



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Unique Brands Enterprises, LLC v. Media Insights, Media Insight

Case No. D2008-1749

1. The Parties

The Complainant is Unique Brands Enterprises, LLC of Coral Gables, Florida, United States of America, represented by Hogan & Hartson, LLP, United States of America.

The Respondent is Media Insights, Media Insight of Miami Beach, Florida, United States of America.

2. The Disputed Domain Names and Registrars

The disputed domain names <azulbluerivieramaya.com>, <eldoradomaromaresort.com>, <eldoradoroyalespa.com>, and <eldoradoseasidesuite.com> are all registered with Melbourne IT Ltd. (“Melbourne IT”), while the remaining disputed domain name <azulhotelbeach.com> is registered with Network Solutions, LLC (“Network Solutions”). For the sake of simplicity, both registrars will be collectively referred to below as simply the “Registrar” except in those instances where the context requires reference to a specific registrar.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), which was adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, and approved on October 24, 1999, and in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and the World Intellectual Property Organization (“WIPO”) Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint, with accompanying Annexes A-M, was filed with the WIPO Arbitration and Mediation Center (the “Center”) by email on November 12, 2008 and by hardcopy on November 17, 2008.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single-member panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on November 13, 2008, the Center requested confirmation from the Registrar as to whether each registrar received a copy of the Complaint from the Complainant and to confirm contact and registrant information set forth in the Complaint relative to each of the disputed domain names. The Center also requested each registrar to specify, for the domain name registered with it: (a) whether the Policy applies to that domain name, (b) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name, (c) the language of the registration agreement, and (d) whether the name will remain "locked" during the proceeding.

Subsequently, on November 13, 2008, Melbourne IT provided its response to the Center through which it specified name and contact information pertinent to each of the four disputed domain names that have been registered with it to the extent, as it then existed, in its WhoIs database. Specifically, Melbourne IT stated that, for each of these four domain names, the Respondent was listed as the registrant for that name. The response also indicated that: (a) Melbourne IT received a copy of the Complaint; and for each of the domain names: (b) the Policy applies to that domain name, (c) Melbourne IT is the registrar of that domain name, (d) the Registrant submitted to the jurisdiction of the courts at the location of the principal office of Melbourne IT, (e) the registration agreement is in English, and (f) that domain name will remain locked during this proceeding.

Further, on November 13, 2008, Network Solutions provided its response to the Center through which it specified name and contact information pertinent to the single disputed domain name that has been registered with it to the extent, as it then existed, in its WhoIs database. Specifically, Network Solutions stated that the Respondent was listed as the registrant for that name. The response also indicated that: (a) the Policy applies to that name, (b) Network Solutions is the registrar for that name, (c) the Registrant submitted to the jurisdiction of the courts at the location of the principal office of Network Solutions, (d) the registration agreement is in English, and (e) the name will remain locked during this proceeding.

The Center verified that the Complaint satisfied the formal requirements of the Policy, the Rules and the Supplemental Rules.

On November 18, 2008, the Center formally notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint to that Respondent, together with all its exhibits, by post or courier and by email, and without the annexes by facsimile. The Complaint and its accompanying documents, and all subsequent communications associated therewith, were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on November 18, 2008, under paragraph 4(c) of the Rules, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and all the correspondence, including that between the Center and the Registrar, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on December 8, 2008, to file its Response with the Center.

As of December 9, 2008, the Center had not received any Response to the Complaint from the Respondent; hence, the Center, in an email letter dated December 9, 2008, notified the Respondent of its default.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated December 16, 2008, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a Sole Panelist for this dispute. Subsequently, on the same date, Mr. Michaelson accepted and returned, by email attachment to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated December 17, 2008, notified the Parties of the appointment of Mr. Michaelson as sole Panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before December 31, 2008. Owing to unexpected time conflicts issues experienced by the Panel all of which constituted unforeseen circumstances, the Center, at the request of the Panel, subsequently notified the Parties extending this due date to January 8, 2009.

This dispute concerns five domain names, specifically names <azulbluerivieramaya.com>, <azulhotelbeach.com> <eldoradomaromaresort.com>, <eldoradoroyalespa.com>, and <eldoradoseasidesuite.com>.

The language of this proceeding is English.

4. Factual Background

As indicated in the WhoIs registration records provided in Annex B to the Complaint, the disputed domain names were registered as follows: <azulbluerivieramaya.com> and <eldoradoroyalespa.com> on January 20, 2006; <azulhotelbeach.com> on October 25, 2006; <eldoradoseasidesuite.com> on October 26, 2006; and <eldoradomaromaresort.com> on November 19, 2007.

