

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. Host Master, Transure Enterprise Ltd.
Case No. D2023-1113

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 Host Master, Transure Enterprise Ltd., United States.

2. The Domain Name and Registrar

The disputed domain name <psairline.com> (the “Disputed Domain Name”) is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 17, 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 (Above_privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 20, 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 March 22, 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 March 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 17, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on April 27, 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 the largest air carrier in the world and enjoys a reputation in the United States and internationally as a premier airline for business and leisure travelers.

PSA Airlines (“PSA”) is a wholly-owned subsidiary and regional carrier of the Complainant. PSA operates more than 800 daily flights to nearly 100 destinations and has more than 5,000 employees that provide regional flight services to the Complainant’s travelers.

The Complainant has extensively used the PSA trademark in commerce with travel related goods and services for over 70 years. To protect its significant investment, the Complainant (including through its predecessor) has registered the PSA trademark with the United States Patent and Trademark Office (“USPTO”). Specifically, the Complainant owns the following federal registration: PSA, United States Registration No. 1,105,789, registered on November 7, 1978, with a date of first use in commerce of May 5, 1949, in International Class 39 (hereinafter referred to as the “PSA Mark”).

The Complainant has also obtained trademark registrations for the PSA Mark in Canada (Registration No. TMA535515), registered on October 24, 2000, and Mexico (Registration No. 822712), registered on February 27, 2004. In addition to its registered rights in the United States, Canada and Mexico, PSA has strong common law rights in the PSA Mark by virtue of extensive use and promotion in commerce. As such, the PSA Mark serves as a unique source identifier for PSA’s transportation services. The Complainant has extensively used the PSA Mark on its website for PSA at “www.psaairlines.com” to provide information about the company and to promote job listings.

The Disputed Domain Name was registered on May 13, 2022, previously redirecting to a Norton AntiVirus website, where the Respondent would earn a commission through affiliate advertising programs, currently redirecting to a blank web page and, at certain times, randomly redirects Internet users to various third-party websites under a process known as dynamic redirection. According to the Complainant, the Disputed Domain Name had activated mail exchanger (“MX”) records, which could be used as part of a phishing scheme to impersonate the Complainant.

5. Parties’ Contentions

A. Complainant

The following are the Complainant’s contentions:

- the Disputed Domain Name is confusingly similar to the Complainant’s PSA Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's PSA Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the PSA Mark.

It is uncontroverted that the Complainant has established rights in the PSA Mark based on its many years of use as well as its registered and common law trademarks for the PSA Mark with the USPTO in the United States, and other jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the PSA Mark.

The Disputed Domain Name consists of the PSA Mark in its entirety followed by the term "airline", and then followed by the generic Top-Level Domain ("gTLD") ".com". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". The mere addition of the term "airline" to the Complainant's PSA Mark to create the Disputed Domain Name <psairline.com> cannot prevent a finding of confusing similarity. See *e.g.*, *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Disputed Domain Name is confusingly similar to the Complainant's PSA Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent

carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its PSA Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

The Respondent has never operated any *bona fide* or legitimate business with the Disputed Domain Name and is not making a noncommercial or fair use of the Disputed Domain Name. Rather, as the Complainant claims the Respondent was previously using the Disputed Domain Name to divert Internet traffic to a Norton AntiVirus website to earn a commission through an affiliate advertising program. Such use demonstrates neither a *bona fide* offering of goods or services under Policy paragraph 4(c)(i), nor a legitimate noncommercial or fair use of the disputed domain name under Policy paragraph 4(c)(iii). See *The Sportsman's Guide, Inc. v. JoyRide*, WIPO Case No. [D2003-0153](#) (redirecting Internet users to a resolving website by a disputed domain name that is confusingly similar to the Complainant's mark to earn a commission does not constitute a *bona fide* commercial use).

Moreover, the Panel finds that the nature of the Disputed Domain Name, comprising the Complainant's PSA Mark and the term "airline" related to Complainant's business, carries a risk of implied affiliation and cannot constitute fair use here, as it effectively suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

The Panel notes the composition of the Disputed Domain Name reproducing the Complainant's PSA Mark in its entirety together with the term "airline" which is a term connected to the Complainant's field of business. The Panel also notes, the Complainant operates the domain name <psairlines.com>, which is almost identical to the Disputed Domain Name.

Based on the circumstances here, the Respondent registered and used the Disputed Domain Name in bad faith to target the Complainant's PSA Mark for commercial gain.

Specifically, the Panel finds that the Respondent targeted the Complainant and its PSA Mark because the Respondent had actual knowledge of the PSA Mark, which is reproduced in its entirety with the term "airline" when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Because the PSA Mark had been used for 70 years before the Respondent registered the Disputed Domain Name, it strains credulity to believe that the Respondent had not known of the Complainant or its PSA Mark at that time. The Respondent's awareness of the Complainant and its PSA Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's PSA Mark and to disrupt the Complainant's business. Such conduct indicates that the Respondent registered the Disputed Domain Name in bad faith. Noting the redirection of the Disputed Domain Name the Panel finds that the Respondent registered and used the Disputed Domain Name in bad

faith in an attempt to attract Internet users to a website or online location by creating a likelihood of confusion with the Complainant's PSA Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name.

Second, the Panel notes at certain point the Disputed Domain Name has led to a blank page, and the Panel concludes that the non-use of the Disputed Domain Name does not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3.

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine 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 concealment of its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Based on the above, the Panel has taken into consideration the following factors in arriving at a finding of bad faith registration and use: (i) the Complainant's trademark had been used for decades prior to the Respondent's registration of the Disputed Domain Name; (ii) the Respondent appears to have taken pains to conceal its identity by using a privacy or proxy registration service; (iii) the Respondent has not submitted a response in the proceeding; (iv) the Disputed Domain Name currently randomly redirects Internet users to various third-party websites, also resolving to a blank page, and previously redirected to a Norton Antivirus website likely to earn a commission through an affiliate advertising program; (v) the Complainant provided evidence that the Respondent has active MX records for email use, which evidences a potential for phishing or fraudulent email communications; and (vi) the Respondent registered a domain name that incorporates the trademark of a well-known company, with the Complainant operating an almost identical domain name. The Panel therefore finds that the Disputed Domain Name has been registered and used in bad faith.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <psairline.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: May 9, 2023