

DISPUTE RESOLUTION SERVICE

DRS 7478

Decision of Independent Expert

SIX CONTINENTS HOTELS, INC.

and

MIKHAIL DOUBINSKI

1. The Parties:

Complainant: Six Continents Hotels, Inc.

Address: ATTN:Douglas M. Isenberg
5555 Glenridge Connector
Suite 200
Atlanta, Georgia
Postcode: 30342
Country: United States of America

Respondent: Mikhail Doubinski

Address: ATTN: Mikhail Doubinski
205/1-9 Pyrmont Bridge Rd.
Sydney
Postcode: NSW 2009
Country: Australia

2. The Domain Name(s):

crownplaza.co.uk

3. Procedural History:

3.1 The Complaint was submitted to Nominet on 08 July 2009 and subsequently validated by Nominet on 08 July 2009.

3.2 The Respondent failed to submit a response to Nominet despite attempts at contacting the Respondent made on 08 July 2009, 14 July 2009 and 22 July 2009 to the email address supplied to Nominet by the Respondent. The Complainant paid the requisite fee to obtain an Expert Decision pursuant to paragraph 6 of the Nominet Dispute Resolution Service Policy (“the Policy”) on 31 July 2009.

3.3 On 31 July 2009, Mrs. Anna Carboni was originally appointed as Expert but was unavailable to adjudicate this matter. Mrs. Kathleen Fox, the undersigned (“the Expert”), was then appointed and confirmed to Nominet that she knew of no reason why she could not properly accept Nominet’s invitation to act as an Expert in this case. A formal appointment of the Expert was made on 31 July 2009 with David King confirmed as Expert Reviewer also on 31 July 2009.

4. Factual Background:

4.1 The Complainant is one of a number of companies collectively known as the InterContinental Hotels Group (“IHG”), and is reputed to be the world’s largest hotel group by number of rooms. Companies within IHG own, manage, lease or franchise, through various subsidiaries, more than 4,200 hotels and 620,000 guest rooms in nearly 100 countries and territories around the world. IHG owns a portfolio of well-recognized hotel brands including Holiday Inn Hotels and Resorts, Holiday Inn Express, InterContinental Hotels & Resorts, Crowne Plaza Hotels & Resorts, Hotel Indigo, Staybridge Suites and Candlewood Suites.

The Crowne Plaza brand itself was founded in 1983 and is today estimated to be used in connection with approximately 350 hotels worldwide. Collectively Crowne Plaza Hotels offer around 100,000 hotel rooms with approximately a quarter of these rooms located in Europe, Middle East and across Africa.

4.2 The Complainant and/or its affiliates own at least 269 trademark registrations in 118 territories consisting of or including the mark CROWNE PLAZA (the “Crowne Plaza Trademarks”), including the following: U.S. Reg. No. 1,297,211; U.S. Reg. No. 2,329,872; U.S. Reg. No. 2,895,328; CTM Reg. No. E-1,017,946; U.K. Reg. No. 1,569,045; and U.K. Reg. No. 2,042,568. The Complainant’s trade marks date back to as early as 1984 and include word marks and logos of varying types. In addition, the Complainant is the owner of many domain names, including most relevantly the domains “crowneplaza.co.uk”, “crowne-plaza.co.uk” and “crowneplaza.com”

5. Parties’ Contentions:

The Complainant

5.1 The Complainant’s contentions are very straightforward and brief on submission, namely, that the Complainant is the worldwide owner of many trade marks, domain names and business operations and therefore have achieved a certain level of “fame” as a result of the nature and geographic spread of their enterprises. The Complainant contends that the Respondent’s registration of the Domain Name in 2003 effectively constitutes unauthorised use of the Complainant’s trade marks and is therefore abusive and therefore in violation of

paragraphs 3(a)(i)(C) and 3(a)(ii) of the DRS Policy. In brief, the Complainant states that “the content of the website associated with the domain name “crownplaza.co.uk” ‘disrupt[s] the business of the Complainant’ and ‘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 with the Complainant”.