A. The Complainant's Marks

The Complainant owns various Mexican trademark registrations for marks which include either of the terms "AZUL" and "EL DORADO", as formatives, in conjunction with other terms and/or design elements. Copies of its Mexican trademark registrations appear in Annex D to the Complaint. Pertinent details of two of the Mexican trademark registrations are as follows:

1. AZUL HOTEL AND BEACH RESORT
- Mexican registration: 863,210; registered: December 9, 2004

This mark is registered for use in connection with "Services for supplying food and drink temporary accommodation" in international class 43. The Complainant claims that it

first used this mark during November 2004.

2. EL DORADO CASITAS ROYALE

Mexican registration: 1,025,385; registered: February 21, 2008

This mark is registered for use in connection with “services for supplying food and drink; temporary accommodation” in international class 43. The Complainant claims that it first used this mark during February 2007.

The Complainant states that it also has common law rights in its registered marks and other similar, but unregistered, marks that contain the same formatives by virtue of its use of all those marks throughout North America, South America, Latin America, the Caribbean and Europe. Of its unregistered marks, the Complainant claims rights in the marks AZUL BLUE and EL DORADO ROYALE for which its use of these marks commenced during December 2006 and February 2003, respectively. The Complainant states that its first use of all its marks occurred on “Karisma” merchandise. A listing of all of the Complainant’s marks, including dates of first use, appears in Annex C to the Complaint.

B. The Complainant

The Complainant has acquired its marks (the “Complainant’s Marks” or “Marks”) through an assignment dated September 22, 2008 from Karisma Companies. Certain of those companies operate the Karisma Resorts, which are luxury, all-inclusive hotel and resorts, and/or offer travel services such as arranging vacations and tour packages and making hotel reservations for others at those hotels and resorts.

The Complainant’s Marks have been licensed to and are used by the Karisma Companies in numerous countries including Mexico, where the Karisma Resorts are located, as well as in the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, and other parts of North America, Latin America, South America and Europe. The Karisma Resorts and the Complainant’s Marks are widely promoted in all of those areas by and on behalf of the Complainant itself and also by the Karisma Companies.

For example, the official website for the Karisma Resorts prominently displays the Complainant’s Marks and allows individuals to submit reservation requests for the Karisma hotels and resorts. That website is “www.karismahotel.com”, and the site “www.azulhotels.com” re-directs Internet visitors to the former site. The former site has been in operation since 2001. The Complainant has provided, in Annex F to the Complaint, hard-copy print-outs of various pages of its “www.karismahotel.com” website showing use of its marks. The Complainant also uses its Marks in direct mail and e-mail promotions copies of various examples of which appear in Annex G to the Complaint, and through trade shows.

Use of all of the Complainant’s Marks commenced in conjunction with the Karisma Resorts and related goods (e.g., merchandise such as stress balls, robes and paper weights) and services prior to the dates on which the Respondent registered the disputed domain names, and continues to the present. The Complainant, in Annex E to the Complaint, has provided pictures of a sample of various items that bear some of those marks.

The Karisma Resorts are regularly covered in articles and features that prominently refer to the Complainant’s Marks, such as in, e.g., *Travel + Leisure* and *Conde Nast Travel*. The Complainant has provided a sample of those articles in Annex I to the

complaint. Likewise, the Karisma Resorts and the Complainant's Marks have been highlighted or appeared in various television features, including on the *BBC*, *Good Morning Texas* and *Fox 41*. The Complainant has provided a representative sample of such features on a CD-ROM which it included as Annex J to the Complaint.

The Complainant estimated that, since the time its Marks have been adopted, over USD35 million has been spent on advertising and marketing the Karisma Resorts using those Marks.

C. The Respondent

As indicated by hard-copies, in Annex K to the Complaint, of web pages to which each of the disputed domain names resolves, the Respondent operates a website at each of those names which promotes a corresponding Karisma Resort and permits Internet users to submit reservation requests for that particular resort. For example, the websites at "www.eldoradoroyalespa.com" and "www.azulhotelbeach.com" promote the El Dorado Royale Resort and Azul Beach Hotel Resort, respectively. Each of these websites depicts the logo associated with the corresponding Karisma Resort as well as verbatim content used at the official websites for the Karisma Resorts.

D. Interactions between the parties

After learning of the Respondent's use of the disputed domain names, counsel for the Complainant sent the Respondent a letter dated July 17, 2008 through which counsel demanded that the Respondent cease all further use of the domain names and transfer all the domain names to the Complainant. A copy of that letter appears in Annex L to the Complaint. Having not received any prior response to its July 17th letter, that counsel, on July 29, 2008, sent the Respondent a copy of that letter as a reminder. No response was ever received from the Respondent to this latter communication either.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that each of the disputed domain names is confusingly similar to the Complainant's marks.

