Decision for dispute CAC-UDRP-103428

Case number	**CAC-UDRP-103428**
Time of filing	**2020-11-25 09:53:40**
Domain names	**amanrosaalpina.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Aman Group S.A.R.L.**

Complainant representative

Organization	**IP TWINS**

Respondent

Organization	**Jamaican Jerk Ltd**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of several trademarks, hereafter referred to as “the “AMAN” trademarks”, including:

- International word trademark registration n. 953150 “AMAN”, registered on 24 August 2007, valid for various subclasses under classes 3,9, 16, 36, 39, 41, 43, and 44; and

- EU word trademark registration n. 005892757 “AMAN”, registered on 4 March 2008, valid for various subclasses under classes 3, 36, 43, and 44.

The Complainant also submitted evidence that it is the registered owner of the domain name which incorporates the “AMAN” Trademark, <aman.com>, registered on 22 July 1997. The Complainant also claims to be the owner of numerous other domain names similar to the AMAN trademarks.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a luxury hotel group based in Switzerland. The Complainant claims that it has 37 hotels in 22 countries worldwide, and will have another 5 hotels opening in the upcoming years. The Complainant submitted evidence that it has a strong social media presence on Instagram. The Complainant submitted evidence that it is the registered owner of several trademarks named “AMAN”, among which the trademarks mentioned above under "Identification of rights”. The Complainant is the owner of the domain name <aman.com>.

The disputed domain name was registered on 11 September 2020.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Identical or confusingly similar:

The disputed domain name <AMANROSAALPINA.COM> consists of the Complainant’s registered “AMAN” trademark(s), with the addition of the terms “Rosa Alpina”. The Panel takes into account that this last term relates to the goods and/or services offered by the Complainant and covered by its “AMAN” trademark(s). Indeed, the Complainant has shown that the terms “Rosa Alpina” refer to a hotel. This hotel is named “Rosa Alpina Hotel & Spa” and is located in the Italian Alps. The Complainant has shown that Rosa Alpina Hotel & Spa has entered into a partnership agreement with the Complainant. Rosa Alpina Hotel & Spa will be part of the AMAN group of companies in 2022. Annex 11 consists of a press release statement by the Complainant on its website <aman.com>. Annex 12 seemingly consists of the Complainant’s newsletter, sent via e-mail. In relation to theses Annexes, however, the Panel has noticed that they date from 11 November 2020, while the disputed domain name was registered on 11 September 2020.

Nonetheless, the Panel believes that the fact that the disputed domain name consists of the Complainant’s trademark(s) under which the Complainant exploits several hotels, with the addition of the name of another hotel (“Rosa Alpina Hotel & Spa”) that is linked to the Complainant, reinforces the risk of confusion with regard to the Complainant’s trademark.

There is also the addition of the '.com' suffix, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Respondent did not file an administratively compliant (or any) response.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

Rights or legitimate interests:

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Panel notes that the Complainant asserts that he has never granted the Respondent any authorisation or license to register a domain name incorporating the Complainant's AMAN trademark(s). The Complainant further argues that the Respondent is not commonly known by the disputed domain name, and that the Complainant was not able to find any trademarks owned by the Respondent which include the name "AMAN".

The Complainant also asserts that the Respondent, before the filing of the Complaint, has not used or made preparations to make use of the disputed domain name in relation to a bona fide offering of goods or services

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

The filing of the Complaint took place only two months after the registration of the disputed domain name. The registrant of a domain name must be given a reasonable amount of time to take preparations regarding his intended bona fide offering of goods or services of its own via the disputed domain name. The Complainant has submitted a screenshot of the webpage currently available through the disputed domain name. The Complainant asserts that this screenshot proves that, at the time of filing the Complaint, the disputed domain name resolved to a blank page. However, since this screenshot does not mention any date or time, it rather shows that the disputed domain name resolved to a blank page somewhere in the period between the registration of the disputed domain name and the filing of the Complaint by the Complainant.

Nonetheless, the Panel finds that the Complainant has sufficiently shown that the Respondent does 'prima facie' not have any rights or legitimate interests associated with the disputed domain name, nor with the "AMAN" trademark(s), nor with variations thereof such as "AMAN ROSA ALPINA". The Respondent does not seem to own any trademarks consisting of the terms "AMAN" or "AMAN ROSA ALPINA". The Respondent does not seem to have any consent to use the "AMAN" trademark(s) or variations thereof, let alone in combination with the name of a hotel (let alone when this hotel is soon to be linked to the Complainant). The disputed domain name does not correspond to the name of the Respondent. The Panel also notes that the disputed domain name still resolves to a blank page at the time of this decision (the Panel believes that it has the general powers to undertake limited factual research into matters of public record such as visiting the website linked to the disputed domain name). Since the Respondent did not file any Response, there is no counter-evidence that could show that the Respondent has rights or legitimate interests in the disputed domain name.

