

ADMINISTRATIVE PANEL DECISION

BH Hotels and BH Balzac v. Paulo Ferreira, MBI Holdings
Case No. D2023-3546

1. The Parties

The Complainants are BH Hotels and BH Balzac, France, represented by BBLM Avocats, France.

The Respondent is Paulo Ferreira, MBI Holdings, United Kingdom, represented by Squadra Avocats, France.

2. The Domain Names and Registrar

The disputed domain names <amarantecannes.com> and <hotelbalzac.com> are registered with Lexsynergy Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2023. On August 22 and August 23, 2023 respectively, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 23 and August 24, 2023 respectively, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the complete contact details.

The Center verified that 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 September 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Response was filed with the Center on September 28, 2023.

The Center appointed John Swinson as the sole panelist in this matter on October 23, 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.

On November 10, 2023, the Panel issued a Procedural Order which is discussed further below. The Parties each submitted responses to the Procedural Order.

4. Factual Background

The Complainants are French companies that are part of the Bertrand Corp group of companies. The Complainants operate hotels, including the Hotel Balzac in Paris and the Amarante Cannes.

The Complainants acquired the assets related to these hotels as part of the acquisition of businesses of the companies JJW Luxury Hotels and Amarante by the Bertrand Corp. There were bankruptcy issues that caused the sale. According to the Complainants, the French Supreme Court validated this takeover in January 2023.

The disputed domain names were registered by the Respondent MBI Holdings, whose principal, Paulo Ferreira, apparently was the principal of two entities, JJW Luxury Hotels and Amarante. The disputed domain names were registered while JJW Luxury Hotels and Amarante still owned and operated these hotels. Specifically, JJW Luxury Hotels owned and operated Hôtel Balzac and Amarante owned and operated Hôtel Amarante Cannes.

The Complainants operate websites for these hotels at <amarante-cannes.com> and <hotelbalzac.paris>.

The Complainants were unsuccessful in a prior complaint under the Policy regarding the disputed domain names and other domain names. *BH Vigny, BH Hotels, BH Balzac v. Paulo Ferreira, MBI Holdings*, WIPO Case No. [D2022-0770](#) (“the *BH Vigny* case”)

The disputed domain names resolve to websites related to the Hotel Balzac in Paris and the Amarante Cannes, respectively. The websites, which are operated by the Respondent, give the impression that they are the official websites for these hotels. They include statements such as “Dear Guests, Your safety is of the utmost importance to us. Please find full information for how we’re going to keep you safe at our hotel here. JJW Hotels & Resorts”, headings such as “Our Hotel” and “Offers”, telephone numbers, a reservation email address, room rates, and buttons such as “book now”. When trying to book, an error message appears: “Hotel Configuration Details are not set up properly.” The Respondent confirms the Complainants, not the Respondent, are in fact operating these hotels, and that booking requests on the Respondent’s websites “receive immediate and automatic response indicating that the hotel has shut down its operations...” However, the Panel did not experience that response when attempting bookings on the websites at the disputed domain names.

5. Parties’ Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

B. Respondent

The Respondent contends that this is not a suitable case for determination under the Policy.

6. Discussion and Findings

This is a refiled case, involving the same parties and a subset of the same domain names as in the *BH Vigny* case. As stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.18:

“A refiled case is one in which a newly-filed UDRP case concerns identical domain name(s) and parties to a previously-decided UDRP case in which the prior panel denied the complaint on the merits. (The previous case may or may not be from another UDRP provider.) As the UDRP itself contains no appeal mechanism, there is no express right to refile a complaint; refiled complaints are exceptional.

Panels have accepted refiled complaints only in highly limited circumstances such as (i) when the complainant establishes that legally relevant developments have occurred since the original UDRP decision, (ii) a breach of natural justice or of due process has objectively occurred, (iii) where serious misconduct in the original case (such as perjured evidence) that influenced the outcome is subsequently identified, (iv) where new material evidence that was reasonably unavailable to the complainant during the original case is presented, or (v) where the case has previously been decided (including termination orders) expressly on a ‘without prejudice’ basis.”

The Complainants’ grounds for refiling the case appear to be as follows: (a) the Respondent renewed the disputed domain names after the decision in the *BH Vigny* case; (b) a French court validated the relevant corporate takeover involving the hotels in January 2023; and (c) there are new “litigious acts” committed by the Respondent.

