

ADMINISTRATIVE PANEL DECISION

Whitecap Bay Investments, B.V. v. Media Insight and George Alvarez Case No. D2023-1376

1. The Parties

The Complainant is Whitecap Bay Investments, B.V., Netherlands, represented by Rutan & Tucker, LLP, United States of America (“United States”).

The Respondents are Media Insight and George Alvarez, United States, represented by James S. Robertson, III, Esquire, United States.

2. The Domain Names and Registrar

The disputed domain names <belovedplayamujeresresort.com>, <excellenceelcarmenpuntacana.com>, <excellenceoysterbayresort.com>, <finestresortplayamujeres.com>, and <finestresortpuntacana.com> are all registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 31, 2023, 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 originally named Respondent (Domains By Proxy, LLC, Media Insight and George Alvarez) and contact information in the Complaint and naming Media Insight alone as the registrant of the disputed domain names.

The Center verified that the 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 April 6, 2023. In accordance with the Rules, paragraph 5, the initial due date for Response was April 26, 2023. Upon the request of the Respondents, this due date was extended to May 1, 2023. The Response was filed with the Center on May 1, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 15, 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.

The Panel determines, for reasons which will be clear from the further discussion below, that both Media Insight and George Alvarez are proper Respondents in this proceeding. The term "Respondent" shall be used interchangeably hereinafter to refer to either or both of those Parties in the remainder of this Decision.

4. Factual Background

The Complainant is a company organized under the laws of the Netherlands. It is an operator of hotels and resorts under brand names including "Excellence Resorts", "Finest Resorts" and "Beloved Hotels".

The Complainant is the owner of the following domain names, which were registered on the dates shown below, from which it operates various websites:

- <finestresorts.com>, registered on October 12, 2002
- <excellenceresorts.com>, registered on September 30, 2005
- <belovedhotels.com>, registered on June 27, 2011

The Complainant is the owner of various trademark registrations, the earliest of which the Panel considers to be relevant to this proceeding being as follows:

- European Union Trade Mark registration number 012788592 for a figurative mark FINEST PLAYA MUJERES, registered on August 21, 2014;
- European Union Trade Mark registration number 012788601 for a figurative mark FINEST OYSTER BAY, registered on August 21, 2014;
- European Union Trade Mark registration number 012867008 for a figurative mark EXCELLENCE GROUP LUXURY HOTELS & RESORTS plus a device, registered on September 23, 2014;
- European Union Trade Mark registration number 012928024 for a figurative mark FINEST PUNTA CANA, registered on September 22, 2014; and
- Brazil trademark registration number 910268835 for a combined mark THE BELOVED HOTEL, registered on February 6, 2018 (with a filing date of November 13, 2015).

Media Insights is a third party broker of hotel and other travel-related services. It trades as (or in conjunction with) The Vacation Store Miami. Mr George Alvarez is the President of Media Insights and the Vice-President of The Vacation Store Miami.

Mr George Alvarez is the owner of various trademark registrations including the following:

- United States trademark registration number 3844935 for a standard character mark EXCELLENCERESORTPUNTACANA.COM, registered on September 7, 2010;
- United States trademark registration number 4721783 for a standard character mark FINESTRESORTPLAYAMUJERES.COM, registered on April 14, 2015;
- United States trademark registration number 4831370 for a standard character mark BELOVEDPLAYAMUJERESRESORT.COM, registered on October 13, 2015;

- United States trademark registration number 4957709 for a standard character mark FINESTRESORTPUNTACANA.COM, registered on May 10, 2016; and
- United States trademark registration number 5086806 for a standard character mark EXCELLENCEPLAYAMUJERESRESORT.COM, registered on November 22, 2016

The disputed domain names were registered on the dates shown below:

- <belovedplayamujeresresort.com> on October 21, 2014
- <excellenceelcarmenpuntacana.com> on August 4, 2015
- <excellenceoysterbayresort.com> on July 31, 2006
- <finestresortpuntacana.com> on May 31, 2015
- <finestresortplayamujeres.com> on October 10, 2014

