

ADMINISTRATIVE PANEL DECISION

Accor Management US, Inc. v. All My Domain
Case No. D2022-3355

1. The Parties

The Complainant is Accor Management US, Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is All My Domain, United States.

2. The Domain Name and Registrar

The disputed domain name <fairmontscotts.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 9, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 9, 2022, the Registrar transmitted by email its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 September 14, 2022.

The Center verified that 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 the Respondent of the Complaint, and the proceedings commenced on September 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2022.

The Center appointed Steven Auvil as the sole panelist in this matter on October 25, 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

According to the Complaint, the Complainant is a hotel and leisure company based in the United States that operates the largest luxury hotel and accommodation business in North America. The Complainant is owned by AccorHotels, one of the leading travel and lifestyle groups, with over 5,300 hotels, resorts and residences around the globe.

One of the Complainant's hotel chains includes the Fairmont chain, which has been operated and licensed under the FAIRMONT mark since the 1900s. There are 80 FAIRMONT properties across the world and the Complainant is currently developing 27 new hotels and properties with the use of the FAIRMONT mark. The Complainant has received numerous awards and recognitions for the FAIRMONT hotels.

One of the Complainant's FAIRMONT properties is the Fairmont Scottsdale Princess, located in Scottsdale, Arizona. The Fairmont Scottsdale Princess has earned multiple awards.

Additionally, the Complainant has promoted the FAIRMONT mark on television, in print advertisements, and on the Internet. The Complainant owes registered marks for the FAIRMONT brand, including United States Registration No. 982,668 (registered April 23, 1974), United States Registration No. 982,669 (registered April 23, 1974), and United States Registration No. 983,000 (registered April 23, 1974).

The disputed domain name <fairmontscotts.com> was registered on July 25, 2022. Both at the time of writing the Complaint and at the time of writing this Decision, the disputed domain name resolved to an inactive website and the web browser returned a message "This site can't be reached". However, the Complainant provided evidence the disputed domain name has been used in connection to a fraudulent email scheme impersonating an employee of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its FAIRMONT mark because the disputed domain name incorporates the Complainant's entire FAIRMONT mark and only adds the geographical term "scotts" and the generic Top-Level Domain ("gTLD") ".com". The Complainant contends that the addition of "scotts" is a shortened version of "Scottsdale."

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Complainant's adoption and extensive use of the FAIRMONT mark predates the Respondent's registration of the disputed domain name. The Complainant has not granted the Respondent any license, permission, or other right by which the Respondent could own or use any domain name incorporating the Complainant's FAIRMONT mark.

Further, the Complainant asserts that the Respondent is not commonly known by the disputed domain name and has developed no legitimate interests in the disputed domain name through *bona fide* use.

Additionally, the Complainant asserts that the Respondent registered the disputed domain name in bad faith because it is inconceivable that the Respondent was unaware of the Complainant's FAIRMONT mark when it registered the disputed domain name. Furthermore, the Complainant asserts that the Respondent used the disputed domain name to impersonate one of the Complainant's employees at the FAIRMONT SCOTTSDALE PRINCESS resort. The Complainant's asserts that this use was an exploitation of the

Complainant's mark and goodwill for financial gain by perpetuating a fraud on unwary individuals and therefore demonstrates bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

(i) that the disputed domain name is identical or confusingly similar to a trademark or a service in which the Complainant has rights;

(ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) that the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a Response, the Panel renders this Decision on the basis of the Complainant's undisputed allegations, pursuant to paragraphs 5(f), 14(a), and 15(a) of the Rules, and draws such inferences it considers appropriate, pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept as true allegations set forth in the Complaint, unless the evidence is clearly contradictory, and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions on the basis of the undisputed allegations and evidence contained in the Complaint and reasonable inferences drawn from that evidence.

A. Identical or Confusingly Similar

As noted above, the Complainant is the owner of several registered trademarks for the FAIRMONT brand. The Panel therefore finds that the Complainant has rights in the FAIRMONT mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

It is further understood that when a disputed domain name fully incorporates a complainant's registered mark, it is indicative of the disputed domain name being identical or confusingly similar. See [WIPO Overview 3.0](#), section 1.7; see also *Fairmont Hotels & Resorts (U.S.) Inc. v. Kate Wood, Luxury Havens*, WIPO Case No. [D2018-0484](#), and *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#).

The disputed domain name here incorporates the entirety of the registered mark, FAIRMONT. The fact that the disputed domain name also incorporates "scotts" does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8.

Additionally, as set forth in section 1.11.1 of the [WIPO Overview 3.0](#), the applicable gTLD (e.g., “.com”, “.site”, “.info”, “.shop”) “is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. As such, the use of “.com” has no bearing on establishing identity or confusing similarity here. See *Calzaturificio Casadei S.p.A. v. Nancy Salvaggio*, WIPO Case No. [D2019-2329](#); *GS1 AISBL v. WhoisGuad Inc. /Elmer Robles*, WIPO Case No. [D2020-2037](#).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant’s mark. Therefore, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

From the Complainant’s allegations and evidence as well as the inferences drawn from the evidence, the FAIRMONT mark is a distinctive and well-known mark registered by the Complainant. The Complainant has operated its business for decades, both domestically and internationally. The Complainant did not license or otherwise authorize the Respondent’s use of the FAIRMONT mark, and the Complainant has no affiliation, association, sponsorship, or connection with the Respondent. Therefore, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides that “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.”

Here, the Respondent did not respond to the Complaint and thus has failed to rebut the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Moreover, as discussed further below, the Complainant has provided evidence the disputed domain name has been used to send fraudulent email communications impersonating an employee of the Complainant. Such use can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Section 3.1.4 of the [WIPO Overview 3.0](#) provides that “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. Additionally, section 3.2.1 of the [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion); [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”

Here, as noted above, the disputed domain name incorporates the entirety of the Complainant’s registered FAIRMONT mark, which has been used for many decades. This alone creates an inference of bad faith registration and use.

Moreover, the evidence demonstrates that the Respondent was using the disputed domain name in connection with deceptive and fraudulent activities. Indeed, the use of the Complainant's FAIRMONT mark in the disputed domain name was meant to impersonate the Complainant and related entities to obtain confidential information from individuals who were applying for jobs with the Complainant. This use has caused and will continue to cause recipients of the emails to reasonably believe those emails are connected to or approved by the Complainant or its related entities. Through the inclusion of the Complainant's entire FAIRMONT mark and use of the Complainant's employees actual names, the Panel finds that the Respondent was aware of the Complainant's business and rights in registering and using the disputed domain name. This, too, evidences bad faith registration and use. See *Mazzetta Company, LLC v. Perfect Privacy, LLC/ Name Redacted Case*, WIPO Case No. [D2021-3043](#) (finding that because the respondent sent fraudulent emails and deceptively presented itself as a complainant executive, even using official contact information, it registered and was using the disputed domain name in bad faith); *Minerva S.A. v. Miranda Nyenhuis*, WIPO Case No. [D2018-0763](#) (finding that because the respondent used the disputed domain name in an email scam using the names of the complainant's employees, it is evidence of registration and use in bad faith).

The Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's FAIRMONT mark as the source, sponsorship, affiliation or endorsement of the Respondent's fraudulent emails under paragraph 4(b)(iv) of the Policy. Moreover, the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the third element of paragraph 4(a) of the Policy is 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 <fairmontscotts.com> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: November 7, 2022