



**CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE**

(a)

**DOMAIN NAME DISPUTE  
ADMINISTRATIVE PANEL  
DECISION**

CIIDRC case number:	20096-CDRP	Decision date: 13 March 2023
Domain Name:	ihghotel.ca	
Panel:	Ivett Paulovics	
Complainant:	Six Continents Limited	
Complainant's representative:	Doug Isenberg of Giga Law	
Registrant:	MichaelArnold (sic)	

**1. PROCEDURAL HISTORY**

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

The particulars of the case are as follows:

1. On February 1, 2023, counsel for the above-named Complainant filed a Complaint pursuant to the CDRP and the Resolution Rules.
2. The identity of the Registrant is not published in the public WHOIS database; therefore, the Registrant's name was not included in the Complaint.
3. On February 2, 2023, CIRA was notified of this proceeding. On the same date, CIRA transmitted by email to CIIDRC its verification response informing who is the Registrant of the disputed domain name. CIRA also confirmed that the <ihghotel.ca> domain name was placed on a Registrar LOCK.
4. On February 2, 2023, CIIDRC, as Service Provider, confirmed compliance of the Complaint and commencement of the dispute resolution process.

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5. The Complainant did not file any further submissions with respect to the issue of the Registrant's legitimate interest (or lack thereof) in the disputed domain name, as permitted by section 11.1 of the CIRA Domain Name Dispute Resolution Rules Version 1.5.

6. Per CIRA's Rule 4.3 and as the Complaint with the attachments was filed exclusively online, the Centre delivered the Complaint to the Registrant only by email to the email provided by CIRA as well as to Postmaster@ihghotel.ca.

7. The Registrant failed to file its response by the due date of February 22, 2023.

8. The Complainant in this administrative proceeding has elected for a Panel consisting of a single-member.

9. CIIDRC appointed Ivett Paulovics as a single-member Panel in this matter on February, 24 2023.

The Domain Name was registered on July 19, 2022.

This matter is conducted pursuant to the Canadian Dispute Resolution Policy (the CDRP) and the Canadian Dispute Resolution Rules (the Resolution Rules) of the Canadian Internet Registry Authority.

## **2. FACTS ALLEGED BY THE PARTIES**

The Complainant alleges to be one of a number of companies collectively known as IHG Hotels & Resorts ("IHG"), one of the world's largest hotel groups. Companies within IHG own, manage, lease or franchise, through various subsidiaries, 6,061 hotels and 888,147 guest rooms in about 100 countries and territories around the world. IHG owns a portfolio of well-recognized and respected hotel brands including Crowne Plaza Hotels & Resorts; Holiday Inn Hotels; Holiday Inn Express Hotels; Holiday Inn Club Vacations; Hotel Indigo; InterContinental Hotels & Resorts; Staybridge Suites; Candlewood Suites; Six Senses Hotels, Resorts & Spas; Regent Hotels & Resorts; Kimpton Hotels & Restaurants; Hualuxe; Even Hotels; avid Hotels; and voco Hotels; and also manages one of the world's largest hotel loyalty programs, IHG Rewards Club.

The Complainant is owner of the following trademarks registered in Canada:

- Reg. No. TMA757107 for IHG, registered since January 15, 2010
- Reg. No. TMA757250 for IHG, registered since January 19, 2010

(hereinafter collectively referred to as "the IHG Trademark").

The Complainant, via its related company Six Continents Hotels, Inc., also holds numerous domain names that contain the IHG Trademark, including <ihg.com> (created on May 4, 1998), <ihghotels.com> (created on May 15, 2004), <ihghotel.com> (created on May 24, 2005) and <ihg.ca> (created on February 21, 2002).

The Registrant created the Domain Name on July 19, 2022, many years after the registration of the IHG Trademark. The Domain Name is being used in connection with a website that falsely appears to be a website for the Complainant. In addition, as part of an apparent employment scam, the Registrant uses the Disputed Domain Name in connection with a web page that falsely advertises non-existent jobs with the Complainant and informs those interested in applying about a “compulsory” 650CAD “Work permit and Tax” that must be paid by “all foreign applicants”.

