

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. Domains By Proxy, LLC / Carolina Rodrigues,  
Fundacion Comercio Electronico  
Case No. D2022-1048

### **1. The Parties**

1.1. The Complainant is American Airlines, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States (the “Complainant”).

1.2. The Respondent is Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama (the “Respondent”).

### **2. The Domain Name and Registrar**

2.1. The disputed domain name <americianair.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

3.1. The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2022. On March 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint.

3.2. The Center sent an email communication to the Complainant on March 30, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 4, 2022.

3.3. The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

3.4. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 5, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was April 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 27, 2022.

3.5. The Center appointed Ike Ehiribe as the sole panelist in this matter on May 4, 2022. 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 Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

4.1. The Complainant in this administrative proceeding is American Airlines Inc. a Delaware corporation located and doing business from Texas, United States. The Complainant is described as the largest air carrier in the world with an International reputation as the premier airline for business and leisure travel. It is said that prior to the Covid 19 Pandemic the Complainant and its affiliates served over 350 destinations in over fifty countries and operated nearly 7,000 daily flights. It is said further that the Complainant has used the AA abbreviation, AMERICAN and American Airlines marks alone or in combination with other words and designs in connection with travel and transportation services, travel agency services, travel reservation services, travel rewards loyalty programs, travel rewards credit cards and numerous other goods and services. The Complainant also owns and operates the domain names <aa.com>, <americanairlines.com> and <americanair.com>, which redirects to <aa.com> where the Complainant's primary website is hosted, in addition to numerous other domain names incorporating the terms "American" and "American Airlines". The Complainant's website also features general information on travelling and allows customers to book travel reservations around the world, view change and cancel travel reservations check in for flights and view flight status. The Complainant refers to web analytics website to reveal that the Complainant's website has been ranked number one website in the world in the category of Air Travel. The Complainant is said to also own numerous trademark registrations for its AMERICAN and AMERICAN AIRLINES marks with the United States Patent and Trademark Office ("USPTO") and has also obtained trademark registrations incorporating its AMERICAN AIRLINES mark in over 75 countries and in Panama where it is said the Respondent is based. The Complainant states further that priority for the oldest trademark registration for the AMERICAN AIRLINES mark No. 514294 dates back to July 27, 1948 way before the Respondent decided to create the Disputed Domain Name in the year 2021.

4.2. The Respondent is Carolina Rodrigues of Fundacion Comercio Electronico located at Panama City Panama, and according to the Whois database registered the Disputed Domain Name <americianair.com> on July 26, 2021 through the privacy service known as Domains By Proxy LLC. It is said that the Respondent is using the Disputed Domain Name to redirect Internet traffic to competitive travel websites for pay-per-click purposes and to derive financial gain from the Complainant's reputation. Additionally, the Disputed Domain Name is offered for sale for USD 999 in a listing at the domain name marketplace located at "www.afternic.com".

#### **5. Parties' Contentions**

##### **A. Complainant**

5.1. The Complainant contends that the AMERICAN and AMERICAN AIRLINES marks have achieved worldwide fame and recognition in the airline industry during its more than 90 year history, considering its extremely strong common law rights, its multiple trademark registrations in over 75 countries and its heavy activity on social media. With regards to social media activity, the evidence adduced by the Complainant shows it has over 2.5 million followers on Facebook and 1.6 million followers on Twitter. The Complainant therefore contends that the Disputed Domain Name <americianair.com> is identical and confusingly similar to the Complainant's trademark in that the Disputed Domain Name wholly incorporates the Complainant's AMERICAN mark. The Complainant states that by inserting the letters "i" and "c" in the American component of the American Airlines mark and shortening the AIRLINES component of the American Airlines mark to "air" and adding the generic term "air" does nothing to prevent a confusingly similar finding.

The Complainant refers to a number of previous UDRP decisions including *Verizon Trademark Services, LLC v. Paulo c/o Paulo kann*, WIPO Case No. [D2010-0989](#) to argue that misspelling and or transposing letters as well as the addition of a gTLD and generic terms to a complainant's mark does not prevent a confusing similarity finding for purposes of the Policy.

5.2. The Complainant states further that the AMERICAN mark has extensive presence over the Internet and is well-known world wide and it is the owner of the following domain names namely; <aa.com> <americanairlines.com> and <americanair.com> all of which it uses to promote and facilitate its international airline business. Therefore, Internet users and the Complainant's customers intending to contact the Complainant are likely to be confused by the Disputed Domain Name.

