

ADMINISTRATIVE PANEL DECISION

Csi Danışmanlık Ve Destek Hizmetleri Anonim Şirketi v. Ghadah M
Case No. D2024-2062

1. The Parties

The Complainant is Danışmanlık ve Destek Hizmetleri Anonim Şirketi, Türkiye, represented by Abion AB, Sweden.

The Respondent is Ghadah M, Pure Houses Investments and Real Estate, Saudi Arabia, represented by McCarthy Denning, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <shirvanhotels.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 16, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 21, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 May 27, 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 June 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 24, 2024. The Response was filed with the Center on June 24, 2024.

On July 19, 2024, the Complainant filed a supplemental filing.

The Center appointed Warwick A. Rothnie, David H. Bernstein, and Michael D. Cover as panelists in this matter on July 22, 2024. The Panel finds that it was properly constituted. Each member of 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 engaged in launching hotel projects in Türkiye, Saudi Arabia, and Africa.

The Complainant is the owner of the following registered trademarks:

- (a) Guinea (OAPI) Registered Trademark No 3202300758, SHIRVAN HOTEL, which was applied for on November 7, 2022, and registered on October 18, 2023, in respect of temporary accommodation services and services for providing food and drink in International Class 43;
- (b) United Kingdom Registered Trademark No UK00003861109, SHIRVAN HOTELS, which was registered on May 19, 2023, with effect from its filing date on December 20, 2022, in respect of temporary accommodation provision of food and drink hotel services in International Class 43; and
- (c) Saudi Arabia Registered Trademark No MCI 405073, SHIRVAN HOTEL, in respect of food and beverage services and temporary accommodation services in International Class 43 which was filed in Saudi Arabia on February 28, 2023.

The United Kingdom mark claims priority from the Guinea registration.

The Complainant registered the domain name, <shirvanhotel.com>, on April 5, 2024. This domain name resolves to a website which states in part:

“Shirvan Hotel are currently in the process of launching hotel projects to be operated in Turkey, Saudi Arabia and Africa. Unfortunately our progress and launch has been delayed due to an infringement of our trademark.”

and invites the user to visit again for updates.

The disputed domain name was registered on December 12, 2022.

It resolves to a website promoting and offering bookings for the “Shirvan Hotel, City Yard” in Jeddah, Saudi Arabia.

The Respondent¹ has been involved with hotel operating services since 2021. The Respondent terminated the services of the previous operator and the hotel was re-branded and launched as the “Shirvan Hotel, City Yard” on December 17, 2022.

The hotel’s services are also promoted through travel booking websites such as Booking.com, Trivago, Expedia, hotels.com, and halalbooking.com.

¹ Registrant Ghadah M is an employee of Pure Houses Investments and Real Estate and registered the domain name for his employer’s behalf. Pure Houses Investments and Real Estate operates the Shirvan Hotel, City Yard, and is the real Respondent in interest. The Response has been filed on behalf of both the registrant of the disputed domain name and Pure Houses Investments and Real Estate. For simplicity, therefore, the Panel will refer to both the registrant of the disputed domain name and Pure Houses Investments and Real Estate as the Respondent unless it becomes necessary to distinguish between them.

Before the Complainant filed its application to register its trademark in Saudi Arabia, United Marks Trading Co. had applied to register Application No MCI 386440, SHIRVAN LUXURY BOUTIQUE HOTEL. By decision handed down on January 31, 2024, however, the Complainant successfully opposed the registration of that application in Saudi Arabia.

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.

First, the Complainant alleges that the domain name <shirvanhotels.com> is confusingly similar to its registered trademark SHIRVAN HOTELS, as it encompasses the entirety of the mark.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. In support of this contention, the Complainant argues that (i) the Respondent did not have the license or authorization from the Complainant to use its trademarks; (ii) the Respondent is not otherwise affiliated to the Complainant; (iii) the Complainant did not endorse or sponsor the Respondent or the Respondent's website; and, (iv) the Respondent has inappropriately utilized the disputed domain name for commercial benefit.

Third, the Complainant contends that the Respondent registered the disputed domain name in bad faith to benefit from the Complainant's good reputation. In support, the Complainant highlights that its trademark registrations predate the Respondent's registration of the disputed domain name.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent concedes that the Complainant currently has relevant trademark rights in SHIRVAN HOTELS. However, the Respondent claims that the Complainant's application for trademark registration in Saudi Arabia was made in bad faith and intends to challenge it. Specifically, according to the Respondent, the Complainant appears to have applied for trademark registration in Saudi Arabia to harm the Respondent's business once becoming aware of the Respondent's plan to rebrand their hotel to "Shirvan Hotel".

In addition, the Respondent argues that it has legitimate interests in the disputed domain name because it has been operating the hotel under this name since December 2022 and uses the disputed domain name to host its business operations.

Finally, the Respondent requests that the Panel consider a finding of Reverse Domain Name Hijacking against the Complainant. The Respondent alleges that the Complainant brought these proceedings to harass the Respondent due to its termination of a contractual relationship with an unnamed company it believes to be affiliated with the Complainant.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a 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;
- (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, the Rules and any rules and principles of law that it deems applicable.

A. Complainant's Supplemental Filing

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel, bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

Where unsolicited supplemental filings are admitted, it is usually because the material corrects some error or addresses something raised in a Response which could not reasonably have been anticipated or which was not otherwise appropriate to deal with until a respondent's position on a particular point was clear.

