

## **ADMINISTRATIVE PANEL DECISION**

Accor v. 刘忠鹏 (Zhong Peng Liu)

Case No. D2023-2490

### **1. The Parties**

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

The Respondent is 刘忠鹏 (Zhong Peng Liu), China.

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

The disputed domain name <pullmantaiyuan.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 8, 2023. On June 8, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 in English on June 15, 2023.

On June 12, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on June 15, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 11, 2023.

The Center appointed Deanna Wong Wai Man 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 a multinational hotels, resorts, and vacation properties group headquartered in France. The Complainant operates over more than 5,100 hotels in 110 countries worldwide, including in China. Particularly relevant to this case is that the Complainant currently operates PULLMAN-branded hotels in 24 cities and provinces of China, including in Taiyuan city.

The Complainant owns an international portfolio of trademark registrations for PULLMAN, for instance Chinese trademark registration number 4734292 registered on February 7, 2009, and International trademark registration number 1429995, registered on July 27, 2018, and designating *inter alia*, Australia, China, and the European Union. The Complainant also has a strong online presence and owns a portfolio of official domain names, such as <pullmanhotels.com> registered on March 21, 1999, and <pullmanhotels.cn> registered on December 18, 2007.

The relevant registered trademarks adduced by the Complainant were successfully registered prior to the registration date of the disputed domain name, which was registered on March 22, 2022. The Complainant submits evidence that the disputed domain name first directed to an active website, which purported to be the Complainant's website for its hotel located in Taiyuan city, China, by displaying information on, and images of, that hotel and by offering unauthorized online booking services for that hotel. The website further contained a one sentence disclaimer on the top of the website explaining it is operated by Hotel Online (酒店在线). Subsequently, the disputed domain name directed to a website where the disputed domain name was offered for sale, and on the date of this Decision, it directs to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for PULLMAN, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are famous and well regarded in the hospitality industry, and provides evidence of its marketing materials and refers to prior domain name decisions which state that the Complainant and its PULLMAN trademark are well-known (see for instance *Accor SA, SoLuxury HMC v. Xu Yang Hui*, WIPO Case No. [D2018-0675](#)). Moreover, the Complainant submits evidence that the disputed domain name first directed to an active website, which purported to be the Complainant's website for its hotel located in Taiyuan, China by displaying information on and images of that hotel and offering unauthorized online booking services. The Complainant also contends that such website unlawfully used its trademarks and copyrighted works. The Complainant argues that subsequently, the disputed domain name directed to a website where the disputed domain name was offered for sale, and then finally to an inactive website. In this regard, the Complainant contends that the Respondent was previously intentionally attracting Internet users for commercial gain to such website by creating consumer confusion and that it is currently holding the disputed domain name passively. The Complainant essentially contends the abovementioned use of the disputed domain name does not confer any rights or legitimate interests in respect of the disputed domain name on the Respondent and constitutes registration and use in bad faith by the Respondent.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the Registration Agreement for the disputed domain name is in Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited in a timely manner by the Center to present its response and arguments in either English or Chinese, but chose not to do so); the fact that the disputed domain name contains the Complainant's trademark in its entirety, that the disputed domain name is written in Latin letters and not in Chinese characters; the fact that the website linked to the disputed domain name was (before it was taken offline) available in both Chinese and English, from which the Panel deduces that the Respondent is able to understand and communicate in English; and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and the language of this administrative proceeding shall be English.

### **6.2. Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- (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.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

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

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in the mark PULLMAN, based on its use and registration of the same as a trademark .

Moreover, as to confusing similarity of the disputed domain name with the Complainant's trademarks, the disputed domain name consists of the combination of two elements, which are the Complainant's PULLMAN trademark and the geographical location "Taiyuan". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), section 1.7, "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” (see also *Wal-Mart Stores, Inc. v. Richard McLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The Panel concludes that the disputed domain name contains the entirety of the Complainant’s trademarks for PULLMAN, which remains easily recognizable, and that the addition of the geographical term “Taiyuan” therefore does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, and that the Complainant has satisfied the requirements for the first element under the Policy.

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

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name, and is not making a legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

The composition of the disputed domain name carries a risk of implied affiliation, as the Complainant operates a hotel in Taiyuan, China. Moreover, upon review of the facts and evidence, the Panel notes that the disputed domain name previously resolved to an active webpage purporting to be the Complainant’s official website for its hotel located in Taiyuan. The Panel notes that while there was a disclaimer on the top of the website explaining it is operated by Hotel Online (酒店在线), the Panel does not consider the disclaimer to be prominent and neither does it actually explain the relationship between the website and the Complainant (see [WIPO Overview 3.0](#), section 2.8.1). On the contrary, the Respondent has reinforced the implied affiliation to the Complainant by prominently displaying the PULLMAN marks and the Complainant’s hotel’s images on the confusingly similar disputed domain name. In the Panel’s view, no rights or legitimate interests derive from using the Complainant’s well-known trademark to divert Internet users for commercial gain to a website impersonating the Complainant and offering unauthorized online booking services. However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#), and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

Given the international reputation and fame of the Complainant’s trademarks, the registration of the disputed domain name, which incorporates such prior registered trademarks in their entirety, is clearly intended to mislead and divert consumers to the website at the disputed domain name. Even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned, and owns, trademarks for PULLMAN and uses these marks extensively, including notably in the Respondent’s home jurisdiction China. This finding is further reinforced by the fact that the Complainant indeed operates a PULLMAN-branded hotel in Taiyuan, and that the registration of the disputed domain name, including the geographical word “Taiyuan”, is clearly intended to mislead and divert customers of the Complainant’s hotels in Taiyuan to the website at the disputed domain name where unauthorized booking services were offered. In the Panel’s view, this clearly indicates the bad faith of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the website previously linked to the disputed domain name falsely purported to be the official website of the Complainant's hotel located in Taiyuan, by prominently displaying the PULLMAN marks, displaying the Complainant's hotel's images which are likely protected by copyright, and by offering unauthorized booking services. The Panel concludes from these facts that the Respondent was intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. However, on the date of this Decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding". The Panel has reviewed all elements of this case, and attributes particular relevance to the following elements: the fact that the disputed domain name contains the entirety of the Complainant's trademarks that predate the registration of the disputed domain name, the high degree of distinctiveness, international fame, and intensive use of the Complainant's trademarks, the Respondent's failure to respond to the Complaint, the inherent misleading nature of the disputed domain name, the change of the use of the disputed domain name from a website purporting to be the official website for the Complainant's hotel located in Taiyuan to an inactive website, and the unlikelihood of any good faith use to which the disputed domain name might be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent does not prevent a finding of use of the disputed domain name in bad faith. On the basis of the above elements, the Panel finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <pullmantaiyuan.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: July 20, 2023