



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1600899
Complainant:	Galaxy Entertainment Licensing Limited
Respondent:	Mr. Martin Mir
Disputed Domain Name(s):	< galaxyhotelmacau.com >

1. The Parties and Contested Domain Name

The Complainant is Galaxy Entertainment Licensing Limited, of Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands (BVI). The authorized representative of the complainant is Wilkinson & Grist, 6/F, Prince's Building, Chater Road, Central, Hong Kong SAR.

The Respondent is Mr. Martin Mir, of Silverene Tower, Dubai Marina, Dubai 211448, United Arab Emirates (UAE).

The domain name at issue is < galaxyhotelmacau.com >, registered by Respondent with Ascio Technologies, Inc. Denmark, of Ørestads Boulevard 108, 10. Sal.th. 2300 Copenhagen S, Denmark.

2. Procedural History

On 13 September 2016, the Complainant filed the Complaint with the Hong Kong office of the Asia Domain Name Dispute Resolution Centre (the "Centre") in accordance with the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Cooperation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On the same date, the Centre transmitted by email to the Registrar a request for confirmation that the disputed domain name was registered by the Respondent and that the disputed domain name will be prohibited from being transferred to a third party.

On 14 September 2016, the Registrar confirmed by email that the Respondent was the registrant of the disputed domain name and the Disputed Domain Name had been locked. In accordance with paragraphs 2(a) and 4(a) of the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 15 September 2016. In accordance with paragraph 5(a) of the Rules, the due date for the Response was 5 October 2016. The Respondent did not submit any response. Accordingly, the Centre notified the parties of the Respondent's default on 6 October 2016.

On 13 October, 2016, the Centre appointed professor Julien Chaisse as Panelist in the administrative proceeding. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rule 7. The Panel finds that the Asian Domain Name Dispute Resolution Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the Complaint, the Response, the e-mails exchanged, the evidence presented, the Policy, the Rules, the Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from the Respondent. Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Centre on or before 27 October, 2016.

3. Factual background

The Complainant: Galaxy Entertainment Licensing Limited ('Galaxy')

A. The Complainant's Galaxy and its activities

The Complainant was incorporated in 2007 as a wholly-owned subsidiary of Galaxy Entertainment Group Limited to hold and manage most of the intellectual property rights of companies associated with the Galaxy Entertainment Group. Galaxy Entertainment Group Limited was incorporated in 1988 and is currently listed on the Hong Kong Stock Exchange and a member of the Hang Seng Index, which is one of Asia's leading developers and operators of integrated entertainment and resort facilities.

Galaxy Entertainment Group Limited wholly owns Galaxy Casino S.A., a gaming concessionaire that received a gaming concession from the Macau SAR government in 2002. The Complainant, together with its associated companies including the said Galaxy Entertainment Group Limited and Galaxy Casino S.A. are collectively referred to as the "Complainant" in the present complaint. The Complainant is ranked Macau's second largest gaming group with 20% of market share. It operates three flagship venues in Macau on Cotai, Galaxy Macau, one of the world's largest integrated destination resorts, and the adjoining Broadway Macau, a new hotel, entertainment and retail landmark destination; and on the Peninsula, StarWorld Macau, an award winning high end property. On 27 May 2015, the Complainant opened the doors to the expanded Galaxy Macau resort and the brand new Broadway Macau, representing HK\$43 billion of a HK\$100 billion planned investment by the Group in Macau.

B. The Complainant's Galaxy and its Marks

The Complainant has been using "Galaxy" as its trade name since its incorporation, and has been using the series of trademarks incorporating "Galaxy" and especially "Galaxy Hotel" and "Galaxy Macau" continuously and extensively in various countries. The Complainant and its related group companies have applied for or registered "Galaxy Hotel" and "Galaxy Macau" and series marks incorporating "Galaxy" worldwide.

