

DISPUTE RESOLUTION SERVICE

D00011901

Decision of Independent Expert

Accor

and

webdreams llc

1. The Parties:

Complainant: Accor
Address: 110 Avenue de France
Paris
75013
Country: France

Respondent: webdreams llc
Address: 7928 east drive suite 901
Miami
Florida
33141
Country: United States

2. The Domain Names:

accorhotes.co.uk
accorotels.co.uk
wwwaccorhotels.co.uk (“Domain Names”)

3. Procedural History:

13 September 2012	Dispute received
14 September 2012	Complaint validated
14 September 2012	Notification of complaint sent to parties
3 October 2012	Response reminder sent
8 October 2012	No response received

8 October 2012	Notification of no response sent to parties
17 October 2012	Expert decision payment received
23 October 2012	Steve Ormand appointed as Expert

Clause 4.1 of the Nominet Terms and Conditions provides that it is the responsibility of each domain name registrant to “give and keep us notified of your correct name, postal address and any phone, fax or e-mail information and those of your contacts (if you appoint any, see condition 5.2). This duty includes responding quickly and correctly to any request from us to confirm or correct the information on the register;”

‘Correct’ in this context is defined as follows: “This means that the information must be good enough to allow us to contact you quickly at any reasonable time without having to get information from anywhere else, must not be deceptive, and (if possible for that type of information) must clearly identify you. For your name this also means that the information must be detailed enough that we can tell exactly who you are (in legal terms, exactly which legal entity we have this contract with).”

The provisions quoted above were effective from 1 May 2012, but similar provisions to the same effect have appeared in earlier iterations.

It is the registrant’s responsibility to ensure that its contact details are correct and remain current. Nevertheless, Nominet received email delivery failure messages to all emails sent to postmaster@... at each of the Domain Names. The complaint notification sent by recorded delivery to the contact address provided by the Respondent was also returned undelivered. However, no delivery failure messages were received for emails sent to the contact email address provided by the Respondent.

I am satisfied that Nominet has notified the Respondent at all stages of the complaint in accordance with §2a of the Procedure.

Definitions used in this decision have the same meaning as set out in the Nominet UK Dispute Resolution Service Policy Version 3, July 2008 (the “Policy”) and/or the Nominet UK Dispute Resolution Service Procedure Version 3, July 2008 (the “Procedure”) unless the context or use indicates otherwise.

4. Factual Background

The Complainant is a company incorporated under French law as Accor SA with registered office at 100 Avenue de France, 75013 Paris, France.

The Complainant is listed as one of the world’s largest hotel groups operating more than 4,400 hotels in 92 countries. The Complainant’s Group includes the hotel chains IBIS, MERCURE, SOFITEL and NOVOTEL. It has operated in the hotel industry for more than 45 years.

The Respondent registered the Domain Names on 24 February 2012.

The Complainant became aware of the registration of the Domain Names and, on 22 May 2012, noted that they were being used to redirect internet traffic to the Complainant’s website at www.accorhotels.com. By the date of the Complaint, the Domain Names were inactive and resolved to a Sedo parking page where they are offered for sale.

The Complainant sent a cease-and-desist letter to the Respondent (by registered letter dated 6 June 2012 and by email dated 14 June 2012) requesting the Respondent to cancel the Domain

Names. In response, the Respondent offered to sell each Domain Name for 200 €. The Complainant responded that it would not pay for Domain Names whose value arise from its trademark ACCOR and offered instead to reimburse the registration fees for the Domain Names. The Respondent repeated its offer to sell the Domain Names.

5. Parties' Contentions

The Complaint

The Complainant contends that it has Rights in the name 'ACCOR' because:

