

ADMINISTRATIVE PANEL DECISION

Jumeirah International LLC v. Michael Nava, Domain Nerdz LLC
Case No. D2024-2161

1. The Parties

The Complainant is Jumeirah International LLC, United Arab Emirates, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Michael Nava, Domain Nerdz LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain name <burjalarab.org> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2024. On June 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 2024, 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 Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 7, 2024, 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 June 12, 2024.

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 June 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed James Bridgeman as the sole panelist in this matter on July 19, 2024. 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

Complainant is a member of the Jumeirah Group of Companies, that include its affiliate Jumeirah Beach Resort LLC providing international hotel services using the BURJ AL ARAB trademark and service mark. Jumeirah Beach Resort LLC holds a portfolio of trademark and service mark registrations for the BUGJ AL ARAB mark including the following:

- European Union Trade Mark BURJ AL ARAB, registration number 002315380, registered on February 20, 2003, for goods and services in classes 16, 35 and 42;
- China registered trademark, BURJ AL ARAB, registration number 3014473, registered on January 28, 2003, for goods in class 16.

The disputed domain name was registered on October 26, 2010. It resolves to a website where it is being offered to the public for sale, at the time of the Complaint for USD 1,988.

There is no information available about the Respondent, except for that provided in the Complaint, the Registrar's Whols, and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name. The record shows that the Respondent has been the unsuccessful respondent in numerous proceedings under the Policy.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Complainant and its affiliate Jumeirah Beach Resort LLC are members of Dubai Holding a global luxury hotel company established in 1997 which operates a portfolio of 26 properties, comprising beachfront resorts, city hotels, and luxury serviced residences across the Middle East, Europe, and Asia.

The Complainant claims rights in the disputed domain name based on the trademark and service marks registrations described above, which are owned by Complainant's affiliate corporation and used by the Complainant as the name of the Burj Al Arab hotel in Dubai, United Arab Emirates, which it developed and manages. The Burj Al Arab was completed in 1999 and officially opened on December 1, 1999.

Firstly, the Complainant alleges that the disputed domain name is identical or confusingly similar to the BURJ AL ARAB mark in which the Complainant has rights.

The Complainant argues that the disputed domain name consists solely of the BURJ AL ARAB mark and adds that it is standard practice when comparing a domain name at issue to a complainant's trademark, that the generic Top-Level Domain ("gTLD") need not be taken into account. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") at 1.11.1 ("The applicable Top Level Domain ("TLD") in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name arguing that:

- the Respondent is not sponsored by or affiliated with Complainant in any way;
- the Complainant has not given Respondent permission to use the Complainant's trademarks in any manner, including in domain names;
- the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating Complainant's trademark. "In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed." See *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case [D2014-1875](#);
- the Respondent is not commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests;
- in the instant case, the pertinent Whois information identifies the registrant as "REDACTED FOR PRIVACY, Privacy Protection", which does not resemble the disputed domain name in any manner;
- where there is no evidence, including in the Whois record for the disputed domain name, suggesting that the Respondent is commonly known by the disputed domain name, then the Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case [D2004-1049](#) (in which the panel noted "that the Respondent's name is "Bestinfo" and that it can therefore not be "commonly known by the Domain Name" [moncler.com]");
- furthermore, at the time of filing this Complaint, the Respondent was using a privacy Whois service, which past panels have also found to equate to a lack of legitimate interest. See *Jackson National Life Insurance Company v. Private Whois www.jacksonnationallife.com N4892*, WIPO Case [D2011-1855](#) ("The Panel concludes that the Respondent possesses no entitlement to use the name or the words in the Complainant's marks and infers [...] from the "Private Whois" registration that it is not known by such name. There is no evidence of the Respondent ever being commonly known by the name or words now included in the disputed domain name.");
- a screen capture exhibited in an annex to the Complaint shows that the disputed domain name resolves to a website where it is offered for sale in an amount that is far in excess of the Respondent's out-of-pocket expenses in registering the disputed domain name;
- the Respondent registered the disputed domain name on October 26, 2010, which is significantly after the registration of the Complainant's trademark registrations, and by that time the Complainant already had a worldwide reputation in the BURJ AL ARAB mark which is fully adopted in the disputed domain name;
- the disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the disputed domain name (see [WIPO Overview 3.0](#), section 2.5.1).

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3)).

It is submitted that the Complainant and its BURJ AL ARAB trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark since 1999, which is well before Respondent's registration of the disputed domain name on October 26, 2010.