Each of the disputed domain names has resolved to a website featuring one of the Complainant's hotels or resorts. The websites are headed, respectively, "The Beloved Hotel, Playa Mujeres, Mexico"; "Excellence El Carmen"; "Excellence Oyster Bay"; "Finest Playa Mujeres"; and "Finest Punta Cana". Each website features photographs, information, and a booking facility specific to the hotel or resort in question. Three of the five websites include the words "Vacation Store Miami ®" above the name of the hotel or resort in question, although this is in smaller type and a feinter grey colour than the name of the hotel or resort.

5. Parties' Contentions

A. Complainant

The Complainant states that it has operated hotels and resorts under the "Excellence" brand since 2001, the "Beloved" brand since 2009 and the "Finest" brand since 2015. It refers to each of its own domain name registrations, as mentioned above, in connection with each of these brands.

The Complainant submits that, between the early 2000s and 2009, it permitted the Respondent to sell rooms at three of its "Excellence" hotels, namely, "Excellence Playa Mujeres", "Excellence Punta Cana", and "Excellence Riviera Cancun". It states that its business relationship with the Respondent was, however, terminated in 2009 owing to performance and business issues. The Complainant submits that all of the disputed domain names, with the exception of <excellenceoysterbayresort.com>, were registered by the Respondent after that business relationship ended and were only discovered by the Complainant by way of Internet searches.

The Complainant submits that the Respondent (whether Media Insight or Mr George Alvarez) is no stranger to cybersquatting proceedings. It produces a list of 29 proceedings under the UDRP to which it says the Respondent is or has been a party. It also refers to two United States federal court lawsuits which it says have been brought against the Respondent.

The Complainant highlights, in particular, the findings of the UDRP panel in *EPI Gestion, S.L. v. Media Insight and George Alvaraz*, WIPO Case No. [D2019-3416](#), in which the panel stated:

"[Respondents] identify popular hotels and register a domain name which combines the hotel name or a relevant brand associated with the hotel and a geographic and/or descriptive term... [t]hat domain name is then linked to a website which the Respondents develop which promotes the hotel, but solicits bookings for the hotel through the Respondents as a tour operator. It seems clear to the Panel that the domain name registrations are undertaken entirely speculatively by the Respondents without the express consent of the relevant hotel owner. The Respondents presumably hope as a matter of business practice that the hotel owner will accept the situation when it discovers it. It is however clear from the above listing of cases that there are numerous cases where hotel operators have objected to the Respondents' business model. It would seem that the Respondents have been engaged in this business model since at least 2004. The

Respondents have also lost a case in the United States District Court which was, as far as the Panel can see, also based on facts arising out of the Respondents use of the business model described above.”

The Complainant submits that the Respondent knew of the Complainant’s plan to open a resort at Oyster Bay before it registered the disputed domain name <excellenceoysterbayresort.com> because it had seen the plans for that resort mentioned in the Complainant’s emails during the course of the Parties’ business relationship. The Complainant submits that the Parties’ business relationship did not extend to the Complainant’s Oyster Bay resort.

The Complainant submits that each of the disputed domain names is confusingly similar to a trademark in which the Complainant has rights. It states that the disputed domain names comprise the Complainant’s trademarks plus descriptive terms.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that none of them are the names of the Respondent. It further states that it has never authorized the Respondent to register domain names including the Complainant’s trademarks.

With regard to the Respondent’s actual use of the disputed domain names, the Complainant submits that each of these resolves to a website which mimics the Complainant’s own websites and even uses a similar font to that adopted by the Complainant. It submits that the Respondent’s inclusion of the name “Vacation Store Miami” on some of the websites is insufficient to dispel the impression that each website is in fact owned or operated by the Complainant.

