



## NATIONAL ARBITRATION FORUM

### DECISION

Radisson Hotels International, Inc. v. Damian Macafee d/b/a QTK Internet (Name Proxy)  
Claim Number: FA0603000652870

#### PARTIES

Complainant is **Radisson Hotels International, Inc.** ("Complainant"), Carlson Parkway, P.O. Box 59195, Minneapolis, MN 55459. Respondent is **Damian Macafee d/b/a QTK Internet (Name Proxy)** ("Respondent"), BCM Box 1768, London, England WC1N 3XX, United Kingdom.

#### REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**>, registered with **Go Daddy Software, Inc.**

#### PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

#### PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on March 2, 2006; the National Arbitration Forum received a hard copy of the Complaint on March 2, 2006.

On March 2, 2006, Go Daddy Software, Inc. confirmed by e-mail to the National Arbitration Forum that the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names are registered with Go Daddy Software, Inc. and that Respondent is the current registrant of the name. Go Daddy Software, Inc. has verified that Respondent is bound by the Go Daddy Software, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On March 10, 2006, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of March 30, 2006 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@radissonseattle.com, postmaster@radissonneworleans.com and postmaster@radissonmiabchresort.com by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On April 6, 2006, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

#### **RELIEF SOUGHT**

Complainant requests that the domain names be transferred from Respondent to Complainant.

#### **PARTIES' CONTENTIONS**

A. Complainant makes the following assertions:

- [a.] Respondent's Domain Names Radissonseattle.com, Radissonneworleans.com and Radissonmiabchresort.com Are Identical Or Confusingly Similar To The Radisson Trademark In Which The Complainant Has Rights.

Respondent, who has been the subject of numerous ICANN proceedings, registered domain names which are confusingly similar to the Mark in which Complainant has established rights and which is exclusively associated with Complainant.

The disputed domain names fully incorporate Complainant's Radisson mark. The only difference between the disputed domain names and the Mark are:

1. The addition of the generic top level domain name ".com" which previous panels have held to not be sufficient to create a distinction. See, for example, *Pomellato S.p.A v. Tonetti*, D2000-0493 (WIPO July 7, 2000) (finding <pomellato.com> identical to Complainant's mark because the generic top-level domain (gTLD) ".com" after the name POMELLATO is not relevant); see also *Blue Sky Software Corp. v. Digital Sierra Inc.*, D2000-0165 (WIPO Apr. 27, 2000) (holding that the domain name <robohelp.com> is identical to Complainant's registered ROBOHELP trademark, and that the "addition of .com is not a distinguishing

difference").

2. The addition of geographic qualifiers of various cities in the domain names. The addition of the city names to Complainant's Radisson mark is not sufficient to distinguish the disputed domain names from Complainant's mark. See *Verisign, Inc. v Tandon*, D2000-1216 (WIPO Nov. 16, 2000) and *Volkswagen of America, Inc. v Site Design Online* FA 95753 (Nat. Arb. Forum Nov. 6, 2000) (finding that adding a geographical qualifier to a mark was not sufficient to prevent confusion).
3. Finally, the third domain name, "radissonmiabchresort.com" in addition to including the geographic qualifier of "miabch", an abbreviation of "Miami Beach", includes the generic "Resort" which describes the type of business associated with Radisson and is not sufficient to distinguish the domain. See *Brown & Bigelow, Inc. v Rodela*, FA 96466 (Nat. Arb. Forum Mar. 5, 2001) (finding that the <hoylecasino.net> domain name is confusingly similar to the complainant's HOYLE mark, and that the addition of "casino," a generic word describing the type of business in which the complainant is engaged, does not take the disputed domain name out of the realm of confusing similarity) and *Christie's Inc. v Tiffany's Jewelry Auction, Inc.*, D2001-0075 (WIPO Mar. 6, 2001) (finding that the domain name <christiesauction.com> is confusingly similar to the complainant's mark since it merely adds the word "auction" used in its generic sense).

Additionally, Complainant currently operates hotels in all three referenced cities creating additional possibilities for consumer confusion.

[b.] The Respondent Should Be Considered As Having No Rights Or Legitimate Interests In Respect Of The Domain Names That Are The Subjects Of The Complaint.

