

ADMINISTRATIVE PANEL DECISION

Soluxury HMC v. Abhinav Mardia
Case No. D2022-5028

1. The Parties

The Complainant is Soluxury HMC, France, represented by Dreyfus & associés, France.

The Respondent is Abhinav Mardia, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2023 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 6, 2023.

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 January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2023.

The Center appointed Andrew Sim as the sole panelist in this matter on February 8, 2023. 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 subsidiary of Accor, leading global hotel operator that owns, manages and franchises hotels, resorts, and vacation properties since 1967. Among Accor's brand portfolio, there are currently 120 SOFITEL hotels worldwide in 47 countries from Europe, Africa, the Middle East, Asia, North and South America. The Complainant's official website is available at "www.sofitel.com", which has been registered on April 11, 1997.

The Complainant is the owner of trademark registrations of SOFITEL across various jurisdictions, including Indian trademark registration No.1596989, registered on August 31, 2007; international trademark registration No. 863332, registered on August 26, 2005, designating *inter alia* China, Japan, Russian Federation, United States of America, and Viet Nam; and international trademark registration No. 939096, registered on August 30, 2007, designating *inter alia* European Union, China, United States of America, and Viet Nam. In addition, the Complainant operates, among other, domain names reflecting its trademarks in order to promote its services for example, <sofitel.com> registered on April 11, 1997; <sofitel-mumbai-bkc.com> registered on January 11, 2011; and <sofitel.in> registered on February 26, 2005.

The disputed domain name <sofitelresidences.com>, was registered on July 5, 2018. According to evidence provided by the Complainant, the disputed domain name resolves to a parking page displaying sponsored links related to the Complainant's field of activity. Moreover, the disputed domain name is offered for sale. At the time of drafting of this Decision, there is no indication of the Respondent's own activities on the aforementioned site.

The Complainant made efforts to resolve this matter amicably by sending a cease-and-desist letter to the Respondent, via email on the basis of its trademark rights, on August 28, 2018. The Complainant did not receive any response from the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its SOFITEL trademark. The additional term "residences" alludes to the Complainant's business which further supports the confusing similarity between the disputed domain name and the Complainant's trademark.

The Complainant further contends that the Respondent is not affiliated with the Complainant. The Complainant has not given the Respondent license, authorization or permission to use the Complainant's trademark in any manner, including in domain names. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent was using a privacy Whois service at the time of filing of the Complaint. The disputed domain name, which entirely incorporates the Complainant's trademarks, resolves to a parking page displaying sponsored links related to the Complainant's field of activity and some of them are related to hotel, residence, apartment and notably those of the Complainant's competitors. Thus, it cannot be inferred that the Respondent is making a legitimate noncommercial or fair use of disputed domain name. Moreover, the disputed domain name is offered for sale, which does not constitute a fair use of the disputed domain name. This use fails to constitute a *bona fide* offering of goods or services. Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant must prove that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which it 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.

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark SOFITEL.

The test for confusing similarity involves the comparison between the trademark and the disputed domain name. It is well established that the generic Top-Level Domain “.com” may be ignored in accessing the confusing similarity between the disputed domain name and the Complainant’s trademark.

The disputed domain name incorporates the Complainant’s trademark SOFITEL in its entirety, with the word “residences” added at the back. The addition does not prevent a finding of confusing similarity between the Complainant’s SOFITEL trademark and the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that it has no connection with the Respondent, and has not authorized the Respondent the use its trademark in any manner. The Panel agrees with the Complainant that the Respondent, which is identified as “Abhinav Mardia”, does not resemble the Complainant’s trademark or the disputed domain name in any manner.

The Complainant also contends that the website was used as a way for the Respondent to use the Complainant’s notoriety to generate revenues by resolving to a parking page displaying sponsored links related to the Complainant’s field of activity and those of the Complainant’s competitors. Such use cannot be inferred that the Respondent is making a legitimate noncommercial or fair use of disputed domain name. Additionally, offering to sale a domain name which entirely incorporates a well-known trademark cannot be considered as a use of the disputed domain name in connection with a *bona fide* offering of goods and services. Further, if the Respondent had a right or legitimate interest in connection with the disputed domain name, he would have vigorously defended its rights by quickly replying to the Complainant’s cease-and-desist letter. Thus, the Panel accepts that on a balance of probabilities these allegations were soundly based and the Complainant has established a *prima facie* case. The burden of production to prove its rights or legitimate interests in respect of the disputed domain name shifts to the Respondent and the Respondent failed to submit a response. The Panel concludes that the Respondent has no answer to those allegations.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel agrees with the Complainant that the Respondent most likely was aware of the Complainant’s business when the Respondent registered the disputed domain name. The Complainant is well-known throughout the world, including Asia, where the Complainant is *inter alia* operating its business in India where the Respondent appears to be based. A quick SOFITEL trademark search would have revealed to

the Respondent the existence of the Complainant and its trademarks. The Respondent's failure to do so is a contributory factor to its bad faith. Moreover, the Respondent has not replied to any cease-and-desist letters and reminders the Complainant sent, and an inference of bad faith can be made of such behavior. Finally, the Complainant emphasizes the fact that the Respondent's contact details are no longer accessible on the Whois database and such hiding of contact details after the notification sent by the Complainant, may be considered a further indication of bad faith.

As indicated in section 6.B above, the Complainant has satisfied the Panel that the Respondent is making commercial gains by capitalizing and taking unfair advantage of the goodwill and reputation of the Complainant's trademark by using the disputed domain name as a parking page with sponsored links to the Complainant's field of activity and stating that the disputed domain name is for sale.

The Panel is therefore satisfied that the disputed domain name was registered and being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b) 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 <sofitelresidences.com> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: February 22, 2023