

## **ADMINISTRATIVE PANEL DECISION**

**Belmond Management Limited v. Dereshen Govender, Grey Pitbull Marketing PTY**

**Case No. D2024-0661**

### **1. The Parties**

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

The Respondent is Dereshen Govender, Grey Pitbull Marketing PTY, South Africa.

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

The disputed domain name ("Domain Name") <thebelmond.vip> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 13, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2024, 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 (Redacted for Privacy, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on February 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 19, 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 Respondent of the Complaint, and the proceedings commenced on March 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2024. Respondent sent email communications to the Center on February 14, 2024, and February 19, 2024. On March 25, 2024, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Marina Perraki as the sole panelist in this matter on April 4, 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**

Complainant owns and/or operates luxury hotels, trains, river cruises and safari lodges under the brand BELMOND since 2014. 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, the Telegraph and more. Complainant has used the domain name <belmond.com> for its main website since 2014. Complainant's main website has received an average of more than 600,000 visitors per month during the three-month period from February and April 2023. Complainant has also held the registration for the domain name <thebelmond.com> since 2014. As of May 2023, Complainant has reported over 179,643 "likes" on Facebook, 22,200 followers on Twitter, and over 518,000 followers on Instagram. On April 2019, Complainant joined the LVMH group.

Complainant owns trademark registrations for BELMOND, including the United States of America trademark registration No. 4832479, BELMOND (figurative), filed on November 8, 2013, and registered on October 13, 2015, for services in international classes 35, 36, 39, and 43.

On December 20, 2023, January 2, 2024, and January 12, 2024, Complainant sent cease and desist letters to Respondent, to which Respondent did not respond.

The Domain Name was registered on October 17, 2023, and at the time of filing of the Complaint it led to a Registrar parking page. Currently it resolves to a blocked page.

#### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

#### **B. Respondent**

Respondent did not formally reply to Complainant's contentions. He sent an email communication to the Center on February 14, 2024, asking for clarification. On February 19, 2024, he sent another email to the Center stating that he purchased the Domain Name for a "car wash VIP program", that he has "no need for the domain now", and that he is happy to transfer it to Complainant.

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the 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 Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

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 Domain Name. Accordingly, the 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, the word "the", may bear on assessment of the second and third elements, the Panel finds the addition of such word 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 generic Top-Level Domain ("gTLD") ".vip" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

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 Respondent may demonstrate rights or legitimate interests in the 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

Respondent has not submitted a formal response and has not submitted any evidence for the alleged "car wash VIP program".

As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent did not demonstrate prior to the notice of the dispute any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a bona fide offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name resolves to a parking page. Moreover, Respondent has stated that he has "no need" for the Domain Name now.

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.

The Panel notes that 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.

Complainant's BELMOND trademark was used and registered by Complainant at the time of the Domain Name registration and enjoyed reputation. Moreover, Complainant's online presence goes back to 2014. In the circumstances, the Panel finds it more likely than not that Respondent had Complainant's trademark in mind when registering the Domain Name (*Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)). Furthermore, the whole of Complainant's trademark is included in the disputed domain name.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. The Panel also notes the composition of the disputed domain name, which incorporates Complainant's mark in its entirety and is similar to Complainant's domain names, as well as the fact that Respondent used a privacy shield when registering the disputed domain name and 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.

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 Domain Name <thebelmond.vip> be transferred to Complainant.

/Marina Perraki/

**Marina Perraki**

Sole Panelist

Date: April 18, 2024