- (i.) The word "Radisson" is associated exclusively with Complainant and has no independent meaning and is therefore not a name Respondent would legitimately choose unless seeking to create an impression of an association with the Complainant.
- (ii.) Respondent is not a licensee or subsidiary of Complainant. Respondent has never been authorized to use Complainant's Mark. Previous panels have found no rights or legitimate interests where (1) Respondent is not a licensee of Complainant; (2) Complainant's prior rights in the domain name precede Respondent's registration; (3) Respondent is not commonly known by the domain name in question. See *Wells Fargo & Company v. Mahmoud Nadim*, FA0210000127720, (NAF November 29, 2002); *Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000); *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding that Respondent does not have rights in a domain name when Respondent is not known by the mark.).

(iii.) Attempts by Complainant to reach Respondent have been unsuccessful, and neither Respondent nor any of its aliases responded to any of the previous UDRP proceedings filed against them. Previous panels have held that a failure to respond to a complaint can be construed as an admission that they have no legitimate interest in the disputed domain names, see *InfoSpace, Inc. v. Mahmoud Nadim*, FA 0402000237450 (NAF March 26, 2004).

(iv.) Respondent has not used the disputed domain names in connection with a bona fide offering of goods or services. Respondent uses all three disputed domain names to redirect Internet users to a commercial website completely unrelated to Complainant at <roomsusa.com> selling competing travel products. Respondent is clearly attempting to capitalize on a close similarity between its domain names and the registered mark of Complainant, presumably to gain revenue from each Internet user redirected to the competing travel website. Respondent's use of the disputed domain names to attract and redirect Internet traffic to a commercial website completely unrelated to Complainant is not a bona fide offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the domain names pursuant to Policy ¶4(c)(iii). See *Alta Vista v Krotov*, D2000-1091 (WIPO Oct. 25, 2000) (finding that use of the domain name to direct users to other, unconnected websites does not constitute a legitimate interest in the domain name); *The Black & Decker Corp. v. Clinical Evaluations*, FA 112629 (NAF June 24, 2002) (holding that Respondent's use of the disputed domain name to redirect Internet users to commercial websites, unrelated to Complainant and presumably with the purpose of earning a commission or pay-per-click referral fee did not evidence rights or legitimate interests in the domain name); *WeddingChannel.com Inc. v. Andrey Vasiliev a/k/a NA and Free Domains Parking*, FA 156716 (NAF June 12, 2003) (finding that Respondent's use of the disputed domain name to redirect Internet users to websites unrelated to Complainant's mark, websites where Respondent presumably receives a referral fee for each misdirected Internet user, was not a bona fide offering of goods or services as contemplated by the Policy).

(v.) Respondent is not making a legitimate noncommercial or fair use of the domain names. Respondent registered the names for commercial gain in order to misleadingly divert consumers to a web site offering competing travel services and to tarnish or dilute Complainant's Mark.

[c.] The Domain Names Should Be Considered As Having Been Registered And Been Used In Bad Faith.

(i.) As stated above, Respondent has a well established history of abusive registrations which have been the subject of numerous successful UDRP Complaints. The current complaint is part of a pattern by Respondent of registering trademarks that Respondent has no legitimate interest in and which domains do not direct to websites associated with the trademark owners. For example, in addition to the domains which are the subject of this complaint, Respondent's other domain holdings include

<holidayinntampa.com> and <longbeachdaysinn.com> (both domains redirect users to the <roomsusa.com> website) and Columbia Pictures <columbiahomevideo.com>, Aviation Weekly <aviationweekly.com> and Nestlé foods <nestlebabyruth.com>/ This pattern of abusive registrations produces a *prima facie* appearance of Respondent's bad-faith.