For these reasons, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

Bad faith registration and use:

The Complainant claims that the disputed domain name was registered in bad faith. The Complainant asserts that its AMAN

trademark(s) are well-known all over the world, and that it is highly unlikely that the Respondent was not aware of the Complainant's trademark rights and the value of its trademark(s) at the moment of registering the disputed domain name. The Complainant refers to several previous domain name decisions that confirm that the Complainant enjoys a worldwide reputation. The Complainant also submitted one of these decisions, WIPO Decision D2019-0340. This Decision establishes that "considering the established reputation of the Complainant's trademark, the Respondent must have had knowledge of the Complainant's rights at the time of registering the Disputed Domain Name". In this case, the disputed domain name included the Complainant's AMAN trademark in its entirety with the addition of the geographic term "kyoto".

The Complainant further asserts that the Respondent's choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. The Complainant points to the fact that its AMAN trademarks significantly predate the registration date of the disputed domain name.

The Complainant argues that the Respondent potentially had knowledge of the Complainant's upcoming collaboration with hotel "Rosa Alpina Hotel & Spa", as the disputed domain name was registered shortly before the Press Release of the Complainant on 11 November 2020.

The Complainant also claims that the disputed domain name was used in bad faith. The Complainant asserts that the disputed domain name has no other use except for disrupting the Complainant's business. The Complainant asserts that a search for the Complainant's trademark(s) via Google yields results only related to the Complainant. According to the Complainant, the Respondent therefore knew or should have known that, when registering and using the domain name, he would do so in violation of the Complainant's earlier rights.

Lastly, the Complainant submits proof that the Complainant sent a cease-and-desist letter to the Respondent on 27 October 2020. According to the Complainant, this indicates that the Respondent was made aware of the existence of the AMAN trademark(s) by this letter, and that the Respondent purposefully decided to ignore the Complainant's request to cease any use of the disputed domain name.

The Panel finds that, on the balance of probabilities, it can be presumed that the Respondent had knowledge of the existence of the Complainant and its activities, and of the Complainant's "AMAN" trademark(s) and the scope of these trademark(s) for the following reasons.

The Complainant is a luxury hotel group and exploits hotels in many countries around the world under the name "AMAN". At first view, it seems that the Complainant and its "AMAN" trademark(s) are indeed fairly well-known in the hospitality industry.
The Panel believes that it can be presumed that the Respondent was aware of the unlawful character of the disputed domain name, at the time of its registration and use. This stems from the fact that, while the Complainant exploits luxury hotels under the name "AMAN", the terms "Rosa Alpina" refer to a luxury hotel as well, namely "Rosa Alpina Hotel & Spa" in Italy.

Furthermore, the Complainant announced it had entered into a partnership agreement with this hotel, shortly after the registration of the disputed domain name. It seems highly unlikely that the Respondent has come up with a domain name consisting of the terms "AMAN", "ROSA" and "ALPINA", without having prior knowledge of the Complainant, the Complainant's trademark(s), and the upcoming partnership between the Complainant and Rosa Alpina Hotel & Spa. On the contrary, it seems likely that the Respondent has registered the disputed domain name in anticipation of the partnership between the Complainant and Rosa Alpina Hotel & Spa since the disputed domain name consists of the names of both of the parties of this agreement.

The Panel suspects that, by registering the disputed domain name, it was the intention of the Respondent to disrupt the Complainant's business and/or to offer to sell the disputed domain name to the Complainant.

Considering the fact that the Respondent is based in the United Kingdom, the term "AMAN" has no meaning in the English language. Moreover, the Complainant has shown that a simple online search via Google for the term "AMAN" only shows results related to the Complainant and its trademark(s). The Respondent's choice of the disputed domain name is therefore likely to have been influenced by the Complainant and its earlier "AMAN" trademark(s).

The Respondent did not submit a Response in this procedure. It also seems that the Respondent did not respond to the Complainant's cease-and-desist letter of 27 October 2020.

The Panel believes from the facts in this case that the Respondent had the "AMAN" trademark(s) of the Complainant in mind when registering and subsequently using the disputed domain name.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **AMANROSAALPINA.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2020-12-29

Publish the Decision