

ADMINISTRATIVE PANEL DECISION

Sandals Resorts International 2000 Inc. v. Valentine Kovalenko, System1 OpCo, LLC
Case No. D2023-5281

1. The Parties

The Complainant is Sandals Resorts International 2000 Inc., Panama, represented by Dechert, United Kingdom.

The Respondent is Valentine Kovalenko, System1 OpCo, LLC, United States of America (“United States” or “US”).

2. The Domain Name and Registrar

The disputed domain name <sandals-resort-us-1567585.fyi> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 20, 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 Agent (868456283), Whois Privacy Protection Service, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 9, 2024, 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 January 11, 2024.

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 January 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on February 12, 2024. 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

It results from the Complainant's undisputed allegations that it has been operating a holiday business under the Sandals brand since the mid-1980s. It has 24 properties in eight countries across the Caribbean, including 18 luxury all-inclusive beach resorts operating under the Sandals brand.

The Complainant is the registered owner of many trademarks worldwide for SANDALS, e.g., European Union registration no. 000169946 SANDALS, filed on April 1, 1996, registered on June 11, 1998, for goods and services in classes 16, 25, 28, 42; United States Trademark registration no. 2054532 SANDALS filed on February 6, 1996, registered on April 22, 1997, for goods in classes 16, 18 and 25; United States Trademark registration no. 4047770 SANDALS RESORTS filed on August 18, 2010, registered on November 1, 2011 for services in class 43.

In addition, the Complainant uses the following domain name <sandals.com> in order to promote its services.

The disputed domain name was registered on October 16, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click ("PPC") links in the Complainant's area of activity.

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 the Complainant's trademark since it includes the trademark in its entirety, in relation to which the Complainant has developed goodwill and reputation. The addition of the words "resort" and "us" serves only to enhance the confusion between the disputed domain name and the trademark as the word "resort" is descriptive of the Complainant's business, which is known for offering full-inclusive luxurious resort packages in the Caribbean. Furthermore, the Complainant often advertises its resorts to customers based in the "US".

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, due to the reputation and international presence of the Complainant, it is reasonable to assume that the Respondent was aware of the Complainant and its rights and reputation in the trademark at the time the disputed domain name was registered. In addition, the disputed domain name hosts a website consisting of a directory of PPC links to services that are identical or at the very least highly similar to the services covered by the Complainant's trademark. Registrations and the services for which the Complainant has developed goodwill and reputation under the trademark. Finally, it has not licensed or otherwise permitted or authorised the Respondent to use its trademark or to apply for a domain name incorporating the trademark.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the purpose of the Respondent's PPC parked website is to attract Internet users to the site, for profit, based on their confusing the disputed domain name with the trademark. Once on the Respondent's website, some users likely click on advertisers' links, which presumably would

confer a commercial benefit on the Respondent. The fact that the Respondent was willing to pay money to register or acquire the disputed domain name, to continue to maintain it, and to host the website, all are evidence that the Respondent expected to profit from the disputed domain name in this way. The Respondent's use of a privacy or proxy service to avoid the disclosure of its name and contact details is also consistent with an inference of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

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 entirety of the mark is reproduced 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, "resort", "us", "1567585" and hyphens] may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant’s trademark or otherwise mislead Internet users (i.e., a parking page displaying PPC links in the Complainant’s area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant’s documented allegations that the disputed domain name resolved to a parking page displaying PPC links in the Complainant’s area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant’s mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant’s trademark when it registered the disputed domain name.

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. On this regard, the further circumstances surrounding the disputed domain name’s registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

(i) the nature of the disputed domain name (i.e., a domain name incorporating the Complainant’s mark plus the geographical abbreviation US term and a term that corresponds to the Complainant’s area of activity);

(ii) the content of the website to which the disputed domain name directs (i.e., a parking page displaying PPC links in the Complainant's area of activity);

(iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

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 <sandals-resort-us-1567585.fyi> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: February 26, 2024