(ii.) Through its unauthorized use of the Mark in the disputed domain names, Respondent is directing Internet users to a website that offers travel packages in direct competition with the services offered by Complainant under the Mark. Previous panels have held that this alone is evidence of registration in bad faith see *MathForum.com, LLC v. Weiguang Huang*, D2000-0743 (WIPO Aug. 17, 2000) (finding bad faith under Policy ¶4(b)(iv) where the respondent registered a domain name confusingly similar to the complainant's mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

(iii.) Respondent's decision to register domain names that mimic the Mark results in the dilution of Complainant's famous mark, while confusing Internet users as to the source or sponsorship of the <roomsusa.com> domain name. Additionally, Respondent is using the Mark for its own commercial gain, through referral fees from the <roomsusa.com> domain name. This is evidence that the disputed domain name was both registered and used in bad faith. *Radisson Hotels International, Inc. v. Amjad Kausar*, FA 0401000224961 (NAF Feb. 23, 2004). See also *Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, D2000-1221 (WIPO Dec. 4, 2000) (finding that the "domain names are so obviously connected with the Complainants that the use or registration by anyone other than Complainants suggests "opportunistic bad faith"); *Sony Kabushiki Kaisha v. Inja, Kil*, D2000-1409 (WIPO Dec. 9, 2000) (finding bad faith registration and use where it is "inconceivable that the respondent could make any active use of the disputed domain names without creating a false impression of association with the Complainant).

B. Respondent failed to submit a Response in this proceeding.

## FINDINGS

Complainant, Radisson Hotels International, Inc., is a leading provider of hotel and hospitality services across the United States. In connection with the provision of these services, Complainant has registered the RADISSON mark with the United States Patent and Trademark Office ("USPTO") (Reg. No. 920,862 issued September 21, 1971). The mark was first used in commerce in 1909.

Respondent registered the <radissonseattle.com> domain name on June 1, 2001, the <radissonneworleans.com> domain name on June 30, 2001, and the <radissonmiabchresort.com> domain name on May 1, 2001. Each of Respondent's disputed domain names resolves to a third-party website which allows Internet users to book hotel and hospitality services.

## DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **Identical and/or Confusingly Similar**

The Panel finds Complainant has established rights in the RADISSON mark through registration with the USPTO. *See Men's Wearhouse, Inc. v. Wick*, FA 117861 (Nat. Arb. Forum Sept. 16, 2002) ("Under U.S. trademark law, registered marks hold a presumption that they are inherently distinctive [or] have acquired secondary meaning"); *see also Vivendi Universal Games v. XBNetVentures Inc.*, FA 198803 (Nat. Arb. Forum Nov. 11, 2003) ("Complainant's federal trademark registrations establish Complainant's rights in the BLIZZARD mark.").

Complainant contends Respondent's <radissonseattle.com>, <radissonneworleans.com> and <radissonmiabchresort.com> domain names are confusingly similar to Complainant's mark. Both of Respondent's <radissonseattle.com> and <radissonneworleans.com> domain names contain Complainant's entire RADISSON mark and a geographic term. The Panel finds the addition of geographic terms fails to sufficiently distinguish Respondent's disputed domain names from Complainant's mark pursuant to Policy ¶4(a)(i). *See Wal-Mart Stores, Inc. v. Walmarket Canada*, D2000-0150 (WIPO May 2, 2000) (finding that the domain name, <walmartcanada.com> is confusingly similar to the complainant's famous mark); *see also CMGI, Inc. v. Reyes*, D2000-0572 (WIPO Aug. 8, 2000) (finding that the

domain name <cmgiasia.com> is confusingly similar to the complainant's CMGI mark). Respondent's <**radissonmiabchresort.com**> domain name also contains Complainant's RADISSON mark and adds "miabch," an abbreviation of Miami Beach, and the term "resort," a term that has a direct connection to the business in which Complainant engages. The Panel finds the <**radissonmiabchresort.com**> domain name is confusingly similar to Complainant's mark for purposes of Policy ¶4(a)(i). *See Am. Online, Inc. v. Asian On-Line This Domain For Sale*, FA 94636 (Nat. Arb. Forum May 17, 2000) (finding that the domain names, which consist of "ao-l" and a geographic location are confusingly similar to the complainant's mark); *see also Marriott Int'l, Inc. v. Café au lait*, FA 93670, (Nat. Arb. Forum Mar. 13, 2000) (finding that the respondent's domain name <marriott-hotel.com> is confusingly similar to the complainant's MARRIOTT mark).

The Panel finds Policy ¶4(a)(i) satisfied.