The Complainant further contends that, when attempting to conduct an “availability” search for rooms using the Respondent’s websites, the user is redirected to a website at “www.skyscanner.com”, which promotes hotels in direct competition to those of the Complainant, stating that the Complainant’s hotels are “sold out”. The Complainant states that it does not sell rooms via Skyscanner. The Complainant exhibits the Skyscanner pages to which it submits an “availability” search on each of the Respondent’s websites has redirected. It claims that the Respondent obtains revenue from the redirection of Internet users via these “affiliate links”.

The Complainant notes that Mr George Alvarez is the owner of certain trademark registrations as mentioned above. It relies in this regard on the findings of the panel in the prior case of *Excellence Resorts N.V. v. Media Insight*, WIPO Case No. [D2012-2497](#), concerning the disputed domain names <excellenceplayamujeresresort.com>, <excellencepuntacanaresort.com> and <excellencerivieracancunresort.com>. In that case the panel made the following observations:

1. That the trademarks registered by Mr Alvarez did not correspond in their entirety to any of the disputed domain names in issue;
2. That the registration of Mr Alvarez’s trademarks “looks somewhat suspicious to this Panel”; and
3. That while it was not for the panel to examine the validity of Mr Alvarez’s trademarks, it was open to the panel in weighing the evidence to decide that the registration of Mr Alvarez’s trademarks did not of itself confer rights or legitimate interests in respect of the disputed domain names in that case.

The Complainant also submits that the Respondent’s activities cannot meet the criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), for the legitimate use of a party’s trademark by a third party reseller. It contends that the Respondent’s websites do not actually enable Internet users to book the Complainant’s rooms, but redirects them instead to offers from the Complainant’s competitors. Further, the Respondent’s websites fail accurately to disclose the relationship between the Parties and, in particular, fail to make clear that they are not operated by the Complainant.

The Complainant contends that the disputed domain names were registered and have been used in bad faith. It submits that there could have been no reason for the Respondent to have registered the disputed

domain names other than to target the Complainant's trademarks. It repeats its submissions as to the Respondent's use of the disputed domain names and contends that the Respondent is attempting to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's marks.

The Complainant also alleges that the Respondent has sought to sell the disputed domain names to the Complainant for "obviously exorbitant purchase prices". It states that it offered the Respondent USD 5,000 for the disputed domain names to which the Respondent responded with an offer of USD 200,000 and subsequently USD 295,000. The Complainant exhibits an email dated March 29, 2021, from its counsel, apparently reporting on an approach from the Respondent's counsel. The email states that Mr Alvarez "has a buyer for his trademark portfolio and that he intends to sell it in approximately one month". The email lists Mr Alvarez's five United States trademarks mentioned in section 4 above, plus EXCELLENCERIVIERAMAYA. It states that, before proceeding with this sale, Mr Alvarez is offering the trademark portfolio to the Complainant for the price of USD 295,000 and that the Complainant's response is awaited.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

The Respondent objects that the Complainant is effectively seeking to re-litigate the decided case of *Excellence Resorts N.V. v. Media Insight*, WIPO Case No. [D2012-2497](#), referred to above. It points out that the Complainant was in fact unsuccessful in that case. It adds that the Complainant could also have challenged the disputed domain name <excellenceoysterbayresort.com> in that earlier case and that disputed domain name should be regarded as *res judicata* in the circumstances.

The Respondent states that it earns revenue by putting together travel packages. It states that it has a longstanding relationship with the Complainant, going back to 2000, which authorized it to sell the Complainant's hotel rooms. It contends that the websites to which the disputed domain names resolve were both authorized and enabled by the Complainant and that the Respondent has never diverted Internet users to competitors of the Complainant.

