

ADMINISTRATIVE PANEL DECISION

Fareportal Inc. v. Domain Administrator, PrivacyGuardian.org / xwzhang,
xiangwei zhang
Case No. D2022-2753

1. The Parties

The Complainant is Fareportal Inc., United States of America (“United States”), represented by Mitchell, Silberberg & Knupp, LLP, United States.

The Respondent is Domain Administrator, PrivacyGuardian.org, United States / xwzhang, xiangwei zhang, China.

2. The Domain Name and Registrar

The disputed domain name <cheapoairflying.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 27, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 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 August 4, 2022.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2022.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on September 9, 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

The Complainant is a technology company that develops computer software used to power travel-related websites, including the Internet-based travel agency “www.cheapoair.com”.

The Complainant holds *inter alia* the following trade marks (the “Trade Marks”):

- United States word mark CHEAPOAIR, registered as of February 17, 2009 under No. 3,576,166;
- United States word mark CHEAPOAIR.COM, registered as of April 28, 2015 under No. 4,725,988;
- United States word mark CHEAPOAIR.COM, registered as of May 5, 2015 under No. 4,729,795.

The Complainant displays and uses the Trade Marks to advertise and promote its travel services in interstate commerce and on the Internet.

The Domain Name was registered on May 7, 2022, and at the time of the filing of the Complaint resolved to a website from “Contour agents” which purports to offer travel reviews, news, guides, but contains copies of articles on travel and trips from other websites and publications (the “Website”).

5. Parties’ Contentions

A. Complainant

According to the Complainant, the Domain Name is confusingly similar to the Trade Marks, in that it incorporates the entirety of the Trade Marks, while the addition of words commonly identified with air travel (in this case adding “flying” at the end of “air”) does not preclude a finding of confusing similarity, as adding descriptive or non-distinctive matter to another’s mark will not suffice to avoid a claim of infringement.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name and is not using the Domain Name for any *bona fide* or otherwise fair purpose, since the Respondent is not a licensee of the Complainant, nor obtained permission from the Complainant to use the Trade Marks, or any domain name incorporating the Trade Marks. In this context, the Complainant also points out that there is no evidence that the Respondent is or has ever been commonly known by the Domain Name or that the Respondent has operated any *bona fide* or legitimate business under the Domain Name. Furthermore, the Complainant submits that the Respondent uses the Domain Name to misdirect or “bait” Internet users seeking to utilize or learn more about the Complainant’s travel-related services to the Website.

According to the Complainant, the Domain Name has been registered in bad faith since the Respondent could not plausibly assert that, in registering the Domain Name, it was unaware of the Trade Marks, especially since the Domain Name fully incorporates the Trade Marks. The Complainant also asserts that the Respondent is deemed to have constructive knowledge of the Trade Marks.

Moreover, the Complainant states, misleading and deceptive travel-related content and services allegedly offered through the Website support the inference that the Respondent registered the Domain Name with the bad faith intent to deceive consumers, and that the Respondent has intentionally used the Domain Name to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation or endorsement of the Website and unauthorized, competing services. Finally, the Complainant points out, while use of a privacy service does not in and of itself constitute bad faith under the Policy, the manner in which such service is used may contribute to a finding of bad faith.

With respect to bad faith use of the Domain Name, the Complainant firstly contends that using the Trade Marks to misdirect consumers to the Website demonstrates bad faith use under the Policy.

According to the Complainant, the Respondent's use of the Domain Name, in addition to traditional likelihood of confusion, also creates initial interest confusion, which attracts Internet users to the Website based on the Respondent's use of the Trade Marks. Moreover, the Complainant states, featuring the Trade Marks and offering services identical to certain of those offered by the Complainant, and using the Trade Marks to suggest a connection between the Domain Name and the Complainant is evidence of bad faith. Finally, the Complainant submits that the Respondent's actions will damage the Trade Marks and the Complainant's assets, and the Respondent must have expected that any use of the Domain Name would cause such harm to the Complainant, and the Domain Name is so obviously indicative of the Complainant's services that the Respondent's use of the Domain Name would, at a minimum, inevitably lead to confusion of some sort, to the severe detriment of the Complainant and its goodwill.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks.

The Domain Name is confusingly similar to the Trade Marks as it incorporates the term "cheapoair", of which one of the Trade Marks consists and which is the dominant element of the other two Trade Marks, in its entirety. The addition of the term "flying" does not prevent a finding of confusing similarity between the Domain Name and the Trade Marks (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also, *inter alia*, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The generic Top-Level Domain ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and the Respondent has not acquired any trade mark rights in the Domain Name. In assessing whether the Respondent has rights or legitimate interests in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the Trade Marks in their entirety with a term which is descriptive of the Complainant's business, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of

this case, that the Respondent is commonly known by the Domain Name. Furthermore, in view of the fact that the Domain Name resolved to a website purportedly providing services relating to travel, hotels and airports and containing information on travel and holidays, which may be considered competing with the services and information provided by the Complainant, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, nor does such use constitute a *bona fide* offering of goods or services.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Name, the Respondent was or should have been aware of the Complainant and the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some 13 years after the registration of the earliest of the Trade Marks;
- the Respondent has incorporated the term "cheapoair", of which one of the Trade Marks consists and which the other two contain, in its entirety, and this is not a dictionary term, nor a name that it is likely that a registrant would spontaneously think of when registering a domain name;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks; and
- the subsequent use of the Domain Name to resolve to a website with information and services competing with the Complainant's services and information.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a Response to the Complaint;
- the use of a privacy service to hide the identity of the registrant; and
- the use of the Domain Name for a website with information and services competing with the Complainant's services and information.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith.

7. Decision

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 <cheapoairflying.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: September 23, 2022