



हरियाणा HARYANA

E 155855

RANJAN NARULA
ARBITRATOR

Appointed by the .In Registry - National Internet Exchange of India

In the matter of:

Accor

2 rue de la Mare Neuve

91000, Evry

France

Through

It's authorized representative:

s. Nathalie Dreyfus of M/s. Dreyfus & Associates, Paris. **Complainant**

Tang Wei

Jianhu

Yan Chen

224700

China

Email: klaoban@gmail.com. **Respondent**

1) The Parties:

The Complainant is Accor, 2 rue de la Mare Neuve, 91000, Evry, France. The Complainant is represented by its authorized representative Ms. Nathalie Dreyfus of M/s. Dreyfus & Associates who has submitted this complaint on 23 December 2009. The Respondent is Tang Wei, Jianhu, Yan Chen, 224700, China.

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.accor.co.in. The Registrar is PlanA Corp (R70-AFIN). The registrant is Tang Wei (Respondent).

3) Procedural History:

The Complainant filed this complaint with the .IN Registry and .IN Registry appointed "Ranjan Narula" ("The Arbitrator") as Sole Arbitrator under clause 5 of its policy. The Arbitrator submitted his statement of acceptance and declaration of impartiality and independence on 21st January 2010. The complaint was produced before the Arbitrator on 21st January 2010. The notice was issued to the Respondent on 28th January 2010 at his email address with a deadline of 10 days to submit his reply to the arbitration but no response was filed by the Respondent. Again on 8th February 2010, a second notice was sent to Respondent as a final opportunity to submit his reply within seven days, and not later than 15th February 2010. However, no response was filed by the Respondent. Therefore, the complaint is being decided based on the facts and documents on record.

4) Summary of the Complaint's contentions:

- i. The Complainant is the European leader and one of the world's largest business organizations in travel, tourism and corporate services. Complainant owns about 4000 hotels in 100 countries worldwide. Under the trade name/mark ACCOR, the



Complainant offers hotels services tailored to each customer's needs starting from the most luxurious hotels to the most economic lodging solution.

In addition, one of the two businesses of the Accor group is ACCOR SERVICES whereby more than 32 million users can witness everyday of their position as world leader in the market for prepaid services. In 2008, the consolidated sales of the Complainant represented 7,739 million Euros.

The Complainant owns and operates several hotels under the name 'ACCOR', which is a well-known trademark and is protected worldwide in particular for hotels and restaurants. The Complainant owns numerous trademarks related to the abovementioned brand all across the world, especially in the field of hotels and restaurants. The Complainant owns the following International Trademarks for 'ACCOR'-

Trademark	Registration No.	Filing Date	Class
ACCOR	687060	19 Jan 1998	16, 36, 39, 41 and 42
ACCOR	727696	28 Dec 1999	16, 39 and 42
ACCOR	953507	16 Aug 2007	9, 16, 35, 36, 41 and 43

The Complainant owns the following domain names and communicates on the Internet via these websites in order to allow Internet users to find and book quickly and easily a hotel room or to benefit from other services. The Complainant's domain names also reflect their trademarks:

Domain Names	Filing Date	Registration Date
www.accorhotels.com	30 Apr 1998	2 Apr 2007
www.accor.com	23 Feb 1998	15 May 2007
www.accor.in	22 Feb 2005	22 Feb 2005

The Complainant had sent a cease-and-desist letter (via email and registered post) to the Respondent on 5th May 2009 asking them to transfer the disputed domain name. The letter sent by registered post was returned (undelivered) as the address provided in the Whois database was insufficient.

On 9th May 2009, the Complainant however received a reply to his email indicating that the Respondent had registered the domain name to develop business in India but was willing to sell the same for 12,000 Euros. On 13th May 2009 the



Complainant had sent a reply to the Respondent clarifying its position and explaining that the use of their domain name incorporating the mark ACCOR would be a counterfeiting act and an infringement to the Trademarks Act.

- vii. As there was no reply from the Respondent, the Complainant sent a reminder email on 20th May 2009 to which the Respondent forwarded the same email he had sent on 9th May 2009 that he was willing to sell the domain name for 12,000 Euros. As the domain name was due to expire in August 2009, the Complainant decided to wait and see if it was being renewed. On 10th September, the Complainant received an email from the Respondent stating that he needed money and was willing to sell the domain name for USD 4500.
- viii. As no amicable settlement could be arrived at, the Complainant decided to file a UDRP complain in order to obtain transfer of the disputed domain name.

5) Summary of submissions by both parties:

A. Complainant

The Complainant has, *inter alia*, made the following submissions:

1. The Respondent's Domain name www.accor.co.in is identical to their well-known and registered trade mark/ name ACCOR.
2. In choosing the Domain Name, the Respondent may have deliberately targeted the Complainant's mark in order to attract internet traffic to his website.
3. The Respondent has no rights or legitimate interests in respect of the impugned domain name; the Complainant has not authorized the Respondent to use/ register its trademark 'ACCOR', or register any domain name incorporating the said mark.
4. The Respondent does not have prior rights/ interests in the Domain Name, and is not known under this name.



5. The Respondent is using the Domain Name to redirect internet users to a parked page which displays sponsored links in the field of hotels. Thus, there is no *bona fide* offering of goods/ services by the Respondent under the Domain Name.
6. The Respondent has failed to offer any reason or justification for adopting the Domain Name.
7. The Respondent has registered the Domain Name in bad faith. The Respondent was aware of the Complainant's rights in the mark ACCOR; especially considering that the Complainant has about 84 hotels in the Respondent's country of residence.
8. The Respondent's bad faith is also indicated by his intent to earn click-through commissions from internet users who are redirected to his website.
9. The Respondent also demanded an unreasonable price (of €12,000) for transferring the Domain Name to the Complainant.

