

ADMINISTRATIVE PANEL DECISION

Hyatt Corporation, Hyatt International Corporation v. Privacy Service
Provided by Withheld for Privacy ehf / chetan jindal
Case No. D2022-1578

1. The Parties

The Complainant is Hyatt Corporation, Hyatt International Corporation, United States of America (“United States”), represented by DLA Piper US LLP, United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / chetan jindal, India.

2. The Domain Name and Registrar

The disputed domain name <thehyattvacationclub.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2022. On May 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 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 May 3, 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 May 3, 2022.

The disputed domain name was set to expire on June 28, 2022. On May 3, 2022, the registration was renewed by the Complainant in accordance with the terms of paragraph 3.7.5.7 of the Registrar Accreditation Agreement, applicable to all ICANN-accredited Registrars and all generic Top Level Domain (“gTLD”) registrations.

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 May 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2022. On May 7, May 22 and May 30, 2022, the Center received emails from the Registrar-disclosed email address for the Respondent, as well as from a third party, which are considered below. The Respondent did not, however, submit a formal response. Accordingly, the Center notified the commencement of panel appointment process on May 30, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on June 3, 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 an international hotel management company, with its principal place of business in Chicago, Illinois, United States. It provides services for HYATT-branded properties, hotels and resorts worldwide. Its portfolio of authorized, franchised or licensed hotels now extends to more than 1,150 properties in 70 countries.

The Complainant has used the name HYATT for more than 60 years in connection with the provision of resort services and is the owner of many trade mark registrations which comprise or include this term including, by way of example;

- India Trade Mark, registration number 739750, for HYATT, in class 16, registered on December 17, 1996;
- United States Service Trade Mark, registration number 1,951,219, for HYATT VACATION CLUB, in class 36, registered on January 23, 1996¹.

The Complainant also owns domain name registrations comprising or including its HYATT mark, including <hyatt.com>, which resolves to a website providing information about its services, as well as <hyattvacationclub.com>, which resolves to a website promoting the benefits of its Hyatt Vacation Club business.

The disputed domain name was registered on June 28, 2021. On December 20, 2021, the Complainant's representatives sent a claim letter to a number of parties it believed were responsible for the registration and use of the disputed domain name which, at which time, resolved to an active website promoting a travel business named "The Hyatt Vacation Club". The Respondent's website is currently inactive and the disputed domain name currently resolves to a webpage stating that; "This account has been suspended".

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its HYATT and HYATT VACATION CLUB marks in that it wholly incorporates each of these marks. The inclusion, within the disputed domain name, of the terms "vacation" and "club" will increase the likelihood of confusion to Internet users.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant's rights in its HYATT and HYATT VACATION CLUB marks substantially pre-date the Respondent's registration of the disputed domain name. The Respondent is not known by the disputed domain name and the Complainant has not licensed or otherwise permitted the Respondent to use its HYATT and/or HYATT VACATION CLUB marks or to apply for any domain name

¹ Details obtained from the United States Patent and Trademark Office website.

incorporating those marks. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

Lastly, the Complainant says that the Respondent registered and is using the disputed domain name in bad faith. Given the Complainant's worldwide reputation, the Respondent was, or should have been, aware of the Complainant's marks prior to registering the disputed domain name. The Respondent did not register the disputed domain name in order to offer services but rather for the bad faith purpose of intentionally attempting to attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark. Failure to substantively respond to a complainant's demand letter requesting a transfer of a domain name may serve as evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant 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. Procedural issue – Identification of the Respondent

On May 7, 2022, the Center received an email from the email address disclosed by the Registrar as that of the underlying registrant and the named Respondent, chetan jindal, asserting that he was a website developer and that the disputed domain name had been obtained by him for a third party, Ajay Maddy. On May 22, 2022, the Respondent sent the Center details of an email address for Ajay Maddy. Thereafter, the Center's communications in relation to these proceedings were also sent to Ajay Maddy. In particular, on May 25, 2022, the Center sent Mr. Maddy, copies of the Complaint, the amended Complaint and the accompanying annexes. On May 30, 2022, an email was sent to the Center from Mr Maddy's email address stating "The domain gas [sic] already been shut down. What issue you team creating or having. What is the issue."

Paragraph 1 of the Rules defines a respondent as "the holder of a domain-name registration against which a complaint is initiated". The Whois information provided by a registrar would usually be considered as the definitive record of the identity of a registrant and therefore of the party that is the proper respondent to proceedings under the Policy. In these proceedings, whilst the Registrar has stated that chetan jindal is the underlying registrant of the disputed domain name, chetan jindal has asserted that Ajay Maddy is, in effect, the beneficial owner of it and has provided contact information for him. Following receipt by Mr Maddy of the Complaint and Amended Complaint, an email has been sent from his email account to the Center, in the terms set out above, in which he implicitly acknowledges an interest in the disputed domain name.