In Hong Kong where the Complainant is based, the Complainant has registered *inter alia* the trademarks "GALAXY HOTEL" (registration no. 301890414) covering services in



Classes 35, 39, 41, 43 and 44, as well as “GALAXY MACAU 澳門銀河” (registration no. 301484415) and “GALAXY MACAU 澳門銀河” (registration no. 301561022) covering services in Classes 39, 41, 43 and 44.

Amongst other goods and services, the said trademark has been used in respect of “[a]rranging or operation of cruises and tours, travel reservation, booking agency services for travel, ticketing services, provision of transportation information, transport of travellers, escorting of travellers, vehicle rental, car parking services, advisory and consultancy services relating to travel and transportation, sightseeing services, handling storage and transport of baggage for travellers, chartering of aircraft, ships and/or vehicles, vehicle and boat rental.” in Class 39 and “[h]ospitality services, provision of temporary accommodations, hotels, motels, resort and guesthouse services, reservation, booking and provision of information and arranging services for hotels and guesthouses, restaurants, self service restaurants, hot pot restaurants, barbecue restaurants, canteen, snack bar, sashimi and sushi bar, fast food counters, café, cafeteria, bar and lounge service, provision of food and drink for dine in, take away and delivery, banqueting services, function rooms, meeting rooms.” in Class 43.

The list of the Complainant’s worldwide trademark registrations for the “Galaxy Hotel” and “Galaxy Macau” series of trademarks were annexed as Exhibit 2 to the Complaint, whereas a selection of copy trademark registration certificates in Hong Kong and other countries and regions were annexed as Exhibit 3 to the Complaint.

The Respondent

No information of significance is available about the Respondent except for the contact details provided for the purpose of registration of the disputed domain names. According to the Complainant, the Respondent sells similar products to the Complainant through the use of the disputed domain names. The disputed domain name was registered on 23 January 2012 and was updated on 14 September 2016.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. Identical or confusingly similar

The Complainant submits that the Disputed Domain Name is identical or confusingly similar to marks in which the Complainant has rights on the basis of its Galaxy’s marks registrations. The Disputed Domain Name and the Complainant’s registered Galaxy’s marks are identical.

As the proprietor of the “Galaxy” trade names/ marks, the Complainant has devoted great efforts and incurred substantial expenses in obtaining and policing trademark registrations for “Galaxy Hotel”, “Galaxy Macau” and variations in various jurisdictions worldwide, including but not limited to Hong Kong, Macau, China, Taiwan, Japan and South Korea. In Hong Kong where the Complainant is based, the Complainant registered the trademarks

“Galaxy Macau” (registration no. 301484415) respectively covering services in Classes 39, 41, 43 and 44 were registered on 25 November 2009, which substantially pre-dated the registration of the Disputed Domain Name in 2012.

The Complainant has also devoted substantial efforts in promoting its services under the “Galaxy” trade names / marks, including “Galaxy Hotel” and “Galaxy Macau”. Exhibit 8 to the Complaint provides examples of advertisements by the Complainant and its group companies including outdoor advertisements, advertisements published in the press, exhibitions etc. dated prior to the registration of the Disputed Domain Name.

In addition to the means of promotion mentioned above, one of the Complainant’s major means of promotion is through its websites. In particular, the Complainant operates the said official website at <http://www.galaxyentertainment.com> and other related websites including <http://www.galaxymacau.com>, <http://www.starworldmacau.com>, <http://www.broadwaymacau.com.mo> in order to promote their services and release relevant news to the general public. For an established corporation like the Complainant, such website is of paramount importance since it provides a credible and convenient way for the general public to access its information on a permanent basis.

In conjunction with its online promotion efforts, the Complainant has registered a series of domain names worldwide incorporating “Galaxy”. The domain name “galaxymacau.com” was registered on 26 February 2002 and the domain name “galaxyhotel.com.hk” was registered on 3 June 2010, which substantially pre-date the registration date of the Disputed Domain Name (23 January 2012), and remain valid as of the date hereof. This further intends to demonstrate the extensive control and use of trade name/ trademarks incorporating “Galaxy” and “Galaxy Hotel” / “Galaxy Macau” by the Complainant.

