

## **ADMINISTRATIVE PANEL DECISION**

**B&B Hotels v. Piage Wallace**

**Case No. D2023-4116**

### **1. The Parties**

The Complainant is B&B Hotels, France, represented by Fiducial Legal By Lamy, France.

The Respondent is Piage Wallace, United States of America.

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

The disputed domain name <hote1bb.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 3, 2023. On October 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 4, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details and contact information in the Complaint.

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 October 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 9, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 16, 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**

According to information in the Complaint, the Complainant is a French company incorporated as of May 28, 1990, and using the trademark B&B HOTELS since as early as 1990 for services of hotels, restaurants, temporary accommodations and related booking services, including through the Internet, to a wide range of customers. The Complainant has more than 700 hotels worldwide and more than 1,000 employees.

The Complainant is the owner of various registered trademarks that consist of or include HOTELBB, including the French trademark registration HOTELBB No. 3182312 registered as of August 29, 2002 for hotel services, booking of hotel rooms in class 43. The Complainant has registered *inter alia* the domain name <hotelbb.com> since November 1, 2001, which it uses as its main corporate website, which shows the Complainant's hotel and restaurant activities and offers online reservation services.

The disputed domain name was registered on March 9, 2023 and does not resolve to an active website.

The Complainant sent a cease and desist letter to the Registrar and the hosting company on May 10, 2023. The disputed domain name was suspended but no further actions were taken by the Registrar or the hosting company. The Complainant sent a cease and desist letter to the Respondent on June 2, 2023 by email and registered letter. Despite a reminder email, the Respondent did not respond.

#### **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 trademarks, as the disputed domain name consists solely of the Complainant's famous mark HOTELBB taken in its entirety, with the simple replacement of the letter "L" by the number "1", which can be perceived as the letter L in lowercase. The simple replacement of the letter "l" by the number "1" does not change the visual, phonetic and conceptual similarity, especially since "1" can easily be perceived as the letter "l". Such modification of a letter is typical of "cybersquatting" behavior.

As regards the second element, the Complainant argues that the Respondent does not have any rights or legitimate interests in the disputed domain name, as the disputed domain name is inactive, the Respondent is currently not and has never been known under the name "HOTE1BB" and he is not currently and has never been offering any goods or services under that name and also the Complainant has not licensed or authorized the Respondent in any way to use any of the Complainant's trademarks or to register or to use the disputed domain name.

With respect to the third element, the Complainant argues that its trademarks are well known and it is a famous hotel chain and the mark is widely used in this respect. Also, the date of the registration of the disputed domain name (March 9, 2023) is later in date to the date of registration of the Complainant's trademarks and the date when the Complainant started using its trademarks (dating back to early 1990). Therefore, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's rights at the time of registration of the disputed domain name. Also, it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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.

### 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Here the disputed domain name consists of the obvious misspelling of the HOTELBB trademark of the Complainant (with the replacement of the “l” with “1”). This misspelling in the disputed domain name, also referred to as typosquatting, does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9). It is well accepted by UDRP panels that a generic Top-Level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

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.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate

noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

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.

According to the un rebutted assertions of the Complainant, its HOTELBB trademarks were widely used in commerce well before the registration of the disputed domain name in March 2023 and are reputed. The Respondent provided no explanations for why he registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference.

As regards the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good faith use and indeed none would seem plausible.

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, <hote1bb.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: November 30, 2023