

ADMINISTRATIVE PANEL DECISION

Accor v. ming jiao li, liming jiao
Case No. D2022-4262

1. The Parties

Complainant is Accor, France, represented by Dreyfus & associés, France.

Respondent is ming jiao li, liming jiao, China.

2. The Domain Name and Registrar

The disputed domain name <hotelf1-ridethehell.com> is registered with CNOBIN Information Technology Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 Complainant on November 16, 2022, 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 November 17, 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 Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 15, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on December 22, 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

Complainant, Accor, is a company incorporated in France. It is one of the world leaders in economic and mid-scale hotels, and a major player in upscale and luxury hospitality services. Based on the information provided by Complainant, founded in 1967, Complainant operates more than 5,300 hotels in 110 countries worldwide and around a million rooms (Annex 3 to the Complaint). As a market leader in Asia Pacific, Complainant operates 1,026 hotels and 201,516 rooms in 18 countries, including China. In addition, in 2014, Complainant signed a strategic alliance with the China Lodging Group (Huazhu Hotels Group - 1900 hotels) to develop its hotel brands in China (Annex 3 to the Complaint).

Complainant is the exclusive owner of the registered HOTEL F1-related marks globally (Annex 4 to the Complaint), including international trademark registration HOTEL FORMULE 1 (registration no. 611981, registered since January 7, 1994, designating, among others, China); international trademark registration HOTEL FORMULE 1 (registration no. 923458, registered since February 19, 2007, designating, among others, China); and European Union trademark registration HOTEL F1 (registration no. 005916671, registered since April 14, 2008). Complainant also owns a few domain names containing the HOTEL F1 mark, such as <hotelf1.com> registered on February 23, 2004 (Annex 5 to the Complaint).

Respondent is ming jiao li, liming jjao, China. The disputed domain name was registered on December 28, 2021, which is long after the HOTEL F1-related marks were registered. According to the Complaint and relevant evidence, the use of the disputed domain name was changed from an inactive website to different webpages displaying, among others, advertisements related to gambling and sport betting activities (Annex 1 to the Complaint). The disputed domain name currently resolves to an inactive website.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name <hotelf1-ridethehell.com> is virtually identical or at least confusingly similar with the trademarks HOTEL F1 in which Complainant has rights.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

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

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a) - (c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the HOTEL F1 and HOTEL FORMULAR 1 marks acquired through registrations, as seen in section 4 above.

The disputed domain name <hotelf1-ridethehell.com> comprises the HOTEL F1 mark in its entirety. The disputed domain name only differs from Complainant's trademark by a hyphen "-", the suffix "ride the hell", and the generic Top-Level Domain ("gTLD") ".com". This does not prevent a finding of confusing similarity between Complainant's registered trademark and the disputed domain name.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

In relation to the gTLD suffix, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

"The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." ([WIPO Overview 3.0](#), section 1.11).

Thus, the Panel finds that disregarding the gTLD ".com", the disputed domain name is confusingly similar to the HOTEL F1 mark.

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) use of, or preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services;
- (ii) the fact that Respondent has been commonly known by the disputed domain name; or
- (iii) legitimate noncommercial or fair use of the disputed domain name.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

Complainant has rights in the HOTEL F1-related marks since at least 1994. Accordingly to Complainant, Complainant is one of the leading companies in the field of hotels, upscale and luxury hospitality services. It operates more than 5,300 hotels in 110 countries worldwide and around a million rooms. As a market leader in Asia Pacific, Complainant operates 1,026 hotels and 201,516 rooms in 18 countries, including China. And, as mentioned above, in 2014, Complainant signed a strategic alliance with the China Lodging Group (Huazhu Hotels Group - 1900 hotels) to develop its hotel brands in China.

Moreover, Respondent is not an authorized dealer of HOTEL F1 branded products or services. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*; *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain names:

- (a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the word “Hotel F1” in the disputed domain name. Rather, Respondent appears to attempt to take advantage of the goodwill associated with Complainant’s HOTEL F1-related marks to attract Internet users to different websites containing, among others, gambling and sports betting advertisements, presumably for commercial gain. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the HOTEL F1-related marks or to apply for or use any domain name incorporating the HOTEL F1-related marks;
- (b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. The disputed domain name was registered on December 28, 2021, which is long after the HOTEL F1-related marks became widely known. The disputed domain name is confusingly similar to Complainant’s HOTEL F1 mark;
- (c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the Panel finds that the disputed domain name previously resolved to different websites displaying, among others, advertisements related to gambling and sports betting activities, and is not currently associated with an active website.

The Panel finds that Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name. The Panel therefore holds (also taking into consideration the Panel’s findings below) that Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding disputed domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for

commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

a) Registration in Bad Faith

The Panel finds that Complainant has a widespread reputation in the HOTEL F1-related marks with regard to its products or services. Complainant has registered its HOTEL F1-related marks internationally since 1994, including international trademark registrations designating China. Complainant operates 1,026 hotels and 201,516 rooms in 18 countries in Asia Pacific, including China. And, in 2014, Complainant signed a strategic alliance with the China Lodging Group (Huazhu Hotels Group - 1900 hotels) to develop its hotel brands in China. It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of registration of the disputed domain name.

The Panel therefore finds that the HOTEL F1 mark is not one that a trader could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*). Further, Complainant asserts that the addition of the term "ride the hell" in the disputed domain name increases such likelihood of confusion because it may allude to a collaboration dating from 2017 between Complainant and Hellfest.

Moreover, Respondent has chosen not to respond to Complainant's allegations. Accordingly to the decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". (See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

Thus, the Panel concludes that the disputed domain name was registered in bad faith with the intent to create an impression of an association with Complainant's HOTEL F1-branded products or services.

b) Use in Bad Faith

As noted above, the disputed domain name has been used to attract Internet users seeking Complainant to different websites displaying, among others, advertisements of online gambling and sports betting activities, presumably for commercial gain of Respondent. Such conduct falls squarely within the language of paragraph 4(b)(iv) of the Policy.

Further, given the lack of response, the Panel cannot envision any other plausible use of the disputed domain name that would not be in bad faith under the present circumstances. Taking into account all the circumstances of this case, the Panel concludes that current non-use of the disputed domain name by Respondent does not change the Panel's finding of bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name, has intended to ride on the goodwill of Complainant's trademarks in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the websites to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

7. Decision

For all 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 <hotelf1-ridethehell.com> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Dated: January 5, 2023