

DISPUTE RESOLUTION SERVICE

DRS 06935

Decision of Independent Expert

- (1) Starwood Hotels and Restaurants Worldwide Inc.
(2) Soci t  des H tels Meridien

and

Sean Gerrity

1 Parties

Complainants:

(1) Starwood Hotels and Resorts Worldwide Inc.
Address: 1111 Westchester Avenue
New York
White Plains
Postcode: 10604
Country: United States

(2) Soci t  des H tels Meridien
Address: 10 Rue Vercing torix
Paris
Postcode: 75014
Country: France

Respondent: Sean Gerrity
Address: 78 Church Hill Road
Loughborough
Leicestershire
Postcode: LE12 7JF
Country: United Kingdom

2 The Domain Name

lemeridiandubai.co.uk

3 Procedural History

02/03/09	Dispute entered into system
03/03/09	Complaint validated
03/03/09	Communication of complaint to Respondent at sean@beach.es and at postmaster@lemeridien.co.uk and by Royal Mail Special Delivery
03/03/09	electronic notification of delivery failure "Delivery Status Notification (Failure)" to postmaster@lemeridien.co.uk
09/03/09	Mail delivery returned as "refused"
09/04/09	Dispute status changed to expert decision
09/04/09	Michael Silverleaf selected as expert
00/04/09	Respondent offers to transfer domain (apparently by e-mail From sean@beach.es)
16/04/09	Complainant indicates desire to proceed with expert determination
16/04/09	Michael Silverleaf appointed as independent expert

3.1 I confirm that I have no connection with any of the parties. I know of no reason why I cannot properly accept the invitation to act in this case and know of no matters which ought to be drawn the attention of the parties which might appear to call into question my independence and/or impartiality in this case.

4 Factual Background

4.1 The only material I have to determine the facts is contained in the Complaint and attachments. The Respondent has responded to communications about this complaint from Nominet only by an e-mails indicating that he wishes the disputed domains to be transferred to the Complainant. Accordingly, I can treat the following facts as undisputed.

4.2 In the materials supplied to me the Complainant is identified as Starwood Hotels and Resprts Worldwide Inc., a Delaware corporation with an address in New York (see above). In the contact sheet for the complainants, Starwood Hotels and Restaurants Worldwide, Inc. is listed as the "Complainant" and Société des Hôtels Méridien as the "Lead complainant". I have been supplied with particulars of registrations for the mark Le Meridien in the UK, the US and the United Arab Emirates (the latter being relevant because of the presence of the word dubai in the disputed domain name). I note that the registered proprietor of one of the UK registrations is Starwood (M) International Inc. of the same address as the Complainant and that all the other registrations are in the name of Société des Hôtels Méridien.

- 4.3 The relationship between the various complainant companies is unclear. Nor is it clear why Starwood Hotels and Resorts Worldwide, Inc. is listed as a complainant: it has no registered rights. In the complaint document there is a reference to Starwood Hotels and Resorts Worldwide, Inc. being “an affiliated company” of the Complainant and to it bringing proceedings before WIPO to recover domains containing the brand name SHERATON from the Respondent. I conclude that the likely true complainant is Société des Hôtels Méridien¹ but I do not think it matters. There is no challenge to the Complainant’s assertion of title. Accordingly, I can assume that all these entities are under common control and shall refer to the Complainant as covering all of them without distinction. It would, however, have made my task, and I suspect that of the Nominet DRS team, easier if the Complainant had been a little less opaque about the structure of its organisation and the role of the various parties in the business of Le Meridien Hotels.
- 4.4 The Complainant’s business, as indicated by the names of the corporations, is hotel and resort services. The Le Meridien brand for hotels is well known and is promoted through an internet presence at www.lameridien.com. This website provides online reservation services for Le Meridien hotels worldwide and provides access to information about the hotels and the business. The Complainant claims common law rights arising from its extensive use of the name Le Meridien for hotels around the world and the promotion and publicity given to those hotels in particular in the UK.
- 4.5 The Complainant also has many other domain registrations including the name Le Meridien. These include lemeridien.co.uk, lemeridien-hotels.com, lemeridienhotels.com, lemeridien.travel, lemeridien.eu, le-meridien.de, lemeridien.nl, lemeridiencairo.com and lemeridienamman.com. The Complainant’s rights in the name Le Meridien have been recognised in a number of WIPO decisions ordering the transfers of the domains, lemeridienresort.com, lemeridienhotels.net, lemeridienhotels.org and lemeridien.com.
- 4.6 I have no information about the Respondent except that which can be gleaned from the material appearing on the disputed domain and the correspondence with the Nominet DRS team. The domain hosts a website which offers hotel booking services. On the “about us” page the following

