

## **ADMINISTRATIVE PANEL DECISION**

LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A. v. 雪林  
Case No. D2023-1492

### **1. The Parties**

The Complainant is LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A., Luxembourg, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is 雪林, China.

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

The disputed domain names <luxairtours.online>, <luxairtoursportal.com>, and <luxairtours.work> are registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 6, 2023, 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 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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on May 23, 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**

According to information in the Complaint, the Complainant is the national airline of Luxembourg, and it operates scheduled services to many destinations over the world with additional charter and seasonal services. The Complainant has been active for over 60 years in four aviation-related activities: passenger air transport, tour operating, airport services and air freight handling. The Complainant offers fast air service to most of Europe's largest cities, business centers and international hubs.

The Complainant has registered various trademarks consisting of or including LUXAIR or LUXAIRTOURS, such as the LUXAIR European Union Trade Mark No. 001348986 (word), registered on December 12, 2000, or the LUXAIRTOURS International trademark No. 1030715 (figurative), registered on January 13, 2010. The Complainant is the owner of the domain name <luxair.com> registered on February 24, 1998.

The disputed domain name <luxairtours.online> was registered on February 21, 2023, the disputed domain name <luxairtoursportal.com> was registered on March 11, 2023, and the disputed domain name <luxairtours.work> was registered on February 22, 2023. According to the evidence in the case file, at the date of the Complaint, the disputed domain names <luxairtoursportal.com> and <luxairtours.work> resolved to identical websites featuring the Complainant's LUXAIRTOURS trademark and requesting personal data as username and password to log in. The websites also appeared to be used in connection with promotion of a LuxairTours platform which would pay funds and commission to members who completed their daily tasks, while the disputed domain name <luxairtours.online> did not resolve to an active website. At the date of the Decision, all three disputed domain names resolve to inactive websites.

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

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

The Complainant argues that the disputed domain names <luxairtours.online> and <luxairtours.work> are identical to the LUXAIRTOURS trademarks of the Complainant. The disputed domain name <luxairtoursportal.com> is highly similar to the LUXAIRTOURS trademarks of the Complainant, as it entirely includes the said trademark combined with the descriptive term "portal" that can lead the customers to believe that they are actually visiting an official website. Therefore, the additional term "portal" emphasizes the confusion with the Complainant's trademarks.

As regards the second element, the Complainant submits that it has not licensed or otherwise authorized the Respondent to use its trademarks or to apply for any domain name incorporating the said trademarks. According to the Complainant, the Respondent has neither made a legitimate or fair use of the disputed domain names. The Respondent has used without authorization the figurative trademark LUXAIRTOURS and logo of the Complainant on the websites at the disputed domain names <luxairtoursportal.com> and <luxairtours.work>.

With respect to the third element, the Complainant contends that two of the disputed domain names, <luxairtours.work> and <luxairtoursportal.com> resolve to identical websites prominently featuring the Complainant's trademarks and logo. The two disputed domain names are being used in connection with a fraudulent scam designed to attract consumers into believing that they are on the Complainant's website, requesting personal data as users and password, in order to mislead and probably obtain illegally personal information about these consumers. The third disputed domain name, <luxairtours.online>, is not actively used, but it is obvious that it has been registered with the same intention of bad faith and it is used in bad faith as it reproduces the Complainant's trademark LUXAIRTOURS. Moreover, the Complainant has filed other UDRP complaints against the Respondent, all decided in its favour. The Respondent has registered more than 467 domain names that included well-known trademarks, which confirms again the Respondent's bad faith.

## B. Respondent

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

## 6. Discussion and Findings

No response has been received from the Respondent in this 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. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain names are identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the LUXAIRTOURS trademarks by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain names. It is well established that the generic Top-Level Domain ("gTLD") may be ignored when assessing the confusing similarity between the disputed domain names and the Complainant's trademarks as they are viewed as a standard registration requirement. Only the second-level portion of the disputed domain names is taken into consideration. See section 1.11.1 of the [WIPO Overview 3.0](#).

The disputed domain names <luxairtours.online> and <luxairtours.work> incorporate the LUXAIRTOURS trademark in its entirety without any addition. They are, therefore, identical to the LUXAIRTOURS trademark in which the Complainant has rights.

The disputed domain name <luxairtoursportal.com> consists of the LUXAIRTOURS trademark, in addition to the term "portal" and the gTLD ".com". The addition of "portal" does not prevent a finding of confusing similarity with the Complainant's trademark. 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 another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel 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 names. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain names.

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 names 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 LUXAIRTOURS, and that the Respondent has no legitimate reason to acquire the disputed domain names. There is no evidence that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

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 names. The Respondent failed to rebut that *prima facie* case because she did not respond to the Complainant's contentions.

Furthermore, the nature of the disputed domain names is inherently misleading, and cannot constitute a fair use as they effectively impersonate or suggest sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

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**

Under paragraph 4(a)(ii) of the Policy, the Complainant must prove that the disputed domain names were registered and are being used in bad faith.

According to the un rebutted assertions of the Complainant, its LUXAIRTOURS trademarks were widely used in commerce well before the registration of the disputed domain names, and are reputed. The disputed domain names are identical or confusingly similar to the Complainant's trademarks. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademarks at the registration dates of the disputed domain names.

As regards the use of the disputed domain names, the Panel accepts the Complainant's evidence, which the Respondent has not disputed, that the Respondent used the disputed domain names <luxairtoursportal.com> and <luxairtours.work> to resolve to identical websites featuring the Complainant's LUXAIRTOURS trademark and requesting personal data as username and password to log in. The website also appeared to be used in connection with promotion of a LuxairTours platform which would pay funds and commission to members who completed their daily tasks. Such use is likely to mislead Internet users looking for the Complainant's products or services. Accordingly, the Panel finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of her website or of a product or service on her website (paragraph 4(b)(iv) of the Policy).

Based on the case record, the disputed domain name <luxairtours.online> has never resolved to an active website. The fact that the websites at all three disputed domain names are currently inactive does not preclude a finding of bad faith, nor does it detract from the Respondent's bad faith. "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 concealing 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 domain name may be put." (Section 3.3 of the [WIPO Overview 3.0](#)).

The following factors were considered by the Panel as indicative of bad faith registration and use of the disputed domain names: (i) the Respondent's failure to respond to the Complaint, even though awarded a possibility to do so; (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain names; (iii) the well-known character of the Complainant's trademarks.

Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Also, as noted above, the Panel has concluded that the Respondent had knowledge of the Complainant's trademark at the time of registration of the disputed domain names. The Respondent provided no explanations why she registered the disputed domain names.

Also, there is a pattern of abusive registration by the Respondent, as the unrebutted evidence in the case file shows that the Respondent was involved in other UDRP proceedings where similar factual situations caused the concerned UDRP panels to decide in favor of the Complainant (see *LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A. v. 雪林, Cheng XIAN*, WIPO Case No. [D2023-0437](#)). 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".

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

## 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 names <luxairtours.online>, <luxairtoursportal.com>, and <luxairtours.work> be transferred to the Complainant.

*/Mihaela Maravela*

**Mihaela Maravela**

Sole Panelist

Date: June 6, 2023