Specifically, the Complainant alleges that each one of four of the domain names merely includes either a misspelled version of one of the Complainant's marks, or an addition to or deletion from the mark of a generic term which describes the goods or services offered by the Complainant through that mark. In that regard and as to the former, the domain name <eldoradoseasidesuite.com> merely omits an "s" that appears at the end of the Complainant's mark EL DORADO SEASIDE SUITES. As to the latter, the domain name <eldoradoroyalespa.com> includes the mark EL DORADO ROYALE followed by the term "spa" and the domain name <eldoradomaromaresort.com> includes the mark EL DORADO MAROMA followed by the term "resort"; while the domain name <azulhotelbeach.com> omits the term "resort" that appears in the Complainant's mark AZUL HOTEL BEACH RESORT.

As to the fifth disputed domain name <azulbluerivieramaya.com>, the Complainant alleges that this domain name incorporates the Complainant's mark AZUL BLUE

followed by the term “riviera maya”, with that term ostensibly being insufficient to adequately distinguish the domain name from the mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in any of the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

First, Complainant states that it has never authorized the Respondent to use any of the Complainant’s marks or to use any of the disputed domain names.

Second, by nevertheless incorporating the Complainant’s Marks into the disputed domain names those marks having become well-known at the time and of which the Respondent undoubtedly had prior knowledge in order to intentionally cause confusion, the Respondent’s subsequent use of those domain names is neither a legitimate noncommercial nor a fair use, let alone one not intended to yield any commercial gain. Nor is that use *bona fide*. Hence, the Respondent’s use of the names, prior to its receipt of notice of the present dispute, was not made in conjunction with a *bona fide* offering of goods or services. Accordingly, the Respondent’s conduct does not fall under either paragraph 4(c)(i) or (iii) of the Policy.

Third, the Complainant contends that owing to the reputation garnered by its Marks, the Respondent has not been and could not be commonly known by any of the disputed domain names at the times when the disputed domain names were registered, thus not qualifying under paragraph 4(c)(ii) of the Policy either.

(iii) Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is now using each of the disputed domain names in bad faith under paragraph 4(a)(iii) of the Policy.

First, the Complainant alleges that the Respondent, having prior knowledge of the Complainant’s Marks, registered each of the disputed domain names to intentionally cause confusion of Internet users and divert those users to the Respondent’s website to: (a) increase web traffic which that site would not otherwise have attained, and (b) generate revenue for the Respondent through reservations for hotel and other travel packages which some of those users would place through the Respondent’s website. Thus, the Respondent was misappropriating the goodwill of the Complainant’s Marks for the Respondent’s own benefit, hence evidencing bad faith use and registration. Further, the Respondent, in copying significant content from the Complainant’s website, in which the Complainant uses its Marks, onto the Respondent’s website and for the purpose of promoting and taking reservations for the Complainant’s hotels through the latter website, completely negates any possible claim of the Respondent that it had no prior knowledge of those Marks and that its use of any of those Marks was legitimate. Hence, this conduct by the Respondent reflects bad faith use and registration under paragraph 4(b)(iv) of the Policy.

Second, the Respondent not only misappropriated the Complainant’s Marks and incorporated them into the disputed domain names, but also has similarly misappropriated other trademarks, owned by third parties and used in connection with the hotels and resorts, and incorporated those marks into other domain names which the

Respondent registered. In that regard, the Complainant cites to several UDRP decisions in which panels found that the Respondent registered and used such domain names in bad faith: *Barceló Corporación Empresarial, S.A. v. Media Insights*, WIPO Case No. D2008-0152 (March 25, 2008) (finding the Respondent acted in bad faith in registering the domain name <barcelodominicanbeach.com> given the complainant's rights in the mark BARCELO); *Riu Hotels S.A. v. Media Insight*, WIPO Case No. D2006-1563 (February 23, 2007) (finding the Respondent acted in bad faith in registering the domain names <rivarubagrand.com>, <riubachata.com>, <riucancun.com>, <riucaribe.com>, <riujalisco.com>, <riumontegobay.com>, <riuochorios.com>, <riupalacecabo.com>, <riupalacecabosanlucas.com>, <riupalacemacao.com>, <riupalacemexico.com>, <riuplayacar.com>, <riutropicalbay.com>, <riupalaceplayacar.com>, and <riupalaceamericas.com> given the complainant's well-known mark RIU and trade name "Riu Hotels S.A."); *Gorstew Limited v. Media Insight*, WIPO Case No. D2006-1467 (January 31, 2007) (finding the Respondent acted in bad faith in registering the domain names <beachesclubresort.com> and <sandalsresortspa.com> given the complainant's rights in the mark SANDALS); *Quiroocan, S.A. de C.V. (Barcelo) v. Media Insights*, Case No. D2006-0801 (August 25, 2006) (finding the Respondent acted in bad faith in registering the domain name <barcelomayacolonial.com> given the complainant's ownership of the marks BARCELO, BARCELO HOTELS, BARCELO HOTELS & RESORTS, and BARCELO MAYA COLONIAL BEACH); and *ACCOR v. Media Insights*, WIPO Case No. D2004-0043 (March 1, 2004) (finding the Respondent acted in bad faith in registering the domain name <sofitelcancun.com> given the complainant's rights in the mark SOFITEL). Thus, in light of the pattern previously established by the Respondent in registering domain names that incorporated third-party marks, the Respondent's conduct in also doing so here constitutes bad faith under paragraph 4(b)(ii) of the Policy.

