Decision for dispute CAC-UDRP-106747

Case number	CAC-UDRP-106747
Time of filing	2024-07-30 09:44:01
Domain names	ritz888.pro

Case administrator

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

Complainant

Organization	The Ritz (London) Limited

Complainant representative

Organization	Stobbs IP

Respondent

Name	Jaipak Koomwong

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

Complainant owns many trade mark registrations worldwide for the word 'RITZ' and RITZ-formative concatenations as have been shown in a list that is enclosed to the Complaint.

In the Complaint itself Complainant mentions:

- UK Registration No. UK00001509163 for RITZ in classes 41;
- UK Registration No. UK00002263535 for RITZ in classes 39 and 41 (the 'Ritz Mark').

The enclosed list shows that the first is registered on 7 June 1996 and the second on 13 September 2002.

No evidence other than a list that provides the relevant data of the trademark registrations is enclosed. Copies of certificates of registration are missing.

FACTUAL BACKGROUND

On formalities

On 26 July 2024 a Complaint was filed with CAC by The Ritz (London) Limited in London, Great Britain, requesting the transfer of 4 domain names: <ritz888.pro>, <ritz888.info>, ritz888.co and mega888ritz.biz. The Respondent was revealed on 30 July 2024 through the Registrar Verification and this was notified to Complainant on same day. Further, CAC informed Complainant that CAC does not administrate the '.co' domain name cases and that the domain name <mega888ritz.biz> is free for registration. Consequently, Complainant informed CAC that it terminates the proceedings in respect of <ritz888.co> and <mega888ritz.biz> on 2 August 2024 and filed an Amended Complaint that includes the Respondent details on the same date. On 5 August 2024 CAC notified that the disputed domain name <ritz888.info> had expired with the request whether parties wish to renew or restore the domain name.

No correspondence on renewing or restoring the disputed domain name <ritz888.info> was filed. The Complainant confirmed via email its intention to continue the proceedings only in regard to domain name <ritz888.pro>.

The Panel will consequently read the Complaint as it was meant to request a transfer of the disputed domain name <ritz888.pro> only and will disregard all argumentations with respect to the domain name <ritz888.info>.

On the content

Complainant is The Ritz (London) Limited. Respondent is Jaipak Koomwong in Kamphaeng Phet. Thailand. Complainant requests transfer of the disputed domain name <ritz888.pro>.

Complainant, incorporated 17 November 1899 and active in the provision of hotel and restaurant services since 1906, operates a global hotel and restaurant business, with its main operations in the United Kingdom. The Complainant's name "RITZ" originates from the hotelier César Ritz.

Complainant held a total equity value of £40.7 million.

Success of Complainant's business has been reflected through multiple awards. In the period of 2014 – 2023, Complainant and it's staff achieved four AA Rosettes, one Michelin Star, multiple recommendations within industry magazines crediting its services, and recognition of Master Innholder status for its General Manager.

Moreover, Complainant has a significant reputation through its RITZ brand in the United Kingdom and online. Complainant submits various examples to illustrate the reputation:

- Complainant's RITZ brand has achieved significant recognition since at least 1906, with Winston Churchill, Dwight Eisenhower and Charles de Gaulle meeting in the Marie Antoinette Suite of the Complainant's premises during the Second World War;
- Complainant welcomed other notable guests including Charlie Chaplin, Sir Roger Moore, Queen Elizabeth the Queen Mother, King Charles III and Queen Camilla;
- In 2002, Complainant was awarded a Royal Warrant for Banqueting and Catering Services by King Charles III, formerly HRH The Prince of Wales. The Complainant is the first and only hotel to have been honoured with the award;
- On 25 March 2020, the Complainant and it's RITZ brand were acquired by Mr Abdulhadi Al-Hajri. The acquisition was subject to significant press coverage.

Further Complainant contends that the recognition of the RITZ brand online is significant and has been reflected through their presence and consistent activity on social media. Complainant submits multiple examples as well as figures to demonstrates it.

The disputed domain name <ritz888.pro> was registered on 20 June 2023 and used as a Thai betting website.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
No administratively compliant Response has been filed.

RIGHTS

According to the Policy paragraph 4(a)(i) it needs first to be established that:

(i)The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

Complainant requests that the Panel omits the gTLD suffixes ".pro" when assessing confusing similarity, as TLD suffixes such as these are merely a technical requirement used for domain name registrations. This principle is confirmed in paragraph 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('**WIPO Overview 3.0**') which states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." On this basis, the Complainant submits that the addition of ".pro" does not distinguish the disputed domain name from the Ritz Mark, nor does it prevent the Panel from making a finding of confusing similarity.

Further Complainant contends that Panels have consistently held that incorporating a trade mark in its entirety within a domain name is sufficient to establish confusing similarity (for example, see Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr. (WIPO Case No. D2000-1525) and Britannia Building Society v. Britannia Fraud Prevention (WIPO Case No. D2001-0505)).

