

ADMINISTRATIVE PANEL DECISION

B&B Hotels v. 五新

Case No. D2024-1314

1. The Parties

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

The Respondent is 五新, China.

2. The Domain Name and Registrar

The disputed domain name <hotelbooking-bby.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 2, 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 (To the owner of the domain name: hotelbooking-bby.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 April 8, 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 April 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 30, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on May 10, 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

The Complainant is a French company, incorporated in 1990, which offers hotel, restaurant, accommodation, and associated booking services. It operates 748 hotels worldwide and its turnover in 2021 was in excess of EUR 220 million. The Complainant trades as B&B HOTELS and a number of variants, including BBHOTEL, BB-HOTEL and HOTELBB, and it has registered trade marks in many countries to protect these trading styles (collectively the “BB Marks”). These include, by way of example only, French Trade Mark, registration number 3182312, for HOTELBB, registered on February 14, 2003 in class 43. The Complainant also owns many domain names which reflect its trading styles including <hotelbb.com>, <hotelbyb.com> and <bbhotelbooking.com>, each of which redirect to a booking website for the Complainant’s hotels.

The disputed domain name was registered on November 26, 2023. It does not appear to have ever resolved to an active website.

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 identical or confusingly similar to the Complainant’s BB Marks, in particular its HOTELBB mark, from which it differs only by the addition of the word “booking”, followed by a hyphen, and the addition of the letter “y”. The incorporation within the disputed domain name of the Complainant’s mark in its entirety is sufficient to establish confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been commonly known by any of the BB Marks and has never been offering any goods or services under the name “hotelbooking-bby.com”. The Complainant has not licensed or authorized the Respondent to use any of its BB Marks. The Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods and services as, in fact, no use is being made by the Respondent of the disputed domain name;
- the Complainant’s BB Marks are well-known and were in widespread use long before the date of registration of the disputed domain name, so it is likely that the Respondent was aware of them as at the date of registration of the disputed domain name. The Respondent clearly registered the disputed domain name without any specific intention to use it. It is clear that Internet users can be attracted to the disputed domain name whilst trying to reach the websites to which the Complainant’s famous domain names resolve, considering the identity, or high degree of similarity, between the disputed domain name and the Complainant’s BB Marks.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that a complainant proves each of the following three elements in relation to a domain name in order to succeed in its complaint:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests with respect to 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 the Complainant's trade mark and the disputed domain name; see the [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its BB Marks and specifically its HOTEL BB mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in respect of the disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's HOTELBB mark is reproduced in its entirety within the disputed domain name and, notwithstanding the fact that the components "HOTEL" and "BB" are divided by the term "booking" and a hyphen and that a "y" has been added to the term "BB", the mark is recognizable within the disputed domain name and the additional letter does not prevent a finding of confusing similarity between it and the Complainant's HOTELBB mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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 by which a respondent may demonstrate rights or legitimate interests in a domain name. Whilst 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 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; see the [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. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name, or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services. Non-use of the disputed domain name, self-evidently, does not comprise use in connection with a bona fide offering of goods and services; see, for example *VKR Holding A/S v. kuli, kuli*, WIPO Case No. [D2023-0469](#) (“holding a domain name passively, without making any use of it, [...] does not confer any rights or legitimate interests in the disputed domain name on the Respondent”);
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, 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 combination of the term “HOTEL” and the letters “BB” renders the Complainant’s HOTELBB mark distinctive in the context of the Policy, which has been used for a long period of time before the registration of the disputed domain name. The registration of a domain name in which the individual components of the Complainant’s trade mark are present, coupled with the absence of any explanation from the Respondent for its registration, suggests an awareness by the Respondent of the Complainant’s HOTELBB mark as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of it in some manner. The resemblance between the Complainant’s domain names, <hotelbb.com>, <hotelbyb.com> and <bbhotelbooking.com>, which were registered before the disputed domain name, and the disputed domain name (which seems to be created to resemble some sort of combination of the Complainant’s domain names), further supports the Panel’s conclusion. Neither the fact that the Respondent does not appear, at present, to be deriving any direct advantage from its registration of the disputed domain name nor the fact that its registration of it does not fit clearly within any of the non-exclusive circumstances evidencing bad faith registration and use set out at paragraph 4(b) of the Policy prevents the registration of the disputed domain name from being considered to be in bad faith; see section 3.1 of the [WIPO Overview 3.0](#) and *John Patrick Davies d/b/a Jigletoes v. Sajima Tan*, WIPO Case No. [D2019-0207](#).

As indicated in the above decision, whilst the disputed domain name does not resolve to an active website, from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding; see the [WIPO Overview 3.0](#), section 3.3. 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, (iii) the respondent’s concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

Applying these factors to the circumstances of these proceedings: (i) the Complainant has provided evidence which establishes, for the purpose of the Policy, that its HOTELBB trade mark is distinctive in the context of the services for which it is registered; (ii) the Respondent has not provided a response to the Complaint nor is there any evidence of actual or contemplated good faith use of the disputed domain name; (iii) the Respondent has sought to conceal its identity by its use of a privacy service; and (iv) there is no evidence of good faith use to which the disputed domain name can be put by the Respondent. 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. See, for example, *W.W. Grainger, Inc. v. Kyle Younger*, WIPO Case No. [D2011-1745](#).

Having reviewed the record, and for the reasons set out above, the Panel finds the Respondent's registration and use of the disputed domain name has been in bad faith.

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 <hotelbooking-bby.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: May 24, 2024