¹ This is the named complainant in the WIPO cases referred to in paragraph 4.5 below.

text appears:

About Us

"Only book with a company who works direct with your chosen hotel"

Www.limeridiendubai.co.uk is a dedicated site for customers specifically wishing to stay at the Le Meridien Dubai. Our reservation team have direct links with the hotel, providing us with unbeatable prices and probably more importantly, allowing us to provide you with a quality service second to none. Having a direct relationship with the hotel enables us the flexibility to tailor your booking and over sea the processing of special requests other companies would be unable to provide. Above all, we are able to ensure a safe and secure booking, one which can be checked by our customers for piece of mind at any time. Beware; there are a lot of internet sites offering hotels such as ours, many with tempting prices. Only book with a company who works direct with your chosen hotel.

On the page for Le Meridien Dubai one finds a description of the hotel and a list of other hotels in the area at which bookings may also be made. These include Dubai Grand, Metropolitan Palace Dubai and San Marco.

- 4.7 Careful inspection of the webpage acknowledgements at the foot of the page indicates that the site is run by beach.es, whose name also appears on the booking form offered by the site. This explains that beach.es deals directly with the hotels and that this gives it an advantage over other tourist operators. The nature of the advantage is not stated.
- 4.8 The Respondent has corresponded with the Nominet DRS team from the e-mail address sean@beach.es. It is apparent that he uses this address and is therefore connected with the organisation behind beach.es. During this correspondence, the Respondent has indicated that he is willing to transfer the disputed domain to the Complainant at no charge. The Complainant, after consideration, has rejected this offer and seeks a reasoned decision transferring the domain to it.

5 The DRS Policy

- 5.1 The version of the DRS Policy relevant to the present dispute is version 3 which relates to complaints lodged after 29 July 2008. Clause 1 of that policy defines an Abusive Registration as:

“a Domain Name which either:

- i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; OR
- ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights”

- 5.2 Clause 1 of the DRS Policy also defines “Rights” for the purposes of this procedure as including but not limited to those enforceable under English law. Under Clause 2 of the DRS Policy a complainant must show on the balance of probabilities
- (a) that it has Rights in a name or mark identical or similar to the Domain Name; and
 - (b) that the Domain Name in the hands of the Respondent is an Abusive Registration.
- 5.3 Clause 3 of the DRS Policy identifies a non-exhaustive list of factors which may be evidence that the domain name is an Abusive Registration. I have accordingly taken these into account in reaching my conclusions.
- 5.4 Clause 3(a) sets out a non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration. Sub-clause (i)(b) provides that these include registration of the domain “as a blocking registration against a name or mark in which the Complainant has Rights”. Sub-clause (ii) provides that these include circumstances indicating that the Respondent is “using the disputed domain name in a way which has confused or is likely to confuse people or businesses into believing that the domain name is registered to, operated or authorised by, or otherwise connected to the Complainant”. Sub-clause (iii) provides that where the Complainant can show that the Respondent is engaged in a pattern of registering domain names which correspond to well known names or trade marks and that the disputed domains form part of that pattern shall also be evidence of abusive registration.
- 5.5 The Dispute Resolution Service procedure is one in which the parties provide written evidence and submissions. There are no oral proceedings and no testing of the evidence. The expert accordingly has to evaluate the written material and give it such weight as is appropriate in order to reach a conclusion on the balance of probabilities.
- 5.6 According to the Appeal Panel decision in the Seiko case (DRS 00248) whether a registration is an abusive registration under the DRS Policy is independent of whether a domain registration is an infringement of trade mark and should be decided under the terms of the DRS Policy alone. The same decision also makes clear, however, that the relevant principles of English law should be applied in determining whether the Complainant has Rights under the Policy and that the Policy is founded on the principle of intellectual property rights which should be taken into account.