The Respondent points out that the trademark registrations upon which the Complainant relies are all for trademarks containing figurative elements. It also exhibits trademark certificates for two of the Complainant's United States trademarks, EXCELLENCE OYSTER BAY, JAMAICA and EXCELLENCE EL CARMEN, D.R., both registered in 2020, which disclaim the terms "Oyster Bay, Jamaica" and "El Carmen, D.R." respectively. The Respondent criticizes the Complainant for failing to provide full information concerning its trademarks. It states that the disputed domain names are neither identical nor confusingly similar to the Complainant's trademarks and that, in any event, it registered the disputed domain names years before the Complainant's registered any relevant trademarks. The Respondent adds that the proper forum for any dispute over the validity of any United States trademark is the United States Patent and Trademark Office and not proceedings under the UDRP.

The Respondent maintains that it has rights or legitimate interests in respect of the disputed domain names. It states that it has a business relationship with the Complainant going back over 20 years and has, throughout that period, operated web pages on the Complainant's behalf. It states (repeatedly in its Response) that the Complainant not only authorized the relevant web pages but also requested various changes to those web pages, provided fact sheets, trademarks, logos and photographs for use in conjunction with them, and even provided funding for the web pages in question.

The Respondent states that, upon the Complainant cancelling its contracts with the Respondent, the Respondent formed an affiliation with a tour operator named GoGo Tours, which itself has contracts with the Complainant and is duly authorized to use the Complainant's intellectual property. The Respondent contends it is authorized to use that intellectual property by virtue of being an affiliate of GoGo Tours and has continued to operate its websites, for the Complainant's benefit, accordingly. It submits that the Complainant

has thereby received, and continues to receive and accept, hotel room reservations emanating from the Respondent.

In support of its contentions set out above, the Respondent exhibits affidavits from Mr George Alvarez and Ms Rosanna Metz-Mendes, who is stated to be the President of Vacation Store. The affidavit of Ms Metz-Mendez states that, under the business relationship between the Parties, the Complainant provided the Respondent with a link to download material for its websites as well as relevant content and photographs for those websites. She refers to email communications with the Complainant referring to the websites and to conversations with a sales director of the Complainant in 2008 requesting certain alterations and additions to the websites, which she states were confirmed in an email dated October 28, 2008. The Panel notes, however, that no evidence of any such emails is exhibited to Ms Metz-Mendes' affidavit, the only exhibits appear to relate to the Respondent's relationship with GoGo Tours. The only exhibits to Mr Alvarez's affidavit are the certificates relating to his own United States trademarks¹.

The Respondent argues that, the Complainant having clearly acquiesced in the operation of the Respondent's websites, it cannot now deny that the Respondent has rights or legitimate interests in respect of the disputed domain names. The Respondent contends that it had, as a minimum, reasonable grounds to believe that its use of the disputed domain names was fair and lawful.

The Respondent adds that, the Complainant having initially placed hotel rooms on the market, it cannot (under the "first sale doctrine") constitute an infringement of the Complainant's trademark rights for a third party then to resell those rooms. The Respondent also argues that its activities fall within the criteria set out in the *Okí Data* case (*supra*) for the legitimate incorporation of the Complainant's trademarks into the disputed domain names.

The Respondent submits that, on the evidence provided, the business relationship between the Parties gives rise, at least, to arguments concerning acquiescence and fair use which must be resolved by a competent court of law as opposed to a panel under the UDRP.

The Respondent denies that the disputed domain names were registered or have been used in bad faith. It submits that it has no business interest in any hotels as it is only a tour operator. It denies that its websites have resulted in business being diverted away from the Complainant's hotels and asserts that it could have no commercial interest in any such diversion. It repeats that the Complainant encouraged it to build and operate its websites. It states that none of the web pages in question contain links to the Complainant's competitors and that no competitors of the Complainant have benefited from the web pages.

The Respondent states that it does not know how the Complainant arrived at the Skyscanner links to which it refers in the Complaint. It asserts that the Panel will obtain a "different result" if it attempts to make bookings via the disputed domain names. It further contends that the Complainant's hotels were shown to be fully booked because that was the case for the dates requested and that if later dates had been requested then the Complainant's hotel rooms would have been offered.

