

## ADMINISTRATIVE PANEL DECISION

Accor v. jing long  
Case No. D2022-2569

### 1. The Parties

The Complainant is Accor, France, represented by Dreyfus & associés, France.

The Respondent is jing long, China.

### 2. The Domain Name and Registrar

The disputed domain name <ibis-jobs.com> is registered with DropCatch.com LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 14, 2022. On July 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 15, 2022 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 19, 2022.

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, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 18, 2022.

The Center appointed Anne Gundelfinger as the sole panelist in this matter on August 24, 2022. 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 leading global hotel operator that owns, manages and franchises hotels, resorts, and vacation properties around the world. It is the largest hospitality company in Europe, and the sixth largest worldwide. Founded in 1967 in France, the Complainant now operates more than 4,500 hotels, from economy to upscale, in 110 countries worldwide. The group includes a number of large hotel chains such as Fairmont, Raffles, Swissôtel, Sofitel, Pullman, Novotel, 6 Grand Mercure, and Ibis.

The first Ibis hotel was launched in 1974 in France. Currently, there are approximately 1,200 Ibis hotels in over 67 countries around the world. Ibis hotels are generally close to city centers, airports, or railway stations, and operate in the “budget” category.

The Complainant’s registrations for the IBIS trademark (“Mark” or “Complainant’s Mark”) include the following:

- IBIS: U.S. Reg. No. 2861902, registered July 2004 in International Class 42;
- IBIS: U.S. Reg. No. 4944233, registered April 2016 in International Classes 16 and 43;
- IBIS: European Union Trademark Reg. No. 001527720, registered February 2000 in International Classes 16, 39, and 42;
- IBIS: China Reg. No. 2018904, registered December 2004 in International Class 42; and
- IBIS: International Trademark Reg. No. 541432, registered July 1989 in International Classes 38, 39, and 42, and designating *inter alia* Algeria, Austria, Bulgaria, Cambodia, Cuba, Egypt, Israel, Mongolia, Kazakhstan, Lithuania, Morocco, North Korea, the Russian Federation, Serbia, Sudan, Switzerland, Ukraine, and Vietnam.

In June of 1993 the Complainant first registered the domain name <ibis.com> which directs to the Complainant’s website promoting the line of Ibis hotels.

The disputed domain name was registered on April 17, 2022 using the NameBrightPrivacy.com privacy service. The disputed domain name resolves to a Chinese-language website hosting pornographic content along with apparent advertising.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant states that in April 2022, upon its discovery of the Respondent’s registration and use of the disputed domain name, it sent a cease-and-desist letter to the Respondent demanding that it cease use of the disputed domain name and transfer it to the Complainant. The Complainant states that it received no response.

The Complainant contends that its IBIS Mark is internationally well known due to its long and prominent use in a wide range of markets, as well as its wide registration, and further notes that many other UDRP panels have found the IBIS Mark to be well known. The Complainant argues that the disputed domain name is confusingly similar to its IBIS Mark because the disputed domain name wholly incorporates the Mark followed by a hyphen and the common English word “jobs”.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. Specifically, the Complainant asserts *inter alia* that (a) the Complainant’s Mark is well known and that the

Respondent must therefore have known of the Complainant's Mark in registering and using the disputed domain name, (b) the Complainant has given no authorization or license for registration or use of the disputed domain name, (c) the Respondent is not commonly known by the disputed domain name, and (d) the Respondent's use of the disputed domain name for a pornographic website fails to establish rights or legitimate interests and also demonstrates the Respondent's bad faith registration and use.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements to be successful in this action: (i) the disputed domain name is identical or confusingly similar to trademarks or service marks 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.

### **A. Identical or Confusingly Similar**

The disputed domain name wholly incorporates the Complainant's well-known IBIS Mark followed by a hyphen and the common English word "jobs". It is well-established that the addition of other terms (whether generic, descriptive, geographical, pejorative, meaningless, or otherwise) to a complainant's mark does not prevent a finding of confusing similarity between a domain name and that mark. See, section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and cases cited therein. See also, *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#); and *Accor v. WhoisGuard, Inc. / Bill Bro*, WIPO Case No. [D2018-2329](#).

Similarly, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is generally disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's Mark, and that the first element of the test is satisfied.

### **B. Rights or Legitimate Interests & Registered and Used in Bad Faith**

The second element of the test requires a showing that the Respondent has no rights or legitimate interests in the disputed domain name, and the third element of the test requires a showing that the disputed domain name has been registered and is being used in bad faith. Departing from the usual approach in UDRP decisions, the Panel addresses the second and third elements together, given their close relationship in this case.