1. The Complainant established the Accor brand in 1987.
2. The Complainant is the owner of several MERCURE trademarks throughout the world including the United Kingdom International Trademark No. 953507, dated 16 August 2007, for the mark ACCOR.
3. The Complainant is the owner of Community Trademark No. 010248466, dated 8 September 2011, for the mark ACCOR HOTELS.
4. The mark ACCOR is unique and is only known in relation to the Complainant. It has no meaning in English or in any other language and consequently has a high degree of distinctiveness.
5. The Complainant mainly communicates on the Internet via the website www.accorhotels.com ("Website") in order to allow Internet users a quick and easy search and booking facility for its hotels.
6. The Complainant operates many domain names reflecting its trademarks including:
 - a. accorhotels.co.uk (registered 1 July 2000)
 - b. accorhotel.co.uk (registered 9 June 2000)
 - c. accor.co.uk (registered 6 November 1998)
7. Internet users accessing the above domain names are redirected to the Website where they are able to easily and quickly find and book hotel rooms or benefit from other services provided by the Complainant.
8. The Domain Names imitate the Complainant's trademark ACCOR HOTELS. They also incorporate the Complainant's trademark and company name ACCOR which is very well known as a company name and in the hotels and services industry. This has been recognised in several World Intellectual Property Organisation (WIPO) cases:
 - a. WIPO Case No. D2012-0025, *Accor v. Paul Hovecar*;
 - b. WIPO Case No. D2012-0038, *Accor v. Domainjet, Inc.*;
 - c. WIPO Case No. D2012-0084, *Accor v. Enrobot*; and
 - d. WIPO Case No. D2012-0272, *Accor v. Above.com Domain Privacy, David Smith / Domain Admin, Huanglitech*.
9. The Domain Names feature or imitate the generic and descriptive word "hotel" added to the Complainant's ACCOR trademark and company name. It is well established that the mere adjunction of descriptive words, such as "hotel", is insufficient to give any distinctiveness to a domain name and is not sufficient to distinguish the Domain Names from the Complainant's trademark and company name (see *Nominet Case No. D00002455, Compaq Trademark B.V. v. Balata.com LLC*).
10. The addition of such a generic word is likely to increase the risk of confusion as it describes the Complainant's main business. In a WIPO case the panel held that the addition of the

word “hotels” to the Complainant’s trademark was not sufficient to consider that the name ACCOR had lost its distinctiveness but in fact increased the likelihood of confusion because Internet users would be likely to associate hotels with the Complainant’s trademark as it is descriptive of the Complainant’s primary business (see ACCOR v. Payam Avarane Khorshid Co. and Nextone Media Limited, WIPO Case No. DIR2010-0001).

11. Internet users are also more likely to be deceived by the Domain Names since the Complainant mainly communicates on the Internet via the Website which associates hotels with the Complainant’s ACCOR trademark and company name.
12. The Domain Names accorhotes.co.uk and accorotels.co.uk imitate the Website with letters “l” or “h” removed. Such a deletion of a letter is taking advantage of the potential for mistyping Internet addresses and thus attracting traffic to the Domain Names. This practice is commonly referred to as “typosquatting”.
13. The Domain Name wwwaccorhotels.co.uk imitates the Website with the full stop removed between the Domain Name and the “www” prefix which also corresponds to a form of “typosquatting” known as “dotsquatting”. In this case the practice relies on traffic being misdirected to the Domain Name by Internet users mis-typing “www.”
14. It is also well established that the “.co.uk” domain extension must not be considered as significant as it simply denotes the country code and therefore, is merely descriptive. The ccTLD “.co.uk” is a common extension in the United Kingdom and could be mistaken with the Complainant’s UK branch (see Nominet Case No. D00004867, Grupo Ferrovial S.A. v. Andy Watson).
15. The Complainant received a “2010 Tourism for Tomorrow Award” from the World Travel & Tourism Council (WTTC) in the Global Tourism Business Award Category which recognizes the Group’s best practices in sustainable tourism around the world.

The Complainant contends that the Respondent’s registration and/or use of the Domain Names are Abusive Registrations because:

1. The Respondent is not known by the name ACCOR or any similar term.
2. The Respondent is not affiliated with the Complainant in any way, nor has the Respondent been authorised by the Complainant to register and use the Complainant’s ACCOR trademark or to register any domain name using this mark.
3. The Complainant’s trademarks are widely known and enjoy a worldwide reputation, especially in Europe. This has been established in a previous Nominet dispute (see Nominet Case No. D00003136 Accor S.A. v. DotComBiz-AU).
4. Several WIPO decisions have also underlined the notoriety of Complainant’s trademarks (see: Accor v. Maixueying Jokemine, WIPO Case No. D2010-2233; Accor v. JE Jeong, WIPO Case No. DCO2010-0040; ACCOR v. Payam Avarane Khorshid Co. and Nextone Media Limited, WIPO Case No. DIR2010-0001).
5. In the light of the Complainant’s reputation, it seems clear that Respondent was aware of the existence of the Complainant and its trademark ACCOR when registering the Domain Names.
6. It has been held that knowledge of a corresponding trademark at the time of the domain name registration suggests bad faith (see: Lancôme Parfums et Beauté & Cie, L’Oréal v. 10 Selling WIPO Case n° D2008-0226; Caixa D’Estalvis I Pensions de Barcelona (“La Caixa”) v. Eric Adam, WIPO Case n° D2006-0464).
7. The presence or the imitation of the generic term “hotel” in the Domain Names illustrates the Respondent’s bad faith since it refers to part of Complainant’s activities. WIPO cases have previously stated that bad faith is present where a domain name “*is so obviously*

connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith” (see WIPO Case No. D2006-0303, Sanofi-aventis v. Nevis Domains LLC).