The disputed domain name incorporates the Ritz Mark in its entirety, with the mere addition of the numerical value '888'. In Société d'Exploitation et de Gestion de Spectacles de Music Halls Internationaux v. Xiao Kaka (WIPO Case No. D2015-2326) it was held that 'the disputed domain name comprises the LIDO Trade Mark in its entirety, together with the suffix "888", which is a number frequently used in the Chinese speaking world to suggest good luck and to promote gambling services. The Panel finds the addition of "888" to "lido" does not serve to distinguish the disputed domain name from the Trade Marks in any significant way. The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Marks.'

In addition, Paragraph 1.8 of the WIPO Overview 3.0 provides that:

'[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.'

The Ritz Mark is clearly recognizable within the disputed domain name, as the Ritz Mark is the dominant and distinctive element.

Panels have consistently held that the addition of numerical values nor generic terms does not dispel confusing similarity. The addition of '888' to the disputed domain name does not distinguish it from the Ritz Mark in which the Complainant has rights.

Complainant concludes that the disputed domain name is highly similar to Complainant's Ritz Mark and therefore Complainant satisfies the first element of the UDRP.

Firstly, the Panel has to decide whether a simple overview of date about trademark registrations, without any evidence of the registrations itself, is sufficient to base a domain name dispute on. The Policy does not provide guidance on this and therefore the Panel has to decide on its own.

The Panel is of the opinion that, as an overview can be manipulated, it considers it not sufficient to be submitted as evidence of possessing trademark rights. Only a certificate of registration originating from a trademark register can do so. However, in this specific case, it can be said that Ritz is a famous trademark and its reputation has existed or a longtime and this reputation has been substantiated by evidence. Therefore, Complainant has rights in the famous trademark being Ritz. Thus, Complainant can rely, based on the specific circumstances as described above, on rights in a trademark with reputation but without any registration. The Panel decides that the schedule of Ritz' trademarks is another illustration of the reputation of the Ritz' trademark.

Further, the Panel agrees with this assertion of Complainant on identity or similarity of disputed domain name and trademark. In this respect it is valuable to mention that Respondent is from the Asian part of the world. Its website under the disputed domain name <ritz888.pro> is geared to Thailand. The addition of '888' to Ritz is commonly known as having the meaning 'gambling' in Asia and it may be even said that this meaning is known in the rest of the world too. Therefore '888' is a descriptive additive to the domain name. Consequently, it can be concluded that Ritz, Complainant's trademark, is the dominant part of the disputed domain name and '888' a descriptive additive and therefore, disputed domain name is similar to Complainant's trademark.

Moreover, the famous Ritz trademark and its registrations predate the registration of the disputed domain name. Thus, the trademark rights prevail.

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

NO RIGHTS OR LEGITIMATE INTERESTS

According to the Policy paragraph 4(a)(ii) it needs further to be established that:

(ii) Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4 (c) of the Policy provides circumstances that could demonstrate that Respondent has no rights to and legitimate interests in the domain name. These circumstances are not exclusive. Circumstance that are providing rights or legitimate interests to the domain name are:

(i) before any notice to the Respondent of the dispute, the 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; or

(ii) Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if though it has acquired no trademark or service mark rights; or

(iii) Respondent is making a legitimate noncommercial 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.

Further, according to the WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., Complainant is required to make out a prima facie case that Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The disputed domain name, <ritz888.pro> resolves to an active betting site. Complainant avers that Respondent incorporated the Ritz Mark in this domain name in an effort to capitalize on and compete with the Complainant's reputation and goodwill in gambling services. Complainant refers in this respect to case Drexel University v. David Brouda, WIPO Case No. D2001-0067, where it was held that rights and legitimate interests cannot be created where Respondent would not choose such a domain name unless it was seeking to create an impression of association with Complainant. Consequently, Respondent cannot claim a defence under Policy, Paragraph 4(c)(i).

Upon information and belief, Respondent has never been known as 'Ritz' or any variation thereof. As stated by Panelist, R. Eric Gaum in the aforementioned case Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci. Case No. D2000-1244, panelist R. Eric Gaum held that: 'merely registering the domain name is not sufficient to establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy'. The registration of the distinctive RITZ mark within the disputed domain name, which is an indicator of trade origin of Complainant (i.e., it is not a common word within the English language), leads Complainant to conclude that the only reason that Respondent registered the disputed domain name was to take advantage of Complainant's goodwill and valuable reputation. Consequently, Respondent cannot claim a defence under Policy, Paragraph 4(c)(ii).

Complainant submits further that nothing about the disputed domain name suggests that Respondent is making a legitimate non-commercial or fair use thereof. Section 2.5.1 of the WIPO Overview 3.0 confirms that: Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Bearing in mind the considerable reputation of Complainant's RITZ brand, there is no believable or realistic reason for registration or use of the disputed domain name other than to take advantage of Complainant's rights. The disputed domain name was registered by Respondent on 20 June 2023. By this point, Complainant already had extensive rights in the RITZ brand, with a strong reputation in the luxury hotel sector, since as early as 1906. Since then, Complainant's brand has grown to prominence on a global basis since that time.

