

ADMINISTRATIVE PANEL DECISION

MHG IP Holding (Singapore) Pte. Ltd. v. Group Priority, PRIORITY CONSTRUCTIONS

Case No. D2023-2958

1. The Parties

The Complainant is MHG IP Holding (Singapore) Pte. Ltd., Singapore, represented by Luthra & Luthra Law Offices, India.

The Respondent is Group Priority, PRIORITY CONSTRUCTIONS, India, represented by Janaki A. Bhide, India.

2. The Domain Name and Registrar

The disputed domain name <anantalarluxury.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 11, 2023. On July 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 17, 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 amendment to the Complaint on July 18, 2023.

The Center verified that the Complaint together with the amendment to the 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 July 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2023. The Response was filed with the Center on August 9, 2023.

The Center appointed John Swinson as the sole panelist in this matter on August 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 and its affiliates owns and operates resorts and spas. The Complainant is a subsidiary of Minor International PCL which operates over 530 hotels, resorts, and serviced suites in 56 countries. Minor International has been in operation for 50 years.

The Complainant and its affiliates operate the ANANTARA brand of hotels, resorts, and spas. The Anantara Spa has won awards relevant to spas. Currently, there are over 50 Anantara hotels and 30 Anantara spas in countries in Asia, the Middle East, Africa, and Europe. The ANANTARA trademark has been in use since 2000. Worldwide revenue for resorts and spas under the ANANTARA brand in 2021 was approximately USD 316 million. In 2019, over 24,000 guests stayed at or visited ANANTARA resorts and spas. As is typical of an international hotel and resort operator, the Complainant has a strong Internet and social media presence.

The Complainant is in the process of launching an ANANTARA resort in India, to be located in Jaipur, Rajasthan.

The Complainant owns registered trademarks for ANANTARA and associated ANANTARA logos. These include, for example, Australian Registration No. 1964293 for ANANTARA with a priority date of June 29, 2018.

The disputed domain name was registered by the Respondent on January 30, 2020.

The Respondent is a real estate property developer in Goa, India. The Respondent's business includes buying, selling, renting, and operating self-owned or leased real estates, such as apartment buildings, developing land, and constructing and selling apartment buildings. The Respondent states that the Respondent has been in business since 2004.

The Respondent's representative, Mr Parind Nachinolcar, applied for an Indian trademark registration for ANANTARA and device on January 18, 2019. This application, being Application No. 4061101 in class 37, has been opposed. The Respondent states that ANANTARA was selected in memory of his great-grandfather, Anant Nachinolcar, because it includes his first name and then the suffix "tara" which means "a star". The Respondent states that the Respondent has used this trademark continuously since January 2019.

The disputed domain name currently resolves to a website titled "Anantara Luxury Homes in Goa" promoting a luxury apartment development in Goa which is called ANANTARA ELYSIAN. The website includes the text: "Translating to 'Timeless' in Sanskrit, Anantara incorporates a spark of the Infinite into the world of real estate, bringing a new vision of luxury to the modern living experience. Our understanding of the true value of eternity in a changing world is reflected in the core values of the brand, with services that focus efforts exclusively on the client's property with passion, quality, and integrity." The website includes appropriate name, address and contact details for the Respondent, as well as a copyright notice as follows: "2020 © Anantara Living Spaces Pvt. Ltd. All Rights Reserved"

The Panelist has reviewed the online database of Intellectual Property India, which includes the following applications and registrations:

- ANANTARA and device, in class 36, application date June 5, 2014, owned by Anantara Residential Resort, status abandoned (No. 2750947)

- ANANTARA and device, in class 43, application date March 16, 2015, owned by Pavan Jaiswal, status refused (No. 2922555)
- ANANTARA GREENS and device, in class 43, application date September 7, 2018, owned by M/S Anantara Greens, claimed date of use February 15, 2017, status opposed (No. 3937733)
- ANANTARA and device, in class 37, application date January 18, 2019, owned by the Respondent, status opposed (No. 4061101)
- ANANTARA RESORT & SPA, in class 43, application date March 23, 2019, owned by Jitendra Arora, status opposed (No. 4126018)
- ANANTARA and device, in class 36, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status objected (No. 5175778)
- ANANTARA and device, in class 43, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status registered (No. 5175779)
- ANANTARA and device, in class 44, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status objected (No. 5175780)
- ANANTARA, in class 36, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status registered (No. 5175783)
- ANANTARA, in class 43, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status objected (No. 5175784)
- ANANTARA, in class 44, application date October 16, 2021, owned by the Complainant, claimed date of use November 8, 2020, status registered (No. 5175785)
- RAHEJA ANANTARA and device, in classes 36 and 37, application dates January 26, 2023, owned by K Raheja Corp., status objected (Nos. 5780529, 5780530)

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 Complainant's ANANTARA brand is well-known, the Complainant owns many ANANTARA trademark registrations, that the Respondent's website slavishly copied the Complainant's well-known brand, and that "the Respondent has no reason to adopt the same for providing overlapping/ nearly identical services, establishing the malicious intentions and dishonest adoption of the Complainant's trademark."