The Respondent describes as "self serving" the email from the Complainant's counsel stating that the Respondent was offering to sell Mr Alvarez's trademark portfolio to the Complainant for USD 295,000. It states that there are no documents from the Respondent regarding this issue. It submits that, in any event, it is clear from a reading of the document that it was a sale of the Respondent's trademark portfolio (as opposed to the disputed domain names) that was under discussion.

The Respondent submits that equitable considerations should also inform this matter. It states that it has spent considerable time and money promoting its web pages over a number of years with the knowledge of

¹ The Panel notes, however, that the Complainants' exhibits in this proceeding include the Response in WIPO Case No. [D2012-2497](#) (*supra*). That Response includes an exhibit comprising two Spanish language emails dated respectively June 3, 2008 and October 28, 2008. While no translation of those emails is provided, the Respondent submits in that case that each of them contains requests from a representative of the Complainant to the Respondent to update its relevant websites, including increases in prices.

the Complainant and that it would be unjust for the disputed domain names now to be transferred to the Complainant. The Respondent adds that it was incumbent on the Complainant to take active steps to protect its trademarks and that it is now effectively time-barred from objecting to the Respondent's activities.

The Respondent contends that the Complainant has brought this proceeding in bad faith. It states that the Complainant failed to make full disclosure concerning the limitations on its own trademarks and other matters. It contends that the Complainant has misled the Panel about other legal proceedings, including one of the United States federal cases in question which was reversed on appeal. It claims that the Complainant "inserts booking links" in its Complaint which the Panel will not find on the websites in question and that the Complainant's evidence concerning Mr Alvarez's offer to sell his trademark portfolio is "a self-serving internal memo."

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

In addition to its trademark registrations referred to in section 4 above, the Panel finds that the Complainant has used the brands "Excellence", "Beloved" and "Finest" in connection with hotels and resorts since 2001, 2009 and 2015 respectively and has established a level of unregistered trademark rights in those brands accordingly.

The disputed domain name <belovedplayamujeresresort.com> combines distinctive elements from the Complainant's registered trademarks THE BELOVED HOTEL and FINEST PLAYA MUJERES together with the additional term "resort" which does not prevent the Complainant's trademarks from being recognizable within the disputed domain name.

The disputed domain name <excellenceelcarmenpuntacana.com> combines distinctive elements from the Complainant's registered trademarks EXCELLENCE GROUP LUXURY HOTELS & RESORTS and FINEST PUNTA CANA together with the additional term "elcarmen" which does not prevent the Complainant's trademarks from being recognizable within the disputed domain name.

The disputed domain name <excellenceoysterbayresort.com> combines distinctive elements of the Complainant's trademarks EXCELLENCE GROUP LUXURY HOTELS & RESORTS and FINEST OYSTER BAY.

The disputed domain name <finestresortplayamujeres.com> comprises the Complainant's trademark FINEST PLAYA MUJERES together with the insertion of the additional term "resort" which does not prevent the Complainant's trademark from being recognizable within the disputed domain name.

The disputed domain name <finestresortpuntacana.com> comprises the Complainant's trademark FINEST PUNTA CANA together with the insertion of the additional term "resort" which does not prevent the Complainant's trademark from being recognizable within the disputed domain name.

The Panel therefore finds that each of the disputed domain names is confusingly similar to a trademark or trademarks in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent's principal contention in this proceeding is that its websites to which the disputed domain names resolve were built and operated with the full knowledge, encouragement, and assistance of the Complainant and that the Complainant has benefited from those websites for many years.

While the Respondent refers to numerous emails supposedly evidencing the Complainant's cooperation with the websites in question, including providing links, photographs and content, requesting changes and even providing funding, it is remarkable that no evidence of any such emails or other communications is provided by the Respondent, whether as any exhibit to the Response or to the affidavits of Mr Alvarez or Ms Metz-Mendes, the latter of which is addressed precisely to this subject-matter².

