

DISPUTE RESOLUTION SERVICE

D00020172

Decision of Independent Expert

Accor SA

and

Mr Sven Gall

1. The Parties:

Complainant:

Accor SA

82 rue Henri Farman

Issy-Les-Moulineaux

Hauts-de-Seine

92130

France

Respondent:

Mr Sven Gall

Haverhill

Suffolk

United Kingdom

2. The Domain Name:

mercurehytheimperial.co.uk ("the Domain Name")

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

07 May 2018 14:18 Dispute received
09 May 2018 13:13 Complaint validated
09 May 2018 13:26 Notification of complaint sent to parties
29 May 2018 02:30 Response reminder sent
01 June 2018 12:17 No response received
01 June 2018 12:17 Notification of no response sent to parties
11 June 2018 16:41 Expert decision payment received

4. Factual Background

The Complainant is a French multinational hotel group which owns numerous brands including “Mercure”. There are 80 Mercure hotels in the UK.

The Complainant owns many registered trade marks for the word “MERCURE” including UK trade mark no. 1276915, filed on 1 October 1986 in class 43 and international trade mark no. 615787 designating the UK (among other countries), registered on 20 December 1993 in classes 8, 16 and 42.

The Respondent registered the Domain Name on 24 October 2017.

As of 21 December 2017, the Domain Name resolved to a registrar parking page with hotel-related sponsored links.

The Complainant sent a cease and desist letter to the Respondent on 5 January 2018 but received no response.

As at 18 April 2018, the Domain Name did not resolve to a website.

5. Parties’ Contentions

Complaint

A summary of the Complaint is as follows:

The Complainant’s “Mercure” trade mark is well-known in relation to hotel and restaurant services.

The Domain Name is confusingly similar to the Complainant's trade mark as it wholly incorporates the trade mark. The geographical terms "Hythe" and the generic term "imperial" do not dispel any likelihood of confusion.

The Domain Name is also an abusive registration.

The Respondent is not known by the name "Mercure" and is not affiliated with the Complainant.

The Respondent has not used the Domain Name for any *bona fide* purpose.

It is implausible that the Respondent was unaware of the Complainant when he registered the Domain Name, given the extent of the Complainant's reputation in the UK and worldwide. The Domain Name includes the name of the "Hythe Imperial Hotel", a competitor hotel in Kent. It is therefore clear that the Respondent registered the Domain Name in order to confuse people into thinking that it was connected with the Complainant. The Domain Name is similar to, and obviously connected with, the Complainant's well-known trade mark. Its mere existence will result in diversion of traffic from the Complainant's site to the Respondent's site.

Email servers have been configured in relation to the Domain Name and so there is a risk that the Domain Name has been or will be used for phishing.

The Respondent did not attempt to defend his position in reply to the Complainant's cease and desist letter.

The fact that the Domain Name is not currently resolving to a website does not prevent it from constituting an abusive registration. There is still the potential to confuse users into thinking that there is a connection with the Complainant.

The Respondent registered the Domain Name to block the Complainant.

Response

The Respondent did not file a Response.

6. Discussions and Findings

To succeed, the Complainant has to prove in accordance with paragraph 2 of the DRS Policy on the balance of probabilities, first, that it has "Rights" (as defined in paragraph 1 of the DRS Policy) in respect of a name or mark identical or similar to the Domain Name and, second, that the Domain Name, in the hands of the Respondent, is an "Abusive Registration" (as defined in paragraph 1 of the DRS Policy).

Complainant's Rights

The meaning of "Rights" is defined in the DRS Policy as follows:

"Rights means 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 Complainant has Rights in the mark "Mercure" by virtue of its registered trade marks as well as unregistered trade mark rights deriving from the extensive and worldwide use of that name.

The Domain Name consists of the Complainant's distinctive mark, which is the first and dominant term, followed by the geographic term "Hythe" and the descriptive term "imperial". The latter terms do not distinguish the Domain Name from the trade mark.

For the above reasons, I am satisfied that the Complainant has established rights in a name or mark which is similar to the Domain Name.

Abusive Registration

Does the Domain Name constitute an abusive registration in the hands of the Respondent? 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 took unfair advantage of or was unfairly detrimental to the Complainant's Rights."*

I have little difficulty in concluding that the Domain Name is an abusive registration.

The Domain Name is dominated by the Complainant's distinctive and famous trade mark, "Mercure". The association with "Hythe Imperial", the name of a competitor hotel, shows that the Respondent had the hotel industry very much in mind when he registered the Domain Name.

It is highly unlikely that the Respondent registered the Domain Name for a legitimate purpose. Certainly, the Respondent has not responded to the Complainant's cease and desist letter, or to this Complaint, in order to try and justify his selection of the Domain Name. Instead, it appears that his reaction to the cease and desist letter was simply to remove the registrar parking page to which the Domain Name formerly resolved.

In the circumstances, the Panel is satisfied that the Respondent was registered in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights in accordance with the first limb of the definition of "abusive registration", set out above. As either limb suffices to constitute abusive registration, it is unnecessary to consider the second limb.

7. Decision

I find that the Complainant has rights in a mark which is similar to the Domain Name and that the Domain Name is, in the hands of the Respondent, an abusive registration. I therefore direct that the Domain Name mercurehytheimperial.co.uk be transferred to the Complainant.

Signed Adam Taylor

Dated 2 July 2018