

ADMINISTRATIVE PANEL DECISION

Quintessentially (UK) Ltd v. Quinton Watton-Smith
Case No. D2023-1406

1. The Parties

The Complainant is Quintessentially (UK) Ltd, United Kingdom, represented by Stobbs IP Limited, United Kingdom.

The Respondent is Quinton Watton-Smith, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <quintessentiallyafrica.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 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 named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 5, 2023.

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 April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any formal response although, on April 29, 2023, the Respondent sent an email to the Center, discussed further below, asserting that he was not the owner of the disputed domain name and disclosing contact details of the alleged owner. On April 28, 2023, the Center notified the Respondent’s default.

The Center appointed Antony Gold as the sole panelist in this matter on May 9, 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 member of a group of companies known as the Quintessentially Group of companies. The group was established in 2000 as a concierge service aimed at high net-worth individuals, with a focus on the luxury sector. It now has over 35 offices, covering over 20 territories and it is active in a number of fields, including corporate and private events and travel.

The Complainant's primary brand is QUINTESSENTIALLY and it has registered many trade marks to protect this trading style including, by way of example only, European Union Trade Mark, registration number 006167456 in classes 35, 36 and 41, registered on October 17, 2008. The Complainant also owns the domain names <quintessentially.com> and <quintessentiallytravel.com>, this latter domain name resolving to a website promoting the Complainant's services in the field of luxury, bespoke travel.

The disputed domain name was registered on May 15, 2019. It resolves to a website promoting luxury holiday hotels in Africa. The opening passage on the home page of the Respondent's website includes the claim: "Quintessentially Africa is a bespoke agency at the forefront of luxury travel in Africa. We design and deliver unrivalled itineraries, along with quality concierge services, tailor-made to suit each individual traveller."

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to a trade mark or service mark in which it has rights in that it incorporates the Complainant's QUINTESSENTIALLY mark in its entirety and simply adds the geographical descriptor and noun "africa".

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not using the disputed domain name as part of a *bona fide* offering of goods and services, in that he is referencing the Complainant's QUINTESSENTIALLY trade mark as part of its advertisement and promotion of services at the disputed domain name which overlap with those of the Complainant. Such use infringes the Complainant's trade mark rights. There is no evidence that the Respondent has been commonly known by the disputed domain name. Moreover, following the filing of a trade mark opposition by the Complainant, a limited liability company of which the Respondent is a director, Ondigital Limited, was unsuccessful in its application for a United Kingdom trade mark for QUINTESSENTIALLY AFRICA, thus reinforcing the lack of rights of the Respondent in the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant's rights in the mark QUINTESSENTIALLY predate the registration of the disputed domain name by almost a decade. As the disputed domain name is being used by the Respondent for the purposes of a website advertising luxury travel services, an offering for which the Complainant's brand is synonymous, it is clear that that the Respondent was aware of the Complainant and its brand at the time of his registration of the disputed domain name and intended to piggy-back off its reputation in order to attract Internet users to his own website. Moreover, the Respondent's decision to register the disputed domain name shows a clear intention on the part of the Respondent to disrupt the Complainant's business and evidences the Respondent's targeting of the Complainant's mark and brand.

B. Respondent

The Respondent did not provide a substantive response to the Complainant's contentions.

6. Procedural issue - Identity of Respondent

The only response to the Complainant received by the Center from the Respondent was an email dated April 29, 2023 asserting that Ondigital Limited, a company registered in the United Kingdom, was the intended owner of the disputed domain name. On May 1, 2023, the Center replied to the Respondent indicating that the Panel would evaluate the Respondent's assertion and inviting the Respondent to forward the Complaint and Annexes to Ondigital Limited. No response has been received to the Center's email, either from the Respondent or from Ondigital Limited.

