

ADMINISTRATIVE PANEL DECISION

Fairmont Hotel Management L.P. v. Yali

Case No. D2024-1292

1. The Parties

The Complainant is Fairmont Hotel Management L.P., United States of America (the “United States”), represented by Dreyfus & associés, France.

The Respondent is Yali, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <fairmont.group> (the “Disputed Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 26, 2024. On March 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 27, 2024, 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 (Privacy protection service) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2024, 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 March 29, 2024.

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 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 24, 2024.

The Center appointed Saisunder Nedungal Vidhya Bhaskar as the sole panelist in this matter on April 30, 2024. 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 brand owned by Accor Group established in 1907 and it has been operating 81 hotels spread across 27 countries, offering luxurious room and dining experience commonly known by the name "Fairmont" in the hospitality industry.

The Complainant is the registered proprietor of the mark FAIRMONT in the United States bearing registration number 2561787 registered on April 16, 2002, registration number 2658616 registered on December 10, 2002, and registration number 5026192 registered on August 23, 2016 ("Trademarks"). The Complainant along with its parent company operates the domain <fairmont.com> registered on August 31, 1995.

The Disputed Domain Name was registered on March 6, 2024. The Disputed Domain Name does not currently resolve to an active website, but at the time of the Complaint, it had resolved to a landing website in which the Disputed Domain name was offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

The Complainant contends that the Disputed Domain Name is confusingly similar to its "FAIRMONT trademark and the Disputed Domain Name reproduces the Complainant's trademark FAIRMONT in its entirety. Further, the Complainant contends that the Respondent has no prior rights or legitimate interests in respect of the Disputed Domain Name more so considering that the Disputed Domain Name incorporates the Trademark of the Complainant which is well-known globally and the Disputed Domain Name resolves to a webpage for sale of the Disputed Domain Name which shows that the Respondent has no legitimate interest in the same. The Complainant further contends that the Respondent has registered and is using the Disputed Domain Name in bad faith as the Disputed Domain Name is virtually identical to the Trademark which is world renowned and the Respondent could simply not have chosen the Disputed Domain Name for any reason other than to deliberately cause confusion amongst Internet users as to its source in order to take unfair advantage of the Complainant's reputation.

B. Respondent

The Respondent did not reply to the Complainant's contentions herein and bearing this in mind and in this background, the Panel shall draw such adverse inferences from the absence of the Respondent's reply as it considers appropriate in the circumstances.

6. Discussion and Findings

For this Complaint to succeed in relation to the Disputed Domain Name the Complainant must prove that:

- 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.

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 trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The applicable Top-Level Domain ("TLD") in the Disputed Domain Name, i.e., ".group" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.11.1.

The Panel finds the first element of the Policy has been established.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie contentions and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Further, UDRP panels have found that domain names identical to a complainant's trademark carry high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

There is no evidence that the Respondent is commonly known by the Disputed Domain Name. The Respondent has not used the Disputed Domain Name in connection with a bona fide offering of goods or services but for a

webpage landing which offers for sale the Disputed Domain Name. The Respondent has never been licensed or otherwise authorized by the Complainant to use its Trademarks.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the light of the well-known status of the Trademark of the Complainant and the fact that the Respondent has incorporated the Trademark in entirety in the Disputed Domain Name which is not active but merely a passive holding in order to unduly enrich himself, the Panel is in no doubt that the Respondent had the Complainant and its rights in the FAIRMONT mark in mind when it registered the Disputed Domain Name. Accordingly, in Panel's view the bad faith is evidently established where a Disputed Domain Name is so obviously connected to the well-known trademark and hence its very use by the Respondent with no connection to the Trademarks suggests opportunistic bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Respondent's registration of the Disputed Domain Name that is identical to the Complainant's trademark and offered for sale is likely in excess of the Respondent's out-of-pocket expenses, and hence the Panel finds that the Respondent's offer for sale of the disputed domain name falls within the paragraph 4(b)(i) on registration and use in bad faith.

Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant's Trademark globally, and the composition of the Disputed Domain Name which incorporates the Trademark in entirety, the failure of the Respondent to submit a response and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Based on the above findings and in the absence of any response from the Respondent, the Panel finds that the Complainant has established the third element 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 Disputed Domain Name <fairmont.group> be transferred to the Complainant.

/Saisunder Nedungal Vidhya Bhaskar/
Saisunder Nedungal Vidhya Bhaskar

Sole Panelist

Date: May 14, 2024