

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

New gTLD String Confusion Panel

Re: 50 504 T 00237 13

HOTEL TOP-LEVEL-DOMAIN
S.a.r.l, Objector

and

BOOKING.COM B.V., Applicant

String: <HOTELS>

EXPERT DETERMINATION

The Parties

The Objector is HOTEL Top-Level-Domain S.a.r.l (“Objector”) and is represented by Dirk Krischenowski of Objector.

The Applicant is Booking.com B.V. (“Applicant”) and is represented by Flip Petillion of Crowell & Moring.

The New gTLD String Objected To

The new gTLD applied for and objected to is: <HOTELS.>

Prevailing Party

The Applicant has prevailed, and the Objection is dismissed.

The New gTLD String Confusion Process

Module 3 of the ICANN Applicant Guidebook (“AGB”) contains Objection Procedures and the new gTLD Dispute Resolution Procedures (“the Procedure”).

Article 1(b) of the Procedure states that “The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person and entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this new gTLD Dispute Resolution Procedure.”

As expressed in the AGB and the Procedure, there are four (4) grounds to object to the registration of new gTLDs. One of these grounds expressed String Confusion, as described in DRP Article 2(e)(i): “(i) ‘String Confusion Objection’ refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.”

Article 3(a) states that “String Confusion Objections shall be determined by the International Centre for Dispute Resolution.”

Procedural History of this Case

Applicant filed its Application for the string .HOTELS. Objector timely filed and served its String Confusion Objection dated March 13, 2013 with attachments Annex A1 through A5 (“Objection”). The Applicant timely filed and served its gTLD Response to String Confusion Objection dated May 16, 2013 with attachments 1 – 63 (“Response”). The International Centre for Dispute Resolution appointed the undersigned as expert (ICDR letter to parties, June 14, 2013).

Basis for Objector’s Standing to Object based on String Confusion

Objector is an applicant for gTLD string .HOTEL. The applications by Applicant (for .HOTELS) and Objector (for .HOTEL) are not in the same contention set.

Parties’ Contentions

The Objector (HOTEL Top-Level-Domain S.a.r.l) contends that registration of the applied-for string .HOTELS and its co-existence with .HOTEL would be confusing on multiple bases and would cause detriment and disruption. (Objection, Pars. 2b1-8, 3, 3a-b and e) It contends that the meaning of “hotel” and “hotels” is and is perceived as essentially identical notwithstanding that “hotels” is plural. It also contends that there is minimal acoustic difference between the words and that if registration were approved there would be potential for deceit and cybersquatting. Objector also states, in support of its objection on string confusion grounds, that others have filed community objections. Objector summarizes that co-existence of the two strings would likely deceive or cause confusion, that confusion would arise in the mind of the average reasonable internet user and consumer and that substantial detriment would arise therefrom. (Id., Par. 5)

The Applicant (Booking.com B.V.) contends that the Objection fails to meet the stringent burden to prove string confusion and asserts grounds beyond those subject to review by a string confusion panel, and that there is no likelihood of confusion between the strings. It contends that the strings are not confusingly similar, citing multiple comparisons including those using the String Similarity Assessment Tool. It also contends that the average internet user is used to small differences between TLDs, and that the strings are visually and aurally different and have different meanings. Applicant also contends that the claim of potential “detriment” as asserted by Objector is irrelevant to whether the strings are confusingly similar to each other. It concludes that “there is no risk of confusion in the mind of the average, reasonable Internet user, nor is such risk probable” and requests that the Objection be declared Unsuccessful.

Discussion and Findings

The parties agree that the standard or relevant criterion for a string objection panel, in ruling on a string objection, is set forth in Section 3.5.1 of the AGB:

“A DRSP panel hearing a string confusion objection will consider whether the applied-for TLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion.. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.”

(Objection, Sec. 2a Standards; Response, Sec. VI A. Relevant Criterion)

The AGB and Procedure provide that in a string confusion objection proceeding the Objector bears the burden of proof. (AGB, Sec. 3.5: “The Objector bears the burden of proof in each case.” Procedure, Article 20(c): “The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.”)

Upon my review and consideration of the Objection, Response and attachments to each, the Objector has not sustained its burden of proof. I find insufficient factual and/or evidentiary, and no expert opinion, support for the Objection required to sustain Objector’s burden of proof.

While it undisputed that the words “hotel” and “hotels” are similar, with only the addition of an “s” differentiating them visually, and one string may bring the other to mind, such “[m]ere association . . . is insufficient to find a likelihood of confusion.” (AGB, Sec. 3.5.1) For a likelihood of confusion to exist, it must be *probable*, not merely possible that confusion will arise in the mind of the average, reasonable Internet user.” (Id., italics added) Objector has not sustained its burden of proof in

establishing the characteristics of the average, reasonable Internet user, nor that it is probable that such user is likely to be misled or confused.

I find persuasive the degrees of similarity or dissimilarity between the strings by use of the String Similarity Assessment Tool (Response, pp. 5-7), that ICANN did not put the applications for .HOTEL and .HOTELS in the same contention set (Id., p. 7), and the analysis and conclusions of the independent expert retained by Applicant. (Id., pp. 9-10). I find the strings, of course while similar as noted above, to be sufficiently visually and aurally different for string confusion purposes.

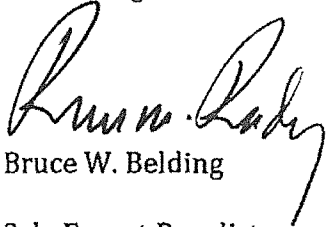
The parties' arguments and contentions regarding alleged business motives and/or attempts to limit competition, alleged detriments that could arise if .HOTELS is approved, and the existence of community objections by others are not addressed herein as they are deemed irrelevant to the task of the expert panel.

Based on the evidence and the parties' submissions, I find no likelihood of string confusion as defined in the AGB and do not find that that it would be probable that confusion would arise in the mind of the average, reasonable Internet user if the applied-for gTLD string is approved.

Determination

The Applicant has prevailed, and the Objection is dismissed.

Dated: August 8, 2013



Bruce W. Belding

Sole Expert Panelist