

ADMINISTRATIVE PANEL DECISION

Montage Hotels & Resorts, LLC v. Proxy Protection LLC / Ichenwo Paul,
Ichenwo Paul
Case No. D2022-0263

1. The Parties

The Complainant is Montage Hotels & Resorts, LLC, United States of America (“United States” or “US”), represented by Neal, Gerber & Eisenberg, United States.

The Respondent is Proxy Protection LLC, United States / Ichenwo Paul, Ichenwo Paul, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <monontage.com> is registered with DreamHost, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 22, 2022. On January 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 27, 2022, 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 31, 2022.

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 February 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2022.

The Center appointed Brigitte Joppich as the sole panelist in this matter on March 8, 2022. 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 US company which has been providing hotel and residential real estate services next to other hospitality-related products and services for almost twenty years. The Complainant's business has garnered international media coverage, and the Complainant's services have won numerous industry awards, *inter alia* inclusion in Travel + Leisure's World's Best Awards, Condé Nast Traveler's Top 100 Best in the World, US News and World Report's Top 25 Luxury Hotels in the United States, and the Forbes Five Star Award.

The Complainant is the registered owner of over 100 trademark registrations containing the word "Montage" in many jurisdictions around the world, *inter alia* US trademark registration no. 3,325,069 for MONTAGE in international classes 41 and 43 registered on October 30, 2007 (the "MONTAGE Mark"). The Complainant promotes its services through numerous websites, including the websites at <montagehotels.com> and <montage.com>.

The disputed domain name was registered on December 20, 2021, and is not actively used in connection with a website. However, the Respondent has been using an email address associated with the disputed domain name to contact one of the Complainant's customers and to impersonate the Complainant's employees. It sent an email requesting that a customer of the Complainant change payment information to make payments to another bank account, presumably to a bank account of the Respondent. The email included the MONTAGE Mark, the Complainant's address and contact information, and the Complainant's actual domain name <montage.com>.

5. Parties' Contentions

A. Complainant

With regard to the three elements specified in the Policy, paragraph 4(a), the Complainant contends that each of the three conditions is given in the present case.

(i) The disputed domain name is confusingly similar to the MONTAGE Mark, as it fully includes such mark and an additional letter "n". The Complainant argues that the Respondent engaged in typo squatting.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It states that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name, that the Complainant never consented to the registration of the disputed domain name and has never licensed or otherwise authorized the Respondent to use the MONTAGE Mark, and that the Respondent is using the disputed domain name in connection with fraudulent and unlawful actions.

(iii) The Complainant claims that the disputed domain name was registered and is being used in bad faith. The Complainant argues that the Respondent used the disputed domain name to send emails in the name of one of the Complainant's employees and that it is not plausible that the Respondent innocently registered or is innocently using the disputed domain name. With regard to bad faith use, the Complainant states that the Respondent has used the disputed domain name to impersonate the Complainant and defraud the Complainant and the Complainant's customers, which clearly demonstrates that the Respondent is engaged in fraudulent activity and acted in bad faith.

B. Respondent

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

6. Discussion and Findings

Under the Policy, paragraph 4(a), the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

A. Identical or Confusingly Similar

The disputed domain name incorporates the Complainant's MONTAGE Mark by only adding an additional letter "n". This is a clear case of typosquatting, and the disputed domain name is nearly identical and confusingly similar to the MONTAGE Mark.

Therefore, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among UDRP panels that a complainant has to make only a *prima facie* case to fulfill the requirements of the Policy, paragraph 4(a)(ii). As a result, once a *prima facie* case is made, the burden of production on this element shifts to the respondent to come forward with evidence demonstrating the respondent's rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and that the burden of production has been shifted to the Respondent.

The Respondent did not deny these assertions in any way and therefore failed to come forward with any allegations or evidence demonstrating any rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. The Respondent's use of the disputed domain name to send fraudulent emails to the Complainant's customers is no *bona fide* use under the Policy.

Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under the Policy, paragraphs 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent registered and used the disputed domain name in bad faith.

Given that the Respondent sent an email which included the MONTAGE Mark, the Complainant's address and contact information, and the Complainant's actual domain name <montage.com>, the Respondent deliberately targeted the Complainant and the MONTAGE Mark and therefore obviously registered the disputed domain name in bad faith.

In addition, as the Respondent used the disputed domain name to send fraudulent emails impersonating the Complainant, the Panel finds that the Respondent used the disputed domain name in bad faith as set out under paragraph 4(b)(iv) of the Policy.

Consequently, the Panel finds that the Respondent registered and used the disputed domain name in bad faith and that the Complainant satisfied the requirements of paragraph 4(a)(iii) 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 <monntage.com> be transferred to the Complainant.

/Brigitte Joppich/

Brigitte Joppich

Sole Panelist

Date: March 22, 2022