5.3. The Complainant asserts that the Respondent has no rights or legitimate interests in the Disputed Domain Name on the following grounds. First of all, the Disputed Domain is not being used nor has it been prepared for the *bona fide* offering of goods and services. Secondly, the Respondent is not commonly known by or with the Disputed Domain Name considering that the registrant of the Disputed Domain Name is identified as Carolina Rodrigues/ Fundacios Comercio Electronico. Thirdly, the Complainant is not making a legitimate noncommercial or fair use of the Disputed Domain Name; instead, the Respondent is using the Disputed Domain Name to divert Internet traffic to websites that contain pay-per-click or affiliate advertising links that redirect to websites that are competitive with the Complainant which display cheap airline tickets. See in this regard a number of previous UDRP decisions including *Ticketmaster Corp. v. DiscoverNet, Inc.*, WIPO Case No. [D2001-0252](#). Fourthly, the Respondent has never been authorised, licensed or permitted to register the Disputed Domain Name and or use the Complainant's marks for the same purpose, and neither does the Respondent's use of the Disputed Domain Name constitute a legitimate noncommercial or fair use of the Disputed Domain Name within the Policy and as stipulated in *Oki Data Americas Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

5.4. On the question of bad faith registration and use, the Complainant again refers to the Respondent's exploitation of the Disputed Domain Name acquired with prior knowledge of the Complainant's established rights to redirect Internet traffic to competitive travel websites garnering pay-per-click or affiliate advertising income for the Respondent's financial gain as demonstrative of bad faith registration and use under the Policy. This conduct it is said is causing disruption of the Complainant's business and creating a likelihood of confusion regarding source, sponsorship affiliation or endorsement.

Secondly, the Complainant contends that the mere fact of registration of the Disputed Domain Name is alone sufficient to give rise to an inference of bad faith registration and use considering the extensive presence of the Complainant's AMERICAN mark all over the Internet, it is inconceivable that the Respondent did not have knowledge of the Complainant's mark before deciding to register the Disputed Domain Name. See previous UDRP decisions including *American Airlines, Inc. v. Ramadhir Singh Whoisguard Protected, WhoisGuard, Inc. et al*, WIPO Case No. [D2021-0294](#) and *Singapore Arilines Ltd v. P&P Servicios de Comunicacion*, WIPO Case No. [D2000-0643](#).

Thirdly, the Complainant argues that in addition to obvious actual and inferred knowledge of the Complainant's marks, the Respondent had constructive knowledge of the Complainant's marks seeing that an ordinary search in the trademark registry in the country where the Respondent is based would have revealed the Complainant's rights following *Kate Spade Llc v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#).

Fourthly, the Complainant has produced evidence indicating that the Respondent is offering for sale the Disputed Domain Name for the sum of USD 999 at the domain name marketplace located at "www.afternic.com".

Fifthly, in addition, the Disputed Domain Name is said to have active (MX) exchange records which is said to be evidence of a likelihood of use of fraudulent email or phishing communications. See in this regard, *Tetra Laval Holdings & Finance S.A. v. Himali Hewage*, WIPO Case No. [D2020-0472](#) and the decision in *Ares management LLC v. Juandaohanjing*, WIPO Case No. [D2020-3254](#).

Finally, the Complainant refers to the Respondent's pattern of prior bad faith registration of domain names associated with well-known trademarks in which the Respondent has no rights or legitimate interests as further evidence of bad faith registration and use of the Disputed Domain Name. In this respect, the Complainant has attached a list of a considerable number of previous UDRP decisions numbering over two hundred in total against the Respondent which concern the Respondent registering and using in bad faith domain names incorporating well-known marks such as Ford, IBM, Geico, Old Navy, Gap, Discover Bank, NVIDIA, and Nestle among others.

## **B. Respondent**

5.5. The Respondent did not reply to the Complainant's contentions, therefore, the Panel shall draw such adverse inferences from the failure of the Respondent to reply to the Complainant's submissions that it considers appropriate.

## **6. Discussion and Findings**

6.1. Under paragraph 4(a) of the Policy, to succeed in the administrative proceeding, the Complainant must prove that:

- i) the Disputed Domain Name is identical and confusingly similar to the trademark or services mark of the Complainant;
- ii) the Complainant has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) the Disputed Domain Name has been registered and is being used in bad faith.

6.2. As expressly stated in the Policy, the Complainant must establish the existence of each of these three elements in any administrative proceeding.

### **A. Identical or Confusingly Similar**

6.3. This Panel finds and accepts that the Complainant enjoys a reputation in the United States and around the world as a premier airline for business and leisure travel with nearly 7,000 daily flights undertaken before the Covid -19 Pandemic. The Panel also accepts that the Complainant's marks namely AMERICAN and AMERICAN AIRLINES are all well-known all over the world and on the Internet, considering the volume of travel and transportation related services offered in the United States and abroad for the past 90 years, extensive activity on social media platforms and the number of trademark registrations in well over 75 countries. In the circumstances, the Panel finds that upon a visual examination of the Disputed Domain Name, <americianair.com> it is undoubtedly confusingly similar to the Complainant's marks. Clearly, the Disputed Domain Name incorporates entirely the Complainant's AMERICAN mark. The Panel equally accepts that the misspelling or transposition of the letters "i" and "c" in the "american" component of the Complainant's AMERICAN mark, the shortening of "airlines" in the Complainant's AMERICAN AIRLINES mark to the term "air", and the mere addition of the generic Top-Level Domain ".com" does not in anyway prevent a finding of confusing similarity when a Panel is engaged in a confusing similarity enquiry. The Panel finds that this is an obvious case of typo-squatting. In this regard, the Panel places reliance on the detailed discussion on the test for confusing similarity as is contained in sections 1.7, 1.8, 1.11.1 and 1.12 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3rd Edition ("WIPO Overview"). See also the earlier decision in *Okidata Americas Inc. v. ASD Inc. supra* where the Panel held as follows "When a domain name incorporates a complainant's mark in its entirety, it is confusingly similar to that mark despite the addition of other words". See also in particular *Verizon Trademark Services LLC v. paulo c/o paulo kana, supra*.

