

ADMINISTRATIVE PANEL DECISION

MHG IP Holding (Singapore) Pte. Ltd. v. Uday Grewal, Ananta Enclave
Case No. D2023-2857

1. The Parties

The Complainant is MHG IP Holding (Singapore) Pte. Ltd., Singapore, represented by Luthra & Luthra Law Offices, India.

The Respondent is Uday Grewal, Ananta Enclave, India.

2. The Domain Name and Registrar

The disputed domain name <anantaenclave.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 July 5, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 (Registration Private, Domains by Proxy LLC.) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 20, 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 July 24, 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 July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent sent emails to the Center on August 14 and 17, 2023. On August 23, 2023, the Center notified the Parties of the Commencement of Panel Appointment process.

The Center appointed Adam Taylor as the sole panelist in this matter on August 30, 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's group owns, operates and/or manages over 50 luxury hotels, resorts and premium serviced apartments, and over 30 spas, under the mark ANANTARA in Asia, the Middle East, Africa and Europe.

The Complainant has operated a website at www.anatara.com since 2000.

In 2020, the Complainant's turnover under its ANANTARA brand was some USD 308 million.

The Complainant owns many registered trade marks for ANANTARA including:

- Malaysian trade mark No. 01005467 and 01005468 (figurative), registered on April 30, 2001, in classes 35 and 43 respectively; and
- Indian trade mark Nos. 5175781, 5175783 and 5175785, registered on October 16, 2021, in classes 3, 36 and 44 respectively.

The disputed domain name was registered on September 16, 2020.

The disputed domain name has been used to resolve to a website entitled "Your Search for Premium Residential Homes ends here!". Under the heading "Residential Space", the website states: "Ananta Enclave is one of those idealistic properties that are excellent for those who want to live in luxury homes" and otherwise promotes a luxury residential development in Ludhiana, India, that is described as "a project of Ayali Developers and Colonisers". The website includes the address "Canal Road, Birmi, Ludhiana" as well photos of a development under construction. The website is branded with a red triangular logo plus the phrases "Ananta Enclave" and "An Endless Living".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends that:

- The Complainant's trade mark qualifies as a well-known trade mark due to its extensive worldwide use, and such reputation extends to India.
- The disputed domain name consists of "ananta", which is visually, phonetically and conceptually highly similar to the Complainant's mark, in conjunction with the term, "enclave", which is descriptive of the services provided thereunder.
- The Respondent has "slavishly" adopted a mark that is nearly identical to the Complainant's well-known ANTARA brand and trade mark in connection with "overlapping / nearly identical services" in order to deceive and divert the Complainant's customers, thereby causing the Complainant to suffer serious loss of revenue and damage to its reputation.

B. Respondent

The Respondent sent two emails to the Center on August 14 and 17, 2023, claiming lack of knowledge of the Complaint and requesting that the Center provide the Complaint and notice documents. Despite the Center having forwarded the requested documents, no formal Response was received.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

In the Panel's view, whether the Complainant's mark could be said to be recognisable within the disputed domain name is arguable. [WIPO Overview 3.0](#), section 1.7. However, in view of the Panel's finding under the second element below, it is unnecessary for the Panel to make a finding under the first element and the Panel declines to do so.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

The Complainant has produced website screenshots indicating that the disputed domain name is being used to promote a luxury residential development in Ludhiana, India known as "Ananta Enclave" – see section 3 above. The Complainant has not suggested, let alone provided evidence, that this website is bogus. On the fact of it, therefore, the disputed domain name is being used for a *bona fide* offering of services and/or the

Respondent has been commonly known by the disputed domain name in accordance with paragraphs 4(c)(i) and/or (ii) of the Policy,

There might nonetheless have been a question mark over the legitimacy of the disputed domain name if the record indicated that the Respondent had likely selected the disputed domain name, and associated trading name, as part of some sort of overarching scheme to deliberately target the Complainant's mark. However, the Panel considers this unlikely for the following reasons:

1. While "Ananta" comprises the first three syllables of "Anantara", in the Panel's view, the omission of the final syllable results in a word that is ultimately different to the Complainant's mark, visually, phonetically, and conceptually.
2. The evidence produced by the Complainant indicates that its main focus is on hotels and spas, whereas the Respondent operates a residential development. It is therefore not obvious to the Panel how the Respondent can be said to be using the disputed domain name for "overlapping / nearly identical services", which the Complainant asserts but does not explain.
3. There is little evidence to support the Complainant's claim that its mark enjoyed an extensive reputation in India at the relevant time. The Complainant's Indian registered trade marks (2021) and the announcement of the Complainant's first development in India (April 11, 2023) all postdate the Respondent's registration of the disputed domain name (2020). And, in the Panel's view, the Complainant's statistics regarding visitors to its resorts from India (some 25,000 in 2019) fall well short of indicating that the Complainant had acquired significant fame in India as of the date of registration of the disputed domain name.
4. The Panel acknowledges that the Respondent's logo is triangle-shaped, like that of the Complainant, but nonetheless the Panel does not consider that this of itself is sufficient to establish illicit targeting, given the other circumstances above.

Accordingly, having reviewed the record, the Panel finds that the Complainant has failed to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel would add that the Policy is not designed to address trade mark infringement, which the Complainant's submissions appear to encompass, and that it is of course open to the Complainant to pursue such a case in the relevant national court if it considers that it has grounds to do so.

Based on the available record, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

In light of the Panel's finding under the second element, it is not necessary for the Panel to make any finding under the third element.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: September 13, 2023