

ADMINISTRATIVE PANEL DECISION

Future Inns UK Ltd v. Sotirios Kopatsaris
Case No. D2022-4920

1. The Parties

The Complainant is Future Inns UK Ltd, United Kingdom, represented by Bevan Brittan, LLP, United Kingdom.

The Respondent is Sotirios Kopatsaris, Greece, represented by Trademarks Wizards, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <thefuturehotels.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 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 December 28, 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 the Respondent of the Complaint, and the proceedings commenced on January 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2023. The Response was filed with the Center on January 25, 2023.

On January 26, 2023, the Respondent sent an email to the Center confirming that the Respondent did not consent to the remedy requested by the Complainant.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on February 10, 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.

On January 31, 2023, the Complainant emailed the Center pointing out that the Response had been filed on behalf of Future Hotels International Single Member PC, not the named Respondent.

4. Factual Background

The Complainant has been operating a chain of hotels in the United Kingdom since 2005. There are three hotels in the chain, Future Inn Cardiff, Future Inn Plymouth, and Future Inn Bristol.

The chain has been very successful. It receives room bookings for more than 125,000 nights each year.

It has ratings of 8.2 (or better) out of 10 on Booking.com – from more than 8,000 guest reviews for Bristol, almost 7,800 reviews for Cardiff and almost 4,000 reviews for Bristol. The Complainant's hotels have achieved similarly high ratings on Google, Hotels.com, Tripadvisor, and Trivago.

It received the Booking.com Traveller Review Award in 2021; the Three Best Rated Award in 2020; and the Tripadvisor Travellers' Choice Award in both 2020 and 2021.

Amongst other things, the Complainant promotes its hotel chain from a website at "www.futureinns.co.uk", having registered the domain name on October 2, 2002.

According to the Complaint, it sponsors a range of venues and events including the Welsh National Opera and Wales Millennium Centre, Brecon Jazz Festival, the Bike to the Future initiative, Castle Coombe FF1600 Championship, and JIF Llandow Races. It also features in online publications such as Visit Cardiff, Bristol Live, Plymouth Live and Wales Online.

The Complaint also states that a number of Future Inn hotels have also operated in Canada in the past, with the first being opened in 1989. At this time, however, there is only one hotel in Halifax, Canada. It is not owned or operated by the Complainant but pays a licence fee to the Complainant for use of the name and brand in Canada.

With effect from January 31, 2003, the Complainant registered United Kingdom Registered Trademark No UK00002322332, FUTURE INN, which is registered in respect a range of hotel, catering and restaurant services in International Class 43.

The disputed domain name was registered on January 21, 2019.

Shortly before the Complaint was filed the disputed domain name resolved to a website promoting "Future Hotels", headed "The world's most innovative hotels" and describing Future Hotels as a global community of award-winning hoteliers, technologists, researchers and travel agents, on a mission to redefine what it means to be an independent hotel in the 21st century – and beyond."

The website lists "Future Hotels" as having two offices; one in Athens and one on Santorini.

The disputed domain name is, and was, registered in the name of Sotiris Kopatsaris.

Mr. Kopatsaris is described in the Response as the founder and CEO of Future Hotels International Single Member PC, a company which was incorporated in Greece on February 23, 2019. Its address, according to the Response, is the same as the address in Athens provided on the website to which the disputed domain name resolves.

Mr. Kopatsaris is also the sole director and majority shareholder of Future Hotels Ltd, a company which was incorporated in the United Kingdom on July 23, 2020.

According to the Response, Future Hotels Ltd was incorporated and the disputed domain name registered in conjunction with plans to expand operations into the United Kingdom.

So far as the record in this proceedings shows, Future Hotels Limited is a dormant company. However:

- (a) it is the owner in the United Kingdom of a registered trademark number UK00003547037, FUTURE HOTELS, which was registered with effect from October 22, 2020 in respect of a range of goods in International Classes 9, 35, 36, 39, 41, 42, and 43 including, amongst other things, hotels, hotel reservations services and travel agency services; and
- (b) it is also the applicant for registration of United Kingdom trademark number, UK00003589859, FUTURE HOTELS and device, which was filed on February 3, 2021 in respect of the same goods and services as registered trademark number UK00003547037.

The Complainant has opposed the registration of trademark application number UK00003589859 and is seeking cancellation of trademark number UK00003547037.

Future Hotels Limited has sought the cancellation of the Complainant's registered trademark.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. The Respondent and the Response

The Complainant appears to challenge the admissibility and relevance of the Response on the basis that it has been submitted by Future Hotels International Single Member PC and not the Respondent identified by the Registrar.

As the Complainant points out, paragraph 1 of the Rules defines the respondent to mean "the holder of a domain-name registration against which a complaint is initiated". It is clear, therefore, that Mr. Kopatsaris is the Respondent for the purposes of the proceeding.

However, Mr. Kopatsaris is the CEO and founder of Future Hotels International Single Member PC and the sole director and majority shareholder of Future Hotels Limited.

Whatever the precise legalities, therefore, it appears clear that Future Hotels International Single Member PC can be regarded as using the disputed domain name with Mr. Kopatsaris' permission. It also appears clear that Future Hotels Limited is part of the same corporate group as Future Hotels International Single

Member PC and both appear to be operating under the direction and control of Mr. Kopatsaris.