In accordance with the UDRP Rules 3(6)(ix)(2), Complainant submits that Respondent has no legitimate interest in the disputed domain name. Consequently, in light of the comments submitted above, Respondent does not satisfy any of the above-mentioned grounds under Policy, Paragraph 4(c).

The Panel finds that Complainant made a prima facie case that Respondent lacks rights or legitimate interests.

With respect to article 4 (c) (i) of the Policy the Panel even finds that it may questionable if the use of the disputed domain name and the website resolving from it can be considered as bona fide use as gambling services may even be illegitimate depending on the country where the website is shown in the world.

Further, as Respondent did not defend itself by asserting the contrary, the Panel accepts the assertions of Complainant as true.

Complainant has, to the satisfaction of the Panel, shown 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

According to the Policy paragraph 4(a)(iii) it finally needs to be established that:

(iii) the domain name has been registered and is being used in bad faith.

Paragraph 4 (b) of the Policy provides circumstances on that demonstrate that Respondent has registered and used the domain name in bad faith. These circumstances are not exclusive. Those circumstance are for example:

(i) circumstances indicating that Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

Complainant submits that the disputed domain name was registered in bad faith.

Complainant reiterates its comments that the Ritz Mark pre-date the creation date of the disputed domain name. Basic due diligence (i.e., a search on any of the most commonly used Internet search engines) would have revealed Complainant's brand. A Google search for 'Ritz' carried out on 5 July 2024, which is attached to the Complaint, shows that virtually all of the search results on the first page are related to the Complainant. Accordingly, the only logical conclusion that can be reached is that Respondent was aware of Complainant's brand and Ritz Mark (and the value thereof) prior to registering the disputed domain name.

Complainant further submits that Respondent is using the disputed domain name in bad faith. Panels have consistently found that registration of a domain name that is confusingly similar – particularly domain names incorporating the mark plus a descriptive term, as in this case – to a well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith (WIPO Overview 3.0 at section 3.1.4). As set out above, the disputed domain name is confusingly similar to the Ritz' Marks.

Complainant further submits that the disputed domain name has been registered primarily for the purpose of disrupting the business of a competitor. With reference to paragraph 3.1.3 of WIPO Overview 3.0:

"…panels have applied the notion of a "competitor" beyond the concept of an ordinary commercial or business competitor to also include the concept of "a person who acts in opposition to another" for some means of commercial gain, direct or otherwise."

Complainant argues that Respondents' advertisement of betting and gambling services being offered under the Ritz Mark at the Infringing Website makes them a "competitor" within the meaning of 4(b)(iii) of the Policy, despite their unauthorized nature. Further, the advertisement of gambling and betting services, under Complainant's brand, directly compete with the goods and services offered by the Complainant. Therefore, the Respondents' actions fall squarely within the meaning of "primarily for the purpose of disrupting".

By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to their website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of their website or location or of a product or service on their website or location.

Using a trade mark to divert traffic to Respondent's own website is consistently held by panelists to amount bad faith registration and use under Policy, Paragraph 4(b)(iv). An example of such findings can be found in the decision between Booking.com BV v. Chen Guo Long. WIPO UDRP Case No. D2017-0311 [<bookingcom.xyz>] where panelist, Matthew Kennedy, held that:

'The Respondent uses the disputed domain name, which is confusingly similar to the Complainant's BOOKING.COM trademark, in connection with a video-on-demand website displaying links to many other websites. The disputed domain name operates by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. This use is intentional. It is more likely than not that the website operates for the commercial gain of Respondent or the operators of the linked websites, or both. Therefore, the facts satisfy the requirements of paragraph 4(b)(iv) of the Policy.' (Emphasis added)

Complainant submits that the above situation applies to these facts because Respondent is or has operated betting websites and/or PPC websites which will likely provide them with revenue. Internet traffic will be diverted to the disputed domain name based on the strength and reputation of the RITZ brand.

For the reasons above, Complainant submits that the disputed domain name was both registered and are being used in bad faith.

Based on the above the Panel has the following findings.

Bad faith circumstances occur mainly when a Respondent sees financial gain on riding on the coat tails of Complainant's success. This is mostly profitable when Complainant has a reputation.

Complainant has submitted sufficient evidence of reputation of its Ritz' trademark.

Further, the bad faith registration and use of the disputed domain name is indeed proven by the fact that as a result of the reputation of the Ritz'mark Respondent could not have not known it when registering the disputed domain name <ritz888.pro>. Moreover, it must be so that the use of the domain name for a gambling website is intentionally done to create a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and consequently ride on the coattails of Complainant's success.

Further, this is not denied by Respondent.

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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ritz888.pro**: Transferred

PANELLISTS

Name	**Marieke Westgeest**

DATE OF PANEL DECISION 2024-09-17

Publish the Decision