Even though the Complainant operates mostly in Hong Kong and Macau, it is so reputable and well-known that when one uses “galaxy hotel” as search keywords in google.ae (Google’s United Arab Emirates website where the Respondent is located), the third top result is the Complainant’s web page and most remaining search results concerned the Complainant’s Galaxy Macau; and when the search keywords are “galaxy macau”, the top result is the Complainant’s website. As such, the Complainant undoubtedly has rights in the “Galaxy” trade names/marks including but not limited to “Galaxy Hotel” and “Galaxy Macau”, which have become well-known worldwide.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to its registered trademarks in which the Complainant has rights or interests for the purposes of paragraph 4(a)(i) of the Policy.

ii. No rights or legitimate interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a) (ii) and particular 4(c) of the Policy.

The rights in the “Galaxy” series of trade names / marks including “Galaxy Hotel” and “Galaxy Macau” vest in the Complainant and its group of companies, and no others. The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the trade names / marks “Galaxy”, “Galaxy Hotel” or “Galaxy Macau”.

The Respondent is not commonly known by “Galaxy”, “Galaxy Hotel Macau”, “Galaxy Hotel” or “Galaxy Macau”. Search on Google.ae using “Martin Mir” and “galaxy hotel macau martin mir” did not reveal that the Respondent has any right in the Disputed Domain Name of that he was known by the Disputed Domain Name. Instead, the search for “galaxy hotel macau martin mir” revealed results concerning the Complainant. Accordingly, on or before the registration date of the Disputed Domain Name, i.e. 23 January 2012:

- The Complainant has already established a group of companies worldwide with names incorporating the trade names / marks “Galaxy”;
- The Complainant has already registered trademarks incorporating “Galaxy” including “Galaxy Hotel”, “Galaxy Macau” and variations thereof in various countries and regions worldwide;
- The Complainant has extensively used “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” as its trade names / marks worldwide;
- Substantial goodwill and reputation subsisted in the Complainant’s trade names / marks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”; and
- The trade names / marks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” have been identified by the public as the trade names / marks of the Complainant’s group of companies and none other.

The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of any of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the Policy.

iii. Registered and used in bad faith

The Complainant contends that the Respondent actual use of the Disputed Domain Name demonstrates that it is registered and used in bad faith, with a view to free-riding the substantial reputation and goodwill enjoyed by the Complainant in the trade names / marks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”.

The Disputed Domain Name was once used for reservation, booking and provision of information and arranging services for hotels and guesthouses in Macau, with the sentence at the top of the webpage “CHTM Official Hotel Promotion Booking Site” and the paragraph “Welcome to the Galaxy Hotel Macau Casino Hotel & Resort!...” at the bottom of the page (**Exhibit 16** to the Complaint provides a printout from the website www.galaxyhotelmacau.com under the Disputed Domain Name on 4 March 2016). Amongst other hotels made available for reservation on the website, the Complainant’s Galaxy Macau could be found. The Complainant contends that visitors may thus be misled into believing that the website under the Disputed Domain Name is associated with, authorized or operated by the Complainant, a reputable and well established company specializes in this sector, or that the website was being operated with the Complainant’s authorization or endorsement, when in fact this is not the case.

In addition, in July 2016, an agent of the Complainant was instructed to approach the Respondent on a no-name basis to negotiate for transfer of the Disputed Domain Name with the Respondent. In reply of the enquiry, the Respondent offered to sell the Disputed Domains for USD 2,600, which is substantially more than the Respondent’s documented out-of-pocket costs directly related to the Disputed Domain Names. The Complainant contends that this proves that (i) the Respondent is aware of the commercial value of the “Galaxy” series of trade names / marks of the Complainant; (iii) the Disputed Domain

Name was registered with the intent to be sold; the Respondent has no legitimate interests in respect of the Disputed Domains.

