

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. 杨智超 (Zhichao Yang)  
Case No. D2023-1315

### **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 杨智超 (Zhichao Yang), China.

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

The disputed domain name <aainfliht.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 31, 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 the first amended Complaint in English on April 6, 2023. The Complainant filed a second amended Complaint in English on April 17, 2023.

On March 31, 2023, the Center sent an email communication to the Parties in English and Chinese regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on April 6, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaints 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 in English and Chinese of the Complaint, and the proceedings commenced on April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 12, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 25, 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 an airline carrier. It owns multiple trademark registrations in multiple jurisdictions, including Chinese trademark registrations for semi-figurative marks featuring the letters "AA", registered under numbers 616410, registered on October 30, 1992, and specifying goods in class 16. That trademark registration remains current. The Complainant has registered various domain names, including <aainflight.com> that it uses in connection with a website where customers can purchase WiFi services and obtain access to the Complainant's in-flight entertainment content.

The Respondent is an individual based in China. According to evidence presented by the Complainant, at least 66 panels in previous proceedings under the Policy have found that the Respondent registered and was using domain names in bad faith.

The disputed domain name was registered on February 16, 2023. It resolves to a landing page displaying Pay-Per-Click ("PPC") links for attorneys, among other things. According to evidence provided by the Complainant, the disputed domain name is listed on a domain name broker's website for sale with an asking price of USD 688.

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

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

The disputed domain name is confusingly similar to the Complainant's AA mark. It is almost identical to the Complainant's domain name <aainflight.com>.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. 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. The Respondent has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent is using the disputed domain name to intentionally attract Internet users to the Respondent's website and PPC advertising for the purposes of commercial gain, causing disruption of the Complainant's business and creating a likelihood of confusion regarding source, sponsorship, affiliation, or endorsement. The Respondent has listed the disputed domain name for sale for USD 688, which is clearly far in excess of the Respondent's investment in the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin characters and resolves to a landing page in English, whereas the Complainant has no familiarity with Chinese and translation would create unnecessary costs and delay.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### 6.2 Analysis and Findings

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

- (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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

#### A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the semi-figurative AA mark referred to in section 4 above, among others. Given that the figurative element of that particular mark (a stylized eagle in flight) does not overtake the textual element of that mark (“AA”) in prominence, and given that the figurative element cannot be reflected in a domain name, the Panel will not take the figurative element into account in the comparison between the disputed domain name and the AA mark for the purposes of the first element of paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.10.

The disputed domain name wholly incorporates the textual element of the Complainant's AA mark as its initial element. The disputed domain name adds the word "in" and a misspelt version of the word "flight" (*i.e.*, "flihht") but the textual element of the AA mark remains clearly recognizable within the disputed domain name. See [WIPO Overview 3.0](#), section 1.8.

The only other element in the disputed domain name is the generic Top-Level Domain ("gTLD") ".com". As a standard requirement of domain name registration, this element may be disregarded in the comparison between a domain name and a trademark, unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent has] acquired no trademark or service mark rights; or
- (iii) [the Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a landing page displaying PPC links related to attorneys, among other things. The Complainant submits that it has not authorized, licensed, or otherwise permitted the Respondent to register and/or use the disputed domain name. The PPC links on the Respondent's landing page operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked sites, or for the commercial gain of the operators of the linked sites, or both. This is not a use of the disputed domain name in connection with a *bona fide* offering of goods or services. Nor is it a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent's name is listed in the Registrar's Whois database as "杨智超 (Zhichao Yang)", which does not resemble the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

In summary, 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 he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The first and fourth of these are as follows:

- (i) circumstances indicating that [the Respondent has] registered or [the Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is 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;
- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location.

With respect to registration, the Panel observes that the disputed domain name was registered in 2023, years after the registration of the Complainant's AA mark, including in China, where the Respondent is based. The disputed domain name incorporates the textual element of the AA mark as its initial element, combined with "in" and "flihht", which is a misspelling of "flight". There appears to be no reason to register the disputed domain name other than to approximate the Complainant's domain name <aainflight.com>, which indicates an awareness of the Complainant, its AA mark, and its domain name. The Respondent does not offer any explanation as to why he chose to register the disputed domain name. Therefore, the Panel has reason to find that the Respondent deliberately chose to register the disputed domain name in bad faith.

With respect to use, the Panel notes that the disputed domain name resolves to a landing page displaying PPC links while it is advertised for sale on a broker's website for the price of USD 688. The Panel considers it more likely than not that this price is in excess of the Respondent's costs directly related to the disputed domain name, which has no apparent value other than as a misspelling of the Complainant's domain name. These circumstances indicate 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 or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. Accordingly, the Panel finds that the facts of this case fall within the circumstances set out in paragraph 4(b)(i) of the Policy.

In addition, the disputed domain name appears to be intended to operate by attracting Internet users searching for the Complainant's in-flight services who accidentally mistype its <aainflight.com> domain name in a browser and divert them to the Respondent's landing page displaying PPC links. For the reasons given in section 6.2B above, this use is for commercial gain. Accordingly, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's landing page, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's landing page within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <aainflihht.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: June 1, 2023