### **3. CONTENTIONS OF THE PARTIES**

- **Complainant**

The Complainant asserts that the Domain Name satisfies the three touchstones of the CDRP. First, the Complainant submits that the Domain Name is confusingly similar to a mark in which the Complainant had rights prior to registration of the Domain Name and continues to have rights. Furthermore, Complainant asserts that the circumstances are such the Registrant has no legitimate interest in the Domain Name, and, as well, that the Domain Name was registered in bad faith per the purpose of the Policy.

- **Registrant**

No Response has been filed by the Registrant.

- **Remedy Sought**

The Complainant requests the Domain Name be transferred to it.

### **4. DISCUSSION AND FINDINGS**

#### **4.1 Eligibility**

Paragraph 1.4 of the Policy requires that in order to initiate the Complaint, the Complainant, at the time of the initiation of the Complaint, must satisfy the Canadian Presence Requirements for Registrants (“Canadian Presence Requirements”) unless the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of that trademark. The Complainant has sufficiently demonstrated that it owns multiple Canadian registered trademarks under Reg. Nos. TMA757107 for IHG, registered since January 15, 2010, and TMA757250 for IHG, registered since January 19, 2010.

Accordingly, the Panel finds that the Complainant is an eligible complainant under paragraph 1.4 of the CDRP.

#### **4.2 Requirements**

In accordance with Paragraph 4.1 of the CDRP, the onus is on the Complainant to prove:

- (a) That the Domain Name is Confusingly Similar to a trademark or service mark in which the Complainant has rights:
- (b) That the Domain Name has been registered in bad faith.

and the Complainant must provide some evidence that:

- (c) That the Registrant has no legitimate interests in the Domain Name.

The Panel will consider each of these requirements in turn.

### 4.3 Analysis

#### 4.3.1 That the Domain Name is Confusingly Similar to a Mark in which the Complainant has Rights

With respect to paragraph 3.1(a) of the CDRP, the Panel concludes that the Complainant has established that it had rights in the IHG Trademark prior to the date of registration of the Domain Name (July 19, 2022) and continues to have such rights. The IHG Trademark is duly registered in Canada (Reg. Nos. TMA757107 for IHG, registered since January 15, 2010, and TMA757250 for IHG, registered since January 19, 2010) and it qualifies as “Mark” under paragraph 3.2(c) of the CDRP.

Paragraph 3.3 of the Policy states that: “In determining whether a domain name is “Confusingly Similar” to a Mark, the Panel shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark”. CDRP panels agree that confusion will be established when the domain name incorporates the entirety or at least the distinctive element of the Complainant’s mark (see *General Motors Acceptance Corporation v. Bob Woods*, CDRP Case No. DCA-891-CIRA (BCICAC), <gmacmortgages.ca>: “The fact that the whole of the distinctive element of the [Complainant’s trademark] is incorporated in the domain name, is sufficient to support a finding of confusing similarity”. See also *American Express Marketing and Development Corp. v. Nameshield Inc., c/o Daniel Mullen*, CIRA Dispute No. 00249 (Resolution Canada) <americanexpresscreditcards.ca>: a domain name containing a registrant’s “trademark in its entirety” is confusingly similar to the trademark).

Furthermore, Paragraph 1.2 of the Policy makes it clear that the “.ca” suffix is to be disregarded in determining confusing similarity of the Domain Name to the Mark.

In assessing confusing similarity in this matter, the Panel finds that the Domain Name incorporates the entirety of the Complainant’s IHG Trademark and differs from such mark by merely adding the term “hotel”. The addition of such generic and descriptive term to the Complainant’s mark neither affects the attractive power of the IHG Trademark, nor is sufficient to distinguish the Domain Name from such mark. On the contrary, given that the additional term “hotel” is related to the Complainant’s business, it even enhances the likelihood that the Domain Name be mistaken for the IHG Trademark by the Internet users.

