

## **ADMINISTRATIVE PANEL DECISION**

Sandals Resorts International 2000 Inc. v. Valentine Kovalenko, Point2web LLC

Case No. D2024-1796

### **1. The Parties**

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

The Respondent is Valentine Kovalenko, Point2web LLC, United States of America.

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

The disputed domain name <sandals-resort-5273198.zone> is registered with eNom, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 29, 2024. On April 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 30, 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 (Whols Agent (298326283)) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 6, 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 May 10, 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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 7, 2024.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on June 17, 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 of America 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 of America Trademark registration no. 4047770 SANDALS RESORTS filed on August 18, 2010, registered on November 1, 2011 for services in class 43.

The registrations will hereafter together be referred to in singular as the "Trademark".

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

According to the information provided by the Registrar, the disputed domain name was registered on September 29, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a website whose layout suggests that it intends to display advertisements or search results but does not yet host a directory of pay-per-click ("PPC") links.

#### **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 relation to which the Complainant has developed goodwill and reputation, in its entirety. The addition of the word "resort", as well as the non-descriptive and non-distinctive numbers "5273198" and the generic Top-Level Domain ("gTLD") ".zone" 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. Furthermore, the gTLD ".zone" heightens the risk of confusion between the disputed domain name and the Trademark as the addition of the word "zone" can refer to specific locations or areas characterized by a particular feature.

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.

Alternatively, the Respondent had constructive knowledge or should have known of the Complainant's rights in the Trademark which would have been revealed by a basic trademark search or by searching the words and number the disputed domain name consists of using an Internet search engine.

In addition, the Respondent cannot argue, that it is making legitimate non-commercial or fair use of the disputed domain name without the intent for commercial gain to misleadingly divert consumers or to tarnish the Trademark. The disputed domain name hosts a website whose layout suggests that it intends to display advertisements or search results, but does not yet host a directory of PPC links. Further, should the website at the disputed domain name launch PPC links in the near future, the Respondent will presumably generate monetary revenue through such PPC links using the disputed domain name which is confusingly similar to the Complainant's Trademark. This use would not be a legitimate non-commercial or fair use of the disputed domain name as it would use the goodwill of the reputed Trademark and would trade off of the Complainant's Trademark in order to generate revenue. The Respondent's efforts to attract Internet users to its websites for commercial gain through confusion with the Complainant's Trademark would prevent any possibility that the disputed domain name is being used in connection with either the good faith offering of goods or services or the operation of a business.

The disputed domain name was registered and is being used in bad faith by the Respondent.

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the Complainant's business. The Respondent must have been aware of the Trademark when the Respondent registered the disputed domain name. The Respondent's use of the Complainant's entire Trademark combined with the word "resort" (as well as the non-descriptive and non-distinctive numbers "5273198" and the gTLD "zone") to describe the Complainant's business is intended to lead consumers to believe that they have reached the Complainant's website and so divert Internet traffic from the Complainant thereby interfering with the Complainant's business.

The Respondent operates the disputed domain name intentionally to detract from the Complainant's legitimate website and to have a vehicle through which, in future, they would attract Internet users to its website or other online locations for commercial gain by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of its websites or a product or service on its websites.

The disputed domain name has also been used in a way that is likely to dilute the reputation of the Trademark and as such is evidence of bad faith. The mere registration alone of the disputed domain name by the Respondent and not the Complainant has meant that the Trademark is not as unique as it was prior to the registration of the disputed domain name.

The disputed domain name was registered over 20 years after the Complainant was founded and started trading under the Trademark and the Complainant gained substantial goodwill and reputation in the Trademark. Accordingly, in the absence of any legitimate interests in the disputed domain name, the registration of the disputed domain name by the Respondent cannot have been in good faith.

It is reasonable to infer that the Respondent had at least constructive, if not actual, knowledge of the Complainant's rights in the Trademark when the Respondent registered the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's Trademark.

The current layout of the website at the disputed domain name suggests that it is poised to host a directory of PPC links. It is conceivable that this website could feature links that use terms that are identical to the services protected by the Complainant's Trademark registrations and to the services for which the Complainant has established substantial goodwill and reputation under the Trademark. The supposed purpose of the Respondent's preparation for a website hosting PPC links would be to attract Internet users to the site for profit, based on their confusing the disputed domain name with the Trademark. Should the website begin hosting PPC links, once users arrive at the Respondent's website, they may click on the advertisers' links, which may yield a commercial benefit for the Respondent.

The Respondent's passive holding of the disputed domain name is an indication of bad faith use.

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, when viewed together with the circumstances described above.

The Respondent has no legitimate interest in the disputed domain name and its registration and use of the disputed domain name would give rise to actions under, among other places, United States of America and European Union Trademark infringement law and as such is further evidence of bad faith. It is not possible to conceive of any plausible use of the disputed domain name by the Respondent that would not be illegitimate, such as by passing off or an infringement of the Complainant's rights under Trademark law.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following three elements in order to succeed in its Complaint:

(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 burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3.

### **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.

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 Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here "resort", "5273198" and "zone") 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.

Given the Registrar’s disclosure of the Respondent’s name as “Valentine Kovalenko, Point2web LLC” and the absence of evidence to the contrary, the Respondent is not currently and has not been known under the name “sandals” or “sandals-resort”.

Moreover, the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. Such inference appears to be the intent of the Respondent, to which the current use also refers as the disputed domain name hosts a website consisting of a page whose layout suggests that it intends to host a directory of PPC links.

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.

In the present case, the Panel notes that the Respondent must have been aware of the Trademark when the Respondent registered the disputed domain name. The Respondent’s use of the Complainant’s entire Trademark in the disputed domain name, combined with the word “resort”, as well as the non-descriptive and non-distinctive numbers “5273198” and the gTLD “zone”, to describe the Complainant’s business, demonstrates that the Respondent must have been aware of the Trademark. It is reasonable to infer that the Respondent had at least constructive, if not actual, knowledge of the Complainant’s rights in the Trademark when the Respondent 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.

The Respondent has no legitimate interest in the disputed domain name, and it is not possible to conceive of any plausible use of the disputed domain name by the Respondent that would not be illegitimate. By using the disputed domain name as described above the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s Trademark as to the source, sponsorship, affiliation, or endorsement of the website. This use is intended to

lead consumers to believe that they have reached the Complainant's website and so divert Internet traffic from the Complainant thereby interfering with the Complainant's business.

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-5273198.zone> be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: June 28, 2024