

## **ADMINISTRATIVE PANEL DECISION**

Hotel Amadeus GmbH v. Majk Pope

Case No. D2022-1092

### **1. The Parties**

The Complainant is Hotel Amadeus GmbH, Austria, represented by Harlander & Partner Rechtsanwälte GmbH, Austria.

The Respondent is Majk Pope, North Macedonia.

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

The disputed domain name <steinhotel.com> (the “Disputed Domain Name”) is registered with FastDomain, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2022. On March 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 31, 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. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed a first amendment to the Complaint on April 11, 2022. In response to request for clarification regarding the remedy section, the Complainant filed a second amendment to the Complaint on April 12, 2022.

The Center verified that the Complaint together with the amendments 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 the Respondent of the Complaint, and the proceedings commenced on April 13, 2022. On April 19, 2022, the Respondent sent an informal communication. On April 20, 2022, the Center informed the Parties that a UDRP proceeding may be suspended to implement a settlement agreement between the Parties. On April 26, 2022, the

Complainant sent an informal communication. On May 3, 2022, the Center received a Supplemental Filing from the Complainant (the "Supplemental Filing").

In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any formal response. Accordingly on May 4, 2022, the Center informed the Parties that it will proceed to Panel Appointment.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 9, 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 Panel accepts as accurate the following evidence derived from the Complaint which has not been challenged. The Complainant is an Austrian company which runs three hotels in Austria – the "Hotel Amadeus", the "Hotel Stein" and the "Hotel Goldgasse" all of which are located in Salzburg, Austria. These hotels are widely recognized outside of Austria, especially in German-speaking countries. The Complainant is the registrant of the domain name <hotelstein.at> which resolves to a website promoting the Hotel Stein (The "Complainant's Website"). The Complainant is the proprietor of European trademark No. 012194726 registered on the February 3, 2014 in classes 41 and 43.

It is referred to in this decision as the "Complainant's trademark".

The Disputed Domain Name was registered on November 15, 2021. It currently does not resolve to an active website. Filed evidence shows it previously resolved to a website (the "Respondent's Website") which purported to promote a "Hotel Stein" in Mainz (Germany), claiming it to be an exceptional luxury hotel in the centre of Mainz. At least some of the content on the Respondent's (former) Website has been copied from the Complainant's website and as such contains for example images of the Complainant's hotel in Salzburg. The filed evidence appears to indicate that there is no "Hotel Stein" in Mainz ("Hotel Stein" does not exist: the available Google Maps view shows a construction site, the hotel cannot be found on any standard booking platforms, and the Respondent's website has pictures of Salzburg (rather than Mainz)).

The Respondent's informal communication of April 19, 2022 stated "What is this all about? I would like to know if it's something against we can remove the Domain and delete it. I am not using it we already made it for a company".

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant say that the Disputed Domain Name is confusingly similar to the Complainant's trademark as it reproduces in full one element within that trademark.

The Complainant says the Respondent has no rights or legitimate interests in the term "Hotel Stein". It says that that term refers to its hotel and the Respondent is not operating a hotel of that name.

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. It relies on the fact that the Respondent's Website relates to a hotel which does not appear to exist and the Respondent wrongly appropriates an image of the Complainant's hotel in Austria, rather than the German city of Mainz, where Respondent's hotel is allegedly located.

## **B. Respondent**

No formal Response has been filed.

## **6. Discussion and Findings**

### **Preliminary Matters**

The Panel notes that no formal Response has been received from the Respondent. Given the Complaint and written notice were sent to the relevant addresses disclosed by the Registrar then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. In any event The Respondent’s informal communication (see above) shows the Respondent has received notice of the Complaint. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any response. While the Respondent’s failure to file a response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see *e.g.*, *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel declines to admit the Complainant’s Supplemental Filing. The only substantive content it adds to the Complaint is a request by the Complainant that the Panel make an award of costs in the Complainant’s favour. There is no jurisdiction under the Policy for a Panel to award costs and hence the Supplemental Filing is misconceived and of no relevance.

### **Substantive matters**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 Panel considers the Disputed Domain Name to be confusingly similar to the Complainant’s trademark. The trademark is a device mark but features clearly as part of the registered device the words “Hotel Stein”. Similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question – see for example *EFG Bank European Financial Group SA v Jacob Foundation* WIPO Case No. [D2000-0036](#) and *Sweeps Vacuum & Repair Centre, Inc. v Nett Corp* WIPO Case No. [D2001-0031](#). Taken as a whole the Complainant’s trademark shows a general corporate name (Amadeus Hotels Salzburg), then three descriptive words (“Kunst Kulture Leben” – which translate as “Art Culture Life”) then three names of specific accommodations one of which is Hotel Stein. In that layout the Panel considers the words “Hotel Stein” form a prominent part of the trademark particularly given that it is well accepted that the first element functions primarily as a standing requirement. The Panel also notes the image on the Respondent’s (former) Website is actually that of the Complainant’s hotel – see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.15. 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 – see [WIPO Overview 3.0](#) at section 1.7.

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

## **B. Rights or Legitimate Interests**

The Panel finds that on the evidence before it the terms "Hotel Stein" or "Stein Hotel" have no other meaning save in relation to the Complainant and its hotel of that name.

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

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the term Stein Hotel or Hotel Stein. The Complainant has prior rights in the Complainant's trademark which precede the Respondent's registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see for example *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](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name (moreover that he has copied (for this former Website) a picture of the Complainant's hotel). Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

## **C. Registered and Used in Bad Faith**

In the present circumstances, the distinctive nature of the Complainant's trademark and the term "Hotel Stein", and the lack of any explanation from the Respondent as to why he registered the Disputed Domain Name lead the Panel to conclude the registration and use was in bad faith.

The Disputed Domain Name has been linked to a website promoting what seems to be a non-existent hotel, but using a picture of the Complainant's hotel. It is not clear to the Panel whether or not the Respondent was seeking to making any commercial gain as a result.

The use of the Disputed Domain Name in this way is in the Panel's opinion illegitimately taking advantage of the Complainant's trademark. It is likely to lead to confusion and may well mislead potential customers who are seeking the Complainant's hotel. Further, the Panel cannot conceive of any uses that the Respondent could make of the Disputed Domain Name which would be legitimate, and the Panel concludes he must in some manner be seeking to take advantage of the Complainant's trademark when he has no right to do so.

Further the Panel notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

As a result, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **8. 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 <steinhotel.com> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: May 23, 2022