

ADMINISTRATIVE PANEL DECISION

Accor v. Marc DULIN
Case No. D2023-2447

1. The Parties

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

The Respondent is Marc DULIN¹, France.

2. The Domain Name and Registrar

The disputed domain name <accorholding.com> is registered with OVH (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 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 16, 2023.

On June 13, 2023, the Center notified the Parties that the language of the registration agreement of the disputed domain name was French. It invited the Complainant to provide satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; or to submit the Complaint translated into French; or to submit a request for English to be the language of the administrative proceedings. On June 16, 2023, the Complainant submitted a request for English to be the language of the administrative proceedings. The Respondent did not comment on the language of the proceedings.

¹ The Complaint against this Respondent was originally filed against “REDACTED FOR PRIVACY”, as found in the publicly available Whois details for the disputed domain name. The identity of the Respondent was subsequently disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name. The amended Complaint lists the person disclosed by the Registrar as the Respondent.

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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2023.

The Center appointed Louis-Bernard Buchman 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.

The Center received an email communication from the Respondent on July 18, 2023.

4. Factual Background

The Complainant is a French company which, since its foundation in 1967, has grown to become a leading global hotel operator, operating more than 4,500 hotels with about 700,000 rooms, in 111 countries around the world.

The Complainant owns a large portfolio of registered trademarks containing the term ACCOR, including, *inter alia*, the French trademark No. 1237864, registered on May 13, 1983, the International trademark No. 480492, registered on November 10, 1983, the French trademark No. 4464429, registered on June 26, 2018, and the International trademark No. 1471895, registered on December 24, 2018 (together hereinafter referred to as “the Mark”).

It also owns numerous domain names, including the <accor.com> domain name, registered on February 23, 1998.

The disputed domain name was registered on January 25, 2023, and resolved to an inactive page of the Registrar’s website.

The Complainant provided evidence that MX servers have been configured under the disputed domain name.

5. Parties’ Contentions

A. Complainant

(i) The Complainant submits that the disputed domain name reproduces the Mark, in which it has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety and that the addition of the word “holding” after the Mark is not capable of dispelling the confusing similarity.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.

(iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Respondent sent on July 18, 2023, an email addressed to the Complainant's counsel, stating that: "Dear Mrs. Dreyfus, I am currently in leave with limited access to emails. I will revert to you first week of August once back to Dubai. Best regards. Marc DULIN."

6. Discussion and Findings

6.1. Procedural Aspects

A. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The Registrar of the disputed domain name, OVH, confirmed that the language of the Registration Agreement of the disputed domain name is French.

The Complainant formally requested that the language of the proceeding be English, to which the Respondent failed to comment or to object, and provided evidence that its counsel sent on February 28, 2023 a cease and desist email in French, to which it contends the Respondent failed to reply. The Complainant further alleges that since the international language of business is English, the Respondent (whose location in France was unknown to the Complainant at the time the Complaint was filed) must understand English. In addition, the Complainant argued that it "would have to incur additional costs for drafting another complaint, which would also inevitably and unduly delay the proceedings".

The Panel notes that the Respondent, in its informal communication of July 18, 2023, to the Complainant's counsel, used the English language, thus confirming that the use of that language will cause him no undue harm.

Pursuant to paragraph 10(c) of the Rules, the Panel must ensure that the administrative proceeding takes place with due expedition.

In the light of the above circumstances, the Panel, who is conversant in both English and French, considering the time and cost for the Complainant of translating and submitting the Complaint in French, determines pursuant to paragraph 11(a) of the Rules that the appropriate language of the proceeding is English.

B. Failure to respond

As aforementioned, no formal Response was received from the Respondent. The Panel notes that the informal communication from the Respondent to the Complainant's counsel was sent after the due date for Response had elapsed and that the Complainant apparently did not react to this email, in particular not agreeing to a suspension of the proceeding.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint. The

Panel does not find any exceptional circumstance in this case which would cause the Panel to proceed differently. Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name, it is evident that the latter consists of the Mark, followed by the word "holding" and the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the disputed domain name is confusingly similar to the Mark, which is incorporated in its entirety, and that the addition of the "holding" word in the disputed domain name does not prevent a finding of confusing similarity, the Mark remaining recognizable within the disputed domain name. See section 1.8 of the [WIPO Overview 3.0](#).

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once a complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#) and section 2.1 of the [WIPO Overview 3.0](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name.

There is no evidence that the Respondent is known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business.

The disputed domain name directs the public to an inactive page of the Registrar's website. No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety and the word "holding", carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See section 3.1.4, [WIPO Overview 3.0](#).

Second, it is well-established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, evidence of bad faith registration. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, the Complainant provided evidence that numerous UDRP panels have found that the Mark is well known. See for instance *Accor and Soluxury HMC v. "m on"*, WIPO Case No. [D2012-2262](#); *Accor v. Domain Whois Protection Service Whois Agent/lijiwei*, WIPO Case No. [D2014-1482](#); *Accor v. Domains By Proxy, LLC / Abdulrahman Almarri*, WIPO Case No. [D2015-0777](#); and, *Accor v. Xu Guo Xing*, WIPO Case No. [D2017-0192](#).

Considering this evidence, the Panel finds that it is impossible to believe that the Respondent (who is apparently located in France) chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

In addition, MX servers were configured on the disputed domain name, with the subsequent risk of phishing activities, further suggesting bad faith in the use of the disputed domain name.

Furthermore, the Panel notes that prior UDRP panels have held that non-use of a domain name may not prevent a finding of bad faith under the so-called "passive holding" doctrine. See section 3.3 of the [WIPO Overview 3.0](#). Given the Panel's findings above on the notoriety of the Complainant's mark, the likely knowledge thereof by the Respondent when registering the disputed domain name, the fact that the Respondent has submitted no evidence of any good faith use of the disputed domain name, and there is no plausible future active use of the disputed domain name that would not be illegitimate, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have a duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party.

See Policy, paragraph 2(b); *Nike, Inc. v. Ben de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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, <accorholding.com>, be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: July 31, 2023