

ADMINISTRATIVE PANEL DECISION

Belmond Management Limited v. Roman Dopita / GrowSmart s.r.o.
Case No. D2023-3323

1. The Parties

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

The Respondent is Roman Dopita / GrowSmart s.r.o., Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <belmondart.com> is registered with WEDOS Internet, a.s. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Following an exchange of correspondence, on August 17, 2023, the Registrar confirmed 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, GrowSmart s.r.o.) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 18, 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 22, 2023.

On August 18, 2023, the Center informed the Parties in Czech and English, that the language of the registration agreement for the disputed domain name was Czech. On August 22, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comments on the Complainant’s language request.

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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. On September 1, 2023, the Center received an email communication from the Respondent.

In light of the email communication received by Respondent, the Center inquired the Parties on September 1, 2023 on their interest in the suspension of the proceeding for settlement discussions. On the same date, the Complainant replied to the Center's communication informing that it did not wish a suspension of the proceeding and requesting its continuation.

On September 15, 2023 the Center notified the Parties of the commencement of the Panel appointment process.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 19, 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 an owner and operator of luxury hotels, trains, river cruises and safari lodges in 24 countries. It is part of the LVMH group.

The Complainant is the owner of the European Union trademark registration for the sign "BELMOND" with registration No. 012293411, registered on November 8, 2014 for services in International Classes 35, 36, 39 and 43 (the "BELMOND trademark").

The Complainant is also the owner of the domain name <belmond.com> registered on March 5, 1998, which resolves to the Complainant's official website.

The disputed domain name was registered on November 16, 2022. It resolves to a parked webpage of the Registrar.

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.

The Complainant states that the disputed domain name is confusingly similar to its BELMOND trademark, because it reproduces the trademark in its entirety with the addition of the dictionary word "art". According to the Complainant, "art" is closely linked and associated with the Complainant's brand and trademark, since the Complainant runs artist residencies, hosts art exhibitions and partners with acclaimed galleries.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not sponsored by or affiliated with the Complainant, and the Complainant has not given it permission to use the BELMOND trademark, including in domain names. The Complainant adds that the Respondent is not commonly known by the disputed domain name. The Complainant points out that the Respondent registered the disputed domain name on November 16, 2022, after the Complainant's first use of its BELMOND trademark and registration of its <belmond.com> domain name.

The Complainant notes that the disputed domain name resolves to a parked Shopify webpage indicating that the respective website will be completed soon, and that the Respondent has not demonstrated any attempt to make a legitimate use of the disputed domain name and the website at the disputed domain name. According to the Complainant, the disputed domain name may be used to divert Internet users to a website that the Respondent may activate in the future without the Complainant's authorization.

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The Complainant submits that the BELMOND trademark has accrued substantial goodwill and recognition and is internationally known, and the name "BELMOND" has become synonymous with luxury properties and experiences. According to the Complainant, the Respondent must therefore have known of the existence of the Complainant's trademark at the time of the registration of the disputed domain name on November 16, 2022.

The Complainant notes that the disputed domain name currently resolves to a parked Shopify page and is not being used. According to the Complainant, the disputed domain name can only be taken as intending to cause confusion among Internet users as to the source of the disputed domain name, and the Respondent's intention is to hold the disputed domain name for some future active use in a way which would be competitive with or otherwise detrimental to the Complainant.

The Complainant adds that the Respondent has ignored its attempts to resolve this dispute outside of the present proceeding under the Policy.

B. Respondent

The Respondent did not file a formal Response to the Complainant's contentions.

In its informal email communication of September 1, 2023, the Respondent stated:

"I have received a letter at home informing me that a complaint has been lodged relating to my purchase of the domain <belmondart.com>. I must admit that I am not entirely sure what this means or where the problem lies. I purchased this domain a few months ago for an e-shop I was running at the time. However, if it would help resolve this issue, I am willing to offer this domain for sale."

6. Discussion and Findings

6.1. Procedural issue – Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Czech. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complaint was filed in English. The Complainant requests that the language of the proceeding be English for the following reasons:

- the Complainant is unable to communicate in Czech and the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter;

- the disputed domain name is comprised of Latin characters;
- the webpage at the disputed domain name features content only in English;
- the word “belmond” does not carry any specific meaning in the Czech language;
- the Complainant previously sent a cease-and-desist letter to the Respondent, but the Respondent neither requested that communications continue in Czech nor responded to the Complainant;

According to the Complainant, in view of the above the Respondent understands the English language.

The Center has sent all its communications to the Respondent in both English and Czech, and has invited the Respondent to express its views on the language of the proceeding. The Respondent did not submit a formal Response or any objections to the Complainant’s request that the proceeding be conducted in English.

Having considered all the matters above, the Panel considers that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive issues

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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the BELMOND trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the BELMOND trademark 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 terms (here, “art”) 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 BELMOND trademark 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.

The disputed domain name is confusingly similar to the Complainant's BELMOND trademark, and redirects to a landing webpage of the Registrar. The Respondent has not shown that it has used the disputed domain name in connection with a *bona fide* offering of goods or services or that it has made a legitimate noncommercial fair use of it. There is no evidence that the Respondent is commonly known by the disputed domain name. The only relevant statement made by the Respondent is that it has registered the disputed domain name "*a few months ago for an e-shop [it] was running at the time*". There is however no explanation as to how the composition of the disputed domain name is related to such an e-shop or to the goods or services allegedly offered on it, and no evidence that such an e-shop has indeed existed. This makes the Respondent's statements less than convincing, and in view of all the relevant circumstances, the Panel accepts that the Complainant's *prima facie* case has remained rebutted by the Respondent. This conclusion is also supported by the lack of reply to the Complainant's cease-and-desist correspondence.

Based on the available record, the Panel therefore 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.

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.

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 domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes that the Complainant has submitted evidence showing the reputation of its BELMOND trademark, to which the disputed domain name is confusingly similar. As discussed in the previous section on rights and legitimate interests, the Respondent has failed to provide any evidence of actual or contemplated good-faith use of the disputed domain name and has made an unconvincing and unsupported by evidence explanation about the reasons for its registration. There is no evidence that it has denied the Complainant's contentions in its cease-and-desist correspondence, and in any case it has not shown that there is any good faith use to which the disputed domain name may be put. In view of this, the Panel 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.

Based on the available record, the Panel therefore 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 <belmondart.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: October 3, 2023