

ADMINISTRATIVE PANEL DECISION

JetBlue Airways Corporation v. Private Registration, NameBrightPrivacy.com
/ muiton sae

Case No. D2022-1398

1. The Parties

The Complainant is JetBlue Airways Corporation, United States of America (“United States”), represented by Frankfurt Kurnit Klein & Selz, PC, United States.

The Respondent is Private Registration, NameBrightPrivacy.com, United States / muiton sae, United States.

2. The Domain Name and Registrar

The disputed domain name <jetblueforgood.com> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 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 April 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 amendment to the Complaint on April 21, 2022.

The Center verified that the Complaint together with the amendment to the 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 May 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on June 7, 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 incorporated and based in the United States and runs an airline serving domestic and international routes.

The Complainant is the owner of numerous trade mark registrations. Specifically, the Complainant owns trade mark registrations for “JETBLUE” (the “JET BLUE Mark”) and “JETBLUE FOR GOOD” (the “JETBLUE FOR GOOD Mark”) as well as various device marks and other word marks incorporating the JET BLUE Mark (together, the “Marks”), around the world, including:

- United States trade mark registration number 2,449,988 for JETBLUE registered on May 8, 2001; and
- United States trade mark registration number 5,197,492 for JETBLUE FOR GOOD registered on May 2, 2017.

The disputed domain name was registered on October 23, 2020. It is currently inactive, insofar as it does not point to any active website.

5. Parties’ Contentions

A. Complainant

The Complainant argues that it has rights in the Marks by virtue of its ownership of various trade mark registrations for the Marks around the world. It contends that the disputed domain name is confusingly similar to the Marks since it incorporates both the JET BLUE Mark and the JETBLUE FOR GOOD Mark (both of which are recognisable within the disputed domain name) under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that it originally registered the disputed domain name in 2016 as a landing page for the Complainant’s charitable ventures, but that for reasons connected with the Covid-19 pandemic, that registration was not renewed.

The Complainant confirms that the disputed domain name was registered by the Respondent without “any legitimate trademark or service mark rights” in that name, by which it is understood that the Complainant is stating that it has not given the Respondent its permission to use the Marks in the disputed domain name and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent registered the disputed domain name with the intention to attract Internet users to the website for its own commercial gain, by creating a likelihood of confusion and/or for the purpose of selling the disputed domain name to the Complainant for commercial gain having prevented the Complainant from re-registering the disputed domain name for itself.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; or has made any demonstrable preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Marks when it registered the disputed domain name. The Marks, according to the Complainant, are well-known throughout the world and are recognised and identified as being connected to the Complainant, given the extensive use of them as documented in the evidence filed in support of the Complaint.

Finally, the Complainant argues that the (current) passive holding of a domain name remains a use in bad

faith under the Policy. Together, the Complainant submits that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Marks.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)) provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel therefore finds that the disputed domain name is confusingly similar to the Marks, since the disputed domain name incorporates both the JET BLUE Mark and the JETBLUE FOR GOOD Mark in their entirety. The use of the gTLD ".com" does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Marks enjoy a degree of inherent distinctiveness that makes a coincidental adoption by the Respondent highly unlikely. The Complainant submits that the Respondent has not been given permission to use the Marks, in a domain name or otherwise, and that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Marks, is

commonly known by the Marks or by the disputed domain name or has chosen to use the Marks in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a legitimate noncommercial or fair use of it.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "[...] a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed".

Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the disputed domain name was registered many years after the Marks were registered and accepts that the disputed domain name was chosen by reference to the Marks.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Marks is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Marks when it registered the disputed domain name.

The Panel therefore finds in the circumstances of this case that the Respondent's registration of the disputed domain name was in bad faith since the Respondent registered the disputed domain name in order to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's Marks.

The disputed domain name is also being used in bad faith. Although the disputed domain name does not currently resolve to a website, the Panel finds that the disputed domain name is being used in bad faith under the doctrine of passive holding.

Section 3.3 of the [WIPO Overview 3.0](#) states that relevant factors to finding bad faith in passive holding include:

- “(i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;
- (iii) the respondent's concealing its identity [...], and
- (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel notes that the Marks are distinctive of the Complainant and further notes that the Respondent has not participated in these proceedings or sought to explain its registration and use of the disputed domain name, but has sought to conceal its identity through a privacy service. Furthermore, noting the composition of the disputed domain name there is no conceivable use of it by the Respondent that would not be illegitimate, and therefore there is no basis for the Panel to conclude that the Respondent's use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Marks.

The Panel determines that the Respondent has registered and is using the disputed domain name 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 <jetblueforgood.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: June 22, 2022