

ADMINISTRATIVE PANEL DECISION

Bowtie Hospitality LV LLC d/b/a Fontainebleau Las Vegas v. Loes Kuper
Case No. D2024-3993

1. The Parties

Complainant is Bowtie Hospitality LV LLC d/b/a Fontainebleau Las Vegas, United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

Respondent is Loes Kuper, United States.

2. The Domain Name and Registrar

The disputed domain name <resortfontainebleaulasvegas.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2024. On September 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 1, 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) and contact information in the Complaint. The Center sent an email communication to Complainant on October 1, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 2, 2024.

The Center verified that the Complaint together with the amendment to the 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 October 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 24, 2024.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on November 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

Complainant is the owner and operator of the “Fontainebleau Las Vegas,” a hotel, casino, retail, and entertainment complex in Las Vegas, Nevada, which opened in December 2023. Complainant contends the Fontainebleau Las Vegas is a new 67-story luxury hotel which is only the second newly built resort to open on the Las Vegas Strip in the past decade, and comes on the heels of a USD 1 billion expansion of the Fontainebleau Miami Beach. The Fontainebleau Miami Beach hotel opened in 1954, was modernized with a USD 1 billion investment in 2005, and was listed on the National Registry of Historic Places and reopened in 2008.

Complainant is an exclusive licensee of the FONTAINEBLEAU trademark (“FONTAINEBLEAU Trademark”) pursuant to an intellectual property license agreement with IP Brandco LLC, which holds rights to the FONTAINEBLEAU Trademark pursuant to an agreement with JS IP LLC, owner of the FONTAINEBLEAU Trademark.

United States trademark registrations owned by JS IP LLC, exclusively licensed to Complainant, that consist of or contain FONTAINEBLEAU are protected by at least 33 trademark registrations in the United States, including the following:

- Registration No. 995,958 for FONTAINEBLEAU, registered October 15, 1974;
- Registration No. 3,061,814 for FONTAINEBLEAU, registered February 28, 2006;
- Registration No. 4,511,008 for FONTAINEBLEAU, registered April 8, 2014;
- Registration No. 4,758,869 for FONTAINEBLEAU, registered June 23, 2015; and
- Registration No. 5,291,294 for FONTAINEBLEAU, registered September 19, 2017.

The disputed domain name was created on June 12, 2024

Respondent is using the disputed domain name in connection with a website that falsely appears to be a website for, or associated with, Complainant, by displaying a prominent banner that says, “FONTAINEBLEAU LAS VEGAS”, advertising hotel rooms and including the following text: “Fontainebleau Las Vegas stands as the epitome of luxury in the heart of Downtown Las Vegas, offering an unparalleled experience for all.”

Complainant has received complaints from guests who attempted to make reservations from Respondent's website and were directed to correspondence with an unknown email address which requested credit card information. In addition, the website using the disputed domain name has been reported for potential “phishing.”

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's exclusively licensed trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

Respondent did not reply to 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 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.

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.

As set forth in section 1.4.1 of [WIPO Overview 3.0](#), "an exclusive trademark licensee is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint." Accordingly, Complainant has established rights in the FONTAINEBLEAU Trademark for purposes of paragraph 4(a)(i) of the Policy.

The entirety of the mark is reproduced within the disputed domain name, with the addition of the descriptive term "resort" and the geographic term "las vegas." These terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized Respondent to register or use the FONTAINEBLEAU Trademark in any manner. Respondent is using the disputed domain name in connection with a website that falsely appears to be a website for, or otherwise associated with, Complainant – by displaying a prominent banner that says, "FONTAINEBLEAU LAS VEGAS",

advertising hotel rooms and including the following text: “Fontainebleau Las Vegas stands as the epitome of luxury in the heart of Downtown Las Vegas, offering an unparalleled experience for all.” Respondent’s website has already led to actual confusion and reports of phishing.

Panels have held that the use of a domain name for illegal activity, such as phishing, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further, by engaging in such activity, Respondent has failed to create a bona fide offering of goods or services under the Policy, and, therefore, Respondent cannot demonstrate rights or legitimate interests under Paragraph 4(c)(i) of the Policy.

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 Respondent is using the disputed domain name in connection with a website that falsely appears to be a website for, or associated with, Complainant, by displaying a prominent banner that says “FONTAINEBLEAU LAS VEGAS”. This implies an association with Complainant and, therefore, is clearly misleading pursuant to paragraph 4(b)(iv) of the Policy.

Based on the well-known nature of the FONTAINEBLEAU Trademark, it is implausible that Respondent was unaware of Complainant and its trademark when it registered the disputed domain name, given the fame of the trademark. The record indicates that Respondent’s likely motive in registering and using the disputed domain name is to disrupt Complainant’s relationship with its customers or potential customers or attempt to attract Internet users for commercial gain. Respondent’s actions suggest opportunistic bad faith in violation of the Policy.

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.

Panels have held that the use of a domain name for illegal activity, as here claimed, such as phishing, impersonation/passing off, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain name constitutes bad faith under 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 <resortfontainebleaulasvegas.com> be transferred to Complainant.

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Sole Panelist

Date: December 2, 2024