

## **ADMINISTRATIVE PANEL DECISION**

Montage Hotels & Resorts, LLC v. mark mark  
Case No. D2022-3720

### **1. The Parties**

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

Respondent is Privacy service provided by mark mark, United States.

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

The disputed domain name <m0ntage.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 October 5, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 (“Withheld for Privacy ehf”) and contact information in the Complaint. The Center sent an email communication to Complainant on October 11, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 16, 2022.

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 Respondent of the Complaint, and the proceedings commenced on October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 8, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on November 14, 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**

Complainant states in its Complaint and provides evidence in the respective Annexes sufficient to support that Complainant owns and operates a collection of distinctive luxury hotels, resorts, and residences under the trademark MONTAGE (the “MONTAGE Mark”) that are dedicated to comfortable elegance with architecture authentic and true to each property’s surroundings, and décor inspired by each property’s respective setting. Complainant operates its properties under the MONTAGE Mark in highly desirable locations including Laguna Beach, California, Kapalua Bay Hawaii, Big Sky, Montana, Deer Valley, Utah, and Los Cabos, Cabo San Lucas, Mexico. Complainant’s luxury hotel services have received widespread critical acclaim in international publications such as the New York Times, USA Today, the Los Angeles Times, Condé Nast Traveler, and Travel + Leisure, and have garnered numerous high-profile and coveted industry awards, including Travel + Leisure’s World’s Best Awards, Condé Nast Traveler’s Top 100 Best in the World, US News and World Report’s Top 25 Luxury Hotels in the United States, and the Forbes Five Star Award.

Complainant has used the MONTAGE Mark in connection with a range of hotel, resort, residential condominium, spa, restaurant and bar services for over 18 years and owns over 100 trademark registrations around the world for such services, including U.S. Trademark Registration No. 2801152, MONTAGE, registered on December 30, 2003; European Union Trademark Registration No. 002979425, MONTAGE, registered on December 3, 2004; New Zealand Trademark Registration No. 762499, MONTAGE; and China Trademark Registration No. 7840015, MONTAGE.

Complainant’s mark and services are further promoted through numerous websites maintained by Complainant, including <montage.com> and <montagehotels.com>.

The disputed domain name was registered on June 14, 2022, and resolves to an inactive website.

#### **5. Parties’ Contentions**

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

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

#### **6. Discussion and Findings**

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

### **A. Identical or Confusingly Similar**

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for the MONTAGE Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

For purposes discussed further under 6.B. and 6.C. below, the Panel also finds that the MONTAGE Mark qualifies as distinctive and well-known in its industry based on credible evidence submitted of national and international media recognition, use and registration of its MONTAGE Mark all over the world, and award-winning recognition from credible third party sources in its industry, including in the U.S. where Respondent’s business appears to be located.

Prior UDRP panels have held a domain name which wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy. [WIPO Overview 3.0](#), section 1.8; see also *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#).

Prior UDRP panels have also considered a domain name, which consists of a common, obvious, or intentional misspelling of a trademark to be confusingly similar to the relevant mark for purposes of the first element. See [WIPO Overview 3.0](#), section 1.9; see also, *Comerica Bank v. Online Management / Registration Private, Domains By Proxy, LLC*, WIPO Case No. [D2014-1018](#) (letter “o” in mark COMERICA replaced with the numeral zero in the disputed domain name).

The Panel finds here that the disputed domain name wholly incorporates Complainant’s registered MONTAGE Mark and is essentially identical to the MONTAGE Mark. As in the Comerica Bank case, Respondent’s only change, replacing the letter “o” in the trademark with the numeral zero (“0”) in the disputed domain name, confirms the fact that the disputed domain name is confusingly similar to the MONTAGE Mark.

Accordingly, the Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to Respondent to come forward with relevant evidence of such rights or legitimate interests in the disputed domain name. If Respondent fails to come forward with such evidence, Complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that it has not licensed, or otherwise authorized Respondent to use the MONTAGE Mark in any manner, nor is Complainant in any way or manner associated with or related to Respondent. Complainant has also argued with persuasive evidence submitted that Respondent, identified by the name “mark mark” is not commonly known by the disputed domain name because it clearly bears no resemblance to the term “MONTAGE”.

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant's trademark, that Respondent is not commonly known by the disputed domain name, and that a complainant has not authorized Respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

Most importantly, Complainant's evidence shows the disputed domain name resolves to an inactive website, Respondent, therefore, is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a *bona fide* offering of goods or services to confer a right or legitimate interest because there is no evidence the disputed domain name is being used at all. See *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

These facts establish Complainant's *prima facie* showing. Respondent has not provided any basis on which that showing may be overcome. In addition, the Panel notes that the composition of the disputed domain name being essentially identical to Complainant's mark carries a risk of implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

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

As noted in 6.A., the record shows that Complainant's MONTAGE mark is widely-known.

Based on this evidence, the Panel finds that it is implausible to believe that Respondent was not aware of the MONTAGE Mark when it registered its confusingly similar disputed domain name with an "0" instead of an "o". Such registration of a domain name confusingly similar to Complainant's widely-known trademark suggests opportunistic bad faith. See *Giorgio Armani S.p.A. Milan, Swiss Branch Mendrisio v. Min Zhi*, WIPO Case No. [D2013-0020](#).

The circumstances of this case, where Respondent has registered a disputed domain name that includes the entirety of Complainant's MONTAGE Mark with an intentional one-letter misspelling of Complainant's widely-known MONTAGE Mark and official <montage.com> domain name, the disputed domain name constitutes typosquatting, which conduct has been taken into account by prior UDRP panels in finding that a domain name has been registered in bad faith. See, [WIPO Overview 3.0](#), section 3.2.1; see also *Equifax Inc. v. Jaewan Lee*, WIPO Case No. [D2021-1628](#). The Panel finds Respondent registered the disputed domain name in bad faith.

Although the disputed domain name resolves to an inactive website, inaction or "passive holding" of a disputed domain name confusingly similar to a well-known mark has been found by prior UDRP panels within the concept of the domain name "being used in bad faith". See *Telstra Corporative Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Prior UDRP panels have also held that registration of a domain name that is confusingly similar to a well-known trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use. See *MasterCard International Incorporated v. North Tustin Dental Associates*, WIPO Case No. [D2007-1412](#).

Finally, Complainant has also shown that Respondent has engaged in a pattern of trademark-abusive domain name registrations. Respondent has been involved in at least three separate UDRP proceedings where the panel found Respondent had registered and used domain names comprised of other's well-known trademarks for fraudulent activity. See *Cantor Fitzgerald Securities, Cantor Index Limited v. Mark Mark, Chen Xian Sheng/Whois Protect*, WIPO Case No. [D2014-0125](#); *BASF SE v. Mark Mark*, WIPO Case No. [D2016-1848](#).

Given the worldwide recognition of Complainant's MONTAGE Mark and Respondent's lack of any relationship to the mark, the Panel finds the disputed domain name has been registered and used in bad faith.

For these reasons, the Panel finds that Complainant has met its burden under paragraph 4(a)(iii) 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 <m0ntage.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: December 2, 2022