The Complainant contends that the IBIS Mark is globally well-known and supports that contention with evidence that the Mark has been in use for nearly 50 years in Europe and other major markets around the world for a highly visible hotel chain with over 1,200 locations under the IBIS, IBIS Styles, and IBIS Budget brands. The Panel is certainly aware of the Complainant's Ibis hotel chain but notes that the Complainant has not specifically supported its claims of well-known status with a developed evidentiary record (such as revenue under the Mark, promotional investment, etc.), as opposed to assertions relating to the corporate family. That said, the Panel must agree that the IBIS Mark is well-known due to its wide and prominent use in city centers around the world. Other UDRP Panels have also found the IBIS Mark to be well-known. See e.g., *Accor and SoLuxury HMC v. Domains by Proxy, Inc. and Therese Kerr*, WIPO Case No. [D2009-0243](#); *Accor, Society Anonyme a Directoire et Conseil de Surveillance v. SEOCHO*, WIPO Case No. [D2002-0517](#); *Accor v. Leland M. Rutla*, WIPO Case No. [D2015-0912](#). The Panel further observes that the Mark is inherently distinctive as applied to hospitality services.

Given the international fame and the inherent distinctiveness of the Complainant's IBIS Mark, the Panel agrees that there can be little doubt that the Respondent knew of and was targeting the Complainant's Mark in registering the disputed domain name. There is no other explanation for the use of the IBIS Mark in the disputed domain name, and the Respondent has certainly offered none, having failed to respond to the Complaint.

The Complainant argues that use of the disputed domain name to host a pornographic website demonstrates both use in bad faith and a lack of rights or legitimate interests. More specifically, the Complainant argues that such pornographic content is illegal in China and therefore the use of the disputed domain name to host such content cannot be considered a *bona fide* offering of goods and services, nor can it be considered a noncommercial fair use.

Here the Panel finds misdirected Complainant's argument that the pornographic content of the website somehow constitutes *per se* bad faith and negates any possibility of rights or legitimate interests. It is not the pornographic content (which can be legal in many jurisdictions under the right circumstances) that violates the Policy, but rather the misleading use of the Mark in the disputed domain name. Specifically, the Panel agrees that it constitutes bad faith registration and use to target a distinctive and well-known mark such as the IBIS Mark and to register and use it as all or part of a domain name to mislead and divert Internet users to an apparently commercial website (pornographic or otherwise) that has nothing at all to do with the Complainant. See, *The Perfect Potion v. Domain Administrator*, WIPO Case No. [D2004-0743](#); *Caledonia Motor Group Limited v. Amazon*, WIPO Case No. [D2001-0860](#). The Panel finds that the Respondent has done exactly this, and accordingly has registered and used the disputed domain name in bad faith under the Policy. This finding of bad faith is bolstered by the fact that the Respondent used a privacy shield to hide its identity. See section 3.6 of the [WIPO Overview 3.0](#).

The Panel now turns to whether the Respondent has rights or legitimate interests in the disputed domain name. It is well established that a complainant must present a *prima facie* case in relation to this second element of the Policy, not mere allegations. Once a *prima facie* showing is made, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the disputed domain name. This burden-shifting is appropriate given that the respondent is often the only party with access to evidence of its own rights or legitimate interests. Accordingly, where a respondent fails to file a response a UDRP panel may draw inferences from the failure to respond as appropriate under the circumstances of the case and while still weighing all available evidence irrespective of whether a response is filed. See, section 2.1 of the [WIPO Overview 3.0](#) and cases cited therein. See also, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Complainant has asserted that it has no connection or affiliation with the Respondent and has given no authorization for the Respondent's use of the disputed domain name. The weight of the evidence clearly suggests that the Respondent intentionally targeted the Complainant's distinctive and well-known Mark and is using the disputed domain name to mislead and divert Internet users to a revenue-generating website that has nothing to do with the Complainant. The Respondent has not responded to the Complaint and has not offered any evidence or argument in support of any rights or legitimate interests. Moreover, the Panel cannot see that use of the disputed domain name is somehow descriptive of the content of the Respondent's website, thus potentially constituting a descriptive fair use. Nor does the Panel see any facts suggesting that the disputed domain name might constitute a nominative fair use, given that the Respondent's website clearly has nothing at all to do with the Complainant's business. Accordingly, under these circumstances given the evidence at hand, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

In sum, the Panel finds that the second and third elements of the test are satisfied.

## 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 <ibis-jobs.com> be transferred to the Complainant.

*/Anne Gundelfinger/*

**Anne Gundelfinger**

Sole Panelist

Date: September 7, 2022