

DISPUTE RESOLUTION SERVICE

DRS10675

Decision of Independent Expert

Accor

and

New Logic Group

1. The Parties:

Lead Complainant: Accor
2 rue de la Mare Neuve
91000 Evry
France

Respondent: New Logic Group
16 Brooklands Way
Boldon Business Park
Boldon NE35 9LZ
United Kingdom

2. The Domain Name:

accorhoteluk.co.uk

3. Procedural History:

20 December 2011 15:56 Dispute received
22 December 2011 09:11 Complaint validated
22 December 2011 09:13 Notification of complaint sent to parties
13 January 2012 01:30 Response reminder sent
18 January 2012 10:45 No Response Received
18 January 2012 10:45 Notification of no response sent to parties
30 January 2012 01:30 Summary/full fee reminder sent
01 February 2012 11:00 Expert decision payment received

4. Factual Background

The Complainant is the owner of registered trademark rights in its trading name "ACCOR".

The Domain Name was registered in the name of the Respondent on 30 April, 2009 and is apparently inactive, resolving as of 9 February 2012 to <v1.dotmailer.co.uk/login>, an email marketing site.

Before submitting the Complaint, the Complainant sent a cease-and-desist notice, by email, fax and registered letter dated June 2, 2009 to the Respondent based on its trademark rights, asking for cancellation of the Domain Name. The Respondent has not replied to the Complainant.

Nominet followed its usual procedures to notify the Respondent about the Complaint and to invite the Respondent to submit a Response. No reply to these communications has been received and no Response has been submitted.

The Complainant asks that the Domain Name be cancelled.

By a letter dated 2 February 2012, I the undersigned, Peter Davies, declared that I was independent of the Parties and knew of no facts or circumstances which might call my independence into question in providing an Expert Decision in this matter.

On February 7, 2012 I was appointed by Nominet to provide an Expert Decision in respect of the Complaint.

5. Parties' Contentions

5.1 Summary of Complainant's submissions

5.1.1 Rights

The Complainant's company name is Accor, a company incorporated under French law with its registered office at 2 rue de la Mare Neuve, 9100 Evry, France. It has operated for more than 40 years as a provider of hotel and hospitality services. It operates 156 hotels in United Kingdom and more than 4,200 hotels worldwide, via well-known chains such as NOVOTEL, MERCURE and IBIS.

The Complainant owns, inter alia, the following trademarks:

ACCOR, International trademark 953507, registered on August 16, 2007
ACCOR, French trademark 3505677, registered on June 8, 2007.

The Domain Name incorporates the Complainant's trademark and company name, in which the Complainant has built up its trading reputation in the field of hotels and hospitality services.

The Complainant owns, among others, the domain name <accorhotels.com> and communicates to customers and potential customers on the Internet principally via this website. The Complainant operates other domain names reflecting its trademarks, including <accorhotels.co.uk>, <accorhotels.com>, <accorhotel.co.uk>, <accorhotel.com>, <accor.co.uk> and <accor.com>.

The Complainant registered the domain names <accorhotel.co.uk> and <accorhotels.co.uk>, on June 9, 2000 and July 1st 2000 respectively, more than 8 years before the Respondent's registration of the Domain Name. The domain name <accorhotels.com> was registered on April 30, 1998, 11 years before the registration of the Domain Name.

The Domain Name includes the generic and descriptive word "hotel" added to the trademark and company name. The addition of such descriptive words is insufficient to differentiate the Domain Name.

Regarding the addition of the remaining letters "uk" to the substantive portion of the Domain Name, these are generally regarded as an abbreviation for United Kingdom. The use of "uk" in the Domain Name does not make the Domain Name dissimilar to the Complainant's mark, especially when the Complainant has various UK trademarks and a strong UK presence. It is also established that the ".co.uk" domain extension must not be considered as significant as it simply denotes the country code and is merely descriptive.

The term ACCOR is unique and is only known in relation to the Complainant. It has no meaning in English, the language of the Registrant, or in any other language. Consequently, this sign has a high degree of distinctiveness. The incorporation of the Complainant's trademark and company name in its entirety into the Domain Name may be sufficient to establish that it is identical or similar to the Complainant's registered prior trademark and company name.

The Complainant accordingly has Rights in respect of a name or mark that is identical or similar to the Domain Name.

5.1.2 Abusive Registration

The Respondent is not known under the name "Accor" or any similar term.

