

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / Normandy Carpet, Tristate Enterprise
Case No. D2022-2319

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Normandy Carpet, Tristate Enterprise, United States.

2. The Domain Name and Registrar

The disputed domain name <ameriairways.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on August 15, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a United States based company first established over 90 years ago in Fort Worth Texas and initially operating eighty small airlines. Much has changed since then. American Airlines (often referred to as “AA” and “AAL”) is one of the world’s most successful airlines, with regional partners and affiliates operating over 7,000 daily international and domestic flights serving as many as 350 destinations in 50 countries.

The Complainant is the owner of trademark registrations for its AMERICAN, AMERICAN AIRLINES, USAIR, and US AIRWAYS marks. The earliest of the Complainant’s AMERICAN marks was registered with the United States Patent and Trademark Office (USPTO) on August 23, 1949. The Complainant’s trademark registrations include among the following:

- AMERICAN AIRLINES, U.S. Trademark Reg. No. 0514294, applied for and registered August 23, 1949;
- AMERICAN AIRLINES, U.S. Trademark Reg. No. 1845693, applied for and registered July 19, 1994;
- AMERICAN AIRLINES, U.S. Trademark Reg. No. 4939082, applied for and registered April 19, 2016;
- AMERICAN (stylized), U.S. Trademark Reg. No. 5288639, applied for and registered September 19, 2017;
- USAIR, U.S. Trademark Reg. No.1243867, applied for and registered June 28, 1983;
- USAIR (stylized), U.S. Trademark Reg. No. 3940948, applied for and registered April 5, 2011; and
- US AIRWAYS (stylized), U.S. Trademark Reg. No. 2360851, applied for and registered June 20, 2000.

UDRP panels in several decisions have recognized the Complainant’s AMERICAN AIRLINES and AMERICAN trademarks as well-known marks. See, e.g., *American Airlines, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues et al.*, WIPO Case No. [D2021-1093](#).

The disputed domain name was registered by the Respondent on January 27, 2022, according to the concerned Registrar’s Whois records. The Complainant submits that the disputed domain name has been used by the Respondent for an “imposter website” that features the Complainant’s marks.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to the Complainant’s well known and registered AMERICAN AIRLINES, US AIRWAYS, and USAIR marks. The Complainant attributes its success largely to investment in its brands and in intellectual property, emphasizing it has acquired global name recognition and goodwill during its 90-year history and is recognized as a household name. The Complainant maintains it is known for its AMERICAN AIRLINES, US AIRWAYS, and USAIR marks in numerous countries.

The Complainant asserts that its US AIRWAY and USAIR brands have acquired invaluable consumer goodwill as a result of the Complainant’s significant investment and continuous use of its brands. The Complainant observes that it owns and operates the domain name <USAAirways.com>, which redirects to the Complainant’s primary websites and also to other domain names incorporating “US Airways” or “USAir”. The Complainant adds that it holds common law rights for its AMERICAN and AMERICAN AIRLINES marks dating back as far as July 27, 1948, and in use since April 1934. The Complainant has used its AMERICAN AIRLINES website since as early as 1998.

The Complainant maintains that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant avers that the Respondent has not been commonly known by the disputed domain name, and has neither been authorized, licensed nor otherwise permitted by the Complainant to register or use the disputed domain name, which the Respondent asserts was registered in order to perpetrate a fraud on the public.

According to the Complainant, the Respondent has used the disputed domain name to divert Internet traffic to a website prominently displaying the Complainant's famous trademarks, with the intention of stealing unsuspecting login credentials from new users in order to defraud consumers.

The Complainant submits that the disputed domain name was registered by the Respondent in bad faith and has been used by the Respondent in bad faith. The Complainant concludes that the disputed domain name has been used by the Respondent with fraudulent intent to pass itself off as the Complainant's website, primarily for the purpose of disrupting the business of the Complainant, described by the Respondent as a "competitor".

The Complainant finds it is inconceivable that the Respondent could make any active use of the disputed domain name without creating a false impression of association with the Complainant, which the Complainant characterizes as "opportunistic" bad faith cybersquatting. The Complainant further considers that the Respondent clearly was aware of the Complainant's rights in its famous AMERICAN AIRLINE Marks when registering the disputed domain name. The Complainant also observes that the Respondent used a proxy service when registering the disputed domain name in order to shield its identity and elude legitimate enforcement efforts.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements to obtain a decision that the disputed domain name should be either cancelled or transferred:

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

Cancellation or transfer of the domain name is the sole remedy provided to the Complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a disputed domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a disputed domain name. Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the Respondent. Thus, the view is that the burden of production shifts to the Respondent to come forward with evidence of a right or legitimate interest in the disputed domain name, once the Complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's AMERICAN, AMERICAN AIRLINES, USAIR, and US AIRWAYS marks, in which the Complainant has established rights through registration and use. In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.¹ The threshold inquiry under the first element of the Policy involves a relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

The Complainant's AMERICAN, AMERICAN AIRLINES, USAIR, and US AIRWAYS marks (hereinafter referred to for convenience as the "AMERICAN AIRLINES marks") are recognizable in the disputed domain name.² Top-Level Domains ("TLDs") generally are disregarded when evaluating the identity or confusing similarity of the Complainant's mark to the disputed domain name under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.³

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a disputed domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainant's AMERICAN AIRLINES marks. The record nonetheless reflects the Respondent's registration of the disputed domain name followed by of the intentional use of the Complainant's marks within an "imposter website."

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

¹ See [WIPO Overview 3.0](#), section 1.7.

² *Id.*

³ See [WIPO Overview 3.0](#), section 1.11.2 and cases cited therein.

- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent 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 Respondent has not submitted a response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

It is evident to the Panel that the Respondent had the Complainant's AMERICAN AIRLINES marks firmly in mind when registering the disputed domain name. The record reflects that the Respondent in all probability registered the disputed domain name with the sole aim of exploiting and profiting from the Complainant's marks in an attempt to defraud consumers. The use of a domain name for illegal activity (e.g., phishing, impersonation, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13 and cases cited therein.

Having regard to the relevant circumstances in this case, and absent any explanation by the Respondent, the Panel finds that the Respondent has neither used nor demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of the disputed domain name. There is no indication that the Respondent at any time has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Accordingly, nothing in the record before the Panel supports a finding of the Respondent's rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Panel concludes that the Respondent had the Complainant's AMERICAN AIRLINES marks firmly in mind when registering the disputed domain name. The Respondent's registration and use of the disputed domain name as reflected in the record of this case is clearly demonstrative of bad faith. The Respondent sought to capitalize on the Complainant's trademark rights, creating a likelihood of confusion with the Complainant's AMERICAN AIRLINES marks, with the Respondent's ultimate objective being to profit illicitly from the perpetration of a fraud.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

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

/William R. Towns/

William R. Towns

Sole Panelist

Date: August 30, 2022