

ADMINISTRATIVE PANEL DECISION

Accor v. Ralf Gottschalk

Case No. D2022-5025

1. The Parties

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

The Respondent is Ralf Gottschalk, Germany.

2. The Domain Name and Registrar

The disputed domain name <accorhotelsasia.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on January 3, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on February 20, 2023. 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 French company which carries on business internationally as the operator of a large portfolio of hotels, resorts and vacation properties. The Complainant's business was founded in 1967, and it now encompasses more than 5300 hotels in 111 countries, including 1384 hotels in Asia.

In terms of trademarks the Complainant owns various ACCOR-formative registrations in a range of jurisdictions. In particular it owns registered trademark rights in the mark ACCORHOTELS (International trademark No. 1103847 dated December 12, 2011) and ACCORHOTELS (EU trademark No. 010248466). In addition, the Complainant owns numerous domain names which incorporate the terms ACCOR and ACCORHOTELS including <accorhotels.com> (which was registered in 1998).

The Respondent registered the disputed domain name on March 25, 2022 and has used it in connection with an associated website promoting and selling women's apparel and accessories.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it owns relevant rights in the trademark ACCORHOTELS as particularized in paragraph 4 above. The registered rights extend back as far as 2011. The Complainant claims a worldwide reputation in its hotel operations which are carried on in association with its registered marks.

With respect to confusing similarity, the Complainant submits that the disputed domain name reproduces its trademarks ACCOR and ACCORHOTELS in their entirety. The addition of the geographic term ASIA does not provide sufficient distinction to diminish the likelihood of confusion.

In terms of rights or legitimate interests, the Complainant notes that the Respondent has never been affiliated with, or authorized by, the Complainant in any manner. The Respondent's conduct in using the disputed domain name as a platform for online clothing sales does not constitute a *bona fide* offering of goods; rather it represents an attempt to trade on the Complainant's reputation to promote the Respondent's products.

With respect to bad faith use and registration, the Respondent must have been aware of the Complainant's trademark rights when he registered the disputed domain name, because the trademarks in question are very well-known around the world. The fact that the trademarks have been reproduced in their entirety supports a finding of opportunistic bad faith, as the Respondent was clearly targeting the Complainant for purposes of commercial gain.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, the Complainant must establish each of the following elements:

- (i) The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant clearly holds relevant ownership rights in the trademark ACCORHOTELS, as demonstrated by the registered trademarks enumerated in paragraph 4, which were registered more than ten years before Respondent took any steps to acquire and use the disputed domain name.

The test for confusing similarity is described as a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademark. The disputed domain name includes the entirety of the distinctive ACCORHOTELS mark with the addition of the geographic term “Asia”. This variation does not prevent a finding of confusing similarity under the first element. See *Fenix International Limited v. Patrick Flensby*, WIPO Case No. [D2022-0310](#). The Complainant’s trademark is clearly recognizable within the disputed domain name ([WIPO Overview 3.0](#), section 1.8).

Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although the Policy places on the complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a complainant to make out a *prima facie* case, which then shifts the burden to the Respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the Respondent fails to produce such evidence, the Complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant has established a plausible *prima facie* case by bringing forward evidence on the following four points: (1) The Respondent has never been associated in any way with the Complainant nor has it ever been authorized to use the ACCOR or ACCORHOTELS mark; (2) there is no evidence the Respondent has been commonly known by the disputed domain name; (3) the disputed domain name prominently features and actually reproduces the distinctive ACCORHOTELS mark in order to mislead and lure consumers to a site for commercial advantage; and (4) the disputed domain name actually resolves to commercial web pages offering women’s apparel for sale, relying on the Complainant’s brand and reputation to attract the business, which cannot be viewed as fair or legitimate use.

The totality of the evidence set out above is sufficient to establish a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Once the Complainant has established a *prima facie* case, the burden then shifts to the Respondent to bring forward evidence of rights and legitimate interests. The Respondent has not filed any submissions relating to this matter. In the absence of any such response, the Panel is prepared to find, for the purposes of this proceeding, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is deemed to have satisfied the requirements under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name has been registered and used in bad faith in light of the factors and circumstances set out below. In particular the Panel finds that the Respondent must have known about the Complainant’s ACCORHOTELS mark, as he acted opportunistically to adopt and use a confusingly similar name to promote his goods many years after the Complainant had established its brand rights and reputation around the world, including Germany where the Respondent appears to reside and across Asia. See *LEGO Juris A/S v. Reiner Stotte*, WIPO Case No. [D2010-0494](#). The Panel takes notice of the nature of the disputed domain name itself: the use of the unique combination of ACCOR and HOTELS by the

Respondent is a telltale indicator of copying and of targeting the Complainant. In the absence of any evidence to the contrary from the Respondent, the Panel is prepared to find that the Respondent's use of the disputed domain name, to promote and sell women's apparel on a commercial website, constitutes a deliberate scheme to attract and divert consumers through the misappropriation of the Complainant's well-known trademarks.

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 <accorhotelsasia.com> be transferred to the Complainant.

/Christopher J. Pibus/

Christopher J. Pibus

Sole Panelist

Date: March 6, 2023