8. It is more than probable that the Domain Names were registered to take advantage of the Complainant’s trademark rights which constitutes abusive registration (see NOMINET Case n°D0009819 Viking Office Products Inc v Multisys Computers Ltd).
9. The Respondent has not proved that it is the holder of prior rights or to have any legitimate interest in the Domain Names. In the absence of any licence or permission from the Complainant, the Respondent may not claim any legitimate use of the Domain Names (see Nominet Case No. DRS 00006995, Normalu S.A. v. Stretch Ceilings).
10. Typosquatting is inherently parasitic and of itself evidence of bad faith (see Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini, case, supra, WIPO Case No. D2002-1011, confirmed by inter alia WIPO Case No. D2011-0304, Insurance Company v. Dyk Dylina/Privacy--Protect.org and WIPO Case No. D2011-0208, Allstate Insurance Company v. Private Whois Service).
11. The Domain Names are so similar to the Complainant’s trademarks, that the Respondent could not reasonably pretend to develop a legitimate activity. The Respondent had no reason to choose the Domain Names other than to profit from the reputation of the Complainant (see NOMINET Case n°D00006524, Expedia, Inc. v. Bluestone Ventures Pty Ltd).
12. Internet users will be deceived as they will most likely believe that the Domain Names are linked to Complainant.
13. The Domain Names have been used to direct to a page of commercial links which is offering the Domain Names for sale. Such a direction cannot be deemed as being a bona fide offering of goods and services (see WIPO Case No. D2008-1070, TNT Holdings B.V. v. Sylvie Bona and WIPO Case No. D2011-0524, L’Oréal and Lancôme Parfums et Beauté et Compagnie v. Deco Trends & Art, K. Plooyer).
14. Offering a domain name for sale has also been considered as demonstrating a lack of legitimate interest: *“The Respondent is quite clearly trading on the reputation of the BLACKBERRY mark and this is evidenced by the offering for sale and auction of “this top domain name” on Sedo [...]”* (see WIPO Case No. D2009-0151, Research In Motion Limited v. Alon Banay).
15. It is also considered that the passive holding of a domain name satisfies the requirement of that the domain name is being used in bad faith by the respondent (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). In Align Technology, Inc. v. 100Marketers (WIPO Case No. D2009-0799) it was held that *“the lack of active use of a domain name does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include complainant having a well-known trademark, no response to the complaint, the impossibility of conceiving a good faith use of the domain name...”*.
16. The present lack of use of the Domain Names cannot prevent a finding of Abusive Registration since it is more than probable that the Domain Names were registered to take advantage of the Complainant’s trademark rights (see NOMINET Case n°D0009819 Viking Office Products Inc v Multisys Computers Ltd).
17. The Respondent is not making any legitimate non-commercial or fair use of the Domain Names. The Domain Names firstly redirected to the Website via a website used by Respondent to earn money. The Domain Names currently resolve to the Sedo parking page which contains several sponsored links as well as a link to Sedo’s webpage dedicated to the sale of the Domain Names.

18. It is evident that the Respondent registered the Domain Names with the intent of making a profit with the Complainant's well-known trademark ACCOR. The Respondent has benefited from traffic arising from its use of the Domain Names thanks to the "pay per view" system which generates income for the Respondent. The DRS has considered that creating such "parking" websites is a demonstration of use in bad faith (see NOMINET Case n° 06318 Mercedes-Benz UK Limited v. Rahul Honda).
19. The Respondent is not making any legitimate non-commercial or fair use of the Domain Name as they are now inactive. Thus, the Respondent's use of the Domain Names is prejudicial to the Complainant as the well-known mark ACCOR is associated to a parking page or an inactive domain name in which the ticking is unknown.

The Response

The Respondent did not provide a response to the Complaint.

