

ADMINISTRATIVE PANEL DECISION

Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco v.
Simone Venersia, and Sofronki Pirela
Case No. D2023-1325

1. The Parties

The Complainant is Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco, Monaco, represented by De Gaulle Fleurance & Associés, France.

The Respondents are Simone Venersia, and Sofronki Pirela, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <hotelhermitagemonte-carlo.com> (the “first disputed domain name”), and <monte-carlohotelhermitage.com> (“the second disputed domain name”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Redacted for privacy, Privacy service provided by Withheld for privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 5, 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 Respondents of the Complaint, and the proceedings commenced on April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on May 4, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 24, 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 company organized under the laws of Monaco with its registered office in the Principality of Monaco, founded on April 6, 1863 by a Sovereign Decree passed by Prince Charles III. Having as main shareholders the Principality of Monaco and its ruling family, namely, the House of Grimaldi, the Complainant presently employs almost 3,000 people and is the largest employer in Monaco.

In addition to the well-known Casino de Monte-Carlo, the Complainant operates a number of luxurious premises in Monaco amongst which the Hôtel Hermitage Monte-Carlo, built in the early 1900s in the heart of Monaco.

The Complainant is the owner of the Monegasque trademark registration No. 01.22310 for HOTEL HERMITAGE - MONTE-CARLO, filed on March 19, 2001, registered on May 31, 2001, subsequently renewed, in classes 8, 11, 21, 24, 41, 42, and 43.

The disputed domain names were registered on March 6, 2023 and March 10, 2023, respectively. Presently no active webpages resolve from the disputed domain names. The first disputed domain name has been used in connection with fraudulent emails impersonating the Complainant (Annex D to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant asserts to operate 4 casinos and gaming rooms in Monaco (the Casino de Monte-Carlo, the Monte-Carlo Bay Casino, the Casino Café de Paris and the Sun Casino) as well as a complete resort including 2 palaces and 2 deluxe hotels, 40 conference and banqueting rooms, 34 restaurants and bars, 3 spas, cultural and leisure venues amongst which the Jimmy's Monte-Carlo night club, the Salle des Etoiles, the Monte-Carlo Golf Club and the Monte-Carlo Country Club. According to the Complainant, these venues form part of a complete resort enjoying a very high reputation among the sphere of luxury palaces around the world, one of which is the Hôtel Hermitage Monte-Carlo, one of its palaces that epitomizes carefree elegance at the highest level.

The Complainant further states that the Hôtel Hermitage Monte-Carlo, a stone's throw from the famous Casino Square, counts with a unique, prestigious collection of 278 rooms and suites, having had part of its structure designed by Gustave Eiffel, the creator of the Eiffel Tower. Having been modernized in the 2000's, it was rewarded with a series of awards and distinctions among which "Top 10 France Condé Nast Traveler Reader's Choice Award 2016, 2015 and 2014".

The Complainant submits that the disputed domain names are subject to common control by either the same person or connected parties and for reasons of fairness, equity and efficiency, the Complainant requests consolidation of the multiple Respondents to the same Complaint, given that: i) the contact details disclosed for the Respondents (address and telephone number) are strictly identical; ii) the disputed domain names share the same Registrar; iii) the disputed domain names were registered within few days from each other;

and iv) the disputed domain names are composed by the same elements, only differing by a hyphen.

Moreover, the Complainant submits that the first disputed domain name is strictly identical to the Complainant's trademark whereas the second disputed domain name consists of a mere inversion of the Complainant's trademark and is therefore confusingly similar therewith.

As to the Respondents lack of rights or legitimate interests in respect of the disputed domain names, the Complainant contends that:

- (a) the Respondents hold no intellectual property rights over any mark that contains "HOTEL HERMITAGE" and "MONTE-CARLO";
- (b) the Complainant has never authorized the Respondents to register and use the disputed domain names; and
- (c) the disputed domain names have not been used in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names.

As to the registration of the disputed domain names in bad faith, the Complainant asserts that the Respondents knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain names in view of the strong reputation and world renown of the Complainant's trademark.

Further, the Respondents' intent to target the Complainant can easily be inferred from the use made of the first disputed domain name in connection with fraudulent emails impersonating the Complainant, having the Complainant sent a takedown notice to the Registrar on March 8, 2023, what lead to the Domain Name System zone to be withdrawn on March 9, 2023 and potentially triggered the Respondent to register the second disputed domain name on March 10, 2023 (also taken down in view of the strong risk of being used in connection with a similar phishing campaign).

Lastly, the Complainant contends that the contact details provided by the Respondents contain false information so as to shield the true identity of the underlying Respondent.

B. Respondents

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain names.

Before turning to these questions, however, the Panel needs to address the issue of the consolidation of the multiple Respondents.

A. Consolidation of Multiple Respondents

The Complainant requests that this Panel accept the multiple Respondents in a single proceeding in view of the facts enumerated at the Section 5.A. above.

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) establishes that “[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”.

All of the aforementioned criteria are present in this case and therefore this Panel accepts such request considering that it would be more procedurally efficient to have all of the disputed domain names dealt with at the same procedure, given that both disputed domain names: (a) share the same Registrar; (b) indicate the same contact details (address and telephone number); (c) were registered within four days from each other; and (d) share a similar naming pattern, being composed by the same elements in inverted order.

This Panel is satisfied, in view of the evidence submitted and on the balance of probabilities that the disputed domain names are indeed subject to a common control and that consolidation would be fair and equitable to all Parties.

B. Identical or Confusingly Similar

The Complainant has established its rights in the HOTEL HERMITAGE - MONTE-CARLO trademark duly registered.

The Panel finds that the disputed domain names reproduce the Complainant’s trademark in its entirety. As recognized by past UDRP panels, this test involves a “comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name” and the disputed domain names are thus confusingly similar to the Complainant’s trademark ([WIPO Overview 3.0](#), section 1.7.)

The first element of the Policy has therefore been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondents’ rights to or legitimate interests in the disputed domain names. These circumstances are:

- (i) before any notice of the dispute, the Respondents’ use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondents (as individuals, businesses, or other organizations) have been commonly known by the disputed domain names, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondents are making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Complainant has made out a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names. The burden of production has therefore shifted to the Respondents to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests.

The Respondents, in not responding to the Complaint, have failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names. This entitles the Panel to draw any such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

As seen above, the first disputed domain name has been used in the past in connection with an email scam impersonating the Complainant in attempt to defraud the Complainant's customers into transferring funds for the benefit of the Respondent. Indeed such use cannot be considered here a *bona fide* offering of goods or services nor legitimate noncommercial or fair use under the Policy.

Furthermore, the composition of the disputed domain names, wholly incorporating the Complainant's well-known trademark carries a risk of implied affiliation. See section 2.5.1, [WIPO Overview 3.0](#).

Also, the lack of evidence on record showing that the Respondents have been commonly known by the disputed domain names, is a further indication that the Respondents lack rights or legitimate interests in the disputed domain names.

The second element of the Policy has also been met.

D. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of the disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the Complainant's establishment is a historical and prestigious establishment, being its name and registered trademark well-known;
- b) the use of the first disputed domain name in connection with a fraudulent email scam impersonating the Complainant;
- c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names;
- d) the present inactive use of the disputed domain names;
- e) the Respondent's choice to retain a privacy protection service; and
- f) the indication of what appear to be false contact details, not being the Centre fully able to deliver communications to the Respondents.

Further, previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain names.

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 names, <hotelhermitagemonte-carlo.com>, and <monte-carlohotelhermitage.com>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 7, 2023