In the present case, the supplemental filing responds specifically to and denies the Respondent's allegation that the unnamed entity which was operating the Jeddah hotel before December 2022 is associated in some way with the Complainant. The Complainant's supplemental filing also denied the claim in the Response that the Respondent had initiated a legal challenge to the validity of the Complainant's trademark in Saudi Arabia. In these circumstances, it is appropriate to admit the supplemental filing into the record.

Having accepted a supplemental filing from the Complainant, the Panel ordinarily would allow the Respondent an opportunity to respond in order to ensure that the parties are treated equally. Here, the Respondent has not requested such an opportunity, and in light of the Panel's decision in the Respondent's favor, the Panel did not deem it necessary to expressly invite the Respondent to submit a response, if it so desired.

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.

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 proven ownership of registered trademarks for SHIRVAN HOTEL / SHIRVAN HOTELS.

In comparing the disputed domain name to the Complainant's trademark, 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. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name is identical to the Complainant's United Kingdom trademark and differs from the Guinea and Saudi Arabia registrations only by the addition of "s", making the plural. Such a minor difference is insufficient to avoid a finding of confusing similarity.

Although the Respondent indicated that it believes the Complainant's Saudi Arabian registration was obtained in bad faith, that registration is prima facie evidence of its validity, and the Respondent has not submitted clear and convincing evidence that the registration is invalid. In any event, the Complainant also has registrations in other jurisdictions as well.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark 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.

While 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 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.

It is not in dispute between the Parties that the Respondent has not been authorised to use the disputed domain name by the Complainant.

There also is no dispute that the Respondent registered the disputed domain name after the Complainant filed for registration of the trademark in Guinea, and that the Respondent is using the disputed domain name in connection with services competing with those protected by the Complainant's trademark.

Neither Party has explained how it came to settle on "Shirvan" as its trademark.

The Respondent contends the Complainant, or an entity associated with the Complainant, got wind of the Respondent's plans to rebrand its hotel in Jeddah to its current name and, in effect, sought to anticipate the Respondent's plans. The Complainant denies this allegation.

The materials before the Panel do not provide a basis on which the Panel can go behind the Complainant's denial and accept the Respondent's allegation. For example, the company the Respondent was dealing with

before December 2022 has not been identified. Nor has any link between that company and the Complainant been corroborated.

However, Annex 1 to the Response does include evidence that the Respondent was corresponding as SHIRVAN HOTEL, City Yard, Jeddah with Booking.com as early as September 30, 2022, to modify its listing.

From this correspondence, therefore, it appears that the Respondent had adopted SHIRVAN for its hotel more than one month before the Complainant filed its application to register the trademark in Guinea.

The Complainant has not provided any evidence, either in the Complaint or its supplemental filing, which would provide a basis for the Panel to conclude the Respondent had somehow got wind of the Complainant's plans before deciding to rebrand its Jeddah hotel. In these circumstances, there is no basis for the Panel to conclude that the Respondent adopted the name SHIRVAN HOTEL to usurp the Complainant's rights.

The Complainant suggests that the Respondent's adoption of the SHIRVAN HOTEL name and trademark was infringing, and therefore cannot give rise to rights or legitimate interests under the Policy. See e.g., *On AG, On Clouds GmbH v. Nguyen Luu, Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf, Vuong Hoang, AN NGUYEN, NEO CORP., and Ngoc Tam Nguyen*, WIPO Case No. [D2021-1714](#) (infringing use of a complainant's trademark would not typically constitute a legitimate interest under the Policy). Here, however, the Respondent's adoption and use appears to have commenced before the Complainant's rights. In light of the Respondent's prior use, the Complainant has not, at least on the record before the Panel, sustained its burden of showing that the Respondent's use was infringing and therefore not legitimate.

In these circumstances, therefore, the Respondent has demonstrated it is using the disputed domain name in connection with a bona fide offering of hotel services as described in paragraph 4(c)(i) of the Policy since at least December 17, 2022, and that it had demonstrable preparations to use the SHIRVAN HOTELS name since at least September 30, 2022.

Accordingly, the Panel finds the Complainant has failed to establish the second element.

D. Registered and Used in Bad Faith

As the Panel has found on the materials in this proceeding that the Respondent seems to have adopted the disputed domain name before the Complainant adopted its trademark (by filing the application in Guinea), it follows that the Complainant cannot establish the third element.

E. Reverse Domain Name Hijacking

The Respondent has requested that the Panel make a finding of Reverse Domain Name Hijacking against the Complainant.

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

The mere lack of success of the Complaint is not, on its own, sufficient to constitute Reverse Domain Name Hijacking. [WIPO Overview 3.0](#), section 4.16.

The substantial basis on which the Respondent's claim rests is its allegation that an unnamed company associated with the Complainant got wind of the Respondent's plans to adopt SHIRVAN as its trademark and sought to forestall that plan. However, the Respondent has not provided any evidence to show that the Complainant knew of the Respondent's plans. See e.g., *Sydney Opera House Trust v. Trilynx Pty. Limited*, WIPO Case No. [D2000-1224](#).

As explained above, the materials before the Panel have not sustained that allegation and, at least on the materials before the Panel, it would appear the information about the Respondent's adoption of the name before, rather than after, the Complainant's adoption only came to light through the Response. That is because the public record showed that the Respondent adopted its hotel name after the Complainant filed its trademark application in Guinea, whereas the Response showed that the Respondent had made demonstrable preparations to adopt that name prior to the Complainant's trademark application.

In these circumstances, and noting that the Parties seem to have a broader dispute between them than as relates to the disputed domain name, the Panel declines to make a finding of Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie
Presiding Panelist

/David H. Bernstein/

David H. Bernstein
Panelist

/Michael D. Cover /

Michael D. Cover
Panelist

Date: August 5, 2024