6. Discussions and Findings

General

To succeed in this Complaint, the Complainant has to prove to the Expert on the balance of probabilities, pursuant to §2 of the Policy, both limbs of the test that:

1. *The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
2. *The Domain Name, in the hands of the Respondent, is an Abusive Registration.*

Complainant's Rights

Rights is defined in §1 of the Policy as rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.

The wholly generic suffix ".co.uk" is discounted for the purposes of establishing whether a complainant has Rights in a name or mark which is identical or similar to a domain name.

I am satisfied on the papers before me that the Complainant has evidenced registered and unregistered rights in the name and mark ACCOR which pre-date the registration of the Domain Names. I am also satisfied that the Complainant has registered rights in the mark ACCOR HOTELS which also pre-date the registration of the Domain Names.

The mark ACCOR is the distinctive part of each of the Domain Names. I am satisfied that the addition of "hotes" and "otels" in two of the Domain Names are deliberate misspellings of "hotels". The use of "hotes" and "otels", and the use of "www" with "hotels", does not detract from the dominance and distinctiveness of the mark ACCOR.

Accordingly, I find that the Complainant has Rights in names and marks which are similar to the Domain Names.

Abusive Registration

Abusive Registration is defined in §1 of the Policy as a Domain Name which either:

1. *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*
2. *has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.*

A non-exhaustive list of factors which may be evidence that a domain name is an Abusive Registration is set out in §3 of the Policy.

The Nominet DRS website also provides extensive and helpful guidance on making a complaint. On the first page of the Expert's Overview guidance document participants are warned: *"Finally, it should be stressed for the benefit of those who have had experience of domain name disputes under the Uniform Domain Name Dispute Resolution Policy ("UDRP"), that the DRS Policy and the UDRP are different systems. In some places they share very similar wording, but there are significant differences and the citation of UDRP decisions in a dispute under the DRS Policy is rarely likely to be helpful."*

The quoting of UDRP cases is irrelevant to a dispute under the DRS Policy. Extensive quoting of UDRP cases, as in this Complaint where some 18 UDRP cases are cited, is particularly exasperating as the Complainant has not directed the submission wholly to the establishment of Abusive Registration under the Policy but left it to the expert to piece together the relevant parts.

Nevertheless, I have considered the relevant aspects of the Complaint and concluded that the Complainant's assertions fall under two of the categories set out in §3 of the Policy: first, that the Respondent has registered or otherwise acquired the Domain Names primarily for the purposes of unfairly disrupting the business of the Complainant; and secondly, that the Respondent is using or threatening to use the Domain Names in a way which has confused or is likely to confuse people or businesses into believing that the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainant.

The fact that:

1. the Respondent registered 3 domains incorporating the Complainant's ACCOR mark on the same date;
2. two of the Domain Names contain a misspelling of the word "hotel" which describes the Complainant's business as one of the world's largest hotel operators;
3. the third Domain Name is essentially a copy of the Complainant's accorhotels domain names (with.co.uk and .com suffixes);
4. the Respondent is not authorised by the Complainant to use the mark ACCOR; and
5. the mark ACCOR is highly distinctive,

is compelling evidence that the Respondent must have known of the Complainant's Rights at the time of registration. I conclude on the balance of probabilities that it did.

Furthermore, I cannot conceive of a legitimate reason for the Respondent to select three domain names using the Complainant's ACCOR mark, together with its choice of the additional parts, other than for the purposes of typosquatting and/or to generate revenue from the mistyping of the Complainant's operational domain names or misdirection of users looking for the Complainant's hotel booking services.

The Respondent has had the opportunity to justify its registration of the Domain Names but has failed to do so. I am entitled by §15c of the Procedure, in the absence of exceptional circumstances, to draw such inferences as I consider appropriate where a Party does not comply with any provisions in the Policy or Procedure. In the circumstances, I conclude that the Respondent did not provide a Response because it is unable to provide any legitimate reason for registering the Domain Names.

There is no evidence presented of actual confusion to Internet users. Nevertheless, given the foregoing, I also find it difficult to conceive of any use of the Domain Names by the Respondent which would not cause confusion.

Accordingly I find that the Domain Names are Abusive Registrations.

7. Decision

In light of the foregoing findings, namely that the Complainant has Rights in a name which is similar to the Domain Names, and the Domain Names, in the hands of the Respondent, are Abusive Registrations, I direct that the Domain Names (accorhotes.co.uk, accorotels.co.uk and wwwaccorhotels.co.uk) be cancelled as requested by the Complainant.

Signed: Steve Ormand

Dated: 14th November 2012