

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. Shi Lei

Case No. D2023-3321

### **1. The Parties**

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

The Respondent is Shi Lei, China.

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

The disputed domain name <americanairlinesflightstatu.com> is registered with Dynadot, LLC. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2023. On August 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 2023, 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 7, 2023.

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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 11, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on September 22, 2023. 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 leading international airline company providing travel and transportation services, travel agency services, and travel reservation services. It has been operating for more than 90 years. The Complainant and its affiliates serve over 350 destinations in over 50 countries.

The Complainant owns many trademark registrations for AMERICAN AIRLINES in many jurisdictions, including United States, Canada, and China where the Respondent is purportedly located. The Complainant's oldest AMERICAN AIRLINES trademark registration dates back to 1949 (e.g., United States Trademark Registration Number 514,294, registered on August 23, 1949).

The Complainant also owns the domain name <americanairlines.com>, registered in 1998, which redirects to <aa.com> where the Complainant's primary website is hosted.

The disputed domain name was registered on July 22, 2023, and resolves to a website containing pay-per-click (PPC) or affiliate advertising links to third parties' websites that are competitive with the Complainant.

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

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

The Complainant submits and contends that:

- the disputed domain name is confusingly similar to the Complainant's AMERICAN AIRLINES mark which is registered in many places around the world and has been recognized by prior panels as well known. Indeed, the disputed domain name incorporates the Complainant's trademark with the addition of the terms "flight" and "statu", which is an intentional shortening of the term "status", both of which directly describes the Complainant's airlines flight services as well as the Complainant's services allowing customers to check the status of flights, and of the generic Top-Level-Domain ("gTLD") ".com".
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized or licensed by the Complainant to use its trademark. The Respondent is not commonly known by the disputed domain name. The disputed domain name resolves to a web site containing PPC links to websites that are competitive with the Complainant. The links are clearly targeting the Complainant's services. The use of a domain name for PPC links is not a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. Therefore, it does not confer on the Respondent any rights or legitimate interests in the disputed domain name.
- The disputed domain name was registered and is being used in bad faith. The Complainant's trademark is well known, which can be an inference of bad faith as the Respondent must have been aware of the Complainant's trademark. The Respondent selected the disputed domain name to intentionally misappropriate the Complainant's trademark as a way of redirecting Internet users to the Respondent's website and PPC advertising for the purpose of commercial gain, causing disruption of the Complainant's business and creating a likelihood of confusion regarding source, sponsorship, affiliation or endorsement.

Finally, the Complainant's contends that the following circumstances are also indicative of the Respondent's bad faith registration and use of the disputed domain name:

- the disputed domain name has active MX records, which could potentially be used for phishing purposes;
- there are numerous UDRP panel decisions under the Policy against the Respondent, a number of which concern famous and well-known marks;
- the Respondent at the time of initial filing of the Complaint had employed a proxy service to hide his identity.

Based on the above, the Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent 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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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

The Panel finds that the Complainant has established rights over the trademark AMERICAN AIRLINES based on the evidence submitted in the Complaint.

The disputed domain name entirely incorporates the Complainant's mark and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (e.g., *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

The addition of the terms "flight" and "statu" does not prevent confusing similarity because the Complainant's trademark AMERICAN AIRLINES remains recognizable in the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - [WIPO Overview 3.0](#)).

The addition of the gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is 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 Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, based on the following: (a) the Complainant holds prior rights in the globally registered and well-known AMERICAN AIRLINES mark; (b) the Respondent has not been authorized to use the Complainant's trademark in any way, and is not commonly known by the disputed domain name; (c) the Respondent cannot demonstrate any *bona fide* use nor a legitimate noncommercial or fair use of the disputed domain name. In this connection, the Complainant has provided evidence that the disputed domain name resolves to a website containing PPC links to third party websites that are competitive with the Complainant.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name 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. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, 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.

Here, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The disputed domain name is being used for competing commercial pay-per-click links, which does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use (see section 2.9 of the [WIPO Overview 3.0](#)) and the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy. Moreover, given the addition of the terms "flight" and "statu" (an intentional misspelling of "status"), the Panel finds that the composition of the disputed domain name is such to carry a risk of implied affiliation to the Complainant contrary to the fact, which cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, which includes: "(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the

complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Complainant's AMERICAN AIRLINES trademark is well known internationally. Given the reputation of the Complainant's trademark - registration and use of which precede by far the registration of the disputed domain name - it is not conceivable that the Respondent did not have in mind the Complainant's trademark when registering the disputed domain name. Such fact suggests that the disputed domain name was registered in bad faith (see section 3.2.2, [WIPO Overview 3.0](#)). Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4).

With respect to use in bad faith, the disputed domain name has been used for competing commercial PPC links. The Respondent is probably deriving some income from each click on those links thereby capitalizing on the Complainant's trademark and goodwill for its own profit. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to websites hosting links to competing products is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#), *Intercontinental Exchange Holdings, Inc. v. 殷磊 (Yin Lei)*, WIPO Case No. [D2021-1395](#), and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its webpage, by creating a likelihood of confusion with the Complainant's Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpage. Lastly, the Respondent's prolific historic as a serial cybersquatter reinforces the Panel's finding of bad faith. See, for example, *W.W. Grainger, Inc. v. shi lei*, WIPO Case No. [D2023-3036](#), and *Asurion, LLC v. Shi Lei*, WIPO Case No. [D2018-2335](#).

On this basis, the Panel finds that the Complainant has satisfied also the third and last element of the Policy, paragraph 4a(iii).

## 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, <americanairlinesflightstatu.com>, be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: October 6, 2023