6.4. Therefore, the Panel is satisfied that the Complainant has established that the Disputed Domain Name

is confusingly similar to the Complainant's trademarks.

## **B. Rights or Legitimate Interests**

6.5. The Panel is equally satisfied that the Respondent has no rights or legitimate interests in the Disputed Domain Name within the ambit of paragraph 4(c) of the Policy. The Panel finds that the Respondent is not commonly known by the Disputed Domain Name considering that the Whois information identifies a certain Carolina Rodrigues /Fundacion Comerico Electronico as the registrant of the Disputed Domain Name. Furthermore, the Respondent who is duty bound to provide evidence in support of any rights or legitimate interests, if in existence, following *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#), has failed to adduce any evidence of engaging in any actual *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of the Disputed Domain Name within the ambit of the Policy. As asserted by the Complainant, the Panel has found no evidence of any permission, authority, licence or other business affiliation between the Complainant and the Respondent that justifies the Respondent's use of a domain name incorporating the Complainant's trademark. On the contrary, what the evidence adduced by the Complainant establishes, is that the Disputed Domain Name redirects Internet users and the Complainant's customers to websites that contain links that compete with the Complainant's business by reason of displaying cheap airline tickets and or to websites that contain pay-per-click links for the Respondent's financial gain. The Panel finds that such conduct cannot by any means be described as legitimate noncommercial or fair use activity within the ambit of the Policy. See *Ticketmaster Corp. v. DiscoverNet Inc. supra*.

6.6. Accordingly, the Panel finds that the Complainant has established that the Respondent does not possess any rights or legitimate interests in the Disputed Domain Name as stipulated in paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

6.7. Turning to the question of bad faith registration and use, the Panel has taken into account a number of irrefutable factors to conclude that the Respondent registered the Disputed Domain Name in bad faith with the intention of engaging in bad faith use through the exploitation of the Complainant's world wide reputation and goodwill in its well-known marks associated with the airline industry.

6.8. In the first instance, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant's AMERICAN and AMERICAN AIRLINES trademarks including its leading reputation in the International airline business before electing to register the Disputed Domain Name on July 26, 2021. The Complainant has correctly alluded to the Respondent's actual and constructive notice of the Complainant's marks which an ordinary trademark or Internet search would have disclosed to assert that such conduct is clear evidence of bad faith registration and use following *American Airlines Inc. v. Registration Private, Domains By Proxy, LLC/Carolina Rodrigues*, WIPO Case No. [D2021-1093](#) where the panel held that the respondent knew of the complainant's trademark and registered the disputed domain name to take unfair advantage of the complainant's reputation. See also *American Airlines, Inc.v. Ramadhir Singh, WhoisGuard Protected, Whois Guard, Inc supra*. Thirdly, the Panel has no hesitation in finding that the Respondent registered the Disputed Domain Name in order as to disrupt the Complainant's business by either using the Disputed Domain Name to intentionally divert Internet traffic to websites with links displaying cheaper airline tickets or to pay-per-click sites for financial gain. Fourthly, the Complainant has disclosed other overt activities undertaken by the Respondent which are well-known indicators of bad faith registration and ultimate bad faith use. The first is the evidence indicating that the Respondent has offered the Disputed Domain Name for sale at USD 999 having placed same for sale on the website at [www.afternic.com](#). The second is the presence of active mail exchange records (MX) which in itself is evidence of the likelihood of using the Disputed Domain Name for fraudulent emails or phishing communications. See in this regard previous UDRP decisions in *BolognaFiere S.p.A. v. Currentbank-Promotools, SA. Inc./ Isidro Sentis a/k/a Alex bars*, WIPO Case No. [D2004-0830](#) and *Tetra Laval Holdings & Finance S.A. v. Himali Hewage, supra*. Fifthly, the Complainant refers to the pattern of conduct of the Respondent exhibiting a tendency to engage in bad faith registration of domain names reflecting well-known trademarks in which the Respondent has no

rights or legitimate interests as further evidence of bad faith registration and use. In support of this contention the Complainant has provided an extensive list of prior UDRP decisions against the Respondent numbering over 200 decisions where the Respondent was found to have registered and used in bad faith domain names incorporating famous and well-known marks e.g Ford, IBM, Geico, Old Navy Gap, Discover bank NVIDIA, Priceline and Nestle among others). Finally as indicated in paragraph 5.5 above, the Panel has drawn adverse inferences from the failure of the Respondent to reply to the contentions of the Complainant in these proceedings.

## **7. Decision**

7.1. For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <amercianair.com> be transferred to the Complainant.

*/Ike Ehiribe/*

**Ike Ehiribe**

Sole Panelist

Date: May 18, 2022