1. The Parties

The Complainant in these Administrative Proceedings is:

Accor, Société Anonyme (France)
Headquartered at:
2, rue de la Mare Neuve
91000 EVRY
France

The Complainant is represented by:

Nathalie Dreyfus
Cabinet ORES
36, rue de St Pétersbourg
75008 Paris
France

The Respondent is:

Aymen Fassi
1, rue Jules Vallès
91000 Evry
France

The Respondent made no representations in these proceedings.

2. The Domain Name and the Registrar

The domain name at issue is “accor.cn”.

The Registrar was identified as:
3. Procedural History

The Complainant filed a Complaint with the Hong Kong International Arbitration Centre (hereinafter “the Centre”) dated July 25, 2003 under the Dispute Resolution Policy of the China Internet Network Information Centre (“CNNIC”) (hereinafter “the Policy”). A paper copy of the Complaint was received on July 30, 2003.


On July 30, 2003, the Centre notified the Registrar that a Complaint had been filed, invited the Registrar to take appropriate measures under the Policy and obtained from the Registrar confirmation of the details of the registration.

On August 1, 2003, the Centre notified the Complaint to the Respondent by registered courier.

On August 4, the Centre informed Respondent of the commencement of the proceedings and of the 20-day time-limit for filing a Response.

On August 26, 2003, the Centre reminded Respondent that Complainant had requested that the proceedings be conducted in the French language and that failure by the Respondent to object would be interpreted by the Centre as indication of an agreement to proceed in French.

On August 26, 2003, the Centre took note of the failure by Respondent to file a Response within the prescribed time limits.

On September 5, 2003, the Centre communicated to the parties a list of three candidates put forward with a view to constituting the Administrative Panel, requesting that the parties rank the candidates in order of preference.

On September 8, 2003, the Centre received a ranking from Complainant only. On the same day, the Centre proceeded to invite Fabien Gélinas to serve as Sole Panelist in these proceedings. A Statement of acceptance and independence was sent to the Centre on the same day.

On the same day, the Centre notified the parties of the constitution of the Administrative Panel, composed of Fabien Gélinas acting as Sole Panelist.
On September 9, 2003, the complete file was forwarded by special courier to the Sole Panelist. The file was received on September 16, 2003.

4. Factual Background

Complainant owns numerous “ACCOR” trademarks throughout the world for products and services in classes 16, 36, 38, 39, 41 and 42; the Complainants holds international registration certificates nos 687060, 742032 et 616274 (Annex 7 to the Complaint).

Complainant alleges the following facts:

Complainant discovered that the domain name “accor.cn” had been registered by Respondent and that said domain name was proposed for sale on the Internet at the price of US$1000 (Annex 3 to the Complaint);

On June 20, 2003, Complainant sent formal notice to Respondent, demanding the voluntary transfer of the domain name in issue to Complainant (Annex 4 of the Complaint);

The formal notice was returned to the sender indicating that Respondent had failed to pick-up the letter at the post office following the notice left at Respondent’s address (Annex 5 of the Complaint);

Copy of the formal notice was sent simultaneously email to the address shown by the sale posting for the domain name at issue;

The answer to this email expressed a refusal to transfer voluntarily the domain name, alleging that said domain name had been transferred to a third party Annex 6 to the Complaint);

Soon after, Respondent contacted Complainant by telephone and offered to transfer the domain name in consideration of a payment of the order of €1000;

ACCOR is a mark known throughout the world; in all there are 3878 Accorhotels, 1300 of which are in France and 16 in China (Annex 8 of the Complaint);

Respondent has no business relationship and no agency relation whatsoever with Complainant;

Before these Administrative Proceedings, Respondent had never used in any way the name ACCOR in his business activities;

Respondent was never known to anyone by or under the name ACCOR or “accor.cn”;

The domain name at issue does not direct users to an active Internet site and there is no genuine use of the domain name;
When Complainant learned about the registration of the domain name at issue, the “www.accor.cn” URL did not resolve;

The “www.accor.cn” URL now leads to an inactive, dummy website the purpose of which is to create the illusion of legitimate use;

Respondent is a French national who knew the ACCOR group of companies at the time of the registration.

Respondent did not submit a Response.

