



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Red Lion Hotels Corporation v. Damir Kruzicevic

Case No. D2006-1051

1. The Parties

The Complainant is Red Lion Hotels Corporation of Spokane, Washington, United States of America, represented by & Ellis, LLP, United States of America.

The Respondent is Damir Kruzicevic of Split, Croatia.

2. The Domain Name and Registrar

The Disputed Domain Name <redlionhotels.com> is registered with Fabulous.com.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 19, 2006. On August 19, 2006, the Center transmitted by email to Fabulous.com a request for registrar verification in connection with the Disputed Domain Name at issue. On August 22, 2006, Fabulous.com transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contacts. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint and that proceedings commenced on August 31, 2006. In accordance with the Rules, paragraph 5(a), the due date for the Respondent to submit a response was September 20, 2006. The Respondent did not submit any response. Accordingly, the Center notified the Respondent of its failure to submit a response on September 21, 2006.

The Center appointed Mr. Alistair Payne as the Sole Panelist in this matter on October 6, 2006. The Panel finds that it is properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is the registered owner of a substantial number of trademarks incorporating the words "red lion" and "hotel". The oldest of these trademarks was registered in 1978 for RED LION and the most recent of these marks was registered in 2002 for RED LION HOTELS & INNS. The Complainant uses the RED LION marks in the operation of over 10,000 hotels. Red Lion Hotels are described as full service hotels catering to the corporate and leisure traveller. The first use of the RED LION marks in conjunction with hotel services was made in 1971. The Complainant Red Lion Hotels Corporation is a New York State limited liability company and listed hospitality and leisure company. The Complainant owns numerous domain names including <redlion.com> at which its website and primary online presence is located.

The Respondent Damir Kruzicevic is the registered owner of the Disputed Domain Name <redlionhotels.com> accord Whois database of the registrar, Fabulous.com. The Respondent's registered address in the Whois database is in C

5. Parties' Contentions

A. Complainant

Whether the Disputed Domain Name is identical or confusingly similar to the registered trademarks, corporate name brand name

The Complainant points to legitimate rights in the RED LION trademarks. They provided evidence that there has been trademark for RED LION since 1971. Furthermore, since the beginning of 2006, over 4,551 rooms were booked through Hotel's website at "www.redlion.com". They noted that it was not necessary for them to establish that they had rights in the Disputed Domain Name in the jurisdiction in which the Respondent resides: *Koninklijke KPN N.V. v. Telepathy Inc.*, [WIPO Case No. D2001-0217](#).

The Complainant notes WIPO UDRP decisions that indicate that minor differences in the Disputed Domain Name and which the Complainant has legitimate rights will not negate confusion between those two names: *Six Continents Hotel Damir Kruzicevic*, [WIPO Case No. D2002-0674](#).

The Respondent's domain name re-directs web browsers to a different website "www.cheaprooms.com" where consumers make reservations at the Complainant's hotel. The Complainant alleges that the Respondent has registered and is using the Disputed Domain Name in a way that creates "a likelihood of confusion" and suggests that the Complainant is an authorized endorser of the Respondent. *Six Continents Hotels, Inc. v. Damir Kruzicevic*, [WIPO Case No. D2002-0674](#).

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Complainant alleges that the Respondent cannot show a *bona fide* offering of goods or a legitimate non-commercial use of the Disputed Domain Name as required under paragraph 4(c)(i) of the Policy but merely uses the Disputed Domain Name commercially. The Respondent is not known, either as an individual, business or organization under the name <redlion>

Whether the Disputed Domain Name is registered and used in bad faith

The Complainant alleges that the use is made in order to disrupt its business in the online reservation industry and to attract Internet users to the Respondent's own website by creating a likelihood of confusion with the Complainant's trademarks. The Respondent's past pattern of conduct supports this contention: *Six Continents Hotels, Inc. v. Damir Kruzicevic*, [WIPO Case No. D2002-0674](#); *South West Airlines Co. v. Damir Kruzicevic*, [WIPO Case No. D2003-0249](#); and *The Ritz Hotel, Lima v. Damir Kruzicevic*, [WIPO Case No. D2005-1137](#).