In some circumstances where a respondent alleges that the information provided by the registrar is incorrect and that a third party is, in fact, the underlying owner of a domain name, it is appropriate for a panel to consider ordering that the proceedings be formally served on that party and that a suitable period be given for the alleged owner to respond to the complaint. In these proceedings, the Panel does not consider it necessary for that step to be taken for three reasons. First, the Respondent has not proffered any evidential support for his contention that he was not the intended owner of the disputed domain name. Second, Ondigital Limited (which, as explained below, will have had constructive notice, via the Respondent, of the existence of the Complaint, irrespective of whether the Complaint was formally forwarded to it) has not provided any indication that it wishes to participate in the proceedings. Third, and most significantly, the Panel has undertaken a brief search of Companies House, which provides company information for limited companies registered in England and Wales, and established that the Respondent is the sole director of Ondigital Limited and is therefore in full control of its activities¹. In these circumstances, whether the Respondent or Ondigital Limited is the proper Respondent to the Complaint is a moot point, not least in the absence of any evidence to support the Respondent's contention. The Panel therefore considers that there is no basis for further delaying these proceedings by directing that they should be formally served on Ondigital Limited and that there is no basis for considering that the Respondent is not the registrant of the disputed domain name nor that it has been incorrectly named in the Complaint.

7. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

The Complainant has provided details of the registered trade marks it owns for QUINTESSENTIALLY, an example of one of these marks having been provided above, and has thereby established its rights in this

¹ As explained at section 4.8 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#), UDRP panels may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. Note that the name of the director is shown as "Quinton Mark Watton-Smith" [emphasis added] but, in the circumstances, this is plainly the Respondent.

term. As a technical requirement of registration, the generic Top-Level Domain (“gTLD”), that is “.com” in the case of the disputed domain name, is usually disregarded when assessing confusing similarity.

The disputed domain name contains the entirety of the Complainant’s QUINTESSENTIALLY mark together with the additional term “africa”. This added element does not prevent the disputed domain name from being found confusingly similar to the Complainant’s mark. As explained at section 1.8 of [WIPO Overview 3.0](#); “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.”

The Complainant’s QUINTESSENTIALLY trade mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: (i) if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The Respondent’s use of the disputed domain name in order to resolve to a website which not only uses a very similar trading style to that of the Complainant but also purports to offer identical, or substantially the same, services is likely intended to confuse Internet users into thinking that the Respondent’s offering is that of, or is closely connected with, that of the Complainant. It does not accordingly amount to use in connection with a *bona fide* offering of goods and services; see *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#) and also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”.

The Respondent’s name, as disclosed by the Registrar, does not have any similarities with the disputed domain name. There is accordingly no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; the Respondent’s website, is commercial in character and the composition of the disputed domain name is such that it carries a risk of implied affiliation with the Complainant, which prevents its use by the Respondent from being considered fair.

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any substantive response on the merits from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel therefore finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The composition of the disputed domain name is apt to be associated by Internet users with the Complainant in that, in addition to containing the Complainant’s QUINTESSENTIALLY trade mark, it includes the term “africa”, which at least some Internet users are likely to assume is a continent in which the Complainant provides its vacation-related services. On, at least, a balance of probabilities, this points to an awareness by the Respondent of the Complainant and its activities as at the date of registration of the disputed domain name as well as an intention on his part to take unfair advantage of the Complainant’s repute. As the panel

found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), “the registration of a domain name with the knowledge of the Complainant’s trademark registration amounts to bad faith”.

The only known use which the Respondent has made of the disputed domain name has been in order to redirect Internet users to a website at which the Respondent provides, or purports to provide, services which are substantially similar, or identical, to those of the Complainant. The fact that the disputed domain name includes the Complainant’s QUINTESSENTIALLY mark increases the likelihood that Internet users will believe that any website to which it resolves will be operated by or with the consent of the Complainant. The Respondent’s use of the disputed domain name thereby takes unfair advantage of the Complainant’s repute in its QUINTESSENTIALLY mark. See section 3.1.1 of the [WIPO Overview 3.0](#): “If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent.”

The Respondent’s use of the disputed domain name therefore falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy sets in that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website. Moreover, there is no plausible good faith use which the Respondent is likely to make of the disputed domain name, nor has the Respondent made any attempt to justify his conduct or to rebut the Complainant’s assertions. The Panel accordingly finds that the disputed domain name has both been registered and is being used in bad faith.

8. 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, <quintessentiallyafrica.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: May 23, 2023