5. Discussion

A. Language of the Proceedings

According to Article 8 of the Rules for CNNIC Domain Name Dispute Resolution Policy (hereinafter the Rules): “Unless otherwise agreed by the parties, or determined in exceptional circumstances by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese”.

Complainant drafted the Complaint in French. In the letter (drafted in English) accompanying the Complaint and its annexes, Complainant requested that the proceedings be held in French.

Before the constitution of the Administrative Panel, on August 26, 2003, the Centre reminded Respondent of the fact that Complainant had requested that the language of the proceedings be French, writing that a failure to object would be interpreted by the Centre as indication of an agreement to proceed in French. Respondent did not react to this reminder and did not send a Response.

The Administrative Panel is not prepared to consider that there was an agreement between the parties, within the meaning of Article 8 of the Rules, in favour of proceeding in a language other than Chinese. However, the circumstances of this case are sufficiently exceptional to warrant a conclusion that the French language would be more appropriate for the proceedings.

Both Complainant and Respondent are located in France. All the communications that occurred between them before the commencement of these proceedings took place in the French language. The domain name at issue was registered by Respondent with a Registrar located in Monaco, a francophone territory. The registration agreement for the domain name at issue, between the Registrar and the Respondent, was in French.
The use of Chinese in such circumstances would impose a disproportionate burden on the parties and would have the perverse effect of allowing a domain name registration holder to use this burden as an argument to discourage recourse this domain name dispute resolution procedure even though such procedure was designed in the interest of speed and low cost. Such perverse effect is adequately shown by the email message received by Complainant on June 20, 2003 (translation): “One must go to China with Chinese translators (compulsory under the CNNIC procedure) … Warms Regards to you from China”.

In view of the circumstances of this case, the Administrative Panel finds and decides under Article 8 of the Rules that the language of these proceedings is French.

B. Merits

Article 31 of the Rules provide that the Administrative Panel shall decide on the basis of the statements and documents submitted as well as any rules or principles of law it deems applicable. According to the Policy, the Complainant must cumulatively establish:

i) that the domain name at issue is identical or confusingly similar to a mark in which said Complainant has rights;

ii) That the domain name holder has no right or legitimate interest in respect of the domain name (or major part thereof);

iii) That the domain name was registered or is being used in bad faith by the domain name holder.

These three conditions will be analysed in turn.

i) Identity or Confusing Similarity

The Administrative Panel finds that the domain name at issue is identical to the mark ACCOR. It was shown to the satisfaction of the Administrative Panel that Complainant has rights in that mark.

ii) Rights or Legitimate Interests

Several elements may be considered in the determination of the question whether Respondent has a right or legitimate interest in the domain name or mark.

In this respect, the Administrative Panel recognizes that Respondent obtained no authorization from Complainant, that Respondent is not known by or under the name ACCOR and that the domain name at issue in this case is not being used by Respondent.
Respondent has not submitted any evidence relating to any right or legitimate interest he might have in respect of the domain name. In the absence of submissions by a respondent, the Administrative Panel decides on the basis of the entire file following a critical analysis of the submissions and allegations of Complainant. In the instant case, the Administrative Panel finds that Respondent has no right or legitimate interest.

iii) Registration or Use in Bad Faith

Complainant succeeded in establishing that ACCOR is a well-known mark the world over and that there are 3878 Accorhotels, 1300 of which are in France and 16 in China (Annex 8 of the Complaint).

The Respondent, being located in France, cannot but have known about the ACCOR mark, which is widely known and distributed in that country. The Administrative Panel also considers as established that Respondent attempted to sell the domain name at issue to the Complainant. The Administrative Panel finds that Respondent registered the domain name for the purpose of selling or transferring it to obtain unjustified benefits within the meaning of Article 9(i) of the Policy.

The Administrative Panel, based on a sovereign assessment of all the facts of this case through the elements and evidence on record, finds that Respondent proceeded to the registration of the domain name at issue in bad faith.

6. Operative Conclusions

For the above reasons, the Panel finds:

a) that the domain name “accor.cn” is identical to the trademark of the Complainant;
b) that the Respondent has no right or legitimate interest in the domain name “accor.cn”;
c) that this domain name was registered in bad faith.

It is therefore ordered that the domain name “accor.cn” be transferred to the Complainant.

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Fabien Gélinas
Sole Panellist
Date: September 29, 2003