The precise nature of the relationship between chetan jindal and Ajay Maddy is unclear, but the Panel finds, on a balance of probabilities, that Mr. Maddy has a beneficial interest in the disputed domain name. In these circumstances, the appropriate course is for the Panel to refer to, and treat, both chetan jindal and Ajay Maddy as the Respondent to these proceedings; see *Skoda Auto a.s. v. GlobeHosting, Inc.; Bogdan Hasnes, Evox Protrade SRL*, WIPO Case No. [DRO2019-0017](#). The Panel notes from Mr Maddy's response to the Center that he has not indicated any desire or intention to challenge the assertions in the Complaint or

to serve a Response.

B. Identical or Confusingly Similar

The Complainant has provided details of its trade and service mark registrations for HYATT and HYATT VACATION CLUB, examples having been provided above. It has thereby established its rights in these marks.

The gTLD, in the disputed domain name, that is the “.com” component, is typically disregarded for the purposes of the comparison made under the first element, as it is a technical requirement of registration. The disputed domain name features the Complainant’s HYATT and HYATT VACATION CLUB trade marks in full. The added term “the” and (in respect of the HYATT mark, the additional terms “vacation” and “club”) do not prevent the disputed domain name from being found confusingly similar to these marks. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)); “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

The Complainant’s HYATT and HYATT VACATION CLUB marks are recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to trade and service marks in which the Complainant has rights.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The Complainant has provided evidence of the established global repute of its HYATT mark. Whilst the Complainant’s evidence is not specifically directed to its repute in India, where the Respondent is located, the claim letter sent by the Complainant’s representatives to the Respondent in December, 2021 asserted that the Complainant operated more than 25 hotels in India. Additionally, the Complainant has demonstrated that its HYATT mark is long-established and widely-known internationally in the field of holiday resorts and hotels and is distinctive of those services.

Whilst the exact nature of the travel business which was operated, or purportedly operated, by the Respondent during the period that its website was active is not readily apparent, the screenshots of the website contained within the Complainant’s claim letter contain photographs of a holiday setting, as well as a section headed “Benefits of the Hyatt Vacation Club”, beneath which are the words “Enjoy a host of benefits for your family when travelling with The Hyatt Vacation Club on your next trip!”. Additionally, one of the quick links in the Respondent’s website is to “Resort Options”. It is therefore clear that the business promoted by the Respondent was in substantially the same field of activity as that of the Complainant. In these circumstances the Panel finds that during the period that the disputed domain name resolved to an active website, the Respondent had used the disputed domain name and the trading style “The Hyatt Vacation Club” in order to confuse Internet users into believing that its business was operated by, or at least with the authorization of, the Complainant.

As explained by the panel in *Option One Mortgage Corporation v. Option One Lending*, WIPO Case No. [D2004-1052](#); “It is undisputed that Complainant and Respondent operate in the same field. Respondent’s use of a confusingly similar Domain Name on a website offering for sale overlapping products and services is neither a *bona fide* offering of goods or services, nor is it a legitimate noncommercial or fair use pursuant to Policy”.

The Panel therefore finds that the Respondent's earlier use of the disputed domain name does not comprise a *bona fide* offering of goods and services, nor does it comprise a noncommercial or fair use of it.

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. Lastly, the present inactive status of the disputed domain name amounts neither to a *bona fide* offering of goods and services nor to a noncommercial or fair use of it.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

D. Registered and Used in Bad Faith

The Complainant has provided evidence that as at the date of the registration of the disputed domain name, its HYATT mark was long-established and well-known internationally. Having regard to the use to which the Respondent put the disputed domain name following registration, it is evident that the Respondent was aware of the Complainant's mark as at the date of its registration of the disputed domain name and that the Respondent's underlying intention in registering it had been to take advantage of the Complainant's repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#): "[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith." See also, *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#); "Substantial authority exists to the effect that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use". The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The nature of the Respondent's website, whilst it was active, falls within these circumstances in that its form and content will have led Internet users to believe that it was operated by, or with the authorization of, the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain name and the Complainant's trade marks. The Respondent's use of the disputed domain name in order to create the false impression of a connection with the Complainant's business is accordingly in bad faith. See, for example, *Capella Hotel Group Pte. Ltd. v. Vu Ngoc An*, WIPO Case No. [D2021-3941](#).

The current, inactive status of the disputed domain name is not a bar to a finding of bad faith. Section 3.3 of the [WIPO Overview 3.0](#) explains that: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put". See also; *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

Applying these factors to the current circumstances; (i) the Complainant's HYATT mark is distinctive, long-established and widely used; (ii) the Respondent has not provided any credible evidence of actual or contemplated good-faith use by it of the disputed domain name; (iii) the Respondent has sought to conceal

its identity through use of a privacy service; and (iv) it is not possible to conceive of any plausible good faith use to which the disputed domain name could be put by the Respondent.

For the above reasons, the Panel finds that the disputed domain name was both registered and is being used in bad faith.

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 <thehyattvacationclub.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: June 15, 2022