### **Rights or Legitimate Interests**

Complainant alleges Respondent does not have rights or legitimate interests in the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names. Once Complainant makes a *prima facie* case in support of its allegations, the burden shifts to Respondent to show rights or legitimate interests. Due to Respondent's failure to respond to the Complaint, the Panel infers Respondent does not have rights or legitimate interests in the disputed domain names. *See G.D. Searle v. Martin Mktg.*, FA 118277 (Nat. Arb. Forum Oct. 1, 2002) (holding that, where the complainant has asserted that respondent does not have rights or legitimate interests with respect to the domain name, it is incumbent on respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent does not have rights or legitimate interests is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist); *see also Desotec N.V. v. Jacobi Carbons AB*, D2000-1398 (WIPO Dec. 21, 2000) (finding that failing to respond allows a presumption that the complainant's allegations are true unless clearly contradicted by the evidence).

Complainant contends Respondent is using the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names to connect Internet users to a website that provides hotel and hospitality booking services. The Panel finds Respondent's use of the disputed domain names is neither a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) nor a legitimate non-commercial or fair use pursuant to Policy ¶4(c)(iii). *See Coryn Group, Inc. v. Media Insight*, FA 198959 (Nat. Arb. Forum Dec. 5, 2003) (finding that the respondent was not using the domain names for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use because the respondent used the names to divert Internet users

to a website that offered services that competed with those offered by the complainant under its marks); *see also Diners Club Int'l Ltd. v. Car in Won Australia Pty Ltd*, FA 338427 (Nat. Arb. Forum Nov. 10, 2004) (“Since Complainant and Respondent both offer credit card accounts for sale, the Panel finds that Respondent is using the domain names to offer strictly competing services with Complainant, which would be legitimate had Respondent not incorporated Complainant’s mark in a confusingly similar domain name to accomplish this end.”).

Complainant contends Respondent is neither commonly known by the disputed domain names nor licensed to register names featuring Complainant’s mark. In the absence of evidence showing otherwise, the Panel finds Respondent is not commonly known by the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names pursuant to Policy ¶4(c)(ii). *See Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant’s prior rights in the domain name precede the respondent’s registration; (3) the respondent is not commonly known by the domain name in question); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

The Panel finds Policy ¶4(a)(ii) satisfied.

### **Registration and Use in Bad Faith**

Complainant contends Respondent is using the disputed domain names to re-direct Internet users to a website that provides hotel and hospitality booking services. The Panel finds such use constitutes a disruption of Complainant’s business pursuant to Policy ¶4(b)(iii). *See Lubbock Radio Paging v. Venture Tele-Messaging*, FA 96102 (Nat. Arb. Forum Dec. 23, 2000) (concluding that domain names were registered and used in bad faith where the respondent and the complainant were in the same line of business in the same market area); *see also S. Exposure v. S. Exposure, Inc.*, FA 94864 (Nat. Arb. Forum July 18, 2000) (finding the respondent acted in bad faith by attracting Internet users to a website that competes with the complainant’s business).

Complainant contends, as a result of Respondent’s infringing use of the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names, Internet users will likely become confused as to Complainant’s sponsorship of or affiliation with the resulting websites. The Panel finds this to be further evidence of Respondent’s bad faith registration and use pursuant to Policy ¶4(b)(iv). *See Am. Univ. v. Cook*, FA 208629 (Nat. Arb. Forum Dec. 22, 2003) (“Registration and use of a domain name that incorporates another’s mark with the intent to deceive Internet users in regard to the source or affiliation of the domain name is evidence of bad faith.”); *see also Amazon.com, Inc. v. Shafir*, FA 196119 (Nat.

Arb. Forum Nov. 10, 2003) (“As Respondent is using the domain name at issue in direct competition with Complainant, and giving the impression of being affiliated with or sponsored by Complainant, this circumstance qualifies as bad faith registration and use of the domain name pursuant to Policy ¶4(b)(iv).”).

Given the number of famous marks Respondent has registered as domain names, Respondent has engaged in a pattern or practice of cybersquatting, which further indicates its bad faith registration and use of the domain names.

The Panel finds Policy ¶4(a)(iii) satisfied.

## **DECISION**

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**radissonseattle.com**>, <**radissonneworleans.com**> and <**radissonmiabchresort.com**> domain names be **TRANSFERRED** from Respondent to Complainant.



Houston Putnam Lowry, Esq.  
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist  
Dated: April 19, 2006

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