The Respondent is not making legitimate, non-commercial or fair use of the Domain Name, as it is inactive. The Respondent's use of the Domain Name is prejudicial to the Complainant as its ACCOR mark is associated with an inactive domain name.

In the light of the Complainant's reputation and its trademarks, it seems clear that the Respondent was aware of the existence of the Complainant and its trademark ACCOR when registering the Domain Name.

The presence of the generic term "hotel" in the Domain Name illustrates the Respondent's bad faith since it refers to part of the Complainant's activities. It is

more than probable that the Domain Name was registered to take advantage of the trademark rights of the Complainant, which constitutes Abusive Registration.

The Respondent is not affiliated with or authorised by the Complainant to register and use the Complainant's trademarks or to seek registration of any domain name incorporating them.

The Respondent has not proved to be the holder of prior rights or to have any legitimate interest in the Domain Name. In the absence of any license or permission from the Complainant, no legitimate use of the Domain Name may reasonably be claimed.

The Respondent did not reply to the Complainant despite several reminders.

The Domain Name is so similar to the Complainant's trademarks that the Respondent could not reasonably pretend to be using it in the development of a legitimate activity. The Respondent has no reason to choose a domain name which incorporates the trademarks "ACCOR" in its entirety, other than to profit from the reputation of the Complainant.

5.2 Respondent

No Response received.

6. Discussions and Findings

6.1 Introduction

The Complainant refers on a number of occasions to decisions reached in earlier Nominet cases and to decisions of WIPO Expert Panels in disputes brought under the UDRP. While other Nominet cases may be of assistance in achieving a measure of consistency between Experts, it is appropriate to point out that there is no system of precedent under the DRS Policy. So far as UDRP cases are concerned, these are of very limited help. Differences exist between the UDRP and Nominet Policies and I must apply DRS Policy only in reaching a Decision in this matter.

All attempts to communicate with the Respondent appear to have failed and no Response to the Complainant's submissions has been received. I am satisfied that Nominet has complied with its responsibilities under Paragraph 2 of the DRS Procedure in respect of communication of the Complaint to the Respondent and I will proceed to a Decision on this basis, with reference to the submissions which have been received from the Complainant.

Notwithstanding the absence of a Response, DRS Policy requires the Expert to examine the Complainant's case on its merits and on its ability to satisfy the two stage test in paragraph 2 of the Policy: the Complainant must prove on the balance of probabilities that

- i. the Complainant has Rights in respect of names or marks which are identical or similar to the Domain Name; and*

- ii. *the Domain Name, in the hands of the Respondent, is an Abusive Registration.*

6.2 Complainant's Rights

The Complainant has provided details of its registered trademark rights in the name "Accor", and evidence of unregistered rights arising from the use of its trading name in the course of its business. I accept the Complainant's submission to the effect that the additions of the word "hotel" and the letters "uk" to "Accor" in the substantive portion of the Domain Name are not enough to differentiate it from the mark in which the Complainant claims Rights. Discounting also the .co.uk suffixes in accordance with the DRS Policy, I therefore conclude that the Complainant has Rights in compliance with Paragraph 2.i of the DRS Policy.

6.3 Abusive Registration

Paragraph 1 of the DRS 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;*

or

- ii. *has been used in a manner which has taken unfair advantage or has been unfairly detrimental to the Complainant's Rights;"*

The Complainant states that its business activity, its trademark and domain name registrations all precede registration of the Domain Name by the Respondent, pointing to the likelihood that the Respondent knew of the Complainant and of its rights in its trading name at the time of the registration. The Respondent is not making legitimate non-commercial or fair use of the Domain Name and there is nothing before me to contradict the proposition that such a registration, on the balance of probabilities, is unfairly detrimental to the Complainant's Rights. Paragraph 3 b of the Policy states that "failure on the part of the Respondent to use the Domain Name for the purposes of email or a web site is not in itself evidence that the Domain Name is an Abusive Registration". However, taken in association with the other matters and evidence submitted by the Complainant, all of which plausibly support its Complaint, and in the absence of any Response, a conclusion that the Domain Name is an Abusive Registration in the hands of the Respondent as contemplated by Paragraph 1 of the DRS Policy is inescapable.

7. Decision

I find that the Complainant has Rights in a name or mark which is similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. In accordance with the Complainant's wishes, I direct that the Domain Name be cancelled.

Signed Peter Davies

Dated 20 February, 2012