

ADMINISTRATIVE PANEL DECISION

Montage Hotels & Resorts, LLC v. Aleksey Maksimov
Case No. D2022-3440

1. The Parties

The Complainant is Montage Hotels & Resorts, LLC, United States of America (“United States”), represented by Neal, Gerber Eisenberg, United States.

The Respondent is Aleksey Maksimov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <montage-hotel.com> is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 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 September 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center sent to the Parties a document in English and Russian in relation to the language of the proceeding. On September 25, 2022, the Complainant requested that the language of the proceeding be English. On September 27, 2022, the Complainant filed an amended Complaint. The Respondent did not submit any statement on the language of the proceeding.

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 October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 25, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on November 1, 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 a luxury hotel and resort management company founded in 2002. It currently operates seven MONTAGE-branded properties in the United States and one in Mexico.

The Complainant is the owner of the following trademark registrations for the sign “MONTAGE” (the “MONTAGE trademark”):

- the United States trademark MONTAGE with registration No. 2801152, registered on December 30, 2003 for services in International Class 37;
- the United States trademark MONTAGE with registration No. 3320312, registered on October 23, 2007 for services in International Classes 39 and 41;
- the United States trademark MONTAGE with registration No. 3325069, registered on October 30, 2007 for services in International Classes 41 and 43;
- the Russian trademark MONTAGE with registration No. 462596, registered on May 23, 2012 for services in International Class 43; and
- the Russian trademark MONTAGE with registration No. 653371, registered on April 23, 2018 for services in International Class 43.

The Complainant is also the owner of the domain names <montagehotels.com>, registered on August 13, 2004, and <montage.com>, registered on January 12, 1998, which resolve to the Complainant’s main website.

The disputed domain name was registered on February 4, 2022. When accessed, it activates a browser security warning.

5. Parties’ Contentions

A. Complainant

The Complainant points out that while the disputed domain name appears to resolve to an inactive webpage, the warning page automatically activated by an Internet browser suggests that the Respondent is using the disputed domain name to perpetrate a scam to trick users who believe they are providing information to the Complainant into revealing their personal or payment information such as passwords, phone numbers, or credit cards.

The Complainant states that the disputed domain name is confusingly similar to its MONTAGE trademark, because it consists of this trademark plus the dictionary word “hotel”, which indicates the primary service offered by the Complainant. The Complainant notes that the disputed domain name is also visually similar to the Complainant’s domain name <montagehotels.com>, differing by only the omission of the letter “s” and the addition of a hyphen. According to the Complainant, this intentional spelling variation was adopted with the objective of taking advantage of Internet users looking for or mistyping the <montagehotels.com> domain name when trying to access the Complainant’s websites.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has no relationship with the Complainant, and the Complainant has not consented to the Respondent's registration or use of the disputed domain name. The Complainant adds that the disputed domain name does not resolve to an active website, and its passive holding is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. According to the Complainant, the disputed domain name or an email address associated with it are likely being used to perpetrate a scam by seeking the transfer of personal or payment information to perpetrate a fraud on the Complainant's customers. In the Complainant's view, given the renown of the MONTAGE trademark, the Respondent would not have chosen the disputed domain name unless it was seeking to intentionally trade on the MONTAGE trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent has registered the disputed domain name with knowledge of the Complainant's MONTAGE trademark, and given the renown of this trademark, it is not plausible that the Respondent innocently registered the disputed domain name except to exploit its similarity to the MONTAGE trademark. The Complainant points out that the Respondent registered the disputed domain name on February 4, 2022, well after the Complainant's first use and adoption of the MONTAGE trademark, and long after the Complainant's registration of numerous domain names comprised of it, including the domain names <montage.com> and <montagehotels.com>. The Complainant adds that the warning page displayed when one attempts to access the disputed domain name shows that the Respondent may use it to impersonate the Complainant and defraud the Complainant's customers or engage in other fraudulent activity.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue – Language of the proceeding

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. Paragraph 11(a) allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding.

The Registrar has confirmed that the language of the registration agreement is Russian.

The Complaint was filed in English and the Complainant requests that English be the language of the proceeding. The Complainant maintains that the Respondent has familiarity with the English language, because the disputed domain name consists of English-language words and is displayed in Latin characters, while the warning page displayed when one attempts to access the disputed domain name suggests a phishing scheme, which requires sufficient familiarity with English to grasp the Complainant's services, trademarks, and reputation. The Complainant adds that conducting the proceedings in Russian would cause undue hardship to the Complainant and would unnecessarily delay the proceedings.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical 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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain- name holder) to retain registration and use of the disputed domain name [...]”

The Respondent however did not make any submission in this proceeding.

A. Identical or Confusingly Similar

The Complainant has provided evidence that he is the owner of various registrations of the MONTAGE trademark and has thus established its rights in this trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name.

The disputed domain name reproduces the MONTAGE trademark in its entirety with the addition of the dictionary word “hotel”, which refers to the services offered by the Complainant under the MONTAGE trademark. This is sufficient for the Panel to conclude that the disputed domain name is confusingly similar to the MONTAGE trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has no relationship with the Complainant, and the Complainant has not consented to the Respondent’s registration or use of the disputed domain name. The Complainant adds that the warning

webpage displayed when accessing the disputed domain name indicates that it or an email address associated with it are likely being used for scam attacks against customers of the Complainant. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not denied the allegations of the Complainant or the evidence submitted by it. It has not provided any explanation regarding the registration and use of the disputed domain name.

The disputed domain name is confusingly similar to the MONTAGE trademark and to the Complainant's domain name <montagehotels.com>, and its composition refers to the Complainant's business, and the evidence in the case shows that a security warning is displayed when one attempts to access it through a browser. This indicates a risk that illegitimate activities are being carried out through the disputed domain name. In view of this, and in the lack of any contrary allegation or evidence, the Panel finds that the Complainant's *prima facie* case has not been rebutted, and the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the Complainant's MONTAGE trademark and domain name, and refers to the Complainant's business carried out under the same trademark. As discussed in the section on rights and legitimate interests, there is risk that illegitimate activities are being carried out through the disputed domain name, such as scam attacks against persons who may be misled to believe that the disputed domain name is associated with the Complainant.

Taking the above into account, the Panel finds as more likely that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial or other gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's MONTAGE trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on them.

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 <montage-hotel.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: November 15, 2022