In these circumstances, the Panel considers that it would be quite unrealistic to treat Mr. Kopatsaris and the two companies as operating independently of, and unrelated to, each other. Accordingly, the Panel accepts the Response into the record in this proceeding.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademark in the United Kingdom, No. UK00002322332, FUTURE INN. The Panel acknowledges that the validity of the registration is under attack by Future Hotels Limited

The Complainant also claims rights in Future Inn at common law through reputation arising from use. Some caution is required with such a claim as it may depend on the manner of use.

For present purposes, the Panel is prepared to proceed on the basis that the Complainant has established it has rights in FUTURE INN as a trademark in the United Kingdom. The fact is the Complainant's trademark has been registered for almost 20 years and its registration should not be presumed to be invalid just because one of the Respondent's company is seeking its cancellation.

The Panel is conscious that Future Hotels Limited's trademark was registered in the United Kingdom in the face of the Complainant's prior registered trademark for FUTURE INN. This may be taken as an indicating at least for national register purposes that the two trademarks are not *prima facie* confusingly similar. Bearing in mind that the Complainant is also seeking cancellation of Future Hotels Limited's trademark (and that dispute has not been resolved), however, the second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See *e.g.*, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking the required comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. See *e.g.*, [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the "future" component of the Complainant's registered trademark and the term "hotel" "instead of "inn". The addition (or rather, substitution) of this term does not preclude a finding of confusing similarity where the Complainant's trademark is recognizable within the disputed domain name. See *e.g.*, [WIPO Overview 3.0](#), section 1.8.

While the disputed domain name does not contain the whole of the Complainant's trademark, it does include the dominant element that distinguishes the Complainant's hotel services from other hotels or inns and, as the Complainant contends, there is a high degree of conceptual overlap between the two terms.

Generally speaking, the assessment under this requirement of the Policy is carried out without reference to the content of any website the disputed domain name may resolve to. Panels have held, however, it is

permissible to refer to such a website in cases of doubt to confirm whether it appears that the Respondent is targeting the Complainant's trademark. See e.g., [WIPO Overview 3.0](#), section 1.15.

In the present case, the website to which the disputed domain name resolves appears to be offering hotel and closely related services which are services of the kind offered by the Complainant and, given the conceptual similarity of the terms "inn" and "hotel", has the potential to reinforce the risk of confusion.

As this requirement under the Policy is essentially a standing requirement, therefore, the Panel finds that the Complainant has established that the disputed domain name is at least confusingly similar to the Complainant's trademark for the purposes of the Policy and the requirement under the first limb of the Policy is satisfied.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant began using its trademark and also well after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The way the disputed domain name has been used does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

The disputed domain name is not derived from the Respondent's name.

The Response essentially contends, however, it is derived from the name of Future Hotels International Single Member PC and the plans to expand its business into the United Kingdom through Future Hotels Limited.

The Response also essentially contends the name Future Hotels was adopted without knowledge of the Complainant and its trademark. As they appear to be in the same or closely related industries, it is of course quite possible the Respondent was aware of the Complainant and its business when Future Hotels International Single Member PC was incorporated. Equally, bearing in mind that the Complainant appears, on the record in this case, largely to be operating in regional England / Wales, albeit drawing customers more widely and the Respondent and Future Hotels International Single Member PC are based in Greece, at least before seeking to open up in the United Kingdom, it cannot be said that the claim to have been unaware of the Complainant is implausible.

In the end, the Panel considers it decisive that Future Hotels Limited owns a registered trademark in the United Kingdom for FUTURE HOTELS and that registration was achieved in the face of the Complainant's registered trademark – at least at the present time.

The Panel accepts that the Complainant is seeking the cancellation of Future Hotels Limited's trademark. However, the outcome of that action is unknown. Until it is, the Panel considers it is necessary, as with the attack on the Complainant's trademark, to proceed on the basis that the trademark is registered. It follows, therefore, that Future Hotels Limited has a *prima facie* right to use "Future Hotels" and, correspondingly, the disputed domain name.

The Panel further considers that the Respondent can claim the benefit of that right or legitimate interest, at least pending the outcome of the cancellation proceeding, as the Respondent is the sole director and majority shareholder of Future Hotels Limited and, as noted above, that company and Future Hotels International Single Member PC effectively form part of the one corporate or economic group.

Depending on the outcome of the two trademark cancellation actions, the actions of the Respondent or his companies in the United Kingdom may well be infringing the Complainant's trademark rights, or may not. But, given the scope and nature of the Complainant's business and the activities of the Respondent and his company outside the United Kingdom in the circumstances outlined above, it does not necessarily follow that the Respondent is disentitled to the disputed domain name under the Policy – certainly as matters stand at present.

Accordingly, the Panel finds the Respondent has rebutted the *prima facie* case established by the Complainant and the Complainant has not established the second requirement under the Policy also. Therefore, the Complaint must fail.

D. Registered and Used in Bad Faith

As the Complaint must fail, no good purpose would be served by addressing this requirement under the Policy.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: February 24, 2023