B. Respondent

The Respondent denies the majority of the Complaint.

The Respondent asserts that the Respondent used the disputed domain name in good faith since 2020 for its property development business, that the disputed domain name was not selected because of the Complainant, that the Complainant has no operations or reputation in India, and that the Respondent was unaware of the Complainant's proposed operations in India or of the Complainant's ANANTARA brand when deciding to use ANANTARA for its property development business.

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.

While the addition of other terms here, "luxury" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

One of the circumstances listed in paragraph 4(c) of the Policy is paragraph 4(c)(i): "before any notice to [the Respondent] of the dispute, [the Respondent's] 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."

The Complaint did not assert that the Complainant raised any issue with the Respondent regarding the disputed domain name prior to the filing of the Complaint. Accordingly, the relevant date for the purposes of paragraph 4(c)(i) is the date of the Complaint.

In the present case, it appears that the Respondent used “Anantara” prior to the date of the Complaint. The evidence suggests that the disputed domain name resolved to a website by at least 2020 and thereafter was used to advertise the Respondent’s services. The Respondent filed a trademark application for ANANTARA and device in January 2019.

The Complainant does not directly assert that this use by the Respondent of ANANTARA was not *bona fide* use. The Complainant’s submissions in respect of the second element consist of statements that the Respondent must have been well-aware of the Complainant when registering the disputed domain name, and that the Respondent used the disputed domain name to misrepresent the Respondent’s services as that of the Complainant. However, the Complainant does not specifically address any aspects of the Respondent’s business or the website at the disputed domain name when making these claims. On the face of it, relying solely upon the Respondent’s website (because there is no other evidence about the Respondent), the Respondent’s business itself appears to be legitimate. The website at the disputed domain name has a different “get-up”, logo and design to that of the Complainant’s branding and advertising. There is no evidence that the Respondent operates resorts or spas. By including name and address details on the website, photographs and details of the Respondent’s executives, plus a section of the website about the history of the Respondent’s business, the Respondent’s website clearly distinguishes the Respondent’s business from the Complainant’s Anantara resorts and spas.

The Complainant does not address the fact that the Respondent has a trademark application in India for ANANTARA and device (which is prior to the Complainant’s trademark applications in India). The Complainant does not directly deal with the fact that the Complainant does not yet have Anantara resorts or spas in India. It is also not clear whether the Complainant contacted the Respondent prior to filing the Complaint.

The Respondent’s trademark application for ANANTARA and device is opposed. The Respondent did not disclose this, and the Complainant did not address this. A respondent does not need a registered trademark to rely upon paragraph 4(c)(i) of the Policy. What is relevant here is *bona fide* use.

Based on the available record, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

In view of the analysis above, it is unnecessary to consider this element.

D. Reverse Domain Name Hijacking

The Respondent has requested that the Panel makes a finding of Reverse Domain Name Hijacking.

Paragraph 15(e) of the Rules states:

“... If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

Both the Complaint and the Response filed long and detailed submissions prepared by lawyers. However, many of the submissions contain high-level general statements without reference to evidence. The Complaint and Response refer to no prior decisions under the Policy. The submissions discuss irrelevant factors and fail to adequately address relevant factors.

For example, the Complaint did not address whether or not the Complainant and the Respondent were competitors and why consumers would have been confused by the Respondent’s website. The Complaint did not disclose that some of the Complainant’s trademark applications in India for ANANTARA were subject to objections. The Complaint did not address the other ANANTARA trademarks that appear on the register

in India, owned by third parties and that relate to similar services to that of the Complainant, including some that have been opposed. The Complaint did not engage with the issue that the Respondent filed its trademark application in India prior to the Complainant filing its Indian trademark applications. The Complainant apparently did not contact the Respondent about the disputed domain name prior to filing the Complaint. The Complaint was over 20 pages, but addressed the third element in only three substantive paragraphs taking less than a page. These factors, taken together, suggest lack of candor by the Complainant.

However, the Response, which only included one exhibit, did not disclose that the trademark application relied upon by the Respondent had been opposed, provided no details of such opposition, did not include an exhibit including that trademark application, provided no evidence to prove the Respondent's reputation and provided no evidence to prove the Respondent's first use (or any use) of ANANTARA.

Neither party was straightforward. In the circumstances, a finding of Reverse Domain Name Hijacking is not appropriate.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: September 2, 2023