B. Respondent

The Respondent failed to file any Response to the contentions raised in the Complaint.

6. Discussion and Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Consequently, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

A. Identical or Confusingly Similar

The Panel finds that each of the disputed domain names is confusingly similar to the Complainant's Marks.

From a simple comparison of each of the disputed domain names to the Complainant's Marks, no doubt exists that each such domain name is confusingly similar to the Marks.

The only differences between each of four of the disputed domain names and the Complainant's Marks is either a slight misspelling of the corresponding mark or the addition or deletion of a generic term from the mark, along with appending the gTLD (generic top level domain) ".com" to the result to form the name – with the last addition being, in the present circumstances, totally irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored. Specifically, the domain

name <eldoradoseasidesuite.com> merely omits an “s” that appears at the end of the Complainant’s mark EL DORADO SEASIDE SUITES. The domain name <eldoradoroyalespa.com> includes the mark EL DORADO ROYALE followed by the term “spa”. Similarly, the domain name <eldoradomaromaresort.com> includes the mark EL DORADO MAROMA followed by the term “resort”. Lastly, the domain name <azulhotelbeach.com> omits the term “resort” that appears in the Complainant’s mark AZUL HOTEL BEACH RESORT.

As to the fifth domain name <azulbluerivieramaya.com>, this term incorporates the Complainant’s mark AZUL BLUE followed by the term “riviera maya”. The Panel infers, from the absence of any Response having been filed, that the term, like the others has a generic meaning and, as such, is insufficient to adequately distinguish this domain name from the mark.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding short letter or number groups or even generic or highly descriptive words to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that domain name to avoid user confusion. Here, adding or deleting a generic word or slightly altering the mark through a misspelling as the Respondent did here with each of the disputed domain names clearly resulted in such minor variations. See, e.g., *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072 (September 4, 2008); *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505 (May 28, 2008); *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265 (May 5, 2008); *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878 (March 12, 2008); *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627 (January 4, 2008); *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359 (November 14, 2007); *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064 (September 24, 2007); *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952 (August 27, 2007); *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334 (June 28, 2007); *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317 (April 24, 2007); *SPX Corp. v. Hevun Diversified Corp.*, NAF Case No. FA791657 (November 13, 2006); *Google Inc. v. Jennifer Burns*, NAF Case No. FA 726096 (August 16, 2006); *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766 (September 12, 2005); *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531 (July 19, 2005); *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411 (June 22, 2005); *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824 (January 18, 2005); *Lockheed Martin Corp. v. Deborah Teramani*, WIPO Case No. D2004-0836 (December 1, 2004) and *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491 (August 30, 2004); *Lane-Labs USA, Inc. v. Powell Productions*, NAF Case No. FA 155896 (July 1, 2003); and particularly *Cable News Network LP, LLP v. Elie Khouri d/b/a Channel News Network et al.*, NAF Case No. FA 117876 (December 16, 2002).