By registering a domain name that simply incorporates the Complainant's trademark in its entirety, the Respondent has created a domain name that is identical to the Complainant's trademark. As such, the Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business.

The Complainant adds that at the time of registration of the disputed domain name, the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks and that registration of domain names containing well-known trademarks constitutes bad faith per se.

In addition to its registered trademark and service mark rights, Complainant was named the "World's Leading Hotel" at the 2009 World Travel Awards and voted "Middle East's Leading Luxury Hotel" at the 2010 WTAs in

Dubai, as well as “Middle East’s Leading Hotel”, which demonstrates the fame of the Complainant’s hotel and the BURJ AL ARAB mark.

The Complainant further argues that performing searches across a number of Internet search engines for “burjalarab” returns multiple links referencing the Complainant and its business.

The disputed domain name currently resolves to a website where it is offered for sale, which constitutes bad faith under Policy paragraph 4(b)(i) as the Respondent has demonstrated an intent to sell, rent, or otherwise transfer the disputed domain name for valuable consideration in excess of his out-of-pocket expenses.

It is well established that seeking to profit from the sale of a confusingly similar domain name that incorporates a third party’s trademark demonstrates bad faith. See *Groupe Auchan v. Bui Tan Dat / Domain ID Shield Service Co., Limited*, WIPO Case [D2014-1935](#) (“The Panel cannot find any justification for the registration and use of the disputed domain name in such circumstances except to find that the Respondent registered and is using the disputed domain name for the purpose of selling the disputed domain name for valuable consideration in excess of the Respondent’s documented out-of-pocket costs and/or to disrupt the Complainant’s business.”).

The Complainant contends that the disputed domain name was registered to cause confusion among Internet users as to the source of the disputed domain name, and thus, the disputed domain name must be considered as having been registered and used in bad faith pursuant to Policy paragraph 4(b)(iv), with no good faith use possible.

More specifically, where the disputed domain name is identical to the Complainant’s trademark, there is no plausible good-faith reason or logic for Respondent to have registered the disputed domain name. “The only feasible explanation for Respondent’s registration of the disputed domain name is that Respondent intends to cause confusion, mistake and deception by means of the disputed domain name. Accordingly, any use of the disputed domain name could only be in bad faith.” See *OLX, B.V. Kumud, G. / Whois Agent, Whois Privacy Protection Service, Inc.*, WIPO Case [D2015-0218](#) (WIPO Mar. 30, 2015).

The Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity, which past panels established under the Policy have held serves as further evidence of bad faith registration and use. See *Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc.*, WIPO Case [D2003-0230](#). See also [WIPO Overview 3.0](#) at 3.6 (“Panels have also viewed a respondent’s use of a privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith.”).

The Respondent has ignored the Complainant’s attempts to resolve this dispute outside of this administrative proceeding. Past panels established under the Policy have held that failure to respond to a cease-and desist letter may properly be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopedia Britannica v. Zuccarini*, WIPO Case [D2000-0330](#) (failure to positively respond to a demand letter provides “strong support for a determination of ‘bad faith’ registration and use”).

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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

Having reviewed the available record, and the detailed submissions of the Complainant as set out above, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes the disputed domain name, being identical to the Complainant’s BURJ AL ARAB trademark, carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel notes that the disputed domain name was registered long after the Complainant established rights in the BURJ AL ARAB mark. Noting the reputation of the Complaint’s trademark, and the composition of the disputed domain name, it is improbable that the registrant of the disputed domain name chose and registered the disputed domain name for any reason other than to take predatory advantage of the Complainant’s rights, goodwill, and reputation in the BURJ AL ARAB mark.

The evidence shows that the disputed domain name resolves to a website where it is offered for sale to the public for USD 1,988, which is a sum far in excess of the Respondent’s out of pocket costs directly related to the disputed domain name. Such use seeking to take unfair commercial advantage of the identity between

the disputed domain name and the Complainant's trademark, and which appears to have been the motivation in registering the disputed domain name, constitutes registration and use of the disputed domain name in bad faith as set out in Policy paragraph 4(b)(i).

Furthermore, the Complainant has shown that the Respondent been the unsuccessful respondent in numerous complaints under the Policy, and has engaged in a pattern of registering domain names which are identical or confusingly similar to marks in which third parties have rights.

The Panel finds that the Complainant has established the third element of the Policy.

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 <burjalarab.org> be transferred to the Complainant.

/James Bridgeman SC/

James Bridgeman SC

Sole Panelist

Date: August 2, 2024