5.2 Annex B of the Complaint provides a copy of the home page of a website which visitors are directed to upon use of the Domain Name. From a review of this home page, it appears that the Respondent’s website directs visitors to a “commercial hospitality website” where information about flights, hotels, reservations and extra-low hotel rates may be viewed. The Complainant contends that the Respondent’s website is likely a click-through or click-per-view type of arrangement (i.e. parking site) where the Respondent could potentially generate income from each visitor to the website.

5.3 The Complainant also provides information concerning the Respondent’s previous activities concerning other disputed domain names, including DRS 4881 (Amazon.com v. Mikhail Doubinski) involving “amazon.co.uk” and “azon.co.uk” domain names and another action under UDRP Policy for “whitepage.com.au” where in both instances the transfer of the disputed domain names away from the Respondent was ordered by the relevant authorities.

5.4 The Complainant states that the Respondent has no authority or entitlement to use any of the Complainant’s trade marks and that the “Respondent has no connection with the Complainant and is not making a legitimate and non-commercial or fair use of the Disputed Domain Name and the Disputed Domain Name does not correspond to a name by which the Respondent is or has been commonly known”. The Complainant is therefore looking for a transfer of the Domain Name from the Respondent to the Complainant.

The Respondent

5.5 As stated under paragraph 3.2 above, despite numerous attempts at contacting the Respondent no reply has been entered by the Respondent to the Complaint filed by Six Continents Hotels, Inc.

6. Discussions and Findings:

General

In order to succeed, the Complainant must prove, on the balance of probabilities that:-

it has Rights in respect of a name or mark which is identical or similar to the Domain Name (paragraph 2(a)(i) of the Policy); ***and***

the Domain Name in the hands of the Respondent, is an Abusive Registration (paragraph 2(a)(ii)) (emphasis added).

Paragraph 2b of the Policy provides that “the Complainant is required to prove to the Expert that ***both*** elements are present on a balance of probabilities” (emphasis added).

6.1 The Complainant’s Rights

a. First, it is necessary for the Complainant to show that it has Rights in a name which is identical or similar to the Domain Name. The Policy defines “Rights” as including, but not limited to, *“rights enforceable under English law or otherwise and may include rights in descriptive terms which have acquired a secondary meaning. However, a Complainant will be unable to rely on rights in a name or a term which is wholly descriptive of the Complainant’s business.”*

b. Accordingly, it is necessary to consider (1) whether the Complainant has rights in the name CROWNE PLAZA, which are enforceable under English law or another jurisdiction and (2) whether the name is wholly descriptive of the Complainant’s business.

c. Does the Complainant have Rights in a name which is similar or identical to the Domain Name which are enforceable under English Law or otherwise?

d. As it is usual in domain name disputes to disregard the top level or country code suffix, as being a necessary component of a domain name’s address, it is necessary to consider whether the Complainant has Rights in the name CROWNE PLAZA.

e. As noted in paragraph 4.2 above, the Complainant is the owner of numerous trade mark registrations for CROWNE PLAZA including a word mark for CROWNE PLAZA in relation to providing lodging and restaurant services in hotels registered in the United States in 1984 (US Reg 73447193) and a Community Trade Mark (CTM 1017946) registered 17 December 2002 for CROWNE PLAZA (word mark) again for services in relation to hotel accommodation. In total, the Complainant provided evidence under Annex A of the Complaint of six separate registrations for logos and word marks in relation to CROWNE PLAZA in relation to various aspects of hotel services.

f. Upon review of the evidence provided in the Complaint and upon independent review of the nature of the trade marks and services provided by the Complainant and the disputed Domain Name, the Expert holds that the Domain Name (said Domain Name being however minus the “e” at the end of CROWNE as per the Complainant’s trade marks) is identical or similar to the Complainant’s various trade marks for “CROWNE PLAZA”. The lack of a silent “e” in the Domain Name does not materially affect either the look, meaning or pronunciation of the Domain Name from that of any of the Complainant’s many trade marks for CROWNE PLAZA.

g. Is the name CROWNE PLAZA wholly descriptive or generic of the Complainant’s business?