The Panel also notes that the consent and cooperation to which the Respondent refers to is said to have taken place during the currency of the Parties' business relationship, which ended in 2009. In the view of the Panel, even if the Complainant had acquiesced at that time to the Respondent's websites in the manner alleged (at which point of time, the only disputed domain name in possession of the Respondent was <excellenceoysterbayresort.com>), there is no reasonable basis to imply that the Complainant would have intended any such consent to continue beyond the termination of the Parties' business relationship, and certainly not to websites which (as further discussed below) convey the misleading impression to Internet users that they are the Complainant's own websites.

The Panel further notes that, with the exception of <excellenceoysterbayresort.com>, all of the disputed domain names were registered after the business relationship between the Complainant and the Respondent had been terminated, casting further doubt as to the Respondent's claims on the Complainant's alleged acquiescence to the registration and use of the disputed domain names during the currency of the Parties' prior business relationship. The Panel can see no convincing argument in those circumstances that the disputed domain names were registered to facilitate some ongoing consensual business relationship between the Parties.

In the Panel's view, therefore, the Respondent is unable to establish either express or implied consent on the part of the Complainant to the registration of the disputed domain names. The Panel specifically rejects the Respondent's contention that its own affiliation with GoGo Tours, being itself affiliated with the Complainant, in some indirect manner authorizes the Respondent to use the Complainant's property.

In these circumstances, the Respondent falls back on the position that, in certain limited circumstances, a reseller of trademarked goods or services may legitimately incorporate that trademark into a domain name used for the resale of the goods or services in question (see, e.g., section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and the *Okidata* case (*supra*)). However, the Panel finds that the Respondent is unable to meet the *Okidata* criteria in this case. First, the Panel finds the Respondent's websites to be inherently deceptive, as clearly having been designed to give the impression that they are official websites of the hotel or resort in question. Secondly, the Panel accepts the Complainant's evidence that making enquiries on the websites has resulted in Internet users being redirected to other travel operator websites, including offers from hotels in competition with those of the Complainant. Thirdly, the websites fail prominently to disclose that their operator, the Respondent, is independent of, and has no affiliation with, the Complainant.

Nor is the Panel persuaded that the Respondent is assisted by the first sale doctrine in circumstances where it is engaging in deceptive conduct concerning the trademarked services.

² The Panel has, however, noted above the evidence submitted by the Complainant in this proceeding, which includes the Response in the earlier WIPO Case No. [D2012-2497](#) and the emails dated June and October 2018 exhibited thereto. Those emails do not refer to the disputed domain name <excellenceoysterbayresort.com> and predate both the termination of the Parties' business relationship and the registration of the other four disputed domain names in this proceeding.

The Panel does not find in the circumstances that the Respondent is using the disputed domain names in connection with any *bona fide* offering of goods or services and finds, instead, that the Respondent is using the disputed domain names misleadingly to divert the Complainant's customers or potential customers to its own websites by causing confusion between the disputed domain names and the Complainant's trademarks and the names of its resorts and hotels.

These findings notwithstanding, there remains the question of the Respondent's own United States trademark registrations. Three of these trademarks, BELOVEDPLAYAMUJERESRESORT.COM, FINESTRESORTPLAYAMUJERES.COM, and FINESTRESORTPUNTACANA.COM are identical to the disputed domain names <belovedplayamujeresresort.com>, <finestresortplayamujeres.com>, and <finestresortpuntacana.com>.

Section 2.12 of [WIPO Overview 3.0](#), headed "Does a respondent trademark corresponding to a domain name automatically generate rights or legitimate interests?" contains the following guidance:

"2.12.1 Panels have recognized that a respondent's prior registration of a trademark which corresponds to a domain name will ordinarily support a finding of rights or legitimate interests in that domain name for purposes of the second element.

2.12.2 The existence of a respondent trademark does not however automatically confer rights or legitimate interests on the respondent. For example, panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trademark registration where the overall circumstances demonstrate that such trademark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant's exercise of its rights (even if only in a particular jurisdiction). Absent evidence of such circumstances indicating pretext however, panels have been reluctant to reject a respondent trademark registration out of hand."

