer loyalty program incorporating the ACCOR trademark. Complainant registered the domain names <accor.com> and <accorhotels.com> in 1998.

Respondent has used the disputed domain name to direct Internet users to a website using an AccorHotels word and device logo similar to that employed by Complainant on its commercial websites, with Respondent's website offering booking services for and accommodations in the Greek Islands, among other destinations. Respondent's website lists its name as Accor Hotels, and includes an email address for reservations that uses the disputed domain name as the recipient domain.<sup>1</sup> Respondent's website incorporating Complainant's trademarks appears designed to deceive Internet users and to take unfair advantage of Complainant's goodwill. There is no specific evidence in the record of this proceeding regarding Internet users visits to or activities on Respondent's website.

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

#### 5. Parties' Contentions

##### A. Complainant

Complainant argues that it owns rights in the trademarks ACCOR and ACCORHOTELS, and that the disputed domain name is identical or confusingly similar to those trademarks.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent is not in any way affiliated with Complainant, nor has Complainant authorized Respondent to use its trademarks in the disputed domain name; (2) Respondent's use of Complainant's trademarks in the disputed domain name is designed to deceive Internet users; (3) there is no conceivable *bona fide* or legitimate use of the disputed domain names by Respondent; (4) Respondent cannot reasonably claim that it was using or making demonstrable preparations to use the disputed domain name in connection with a legitimate activity before notice of this dispute; (5) Respondent failed to respond to

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<sup>1</sup> It appears that Respondent's domain name hosting account is set up to include an MX record for an email account.

Complainant's cease-and-desist demands; (6) the configuration of an email server in connection with the disputed domain name creates a significant risk that Respondent intended to engage in a phishing scheme.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent knew or should have known of Complainant's trademarks when it registered the disputed domain name because Complainant is known throughout the world, and the disputed domain name is obviously intended to be associated with Complainant; (2) Complainant's trademark rights predate Respondent's registration of the disputed domain name; (3) Respondent employed a privacy shield to hide its identity; (4) Respondent failed to provide any explanation for its choice of the disputed domain name; (5) Respondent's conduct appears to constitute opportunistic bad faith; (6) a simple Google or other search engine result would have demonstrated Complainant and its rights to Respondent; (7) it is likely that Respondent was attempting to prevent Complainant from reflecting its trademarks in the disputed domain name, and; (8) Respondent's configuration of an email server creates a risk that Respondent intended to engage in a phishing scheme.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent could not be completed because of an inaccurate physical address in Respondent's record of registration. There is no indication of difficulty in transmission of email notification to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

### **A. Identical or Confusingly Similar**

Complainant has provided substantial evidence of rights in the trademarks ACCOR and ACCORHOTELS, including by registration as an International Trademark through the Madrid System, and by use in commerce (see Factual Background supra). Respondent has not challenged Complainant's assertion of trademark

rights. The Panel determines that Complainant owns rights in the trademarks ACCOR and ACCORHOTELS.

The disputed domain name directly and fully incorporates Complainant's ACCOR and ACCORHOTELS trademarks. Direct and full incorporation of Complainant's trademarks in the disputed domain name is sufficient to establish identicalness or confusing similarity within the meaning of the Policy. Neither the addition of the term "hotels" to the trademark ACCOR, nor the addition of the generic top-level domain ("gTLD") "live" to each trademark, prevents a finding of identicalness or confusing similarity between the disputed domain name and Complainant's trademarks. The disputed domain name is identical to Complainant's ACCORHOTELS trademark, and it is confusingly similar to Complainant's ACCOR trademark, within the meaning of the Policy.

The Panel determines that Respondent has established rights in the trademarks ACCOR and ACCORHOTELS, and that the disputed domain name is identical to the Complainant's ACCORHOTELS trademark.

### **B. Rights or Legitimate Interests**

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint, and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name in connection with a website deliberately designed to appear associated with Complainant and its trademarks does not establish rights or legitimate interests in the disputed domain name. Such use by Respondent does not constitute legitimate noncommercial or fair use of the disputed domain name as it is likely to deceive Internet users and to divert them from Complainant's online presence. Such use seeks to take unfair advantage of Internet users and of Complainant's rights in its trademarks.

There is no indication that Respondent was commonly known by the disputed domain name or Complainant's trademarks, or that it made or prepared to make a *bona fide* use of the disputed domain name and/or Complainant's trademarks prior to notice of this dispute.

Respondent's use of the disputed domain name as the email recipient domain for inquiries by Internet users regarding reservations on Respondent's deceptive website appears on its face to be an attempt to take unfair advantage of Internet users. Such action by Respondent may cause injury to Complainant and the goodwill in its business.

Respondent's use of the disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

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

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include, "(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 respondent has] engaged in a pattern of such conduct; 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".

Complainant's ACCOR and ACCORHOTELS trademarks were registered and used long before Respondent registered the disputed domain name. Complainant's trademarks are sufficiently well known and readily identified through a simple Internet search that Respondent could not plausibly have been unaware of Complainant's rights when it registered the disputed domain name. Moreover, Respondent's use of the disputed domain name on a website designed to convey the appearance of originating or being associated with Complainant suggests that Respondent was deliberately seeking to target Complainant and the goodwill associated with its business.

Respondent's use of the disputed domain name identical to Complainant's well-known ACCORHOTELS trademark appears designed to secure information from Internet users that may include identity and financial information. Respondent's website also is likely to divert Internet users from Complainant's commercial business. Respondent has not attempted to provide an explanation -- such as authorization by Complainant -- that might justify its registration and use of the disputed domain name. Complainant has stated that Respondent lacks any authorization to use its trademarks in the disputed domain name. Respondent has not replied to the Complaint and has not attempted to provide any justifying explanation for its conduct.

By using disputed domain name, Respondent has intentionally attempted to attract for commercial gain Internet users to Respondent's online location by creating confusion with Complainant's trademarks.

Complainant alleged that Respondent likely registered the disputed domain name to prevent Complainant from reflecting its trademarks in the disputed domain name. Whether or not Respondent registered the disputed domain name for this purpose, Complainant has not provided evidence that Respondent engaged in a pattern of such conduct. This would not suffice to establish bad faith within the meaning of paragraph 4(b)(ii).

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) 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, <accorhotels.live>, be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: July 17, 2023