Accordingly, the Panel finds that the Complainant has met its burden of proof with respect to paragraph 3.1(a) of the CDRP and the Domain Name is confusingly similar to the Mark in which the Complainant has rights.

#### **4.3.2 That the Registrant has No Legitimate Interest in the Domain Name**

To succeed in the Complaint, paragraph 4.1 of the CDRP requires that the Complainant provides some evidence that the Registrant has no legitimate interest in the Domain Name as described in paragraph 3.4. For this, paragraph 3.4 of the Policy provides a non-exhaustive list of circumstances, which, if found to be proved upon evaluation of all evidence presented, shall demonstrate that the Registrant does have a legitimate interest in the Domain Name.

They are as follows:

- a. the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
- b. the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;
- c. the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;
- d. the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;
- e. the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or
- f. the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

In paragraph 3.4(d) "use" by the Registrant includes, but is not limited to, use to identify a web site.

In this matter, none of the six circumstances cited above is found by the Panel, nor is there any other evidence which demonstrates that the Registrant has a legitimate interest in the Domain Name.

The Complainant submits that the Registrant has never received any approval of the Complainant, expressed or implied, to use the IHG Trademark or to register the Domain Name. The Registrant has no rights in the IHG Trademark or any mark similar thereto.

The Domain Name, composed of the distinctive IHG Trademark plus an additional generic and descriptive term related to the Complainant's business, is not the legal name, name, surname or other reference by which the

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Registrant is commonly identified, nor the geographical name of the location of the Registrant's non-commercial activity or place of business. The Registrant is identified as MichaelArnold, located in Summertown, Tennessee (US).

Given that the Domain Name, which is confusingly similar to the Complainant's Mark, is being used in connection with a website that falsely appears to be a website for the Complainant and advertises non-existent jobs with the Complainant as part of an apparent employment scam in which applicants are charged a fee, the Registrant's use of the Domain Name is clearly not a "non-commercial activity" carried out in good faith.

While the Complainant has provided sufficient evidence to establish that the Registrant lacks legitimate interests in the Domain Name, the Registrant chose to not appear in this matter and, thus, failed to invoke any of the circumstances that could demonstrate legitimate interests in the Domain Name.

Accordingly, the Panel finds that the Complainant has met its burden of proof with respect to paragraph 3.1(b) of the CDRP and the Registrant has no legitimate interest in the Domain Name.

#### **4.3.3 that the Registrant has Registered the Domain Name in Bad Faith**

The Panel now turns to the bad faith requirement contained in paragraph 3.5 of the CDRP.

Paragraph 3.5 of the Policy provides a non-exhaustive list of circumstances, which, if found to be present, shall evidence that the Registrant has registered the Domain Name in bad faith:

- a. the Registrant registered the domain name, or acquired the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration;
- b. the Registrant registered the domain name or acquired the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names;
- c. the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant; or
- d. the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website 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 the Registrant's website or location or of a product or service on the Registrant's website or location.

The evidence provided by the Complainant clearly shows that the Registrant has targeted the Complainant and the IHG Trademark with the registration of the Domain Name, which is confusingly similar to the IHG Mark and is being used in connection with a website that effectively impersonates or falsely suggests sponsorship or affiliation with the Complainant. Additionally, the website advertises non-existent jobs with the Complainant as part of an apparent employment scam in which applicants are charged a fee. Therefore, the Panel is persuaded that bad faith exists pursuant to paragraph 3.5(d) of the CDRP.

In light of the above, the Panel finds that the Complainant has met its burden of proof with respect to paragraph 3.1(c) of the CDRP and the Registrant has registered the Domain Name in bad faith.

## 5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the CDRP, Paragraph 12 of the Resolution Rules, the Panel orders that the Domain Name <ihghotel.ca> be transferred to the Complainant.

Made as of March 13, 2023

SIGNATURE OF PANEL



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