Further, the Complainant has conducted a search for WIPO Cases and WIPO Panel Decisions on domain name disputes at <http://www.wipo.int/amc/en/domains/search/> (Exhibit 18 to the Complaint provides for the search results). The search revealed that the Respondent has also been named the respondent in two UDRP domain name dispute cases involving domain names relating to famous hotel groups, namely *Hyatt International Corporation and Hyatt Corporation v. Mr. Martin Mir (MIRMARTI64698)* (D2012-1803) concerning “grandhyattmacao.com” and “hyattmacau.com” and *Starwood Hotels & Resorts Worldwide, Inc. and Westin Hotel Management, L.P. v. Martin Mir* (D2013-1806) concerning the domain name “westindubai.com”. It is noted in particular that the case D2012-1803 also concerned hotels in Macau. In both UDRP disputes, the Respondent has been ordered to transfer the disputed domain names to the complainants in such cases.

The Complainant accordingly submits that it has proved that the Respondent has registered and used the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Complainant must prove that it has rights in a trademark to which each disputed domain name is confusingly similar.

The Complainant has rights in the trade names/ trademarks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”. Because of the extensive and long period of use of “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” by the Complainant and its group of companies, such trademarks/service marks/names have been well-recognised by the public to be distinctive of and identified with the Complainant and its services (including but not limited to hotels, casino, entertainment and rental services of various facilities including meeting facilities) but none other. The distinctiveness of the “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” trade names / marks is unquestionable. Substantial goodwill and reputation have subsisted in trade names/ trademarks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”. One can also find countless publications and reports on the internet about the Complainants by reference to “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”. As such, the Complainant undoubtedly has rights in the trade names/ trademarks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau”.

The distinctive part of the Disputed Domain Name, i.e. “galaxyhotelmacao.com”, is the prefix “galaxyhotelmacao”, which has incorporated and combined in whole the Complainant’s trade names/marks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” into one. The extensions “.com” is indistinctive. Therefore, the Disputed Domain Name as a whole is confusingly similar to the trade names / marks “Galaxy”, “Galaxy Hotel” and “Galaxy Macau” in which the Complainant has rights.

The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B) Rights and Legitimate Interests

The Respondent has not responded to the Complaint to assert any rights or legitimate interests. The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondents to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see for example *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Paragraph 4(c) of the Policy sets out ways in which a Respondent may establish they have rights and legitimate interests. These are: “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Respondent has not responded to the complaint to present any evidence to establish rights or legitimate interests under these heads. None of the circumstances in paragraph 4(c) of the Policy are, therefore, present in this case. The second element of paragraph 4(a) of the Policy is therefore satisfied.

C) Bad Faith

To establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith. That case may be made out if there are facts coming within the provisions of paragraph 4(b) of the Policy. That paragraph sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, namely: “... (i) *circumstances indicating that Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or (ii) Respondent has registered the disputed domain name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or (iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or (iv)*

by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location." However, those criteria are not exclusive and Complainants in UDRP proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression and frequently do so.

The Respondent has registered the Disputed Domain Name with full knowledge of the Complainant's rights in the trade name / marks "Galaxy", "Galaxy Hotel" and "Galaxy Macau". By registering and using the domain name "galaxyhotelmacao.com" and operating the website thereunder, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website or services offered thereon.

In addition, it is an established fact from the above history of UDRP disputes that the Respondent has been engaging in a pattern of bad faith registration of domain names incorporating others' well-known trade names/ marks, which infers that the present Disputed Domain Name has been registered and used in bad faith too.

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use. Consequently, the Panel concludes that the Respondent violated paragraph 4(a)(iii) of the Policy and specifically paragraph 4(b)(i) thereof.

6. Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name < galaxyhotelmacao.com >, be TRANSFERRED to the Complainant.

Professor Julien Chaisse
Panelist

Dated: October 26, 2016