The fact that the Respondent renewed the disputed domain names after the *BH Vigny* case is plainly not an exceptional circumstance.

After the *BH Vigny* case, the French Supreme Court confirmed in January 2023 the decision of the Paris Court of Appeal which confirmed the judgment of the Paris Commercial Court which validated the takeover of all the assets of JJW Luxury Hotels (MBI International’s affiliate) to Bertrand Corp (holding for the Complainants).

The Complainants state, in an email to the Center after the filing of the Complainant, “the Panel denied the first complaint only because there was a legal proceeding in progress (i.e., the proceeding pending before the Supreme Court).”

The Complainants are incorrect. The Panelist decided the *BH Vigny* case primarily on the basis that, for several reasons, the dispute is not a cybersquatting case that is suitable for determination under the Policy.

In the *BH Vigny* case, the panelist concluded:

“The upshot here is that this case does not present a classic case of cybersquatting. It is, rather, a dispute arising from the purported sale of several hotels (with trademarks and Domain Names legitimately owned for some period of time by the seller), which sale apparently remains the subject of judicial proceedings.”

The panel reached this conclusion for several reasons, including that the legal agreements in evidence in that case suggest:

“that there are funds being held in escrow, the disposition of which funds depends on the outcome of certain court proceedings alluded to in the escrow clauses. These provisions, among others, tend to suggest that the assignments of the hotel assets and businesses, as well as the trademarks and Domain Names, are not complete, final, and irreversible.”

The Respondent makes similar arguments in the present case – that the funds have not been paid in full, and accordingly, title to the trademarks have not been transferred to the Complainants.

The Panel issued a Procedural Order to seek clarification from the Complainants regarding ownership of the relevant trademarks. The Complainants provided a detailed response but did not directly address the issue raised in the Response regarding lack of payment, but rather stated that the Complainants were listed on the

Trademarks Register as the owner of the relevant trademarks. (The Complainants explicitly are not claiming common law rights, and thus title to the trademarks is of importance.)

Additionally, the panelist in the *BH Vigny* case raised the issue that it was uncertain whether the Respondent registered the disputed domain names in bad faith, as required by the third element of the Policy. The panelist stated:

“The Panel likewise would have a difficult time deciding the ‘bad faith’ element in this case, given the fact that Respondent’s affiliates were legitimately using the subject trademarks and the five Domain Names before the purported transfer of same to Complainants.”

The Complainants’ argument as to bad faith registration appears to rely upon renewal of the disputed domain names after the *BH Vigny* case. This is not sufficient. “Also, irrespective of registrant representations undertaken further to UDRP paragraph 2, panels have found that the mere renewal of a domain name registration by the same registrant is insufficient to support a finding of registration in bad faith.” [WIPO Overview 3.0](#), section 3.9.

If this Panel were to decide the case anew, this Panel would find bad faith use. The Respondent’s use of the disputed domain names is clearly misleading. However, that alone is not sufficient. The Complainants must also prove bad faith registration by the Respondent. This was referred to in the *BH Vigny* case, but not fully addressed in the re-filed Complaint. At the time of registration of the disputed domain names, the Respondent (or associated entities of the Respondent) owned and operated the two relevant hotels, and accordingly, the registration of the disputed domain names at that time was not in bad faith. The Complainant did not make arguments similar to those made in disputes in respect of terminated distribution and license agreements where bad faith under the Policy has been found. See e.g., *Progeo Monitoring GmbH v. Clark Guinness*, WIPO Case No. [D2015-2163](#) where a distribution agreement between the parties prohibited the respondent from claiming rights based on the complainant’s products. The Complainants did not argue that such principles should apply here, and the Panel is not prepared to make such findings in view of the *BH Vigny* case and because the Parties have not addressed this issue in any substantial way despite it being an issue in the *BH Vigny* case.

The new “litigious acts” committed by the Respondent and relied upon by the Complainants for the refiling all relate to bad faith use, not bad faith registration.

In short: (1) this is not an exceptional situation where the Complainants should be permitted to refile a very similar case re-litigating the same issue, (2) this case does not present a classic case of cybersquatting (and is not a suitable case for decision under the Policy), and (3) based on the evidence and submissions in this case, the Panel will not take a contrary view to the decision in the *BH Vigny* case and conclude that the disputed domain names were registered in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: December 5, 2023