

ADMINISTRATIVE PANEL DECISION

Belmond Management Limited v. sashi sharma, education
Case No. D2023-3317

1. The Parties

The Complainant is Belmond Management Limited, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is sashi sharma, education, India.

2. The Domain Name and Registrar

The disputed domain name <hotelbelmond.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 August 2, 2023. On August 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 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 August 4, 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 August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any formal response. The Respondent sent email communications to the Center on August 14, and August 19, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on September 5, 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, Belmond Management Limited (until 2014 named Orient-Express Hotels Limited), is an internationally renowned owner and operator of luxury hotels, trains, river cruises, and safari lodges. The Complainant's portfolio covers 50 properties extended across 24 countries, encompassing treasured city hotels, the most coveted destination hotels, luxury safari lodges, river cruises, and luxury trains.

The Complainant's iconic properties include hotels like Hotel Cipriani, a Belmond Hotel in Venice, Italy; Splendido, a Belmond Hotel in Portofino, Italy; Copacabana Palace, a Belmond Hotel in Rio de Janeiro, Brazil; Le Manor aux Quat'Saisons, a Belmond Hotel in Oxfordshire, United Kingdom; Maroma, a Belmond Hotel in Mexico; or Hotel das Cataratas, a Belmond Hotel in the Iguassu National Park in Brazil.

On April 2019, the Complainant joined the LVMH group.

The Complainant has been listed in the 2023 Forbes Travel Guide Star Award Winners, and the Complainant and its various operations are regularly featured in major publications worldwide.

The Complainant owns trademark registrations for BELMOND across various jurisdictions, such as the following:

- the Indian registration number 3649515 for BELMOND with device, registered on October 4, 2017, covering services in Nice classes 35, 36, 39, 43;
- the United States of America registration number 4832479 for BELMOND with device, filed on October 3, 2014, and registered on October 13, 2015, covering services in Nice classes 35, 36, 39, 43; and
- the European Union trademark registration number 12293411 for BELMOND with device, filed on November 8, 2013, and registered on November 8, 2014, covering services in Nice classes 35, 36, 39, and 43.

The Complainant has a strong presence online on its main website "www.belmond.com", as well as on social media platforms.

The disputed domain name <hotelbelmond.com> was registered on December 12, 2022, and at the time of filing the Complaint, it resolved to a parked website hosted by the Registrar.

According to Annex 3.2 to the Complaint, the disputed domain name was used in connection with a website purportedly offering services of the Complainant, directly competing with the Complainant's own offerings.

Before commencing the present proceeding, as provided in Annexes 11 and 12 to the Complaint, on February 8, 2023, the Complainant sent a cease-and-desist letter to the Respondent to cease use of the disputed domain name; on February 18, 2023, the Respondent replied apologizing for the misuse of the BELMOND mark and stating that they changed the name of the hotel from all types of registration and public sources. The content available on the disputed domain name has been changed. Further follow up letters of the Complainant sent on February 21, 2023, and March 9, 2023, remained unanswered.

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 disputed domain name is confusingly similar to its well-recognized and respected trademark BELMOND being formed of the mark with the generic, descriptive term, "hotel"; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith, previously used to host a website which claimed to offer the services of the Complainant, and which directly compete with the Complainant's own offerings. Further, the Respondent's subsequent removal of content from the disputed domain name as a result of receiving the Complainant's cease-and-desist letter, is evidence to show the Respondent was aware that they were not using the disputed domain name in connection with a *bona fide* offering of goods and services.

B. Respondent

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

In its informal communications sent to the Center on August 14 and 19, the Respondent mainly claims it changed the name of its "firm & all thing" and provides supporting evidence of what appears to be an online Registration Certificate issued by the Government of India regarding a hotel with a different name than the Complainant's trademark.

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other term here, “hotel”, 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Furthermore, the composition of the disputed domain name (being a well-known trademark and a descriptive term associated with the services provided under the Complainant’s trademark) carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name used to resolve to a website purportedly providing services of the Complainant, without any disclaimer or authorization from the Complainant. Even if the services were genuine, the lack of any disclaimer on the website at the disputed domain name would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant. Accordingly, such use cannot be considered “fair”, nor to have conferred upon the Respondent any rights or legitimate interests.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant uses in commerce the BELMOND trademark, domain name, and trade name since 2014; and, the disputed domain name incorporated the Complainant’s mark along with a descriptive term for the Complainant’s business. Furthermore, the disputed domain name has been used to purportedly provide services identical to those of the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt 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 is evidence of registration and use in bad faith.

According to the evidence provided in the Annex 3.2 of the Complaint and unrefuted by the Respondent, prior to the present proceeding, the disputed domain name was used in connection with a website claiming to offer services identical to the Complainant's services. Given that the disputed domain name incorporates the Complainant's reputable trademark together with the descriptive term "hotel", the website operated under the disputed domain name marketed services identical to those of the Complainant, and has no disclaimer, the Panel finds that the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

At the time of filing the Complaint, the disputed domain name resolved to the Registrar's parking page.

UDRP panels 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. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the misleading domain name may be put. [WIPO Overview 3.0](#), section 3.3.

The Panel notes the distinctiveness and international reputation of the Complainant's trademark; the composition of the disputed domain name; the Respondent's informal response in this procedure, as well as the Respondent's reaction to the Complainant's letters prior to the present proceeding, removing the impersonating content and confirming that the Respondent was aware of the Complainant's rights; and finds that, in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <hotelbelmond.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: September 13, 2023