

ADMINISTRATIVE PANEL DECISION

Montage Hotels & Resorts, LLC v. Aleksey Maksimov
Case No. D2022-4872

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-hotels-resorts.com> (the “Domain Name”) is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 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 January 11, 2023.

On January 6, 2023, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. On January 9, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondents did not comment 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 in both English and Russian, and the proceedings commenced on January 16, 2023.

In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 6, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on February 13, 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 luxury hotel and resort management company. In particular, the Complainant operates a collection of luxury hotels, resorts, and residences under the MONTAGE brand in the United States and Mexico.

The Complainant is the owner of numerous MONTAGE trademark registrations, including:

- the United States Trademark Registration MONTAGE No. 2801152 registered on December 30, 2003;
- the United States Trademark Registration MONTAGE No. 3320312 registered on October 23, 2007;
- the United States Trademark Registration MONTAGE No. 3325069 registered on October 30, 2007;
- the Russian Trademark Registration MONTAGE No. 462596 registered on May 23, 2012; and
- the Russian Trademark Registration MONTAGE No. 653371 registered on April 23, 2018.

The Complainant is also the owner of numerous domain names incorporating its MONTAGE trademark, including <montagehotelsandresorts.com>, <montagehotels.com> and <montage.com>, all of which resolve to <montagehotels.com>.

The Domain Name was registered on November 3, 2022.

At the time of the filing of the Complaint, the Domain Name resolved to a website that wholly copied the Complainant's official website (the "Website"). Moreover, the Complainant presented evidence that the warning page automatically populated by Google Chrome suggested that the Domain Name resolved to the deceptive site where attackers could trick the Internet users into dangerous actions like installing software or revealing personal information (for example, passwords, phone numbers, or credit cards) (the "Warning Page"). As of the date of this Decision, the Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the MONTAGE trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant contends that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the 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 the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Paragraph 11(a) of the Rules provides that "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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English. The Complainant argues *i.a.* that the Respondent has demonstrated familiarity with the English language given that the Domain Name consists of English-language words displayed in Latin characters. Moreover, the Complainant notes that the Warning Page suggests a phishing scheme which requires sufficient familiarity with English to grasp the Complainant's services, trademark and reputation. Further, the Complainant submits that conducting the proceedings in Russian would cause undue hardship to the Complainant, whose primary language is not Russian, and would unnecessarily delay the proceedings. Finally, the Complainant alleges that the Respondent has previously demonstrated sufficient familiarity with the English language in a prior WIPO case. See *Montage Hotels & Resorts v. Alexksey Maximov*, WIPO Case No. [D2022-3440](#).

The Panel agrees that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the language of the proceeding, even though it was notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid MONTAGE trademark registrations which precede the registration of the Domain Name. The Domain Name incorporates this trademark in the entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the terms “-hotels-resorts” in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s MONTAGE trademark. UDRP panels have consistently held that 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. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level Domain (“TLD”) “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s MONTAGE trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s MONTAGE trademark registrations predate the registration of the Domain Name. There is no evidence in the record that the Complainant has licensed or otherwise permitted the Respondent to use the MONTAGE trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it does not result from the evidence in the record that the Respondent makes use of the Domain Name in connection with a *bona fide* offering of goods or services, or it makes a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain. On the contrary, the Domain Name resolved to the Website that wholly copied the Complainant’s official website. Moreover, the Complainant presented evidence that the Warning Page suggested the phishing scheme on the Website. Such use of the

Domain Name does not confer rights or legitimate interests on the Respondent.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

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

As indicated above, the Complainant's rights in the MONTAGE trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name. This finding is supported by the content of the Website purporting to be the Complainant's official website. Moreover, it has been proven to the Panel's satisfaction that the Complainant's MONTAGE trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of services and products under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's MONTAGE trademark.

Moreover, the Domain Name is used in bad faith by the Respondent to attract Internet users to the deceptive Website that wholly copied the Complainant's official website and could be used to trick the Internet users into installing dangerous software or revealing personal information. By reproducing the Complainant's MONTAGE trademark in the Domain Name, as well as copying the content of the Complainant's official website, the Respondent intends to profit from the confusion created with Internet users, as it suggests association with the Complainant. In consequence, the Panel finds that the evidence in the record demonstrates that the Respondent uses the Domain Name deliberately in order to take advantage of the Complainant's reputation and to give credibility to its services.

Furthermore, the Complainant has submitted evidence demonstrating that the Respondent has previously been involved in UDPR dispute with the Complainant with respect to the domain name <montage-hotel.com>. The panel in this case decided that the domain name <montage-hotel.com> was registered in

bad faith and ordered its transfer to the Complainant. See *Montage Hotels & Resorts v. Alexksey Maximov*, WIPO Case No. [D2022-3440](#). Consequently, this Panel finds that there is a documented pattern of the Respondent's bad faith conduct.

Finally, the fact that the Domain Name no longer resolves to an active website does not prevent a finding of bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements 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 Domain Name <montage-hotels-resorts.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: February 27, 2023