

## **ADMINISTRATIVE PANEL DECISION**

Belmond Management Limited v. he song, songhe  
Case No. D2023-4500

### **1. The Parties**

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

The Respondent is He Song, Songhe, China.

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

The disputed domain name <belmondotile.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 30, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 (Whois Privacy Protection Service by onamae.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 8, 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 November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 30, 2023.

The Center appointed Francine Tan as the sole panelist in this matter on December 15, 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 states that it is internationally renowned as the owner and operator of luxury hotels, trains, river cruises and safari lodges. The Complainant was formerly known as Orient-Express Hotels and rebranded as Belmond in 2014. It owns and/or operates luxury properties delivering luxury experiences in some of the world's most inspiring and enriching destinations. Operated and marketed under the BELMOND brand, the Complainant operates its hotel, restaurant, safaris, train, and river cruises businesses in 24 countries and across 50 properties. Since the acquisition of the iconic Hotel Cipriani in Venice in 1976, the Complainant has become the curator of some of the world's most exceptional luxury travel experiences.

The Complainant's iconic properties include Hotel Cipriani in Venice; Splendido, in Portofino; Copacabana Palace in Rio de Janeiro; Le Manoir aux Quat'Saisons in Oxfordshire; Maroma in Mexico; Hotel das Cataratas in the Iguassu National Park in Brazil; and Cap Juluca in Anguilla. Legendary trains it operates include the Venice Simplon-Orient-Express and Royal Scotsman.

On April 2019, the Complainant joined the LVMH Moët Hennessy Louis Vuitton group ("LVMH"). The Complainant has been listed in the 2023 Forbes Travel Guide Star Award Winners, and is regularly featured in major publications, such as Suitcase Magazine, Luxury Media, and the Telegraph.

The Complainant is the owner of various trademark registrations for the BELMOND trade mark worldwide, including the following:

- Swiss trademark registration No. 654784 for , registered on February 13, 2014;
- European Union Trade Mark registration No. 012293411 for , registered on November 8, 2014;
- Japan trademark registration No. 5757457 for , registered on April 10, 2015;
- China trademark registration No. 36046527 for , registered on September 21, 2021;
- United States of America trademark registration No. 4832479 for , registered on October 13, 2015; and
- Canadian trademark registration No. TMA1043032 for , registered on July 19, 2019.

The Complainant states that it also has a strong brand presence online, operating its main domain name <belmond.com>, which was registered on March 5, 1998. Its domain name registrations include <belmondbrazil.com>, <belmondublin.com>, <belmondedinburgh.com>, <belmonditaly.com>, <belmondlondon.com> and <belmondvenice.com>.

The Complainant states that its primary domain name <belmond.com> received an average of more than 600,000 visitors per month during the three-month period from February to April 2023. The Complainant has also established a strong social media presence and uses its BELMOND trade mark to promote its goods and services. As of May 2023, the Complainant has reported over 179,643 “Likes” on Facebook, 22,200 followers on Twitter, and over 518,000 followers on Instagram.

The Respondent registered the disputed domain name on June 1, 2023. At the time of the filing of the complaint, the disputed domain name resolved to a webpage advertising online betting and gambling and containing links to other third-party websites.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name. Notably, the Complainant contends that:

- i. The disputed domain name is confusingly similar to the Complainant’s trade mark in which it has rights. The disputed domain name consists of the Complainant’s BELMOND trade mark with the addition of the “generic, descriptive term ‘otile’”. The suffix is phonetically similar to “hotel”, which is the sector that the Complainant operates in primarily.
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant. The Respondent is not commonly known by the disputed domain name. The Complainant has not authorized or licensed the Respondent to use its BELMOND trade mark in a domain name. Further, the Respondent is not utilizing the disputed domain name in respect of a *bona fide* offering of goods or services. The disputed domain name resolves to a webpage advertising online betting and gambling and containing links to third-party websites. This use does not constitute genuine good faith use. Further, the disputed domain name was registered on June 1, 2023, which is significantly later than the respective registration dates of the Complainant’s BELMOND trade mark, and the date of the Complainant’s first use in commerce of its BELMOND trade mark, in 2014. A *prima facie* case has been established by the Complainant which the Respondent has not rebutted.
- iii. The Respondent registered and is using the disputed domain name in bad faith. The Respondent knew or should have known of the Complainant’s well-known BELMOND trade mark when he registered the disputed domain name. The BELMOND trade mark had become synonymous with high-end and stylistically unique luxury experiences. It is clear that the Respondent selected and registered the disputed domain name to intentionally confuse unsuspecting Internet users into visiting his website. This “bait and switch” tactic is evidence of bad faith. As the disputed domain name consists of the Complainant’s BELMOND trade mark and a term phonetically similar to the service the Complainant provides, the only plausible explanation for the Respondent to register the disputed domain name is for the purpose of causing confusion. The Respondent has also ignored the Complainant’s attempts to resolve the issue privately. The Respondent did not respond to the Complainant’s cease and desist letters, which is also an indicator of bad faith.

### **B. Respondent**

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

## 6. Discussion and Findings

### 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 and 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.

Although the addition of other terms here, "otile", may bear on assessment of the second and third elements, the Panel finds the addition of such a 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 Respondent was not authorized by the Complainant to use the latter's BELMOND trade mark or to register a domain name incorporating the trade mark. There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent does not appear to use the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain.

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.

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name in 2023, long after the registration of any of the Complainant's BELMOND trade marks. The disputed domain name incorporates the entirety of the Complainant's BELMOND mark with the addition of "otile", and it has been used for a webpage advertising online betting and gambling and containing links to other third-party websites.. The fact that (i) the disputed domain name incorporates the Complainant's well-known BELMOND mark plus a random term, (ii) there is an absence of clear rights or legitimate interests by the Respondent in the disputed domain name, and (iii) the absence of any credible explanation for the Respondent's choice of the disputed domain name, are factors the Panel has taken into account in concluding that the Respondent's domain name registration and use was in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel also notes that the Complainant sent the cease-and-desist letters to the Respondent on three occasions within the month of August 2023, but received no reply. The Panel draws an adverse inference from this.

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

## **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 <belmondotile.com> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: December 29, 2023