In this case, following the termination of its relationship with the Complainant, the Respondent registered United States trademarks, which can have no conceivable purpose other than to reference the hotels and resorts owned and operated by the Complainant.

Nevertheless, the Panel has some hesitation in determining that the Respondent's three trademarks in question do not confer rights or legitimate interests in respect of the relevant disputed domain names. The trademarks appear to be duly registered and the Panel has seen no evidence that the Complainant attempted to oppose the registration of the trademarks or to seek subsequently to have them invalidated. Jurisprudence under the UDRP is very clear that it is not for panels under the UDRP to adjudicate matters, which may include the validity or relative merits of trademarks, which are more properly the province of a court of law.

On balance, however, the Panel finds that the facts of this case fall squarely within the *proviso* highlighted in section 2.12.2 of [WIPO Overview 3.0](#), namely, that the trademarks were obtained primarily to circumvent the application of the UDRP or otherwise prevent the Complainant's exercise of its rights. The Panel does not therefore consider that the Respondent's trademarks registrations confer rights or legitimate interests in respect of the corresponding disputed domain names. This is not, of course, to make any determination concerning the validity of those trademarks *per se*, but merely to find that, in this particular case, they do not confer rights or legitimate interests for the purposes of the Policy.

The Panel does not accept the Respondent's contentions that it has raised issues of acquiescence and fair use that can only be resolved by court of law and not by the present Panel.

The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

As indicated above, the Panel finds that the Respondent registered all but one of the disputed domain names following the termination of its business relationship with the Complainant and, as in the case of the Respondent's trademarks, the purpose of the disputed domain names can only conceivably be to refer to the Complainant's relevant hotels and resorts. Clearly, the Respondent was aware of the Complainant and its hotels and resorts at the time it registered the disputed domain names, and the Panel also accepts the Complainant's contention that the Respondent had prior notice of its planned Oyster Bay resort. From the evidence it appears more likely than not that the Respondent became aware of the Oyster Bay resort and registered the disputed domain name <excellenceoysterbayresort.com> in anticipation thereof, despite the fact that Parties' business relationship did not extend to the Oyster Bay resort at any time and without any evidence provided from the Respondent as to discussions with the Complainant concerning the disputed domain name <excellenceoysterbayresort.com>.

The Panel finds further that the disputed domain names are inherently deceptive and likely to confuse Internet users into believing they are owned or operated by the Complainant, as the owner of the "Excellence", "Beloved" and "Finest" brands and of the specific resorts and hotels to which the disputed domain names refer. Moreover, as stated above, the Panel finds the Respondent's websites to be similarly deceptive in nature, as suggesting that they are official websites of the resorts or hotels in question and therefore under the Complainant's control.

While the Respondent claims that it does not benefit from any affiliate links that may have been associated with the websites in question, and that no potential customers for the Complainant's rooms have been diverted to any competing hotel, the Panel finds these contentions to be unlikely on the evidence and dismisses them on the balance of probability.

The Panel therefore finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its websites or of a product or service on its websites (paragraph 4(b)(iv) of the Policy).

The Panel also considers that Mr Alvarez's offer to sell his trademark portfolio to the Complainant for USD 295,000 supports the findings of bad faith in this case. The Panel finds it disingenuous for the Respondent to suggest that the offer was to sell the trademarks as opposed to the disputed domain names, since it is difficult to conceive of any purchaser who would buy the trademarks, certainly for the sum of money demanded, without the corresponding disputed domain names. Nor can the Panel conceive of any purchaser other than the Complainant who could make legitimate, non-deceptive, use of the disputed domain names, which also indicates an intention to sell them to the Complainant.

The Panel therefore finds that the disputed domain names have been registered and are 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 names, <belovedplayamujeresresort.com>, <excellenceelcarmenpuntacana.com>, <excellenceoysterbayresort.com>, <finestresortplayamujeres.com> and <finestresortpuntacana.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 29, 2023