Therefore, the Panel finds that each of the disputed domain names is confusingly similar to the Complainant’s Marks as to cause confusion; hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which, under the circumstances here, would legitimize a claim to any of the disputed domain names under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of its Marks or any mark confusingly similar thereto in conjunction with the goods and services with which the Complainant uses that mark or for similar goods and services, nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put any of the Complainant Marks or one confusingly similar thereto in connection with the identical or even similar goods and services to those currently provided by the Complainant, would violate the exclusive trademark rights now residing with the Complainant. See, e.g., *HRB Innovations, Dreamworks, MySpace, Blackrock, F. Hoffmann-La Roche AG, National Football League, Toilets.com, Inc., and Associated Bank*, all cited *supra*; *GoDaddy.com, Inc., v. GoDaddysDomain.com, Clark Signs, Graham Clark*, WIPO Case No. D2007-0303 (May 7, 2007); *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576 (March 14, 2007); *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884 (October 14, 2005); *The Cheesecake Factory Inc., Napster and Caesars Entertainment, Inc.*, all cited *supra*; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA 173362 (September 16, 2003); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, cited *supra*; *MPL Communications, Limited et al v. IWebAddress.com*, NAF Case No. FA 97092 (June 4, 2001); *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Case No. FA 95856 (December 18, 2000); *and America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000). Consequently, the Respondent could not legally acquire any public association between it and any of the Complainant's Marks or one similar thereto, for any of the goods and services rendered by the Complainant, or, broadly speaking, any good or service likely perceived by its users to be so similar and/or to emanate from or be related, in any fashion, to those then offered by the Complainant.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by any of the disputed domain names or more generally any of the Complainant's Marks. Nor is it likely that the Respondent in this case could ever become so known, in light of the Complainant's exclusive trademark rights, with first use of its Marks sufficiently predating, by several years, the dates from October 2006 through November 2007 on which the Respondent registered the disputed domain names, and the reputation and notoriety which the Complainant has gained in its Marks during that time, without infringing on the exclusive trademark rights of the Complainant. See, e.g., *MySpace* and *Treeforms, Inc.*, both cited *supra*.

Hence, based on the evidence before the Panel, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Moreover, since the Respondent's use of each of the disputed domain names, which in this Panel's view infringes the Complainant's trademark rights, cannot constitute a *bona fide* offering of services and is unquestionably commercial in nature, specifically here resulting in a travel/lodging reservation made by an Internet user through the

Respondent's website and for which the Respondent most likely earns some form of monetary or other compensation, the Respondent's conduct does not fall within paragraphs 4(c)(i) or 4(c)(iii) of the Policy either.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in any of the disputed domain names within paragraph 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to each of the disputed domain names, constitutes bad faith registration and use.

The Panel believes that the Respondent was well aware of the Complainant and its Marks when the Respondent registered each of the disputed domain names. Yet, in spite of that knowledge, the Respondent intentionally chose and registered each domain name to opportunistically exploit its potential to generate user confusion for the Respondent's eventual benefit. Given the notoriety and reputation which the Complainant's Marks had garnered by then, it is simply inconceivable in this Panel's view that the Respondent had no such prior knowledge of those marks particular considering that the Respondent intentionally copied, on its website, significant content from the Complainant's website.

This view is further supported by the facts and the Panel's findings that: (a) the Respondent's website promoted and provided Internet users with the ability to place travel/lodging reservations for the Complainant's hotels and resorts which carried the Complainant's Marks and thus diverted those users from the Complainant's website or other sites authorized to take such reservations to the Respondent's site instead which was not authorized or for that matter related, whether by affiliation, sponsorship or endorsement, in any fashion to the Complainant, and (b) the Respondent derived benefit, certainly through increased web traffic, but also ultimately in either pecuniary and non-pecuniary form as a result of such users having chosen, as a result of the diversion, to transact and place its reservation with the Respondent, rather than with either the Complainant or an authorized third-party.

Given the lack of any response, the Panel infers that generating such benefit predicated on such confusion and which the Respondent would not otherwise attain was the Respondent's ultimate goal when it registered and subsequently used each domain name as it did.

It is precisely this opportunistic exploitation which results from the confusion and is predicated on the lack of any legitimate relationship between the parties which, at its roots, trades on, leverages from and injures the goodwill of the Complainant's Marks to the Complainant's detriment and the Respondent's benefit that constitutes bad faith.

Consequently, the Panel concludes that the Respondent's conduct with respect to each of the disputed domain names constitutes bad faith use and registration under paragraph 4(b)(iv) and alternatively the general bad faith proscription in paragraph 4(b), and hence also under paragraph 4(a)(iii) of the Policy.

Moreover, the Panel also finds that the Respondent's registration of the disputed domain names here, in light of its prior and repeated instances of having registered various domain names that also included third-party trademarks, in and of itself constitutes bad faith under paragraph 4(b)(ii) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to each of the disputed domain names, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

All the disputed domain names, namely <azulbluerivieramaya.com>, <azulhotelbeach.com>, <eldoradomaromaresort.com>, <eldoradoroyalespa.com>, and <eldoradoseasidesuite.com> are ordered transferred to the Complainant.

Peter L. Michaelson, Esq.
Sole Panelist

Dated: January 8, 2009