

ADMINISTRATIVE PANEL DECISION

MHG IP Holding (Singapore) PTE. LTD. v. Vaibhav Vaid, Exotic Journeys Private Ltd

Case No. D2023-0341

1. The Parties

The Complainant is MHG IP Holding (Singapore) PTE. LTD., Singapore, represented by Luthra & Luthra Law Offices, India.

The Respondent is Vaibhav Vaid, Exotic Journeys Private Ltd, India, represented by Dodd & Co., India.

2. The Domain Name and Registrar

The disputed domain name <antaracruises.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 January 25, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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”) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2023, 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 amendment to the Complaint on January 31, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on February 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2023. The Center received email communications from the Respondent on February 8, 14, 15, 23, and 25, 2023. The Center extended the due date for Response to February 27, 2023, on the Respondent’s request. The Response was filed with the Center on February 27, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 8, 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 part of a group that owns and operates hotels and spas at what may be described as the luxury end of the market. It is a subsidiary of Minor International PCL which, through a number of companies, operates many hotels and restaurants around the world under various brands.

The Complainant's hotels and spas are operated under the brand ANANTARA and have been since it was founded in Singapore in 2000.

Its portfolio consists of more than 50 hotels and resorts and 30 spas across Asia, the Middle East, Africa, and Europe including in Thailand, Sri Lanka, Vietnam, Cambodia, China, Indonesia, Maldives, Mozambique, Portugal, the United Arab Emirates, Oman, and Qatar. It also offers what it describes as "ANANTARA Experiences" such as excursions into surrounding villages and forests, elephant rides, wine tastings, and river cruises.

The Complainant does not have an establishment in India. However, the Complaint includes evidence that a number of guests from India have stayed at its resorts. In 2001, there were 24 such guests. Since 2015, the number of guests from India has exceeded 10,000 a year and more than 20,000 each year since 2017.

In addition, in 2008, the Complainant's parent and a related company obtained final injunctions on the basis of passing off against a business operating under the name Anantara Hospitality Pvt. Ltd., and its officers.

Amongst other things, the Complainant promotes its resorts and services from a website to which the domain name <anantara.com> resolves. Over time the opening of the Complainant's new establishments have been featured in high profile travel and industry magazines.

The Complainant's Facebook page has over 187,000 followers; its YouTube channel, 20,000 subscribers; and it has more than 19,000 followers on both Twitter and Instagram.

According to the Complaint, the Complainant's revenues under its ANANTARA brand have risen from USD 6.5 million in 2001 to in excess of USD 500 million in each of 2017, 2018, and 2019. Even in 2020 and 2021, its revenues exceeded USD 300 million each year.

The Complainant has numerous registrations of trademarks for ANANTARA as a word mark alone or in a "logo" form in many countries around the world. For present purposes, it is sufficient to note that the Complainant owns registered trademarks in India for ANANTARA for goods and services in International Classes 3, 36, and 44. A "logo" form of the trademark has also been registered in class 43. All of the trademarks were registered on October 16, 2021.

The "logo" form of the trademark is:



The registration:

- (a) in class 36 is for “rental of apartments; apartment house management; real estate agency services; real estate management services; rental of real estate; real estate appraisal”;
- (b) in class 43 is for “services for providing food and beverages; temporary accommodation; hotel services; reservation services for hotel rooms; reservation of temporary accommodation; hotel reservations; guest houses; hotel accommodation agencies; accommodation services in hotels, motels and tourist resorts; food and drink preparation services; restaurant, bar and catering services”; and
- (c) in class 44 is for “hygiene and beauty care services, spa treatment and body massage, beauty salon services, health spa services, fitness centres; wellness centres; ayurvedic therapy services”.

Many of the Complainant’s trademarks in other countries or jurisdictions were registered well before the trademarks were registered in India. For example, early versions of the logo form have been registered since 2006. The European Union Trademark for the word mark alone was filed on November 15, 2016, and registered in respect of goods and services in International Classes 3, 43, and 44 on April 27, 2017.

The disputed domain name was registered on June 8, 2020.

It resolves to a website from which the Respondent or one of its subsidiaries offers luxury river cruises on the inland waterways of India under the name Antara River Cruises.



The Respondent is incorporated in India. Its principal officers have a background in hospitality and tourism going back three decades. According to the Response, the majority shareholder is a well-known expert and authority on wildlife and river cruises in India.

According further to the Response, the Respondent or its subsidiary was formed to take advantage of two Indian government programs. First, the Maritime India Vision 2030 which is directed to promoting trade including river cruise tourism in India and was inaugurated by the Prime Minister of India in 2021. A second program is the Jal Marg Vikas Nigam which is directed to investing in and developing India’s inland waterways.

One of the Respondent’s river cruises is promoted as the longest river cruise in the world. Its maiden journey was “flagged off” by the Prime Minister of India in January 2023. One of the Respondent’s cruises was included by *Conde Nast Traveler* as one of the six river cruises in the world to take in 2017. *Forbes India* ranked a cruise on one of the Respondent’s ships as one of the 10 offbeat travel experiences to indulge in in 2021.

