

ADMINISTRATIVE PANEL DECISION

Belmond Management Limited v. jokia kolia, optika
Case No. D2023-3146

1. The Parties

The Complainant is Belmond Management Limited, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is jokia kolia, optika, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <hotel-belmond.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 July 21, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 2023, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 27, 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 amended Complaint on July 31, 2023.

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 August 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on September 27, 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

- i) since the mid-1970's has operated luxury hotels, safari lodges, trains, and cruises;
- ii) at the time of the Complaint, owned a portfolio of fifty properties across 24 countries;
- iii) traded under the name Orient-Express Hotels until 2014, around which time it rebranded to "Belmond";
- iv) in various countries owns a number of trade mark registrations comprising the name "Belmond", including but not limited to United States of America trade mark registration no. 4832479 BELMOND (figurative) in classes 35, 36, 39, and 43 (registered October 13, 2015) which covers, *inter alia*, hotel services;
- v) joined the LVMH group of companies in 2019;
- vi) provided evidence that it is often covered in press and media, particularly in respect of its position as a luxury brand;
- vii) provided evidence that it promotes its activities by way of various social media pages bearing the name "Belmond" and which at the time of filing of the Complaint enjoyed follower bases in the multiple hundreds of thousands, and a website at the domain name <belmond.com>, which receives on average approximately 600,000 visitors per month;
- viii) provided evidence that the disputed domain name was in June 2023 used to contact a hotel customer of the Complainant in order to seek payment from the customer to a bank account that is not connected with the Complainant.

The Respondent did not respond to the Complaint and did not engage with the proceedings.

The disputed domain name was registered on May 23, 2023. At the time the Complaint was filed, the disputed domain name resolved to a pay-per-click landing page on which it hosts multiple hyperlinks to third-party websites. The publicly-available Whois information shows a privacy service as the recorded registrant as at the date of this decision.

5. Parties' Contentions

A. Complainant

The Complainant asserts that:

- i) the disputed domain name fully incorporates the Complainant's registered BELMOND trade mark and therefore is confusingly similar with a mark in which the Complainant has rights;
- ii) the Respondent is not licensed or otherwise authorized to use the Complainant's BELMOND trade mark (including to incorporate it in a domain name), and has never been affiliated with, sponsored by or otherwise connected with the Complainant in any way;
- iii) the Respondent has never been commonly known by the disputed domain name;
- iv) the disputed domain name has been used for e-mails that falsely give the impression that the Respondent is or is somehow related to the Complainant, and with the purpose of misdirecting to the Respondent funds that are owed to the Complainant (and further provides *prima facie* credible evidence of same);
- v) in this same way, the disputed domain name has been used to impersonate the Complainant for commercial gain;

- vi) on the aforesaid basis, the Respondent has no rights or legitimate interests in the disputed domain name, which in the circumstances has been registered and used in bad faith.

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:

- i) the disputed domain name registered by the Respondent is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- ii) the Respondent has no rights or legitimate interests with respect to 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 contains the Complainant's BELMOND trade mark in its entirety. As identified above, the Complainant owns various trademark registrations for BELMOND.

Panels frequently find that the inclusion of an entire registered trade mark renders the disputed domain name confusingly similar to the included trade mark.

In this case, the use of the additional term "hotel-" in the disputed domain name does nothing to prevent a finding of confusing similarity, as the Complainant's trade mark remains recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a registered trade mark in which the Complainant has rights.

The Complainant has therefore met the first requirement.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

By way of its assertions outlined above in section 5.A ii) through 5. A. vi) inclusive, the Complainant has made out a *prima facie* case that the Respondent does not have rights and/or legitimate interests in the disputed domain name.

The Respondent did not respond, and therefore has done nothing to challenge the Complainant's assertions.

Accordingly, and taking into account the Panel's further findings below, there is no basis on which the Panel can find that the Respondent has any rights or legitimate interests in the disputed domain name.

The Complainant has therefore met the second requirement.

C. Registered and Used in Bad Faith

As noted above, the Complainant has provided a copy of an email whereby an email address at the disputed domain name has been used to impersonate the Complainant in correspondence with a customer.

The email is of a commercial nature and appears to demonstrate an attempt to mislead the customer into transferring to the Respondent a payment that is in fact owed to the Complainant.

The Respondent failed to respond to the Complaint and therefore failed to challenge the Complainant's evidence and assertions in respect of this conduct, which assertions themselves are *prima facie* credible.

UDRP paragraph 4(b) provides that the following scenario constitutes evidence of a respondent's bad faith:

"(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's web site or location or of a product or service on the respondent's web site or location."

Panels have found that the following types of evidence support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful.

Further, as noted in [WIPO Overview 3.0](#) sections 2.13.1 and 3.1.4, the use of a domain name to impersonate a third party, including by way of use of that party's registered trade mark as part of a domain name, is illegitimate activity and manifestly considered to be evidence of bad faith.

The Complainant has therefore met the third requirement.

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, <hotel-belmond.com>, be transferred to the Complainant.

/Aaron Newell/

Aaron Newell

Sole Panelist

Date: October 19, 2023