

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. Domains By Proxy, LLC / Fundacion Comercio Electronico, Carolina Rodrigues
Case No. D2022-0936

1. The Parties

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

The Respondent is Domains By Proxy, LLC, USA / Fundacion Comercio Electronico, Carolina Rodrigues, Panama.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2022. On March 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 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 March 22, 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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 30, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on May 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

According to information in the Complaint, the Complainant is the largest air carrier in the world and enjoys a reputation in the USA and internationally as a premier airline for business and leisure travelers. For decades, the Complainant has continuously used its brands AMERICAN, AMERICAN AIRLINES, and AA (an abbreviation of AMERICAN AIRLINES) both alone and in connection with other words and designs, in connection with travel and transportation services, vacation booking services, travel agency services, travel reservation services, travel rewards and loyalty programs, travel rewards credit cards, and numerous other goods and services.

The Complainant has registered several trademarks consisting of AA or AMERICAN AIRLINES including the USA trademark registrations No. 514,292 registered on August 23, 1949 for the trademark AA and No. 514,294 registered on August 23, 1949 for the trademark AMERICAN AIRLINES or the Panama trademark registration for AA No. 53220, registered May 29, 1991.

The Complainant owns and operates the domain names <aa.com>, <aavacations.com>, and <americanairlines.com> (which redirects to the Complainant's website at "www.aa.com"), for its well-known website dedicated to vacation booking services, which allows customers to book vacation packages of multiple types of reservations, including flights, hotels, and/or car rentals.

The disputed domain name was registered on March 1, 2022, and at the date of the Complaint it resolved to a parking page with links to third party service offerings in the field of vacation booking services. The Complainant has provided evidence that the disputed domain name is offered for sale on a third-party platform for USD 899. The disputed domain name does not resolve to a website at the date of this decision. Also, the record indicates that an active mail exchange ("MX") email server for the disputed domain name has been configured.

5. Parties' Contentions

A. Complainant

The Complainant argues that it owns valid trademark registrations for the AA, AMERICAN, and AMERICAN AIRLINES trademarks in the USA and other countries, demonstrating its rights in those trademarks under the Policy. The disputed domain name incorporates the Complainant's famous AA trademark in full, changing the trademark only by adding the generic Top-Level Domain ("gTLD") ".com" and generic word "vacatiions" (an obvious typo of "vacations"), which directly describes the Complainant's services involving booking of vacation packages, flights, hotels, and car rentals.

With respect to the second element, the Complainant contends that the Respondent has registered the disputed domain name without the Complainant's authorization or consent. Moreover, the Respondent is not commonly known by the disputed domain name, as the Whois information identifies the registrant as Fundacion Comercio Electronico, Carolina Rodrigues. In addition, the Respondent has never operated any *bona fide* or legitimate business under the disputed domain name and is not making a protected noncommercial or fair use of the disputed domain name, as the Respondent is using it to divert Internet traffic to websites that contain pay-per-click (PPC) or affiliate advertising links that redirect to travel booking websites that are competitive with the Complainant. Additionally, the Respondent is offering the disputed

domain name for sale for a minimum of USD 899 and the Complainant argues that this does not create rights and legitimate interests under the Policy.

With respect to the third element, the Complainant argues that long after the Complainant established its rights in its famous AA trademarks, and with knowledge of those trademarks, the Respondent acquired the confusingly similar disputed domain name to redirect Internet traffic to competitive travel websites garnering PPC or affiliate advertising revenue for the Respondent's commercial gain, and that this conduct demonstrates bad faith registration and use pursuant to Policy. Furthermore, the Respondent has listed the disputed domain name for sale for at least USD 899, in excess of the Respondent's investment in the disputed domain name. Additionally, the disputed domain name has active MX (mail exchange) records, which indicate use for email, which evidences a likelihood of additional bad-faith use of the disputed domain name to engage in fraudulent email or phishing communications. Also, the Respondent used a privacy service to register the disputed domain name and use of a privacy or proxy registration service to shield its identity and elude enforcement efforts by the legitimate trademark owner demonstrates the Respondent's bad faith use and registration of the disputed domain name. Finally, according to paragraph 4(b)(ii) of the Policy, the Respondent's pattern of prior bad faith registration of domain names utilizing well-known trademarks in which the Respondent has no rights or legitimate interests provides further evidence of the Respondent's bad faith registration and use of the disputed domain name in this case. The Complainant refers to a high number - over 200 total and over 80 in the past year alone – of prior UDRP panel decisions under the Policy against the Respondent, the vast majority of which concern the Respondent registering and using in bad faith domain names incorporating famous and well-known marks (e.g., Ford, IBM, Geico, Old Navy, Gap, Discover Bank, NVIDIA, Priceline, Nestle, among others).

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that notice of the Complaint was sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Also, bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, the Panel finds that the Respondent has been given a fair opportunity to present his case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

6.2 Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights in the AA trademarks. The trademark AA is reproduced in its entirety in the disputed domain name. The addition of the term “vacatiions” does not prevent a finding of confusing similarity with the Complainant’s trademark AA, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

It is well accepted by UDRP panels that a gTLD, such as “.com”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie case* demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie case* that it holds rights over the trademark AA and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the un rebutted evidence put forward by the Complainant, at the date of the Complaint the disputed domain name was used to host a parked page comprising PPC links to competing services. According to section 2.9 of the [WIPO Overview 3.0](#). “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. In this case, the PPC links are related to the Complainant’s trademark AA and generate search results with competing services to those offered by the Complainant. In this Panel’s view, such use does not confer rights or legitimate interests to the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Panel considers that the Complainant has made a *prima facie case* that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie case* because the Respondent did not respond to the Complainant’s contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. Given the distinctiveness and renown of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks. The Panel also notes that the disputed domain name is a misspelled version of the Complainant's domain name <aavacations.com>.

The disputed domain name was used by the Respondent at the date of the Complaint to direct to a website displaying PPC advertisements for services related to the Complainant's services. Given the confusing similarity between the AA trademark and the disputed domain name, noting also the similarity between the disputed domain name and the Complainant's domain name <aavacations.com>, Internet users would likely be confused into believing that the Complainant is affiliated with the website to which the disputed domain name resolves. Presumably the Respondent intends to benefit from the confusion created: it is likely that the Respondent earns income when Internet users click on the links in search of the Complainant's services.

The Panel also notes that there is a configured MX email server for the disputed domain name, which in view of the Panel creates an ongoing threat to the Complainant, as the disputed domain name could also be used for sending out emails for the purpose of misleading recipients in their believing that any such email sent from the disputed domain name originates from the Complainant, most likely for non-legitimate or even fraudulent purposes.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the unrebutted evidence in the case file shows that the Respondent was involved in numerous other UDRP proceedings where similar factual situations caused the concerned UDRP panels to decide in favor of the complainants. This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct".

The Panel further notes that according to the unrebutted evidence put forward by the Complainant, the disputed domain name was put for sale at a minimum price of USD 899. This is an additional element that sustains in the Panel's view bad faith registration and use of the disputed domain name.

It appears that the disputed domain name no longer resolves to an active website. The current passive holding of the disputed domain name does not absolve the Respondent of bad faith registration and use, and, in fact, under the circumstances of this case is further evidence of bad faith registration and use. See WIPO Overview 3.0, section 3.3.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <aavacatiions.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: May 20, 2022