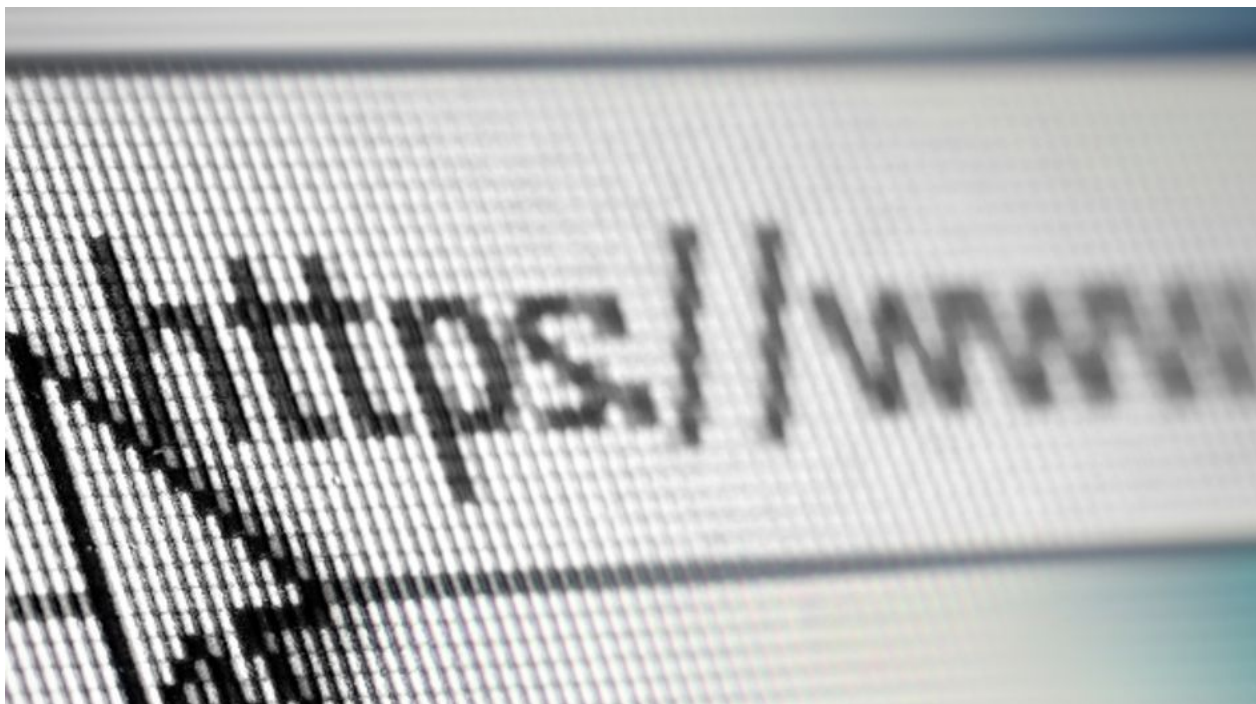


Respondent cruises to victory under UDRP

Jane Seager and Lanlan Bian

Hogan Lovells

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- The owner of several ANANTARA marks sought the transfer of 'antaracruises.com' under the UDRP
- The panel found that there seemed to be an arguable overlap between the main services offered by the parties
- In light of the complainant's ongoing opposition to the respondent's mark in India, it was premature to conclude that the respondent did not have rights or legitimate interests in the domain name

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a panel has denied the transfer of the domain name 'antaracruises.com', finding that the complainant had failed to prove the absence of rights and legitimate interests of the respondent.

Background

The complainant was MHG IP Holding (Singapore) PTE LTD, a company operating many hotels and spas worldwide under the brand ANANTARA since 2000. It promoted its resorts and services through its website using the domain name 'anantara.com'. It also held numerous trademark registrations for ANANTARA in many jurisdictions, including Indian trademarks registered on 16 October 2021.

The respondent was Vaibhav Vaid, Exotic Journeys Private Ltd, an Indian company offering luxury river cruises in India under the name Antara River Cruises. It applied for a logo form of the trademark ANTARA LUXURY RIVER CRUISES in India on 19 March 2020, which was still under a pending opposition filed by the complainant in March 2021.

The disputed domain name was 'antaracruises.com', registered on 8 June 2020. It resolved to a website promoting the respondent's river cruises.

The complainant initiated proceedings under the UDRP for a transfer of ownership of the domain name. The respondent submitted a response requesting the panel to enter a finding of reverse domain name hijacking (RDNH).

To be successful in a complaint under the UDRP, a complainant must satisfy the requirements of Paragraph 4(a) of the UDRP, namely that:

1. the domain name registered by the respondent is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
2. the respondent has no rights or legitimate interests in respect of the domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

Decision

First limb

The panel considered that the complainant had proven ownership of numerous registered trademarks for ANANTARA. Noting that the disputed domain name consisted of the complainant's trademark with the omission of the prefix 'an', the panel was of opinion that the complainant's trademark was recognisable within the disputed domain name and that the majority of the complainant's trademark was reproduced in the domain name. Therefore, the panel found that the domain name was confusingly similar to the complainant's trademark and that the complainant had established the first element of Paragraph 4(a) of the UDRP.

Second and third limbs

The complainant contended that the respondent had registered and was using the disputed domain name with the intention of misleading consumers into thinking that the respondent was the complainant or associated with the complainant's corporate group, which could be inferred from the slavish copying of the complainant's trademark into the disputed domain name and the 'logo' form of trademark on the respondent's website. In the complainant's view, the respondent's use of the domain name was causing confusion and appropriating the goodwill of the complainant's trademark and, therefore, it could not confer a right or legitimate interest in the disputed domain name. The respondent claimed that '*Anantara*' and '*antara*' were ordinary dictionary words in Sanskrit and that it had adopted the term '*antara*' to convey a sense of the quality of its services. The respondent further argued that it was operating in a very different field to the complainant and that the consumers of their respective services were unlikely to be confused.

Having considered the various factors raised by the parties, the panel accepted that the word '*antara*' was the prominent or distinctive feature of the disputed domain name and the 'logo' form of the respondent's trademark. However, despite the lack of direct evidence of the complainant having operations or a reputation in India, there was evidence that increasingly larger numbers of people apparently from India were using the complainant's services. Moreover, the complainant did have registered trademarks in India, and there seemed to be an arguable overlap between the main services offered by the parties: hotel and resort services compared to river cruises.

The panel found that the respondent could be characterised as operating a legitimate and substantial business. In light of the complainant's ongoing opposition to the respondent's trademark in India, the panel considered that it was premature to conclude that the respondent did not have rights or legitimate interests in the disputed domain name. Therefore, the panel found that the complainant had failed to meet the second requirement and thus the complaint must fail.

Given its findings under the second element, the panel considered that it was unnecessary to address the third limb and dismissed the complaint.

RDNH

The panel concluded by declining to enter a finding of RDNH, underlining that the mere lack of success of a complaint was not itself sufficient for a finding of RDNH.

Comment

This decision illustrates that, under the UDRP, it is essential to prove that the registrant of a disputed domain name has no rights or legitimate interests. Complaints brought under the UDRP will fail when the lack of rights and legitimate interests of a respondent is not apparent, especially when the respondent has registered a trademark corresponding to the domain name and uses the domain name for a substantial business, even if the complainant has filed a pending opposition. Brand owners involved in parallel trademark proceedings would therefore be well advised to wait until such proceedings have been finally determined before considering a UDRP complaint.

Jane Seager

Author | Partner

jane.seager@hoganlovells.com

Hogan Lovells

Lanlan Bian

Author

Hogan Lovells

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