B. Respondent

1. The Respondent has not filed any response or submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator.
2. The Respondent has only replied to the Complainant's Cease & Desist notices vide emails (dated 9th and 20th May 2009). In his response, the Respondent has not offered any reason or justification for adopting the Domain Name. Moreover, the Respondent has demanded monetary compensation from the Complainant in lieu of transfer of the Domain Name.
3. The Respondent has responded to the Complainant's claims of trademark infringement by stating that he is the first to register the Domain Name in India.

In a subsequent response to the Complainant's email, the Respondent has stated that he needs money, and demanded US\$ 4,500 from the Complainant for sale of the Domain Name.

6) Discussions and Findings:

As previously indicated; the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case, and will therefore proceed to a decision on the Complaint. Paragraph 12(a) of the Rules provide that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, and any law that the Arbitrator deems fit to be applicable. In accordance with paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence, or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Arbitrator is inclined to agree that the Complainant has established better and prior rights in the mark/ name ACCOR. Further, the Arbitrator is of the view that the Complainant has satisfied all three conditions outlined in paragraph 4 of the Policy, viz.-

- A. The Domain Name is identical or confusingly similar to the trade mark/ name ACCOR in which the Complainant has rights;
- B. The Registrant has no rights or legitimate interests in respect of the domain name; and
- C. The Registrant's Domain Name has been registered or is being used in bad faith.

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The Arbitrator holds this view for the reasons discussed in the paragraphs below:

The Domain Name is identical or confusingly similar to the trade mark/ name ACCOR in which the Complainant has rights

The Complainant is prior to the Respondent in their adoption and use of the trade mark/ name ACCOR. The Complainant owns a worldwide chain of hotels and offers services under the trade mark/ name ACCOR. Further, the Complainant owns registrations for the aforesaid mark in several countries across the world. A perusal of the documents filed show that the earliest of these registrations date back to the year 1998. It is pertinent to note that the Complainant has also registered other domains incorporating the mark/ name ACCOR. Even in India, the Complainant and its affiliate companies under the 'ACCOR' group own and run hotels under the mark/ name ACCOR (as shown on their website www.accorhotels.com). Additionally, the Complainant's domain www.accor.in was registered with the .IN Registry on 22 February 2005. Thus, the Complaint has successfully demonstrated their rights in the mark/ name ACCOR. On the other hand, the documents/evidence on record indicate that the Respondent adopted the domain not earlier than 30 August 2008, which is much subsequent to the Complainant's adoption and use of the trade mark 'ACCOR'. This is sufficient to establish that the Domain Name is identical or confusingly similar to the Complainant's mark ACCOR and the Complainant has better rights in the domain name.

The Registrant has no rights or legitimate interests in respect of the domain name

According to the Policy, following circumstances, in particular but without limitation to, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 5 (ii):

- (1) *"before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;"*

In this case, the Respondent has registered the disputed domain name on 30 August 2008, which is much subsequent to the Complainant's adoption and use of



the mark ACCOR in respect of hotels and prepaid services. There is no evidence to suggest that the Complainant had authorized or licensed the Respondent's registration or use of the Domain Name. The Arbitrator finds that the Respondent has also not offered any plausible reason or justification for registering or using the Domain Name.

Further, the Respondent's Domain Name resolves to a parked page which contains sponsored links to third party hotels which provide services that are directly competing with the Complainant's. The Arbitrator finds that such use cannot be termed as a 'bona fide offering of goods or services'.

- (2) *"the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights"*

The Respondent's name is Tang Wei. There is no evidence to suggest that the Respondent, at any point in time, has been commonly known by the name 'ACCOR'. ACCOR is the name and mark of the Complainant.

- (3) *"The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."*

As mentioned above, the Respondent's Domain Name currently resolves to a parked page which has been monetized with click-through links. Such use supports the Complainant's position that the Respondent is not making 'a legitimate non-commercial or fair use' of the Domain Name. The evidence adduced by the Complainant supports the claim that the Respondent has adopted the Domain Name with intent for commercial gain, and to divert internet users to their website.

Based on the Respondent's default and the evidence adduced by the Complainant, the Arbitrator finds that the Respondent has not satisfied any of the conditions laid down by the Policy to establish their rights or legitimate interests in the Domain Name.



C. The Registrant's Domain Name has been registered or is being used in bad faith.

As per the Policy, the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith:

- (i) *"Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name";*

As mentioned earlier, the Respondent has failed to demonstrate any rights or legitimate interests in the Domain Name. Moreover, the Respondent has demanded excessive monetary compensation from the Complainant for transfer of the Domain Name. In this regard, the Respondent's first demand was for €12,000. Failing this, the Respondent demanded US\$ 4,500 from the Complainant. From the aforesaid circumstances, the Arbitrator finds that the Respondent has registered the Domain Name primarily for selling the Domain Name to the Complainant, who is the actual owner of the mark ACCOR.

- (ii) *"By using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."*

As mentioned earlier, the Respondent's Domain Name currently resolves to a parked webpage which is monetized by click-through revenue. By use of the Complainant's mark ACCOR, it appears that the Respondent has deliberately tried to attract internet users to his website. Thus, the Arbitrator finds that there is a likelihood that Internet users will be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the services advertised on it.

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Finally, Registrant has failed to comply with the Complainant's demands or file any response in the present proceedings. Such failure to respond suggests bad faith registration and use of the Domain Name.

7) Decision:

For all the reasons discussed above, the Arbitrator orders that the domain name www.accor.co.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

24 February 2010