h. The Complainant utilises the name Crowne Plaza as the basis of its company name, logo and image and use of the name, “CROWNE PLAZA” does not

denote any wholly descriptive or generic of the Complainant's business enterprises.

i. In the DRS appeal decision of *Seiko UK Limited v Designer Time/Wanderweb* (DRS 00248) it was noted that the requirement to demonstrate "rights" is not a particularly high threshold test but in this instance the Expert has been provided with a large and ample array of evidence in support of Complainant's rights in the name "Crowne Plaza". From the evidence provided by the Complainant, the Expert finds that the Complainant has rights in respect of the name Crown Plaza by virtue of its numerous trade marks and its length of trading utilizing the Crowne Plaza trade name and logos.

6.2 Was the Respondent's registration and subsequent use of the Domain Name abusive?

a. Paragraph 1 of the Policy defines "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;

ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights".

Paragraph 3(a) of the Policy provides a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. Paragraph 4(a) of the Policy sets out a similar list of factors that may be evidence that a domain name is not an Abusive Registration.

b. From available information, it appears that the Respondent is a private individual and registered the Domain Name on 31 July 2003.

c. The Complainant has not supplied evidence of any confusion amongst its customers/guests with the Domain Name, but does suggest in its Complaint that "there is clear potential for such confusion given the competitive links on the website associated with the domain name crown-plaza.co.uk". Strictly speaking submission of evidence of confusion is not an absolute requirement under paragraph 3(ii) of the Policy. An Expert is permitted to assess the Respondent's conduct and in so doing if the Expert concludes that confusion could ultimately result then this will be an important factor in determining the abusive nature of the registration (see *MySpace, Inc. v Total Web Solutions Limited* (DRS 4962), *Verbatim* (DRS 4331) and *PJ Hayman & Company Limited v. EDOCP Ltd.* (DRS 4522)).

d. In the absence of a Response, the Expert accepts the Complainant's argument that the content of the Respondent's website is likely a revenue generating click-through site. Under paragraph 4(e) of DRS Policy, click-per-view sites are not in themselves objectionable, however such use is not limitless and an Expert is permitted to assess the nature of the Domain Name and the nature of the advertising links on any parking page associated with the Domain Name when

arriving at a decision regarding the abusive nature of use by the Respondent of the Domain Name.

e. The Expert is of the opinion that the registration of a domain name bearing the name of one of the world's largest chain of hotels (albeit missing a silent "e" at the end of CROWN from that of the Complainant's trade marks) and then using said Domain Name in association with a click-per-view website specifically tailored to directing visitors to hotel advertisements, airline flights, hotel reservations and extra-low hotel rates has the clear potential of causing confusion with the hotel and other hospitality services provided by the Complainant.

f. Such assessment is in line with previous Nominet decisions holding that where a domain name is used in connection with a website that "contain[s] links to other sites which may contain subject matter broadly similar to that connoted by the Domain Name," then "the site is thereby taking unfair advantage of the Complainant's Rights," constituting an Abusive Registration (See *The Kennel Club v EDOCO LTD (DRS 5731)*). Similarly, where a domain name has been used to misdirect those potentially seeking a rights holder's website to websites with links which, if followed, would in all probability generate 'click-through' income for the Respondent, then such a website "serves to operate so that potential customers of the Complainant will be diverted to direct competitors of the Complainant, although believing that they were seeking out a website connected with the Complainant constituting an Abusive Registration under the Policy" (See *Roch Valley Ltd. v. EDOCO Ltd, (DRS 5624)*).

g. Again, in the absence of a Response submitted by the Respondent, it appears that the Respondent is using the Domain Name in a way which is extremely likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by or otherwise connected with Complainant. Such activity is considered an abuse of registration under paragraph 3(a)(ii) of DRS Policy.

7. Decision

I find that the Complainant has proved on the balance of probabilities that it has Rights in a name or mark which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. I therefore direct that the Domain Name be transferred to the Complainant.

Signed: Kathleen Harris-Fox

Dated: 19 August 2009