The Respondent has applied to register its trademark in India on March 19, 2020, in respect of passenger ships in International Class 12 and cruise ship services in International Class 39. However, that application was opposed by a member of the Complainant’s corporate group in March 2021. The opposition is still pending.

5. Discussion and Findings

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

A. 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.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for ANANTARA in addition to numerous registrations in the "logo" form.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See *e.g.*, [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 1.7.

In undertaking that comparison, 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 consists of the Complainant's registered word mark with the prefix "an" omitted.

With the omission of that prefix, it still remains that the Complainant's trademark is visually and aurally recognisable within the disputed domain name. Bearing in mind that this requirement under the Policy is essentially a standing requirement as a threshold to identify complainants with a genuine interest in challenging a domain name and there is plainly a serious dispute between the parties, the Panel is prepared for the purposes of the Policy to treat the difference as similar to misspellings such as "typosquatting". See *e.g.*, [WIPO Overview 3.0](#), section 1.9. Bearing in mind the different nature of the test compared to the tests for trademark infringement and that the majority of the Complainant's mark is reproduced in the disputed domain name, therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy.

Accordingly, the Panel finds that the requirement under the first limb of the Policy is satisfied.

B. 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.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark in some parts of the world.

It is also not in dispute between the parties that the Respondent has not been authorised by the Complainant to use the disputed domain name. Nor is the Respondent affiliated with the Complainant or its corporate group in any way.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

The Complainant contends that the Respondent registered and is using the disputed domain name with the intention of misleading consumers into thinking the Respondent is the Complainant or associated with the Complainant's corporate group. According to the Complainant, this is to be inferred from the slavish copying of the Complainant's trademark into the disputed domain name and the "logo" form of trademark on the Respondent's website. The Complainant further contends that causing confusion in this manner and appropriating the goodwill of the Complainant's trademark cannot confer a right or legitimate interest in the disputed domain name.

The Respondent, however, contends that both "Anantara" and "antara" are ordinary dictionary words in Sanskrit; "Anantara" meaning "without end" and "antara", "distinction". "Antara" also means the second musical note in Indian classical music. As a result, the Respondent claims it adopted the term "antara" to convey a sense of the quality of its services. The Respondent further contends that it is operating in a very different field to the Respondent. It contends that there is no evidence of the Complainant having any reputation in India and a simple Google search of "antara" does not turn up any references to the Complainant or its trademark. It further notes, referring to the prices the Complainant and the Respondent charge their respective customers, that purchasers of their respective services are sophisticated and unlikely to be confused.

The Panel accepts that the word "antara" is the prominent or distinctive feature of the disputed domain name and the "logo" form of the Respondent's trademark.

The Panel accepts that there is not much direct evidence of the Complainant having operations or a reputation in India. However, the Respondent's position does not address the court case, albeit that occurred in 2008. Nor does it address the evidence that increasingly larger numbers of people apparently from India are taking advantage of the Complainant's services.

The Complainant does also have registered trademarks in India. There may arguably be some overlap between the services offered by the Respondent and those specified in the Complainant's registered trademarks although that is much less clear with respect to the characterisation of the parties' main services: hotel and resort services compared to river cruises.

On the record in this proceeding, the Respondent cannot be characterised as operating anything other than a legitimate and substantial business. As the pending trademark opposition proceedings show, the issue is whether it is doing so under a trademark that infringes the Complainant's rights.

Having regard to the on-going opposition proceedings in the Indian Trademarks Registry, therefore, on balance the Panel considers it is premature to conclude that the Respondent does not have rights or legitimate interests in the disputed domain name. If the Complainant's opposition is unsuccessful, the Respondent will have established a right to use its trademark, and hence the disputed domain name, in India in respect of the relevant services. On the other hand, if the Complainant succeeds in its opposition, the position of the Respondent will be much more exposed.

The Complainant therefore has not established the second requirement under the Policy and the Complaint must fail.

C. Registered and Used in Bad Faith

As the Complaint must fail, no good purpose would be served by addressing this requirement.

D. Reverse Domain Name Hijacking

The Respondent contends that the Complaint has been brought in bad faith and, accordingly, the Complainant should be sanctioned by a finding of reverse domain name hijacking.

Paragraph 15(e) of the Rules provides, in part:

"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 was brought primarily 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."

Paragraph 1 of the Rules defines "Reverse Domain Name Hijacking" to be "using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name".

The fact that a Complaint has failed is not in itself sufficient to warrant a finding of reverse domain name hijacking.

There are aspects of the Complaint which are troubling. For example, the Complainant did not disclose that the Respondent's trademark application in India had been accepted in the face of the Complainant's own registered trademark even though the Complainant has opposed the registration of that trademark. Nor has the Complainant explained why it brought the Complaint only some 18 months after it commenced the trademark opposition. Be that as it may, the Respondent cannot contend that it has been induced by the delay into making greater investments in its trademark. As the opposition is still on-going, it was plain that the Complainant had not acquiesced in the Respondent's conduct and the Respondent continued its use in the face of the Complainant's opposition.

In the end, the Panel declines to make a finding of reverse domain name hijacking. Until the Complainant's trademark opposition is concluded, it is premature to conclude whether or not the Respondent has rights or a legitimate interest in the disputed domain name, or has acted in bad faith.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: March 22, 2023