

ADMINISTRATIVE PANEL DECISION

Six Continents Hotels, Inc. v. Michael Scribner
Case No. D2024-5019

1. The Parties

Complainant is Six Continents Hotels, Inc., United States of America ("United States"), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

Respondent is Michael Scribner, United States.

2. The Domain Name and Registrar

The disputed domain name <holidayinnucullman.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 December 5, 2024. On December 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 (Registration Private / Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on December 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 7, 2024.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 8, 2025.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on January 16, 2025. 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

Complainant, Six Continents Hotels, Inc., owns and operates hotels and is a company within the international hotel group IHG Hotels & Resorts. Complainant owns and uses the name and mark HOLIDAY INN for its hotels and, of relevance to this proceeding, has a Holiday Inn Express & Suites hotel in Cullman, Alabama. Complainant owns trademark registrations for its HOLIDAY INN mark in the United States (Registration Nos. 592539, 864359 and 3350226), the earliest of which issued to registration on July 13, 1954. Additionally, Complainant owns numerous trademark registrations around the world for its HOLIDAY INN mark or formatives thereof. Lastly, Complainant also owns and uses the domain name <holidayinn.com>, among others, for a website concerning Complainant and its HOLIDAY INN hotels.

Respondent appears to be based in Arkansas, United States. Respondent registered the disputed domain name on July 26, 2024. At some point thereafter, the disputed domain name resolved to a web page entitled "Holiday Inn Cullman" with an image that showed a hotel receptionist and the tag line "Your Comfortable Stay in Cullman". Complainant apparently complained to the Registrar of the disputed domain name regarding the disputed domain name and thereafter the disputed domain name did not, and currently does not, resolve to an active website or page.

5. Parties' Contentions

A. Complainant

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

Complainant asserts that it has rights in the HOLIDAY INN name and mark through the use of the mark since 1952 in connection with hotels and through the many trademark registrations that Complainant has secured for the HOLIDAY INN mark, a mark that several prior UDRP panels have found to be a known trademark.

Complainant argues that the disputed domain name is confusingly similar to the disputed domain name as it contains the HOLIDAY INN mark in its entirety with the non-distinguishing city name "Cullman".

Complainant maintains that Respondent does not have rights or a legitimate interest in the disputed domain name as Respondent (i) is not affiliated with or licensed by Complainant, (ii) is not commonly known by the disputed domain name, and (iii) has not used the disputed domain name for a bona fide offering of goods or services or for a legitimate interest. In that regard, Complainant notes that the disputed domain name was used "in connection with a website that appeared to be a website for, or otherwise associated with, Complainant".

Lastly, Complainant contends that the disputed domain name has been registered and used in bad faith as the disputed domain name fully incorporates Complainant's famous HOLIDAY INN mark that has been in use for over 70 years and was likely done as a means of attracting customers to Respondent's website. Complainant further notes that Respondent's bad faith is further established by the prior use of the disputed domain name for a website that falsely suggested a connection to Complainant and by Respondent's current passive holding of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was 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](#)") at section 1.7.

Here, Complainant has shown rights in its HOLIDAY INN mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel finds that the disputed domain name is confusingly similar to Complainant's HOLIDAY INN mark as the disputed domain name fully incorporates the HOLIDAY INN mark. Although the addition of other terms, here the city name "Cullman", may bear on the assessment of the second and third elements, the Panel finds the addition of such city name does not prevent a finding of confusing similarity between the disputed domain name and the mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The first element of the Policy has thus been established by Complainant.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's prima facie showing 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.

Respondent's registration of the disputed domain name that is clearly based on the HOLIDAY INN mark does not seem coincidental, particularly as Respondent has used the disputed domain name for a website that is essentially branded as HOLIDAY INN and which appears designed to offer hotels stays in Cullman, a location where one of Complainant's HOLIDAY INN hotels is located. Needless to say, the disputed domain name and its associated website (when it was available) are (or were) likely to be mistakenly seen by Internet users as related to Complainant and its well-known HOLIDAY INN hotel services and mark. As such, it is hard to see how Respondent could have any rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#) at section 2.5.1.

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

C. Registered and Used in Bad Faith

The Panel notes that, for 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 view of Respondent's actions, and failure to appear in this proceeding, it is easy to infer that Respondent's registration and use of the disputed domain name, which is clearly based on Complainant's HOLIDAY INN mark, has been done opportunistically and in bad faith for the benefit or profit of Respondent. The disputed domain name on its face suggests a connection to Complainant and its HOLIDAY INN hotels and services (in Cullman, Alabama) and was registered well after Complainant had established rights in its well-known HOLIDAY INN mark. In all, Respondent's actions make it more probable than not that Respondent was fully aware of Complainant and its HOLIDAY INN name when it registered the disputed domain name for the benefit of Respondent.

The Panel thus finds that 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 <holidayinnCullman.com> be transferred to Complainant.

/Georges Nahichevansky/

Georges Nahichevansky

Sole Panelist

Date: January 31, 2025