6 Discussion and findings

- 6.1 As noted in section 4 of this decision I have only submissions from the Complainant. I take the view that I must, therefore, take additional care to ensure that my findings are based only on facts and circumstances which can properly be shown to be established by those submissions. I do, however, also have e-mails which appear to contain the Respondent's consent to the relief sought by the Complainant. I have accordingly taken into account in reaching my decision the fact that the Respondent does not dispute the relief sought.
- 6.2 There is no doubt in my view on the material provided that the Complainant has a reputation and goodwill in the field of hotel services. The facts set out above demonstrate that this is so. The existence of the UK trade mark registrations in the name of the Complainant for the name Le Meridien covering hotel and related services provides registered rights in the same field. Accordingly, I conclude that the Complainant has rights within the meaning of Clause 1 of the Dispute Resolution Policy in the name Le Meridien.
- 6.3 The name of the Domain Name is similar to the name Le Meridien. The only difference is in the addition of the word "dubai" which is a well known geographical location. It is therefore apt to designate a Le Meridien hotel in that location. That is how it would be seen and accordingly there is no difference in trade mark terms between the two. [11]. Accordingly, in my judgment, the Complainant has Rights in a name or mark identical or similar to the Domain Name, and that the first limb of the test under Clause 2 of the DRS Policy is satisfied. It remains to be considered whether the registration by the Respondent is an abusive registration as defined by Clause 1.
- 6.4 The Respondent must have been fully aware of the existence of the Complainant's website and business when he registered the Domain Name. He has used it to create a website referring directly to the Complainant's Le Meridien hotel in Dubai. The website claims direct links with the hotel. This leads to an inevitable inference that his intention was to use the Domain Name to host a site relating to the Complainant's Le Meridien hotel in Dubai. There can be no doubt that this is likely to confuse members of the public using the lemeriendubai.co.uk website into thinking that there was a connection between it and the Complainant. A purchaser taking ordinary care when using the Respondent's website could easily be misled into thinking that it is commercially connected with that of the Complainant. It offers the services of the Le Meridien hotel in Dubai in a way which appears unless read very carefully indeed to be sponsored or linked to the hotel itself. I therefore conclude that the Domain Name has been used in a way which

has confused people into believing there is a connection between the disputed domain and the Complainant's business.

6.5 As I have noted above, the Complainant has also referred to the fact that the Respondent has registered domain names corresponding to another well known name or trade mark. This is the registration of the Sheraton domains to which the first Complainant has successfully objected in other proceedings. It may well be that the Respondent's indication of consent to the relief sought by the Complainant reflects his knowledge that his activities are wrongful and that, once spotted by their objects, he must surrender the disputed domains. If so, then it would seem that the Respondent is aware that he is engaged in a pattern of registering domains corresponding to others' trade marks and the Domain Name is part of that pattern.

6.6 Finally, the Complainant asserts that the Respondent has registered the Domain Name as a blocking registration against a name or mark in which the Complainant has Rights. As I understand the term "blocking registration" it is one which prevents the truly entitled party from using the name as a domain name. In order to be a blocking registration, it therefore seems to me that the registration must be one which prevents the Complainant from using his name as a domain name. The Complainant has a number of lemeridien domains, including co.uk ones. It does not need the disputed domain in order to have domain registrations which cover its business. Had the Respondent not registered the disputed domain, I doubt that the Complainant would have registered it. Alternatively, if it had, I doubt that it would have used it save to prevent others doing so and possibly to host a pointer to the relevant page on its lemeridien.com website. I cannot see any manner in which the registration of the disputed domain has blocked registration or internet use of the Le Meridien name by the Complainant. Nor, for the same reasons, can I see that it has blocked the use by the Complainant of the name Le Meridien Dubai. However, this does not matter as the Domain Name should be transferred to the Complainant for other reasons.

7 Decision

On the basis of the facts set out in section 4 above and the grounds set out in paragraphs 6.2 to 6.5 above I find that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name and that the Domain Name in the hands of the Respondent is an Abusive Registration. I therefore determine that the Domain Name be transferred to the Complainant Soci t  des H tels Meridien.

Michael Silverleaf
11 May 2009