The Complainant noted that the Respondent offers RED LION related hotel services on his website and so clearly infringes the Complainant's trademark at the time he registered the Disputed Domain Name. The Respondent also had constructed and used RED LION trademarks when they were registered with the USPTO.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following:

- (i) the Disputed Domain Name is identical or confusingly similar to the trademark; and
- (ii) the Respondent has no right or legitimate interest in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided substantial evidence of registered trademark rights and common law usage in the United States in the marks RED LION and RED LION HOTEL and in minor variants of these two marks (the RED LION trademarks) which predate the date of the Disputed Domain Name by many years. The Disputed Domain Name differs from these trademarks by the inclusion of the letter "s" or the word "hotels". Numerous panels have found that a domain name that wholly imitates a complainant's registered mark and differs only by a letter or generic word may be confusingly similar for the purposes of the Policy: *Nokia Group v. Mr. Giannattasio Mario*, [WIPO Case No. D2002-0782](#). The Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

The Complainant has established that it has substantial rights in the RED LION trademarks and that it has not authorized the Respondent to use the marks or to register the Disputed Domain Name. In the Panel's view there is no evidence to show that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Respondent appears never to have used the Disputed Domain Name for a *bona fide* offering of goods and services nor is there any indication of its intention to do so. Evidence of use before the Panel suggests that the Respondent uses the Disputed Domain Name to direct web traffic to offering services competing with those of the Complainant. Neither is there evidence that the Respondent is commonly known for the Disputed Domain Name or that there is a link between the Disputed Domain Name and any business name used by the Respondent. There is no evidence before the Panel that any of the circumstances set out in paragraph 4(c) of the Policy apply. Accordingly, based on the case file and in the absence of a rebuttal by the Respondent, the Panel infers that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

In the Panel's view this is a classic case of cybersquatting. The evidence supports an inference that certain of the factors enumerated in paragraph 4(b) are present and consequently that the Respondent registered and used the Disputed Domain Name in bad faith.

In particular it appears to the Panel that it is very likely that the Respondent registered the Disputed Domain Names to prevent the Complainant from reflecting its registered trademarks in the corresponding domain name contrary to paragraph 4(b) of the Policy. Quite apart from having constructive notice as a consequence of the Complainant's trademark registration, the Respondent must in all likelihood have known of the Complainant's services as it appears that the "www.cheaprooms.com" also advertises certain of the Complainant's hotels. Further, the Respondent has demonstrated a repeated pattern of conduct in a substantial range of cases including *Six Continents Hotels, Inc. v. Damir Kruzicevic*, [WIPO Case No. D2003-0249](#); *South West Airlines Co. v. Damir Kruzicevic*, [WIPO Case No. D2003-0249](#); *The Ritz Hotel, Limited v. Damir Kruzicevic*, [WIPO Case No. D2005-1137](#); and *La Quinta Worldwide, LLC v. Damir Kruzicevic*, FA 528474 (Nat. Arb. Forum July 31, 2000).

The Panel also infers that the Respondent has used the Disputed Domain Name so as to intentionally disrupt the business of the Complainant contrary to paragraph 4(b)(iii) of the Policy. There is no other credible explanation for the Respondent's use of the Domain Name to defer to a competitor's website at "www.cheaprooms.com".

Finally, in view of the fact that the Disputed Domain Name links directly to a competing hotel booking service, the Panel finds that it is more than likely that the Respondent registered and used the Disputed Domain Name with the intention of causing confusion among Internet users for commercial gain by creating a likelihood of confusion between the Disputed Domain Name and the Complainant's trademark. See *The Ritz Hotel, Limited v. Damir Kruzicevic*, [WIPO Case No. D2005-1137](#). Accordingly, the Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <redlionhotels.com>, be transferred to the Complainant.

Alistair Payne
Sole Panelist

Dated: October 13, 2006