

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-1712

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 Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <icanairlines.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 21, 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 April 21, 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 April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 22, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on June 17, 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 a large, global air carrier, established over 90 years ago. Together with its affiliates, it now serves more than 360 destinations in nearly 50 countries with almost 7,000 flights daily. Since 1934, the Complainant's primary trading style has been AMERICAN AIRLINES, which it has protected by trade mark registrations in many countries. These include, by way of example only, United States service mark, registration number 4,939,082, in classes 35, 37, 39, 41 and 43, registered on April 19, 2016.

The disputed domain name was registered on November 1, 2022. The Respondent has established a subdomain at the disputed domain name with the term "amer", so that the domain name which includes the subdomain is <amer.icanairlines.com> (referred to below as the "composite disputed domain name"). Save for the period following the added term "amer", the composite disputed domain name thereby equates to the Complainant's AMERICAN AIRLINES mark. As at the date of filing the Complaint, the disputed domain name and the composite disputed domain name have resolved on a rotating basis to third party websites containing content unconnected with the Complainant. In the case of the disputed domain name, these have included a news website, a website giving tips on how to flirt and, more recently a third party website which invites the Internet users to play an online gambling game. The composite disputed domain name has redirected to a website inviting Internet users to a competition to "Find a \$750 Cash App Gift Card" and, more recently to the same gambling website referred to above. The disputed domain name is offered for sale on a third party website at a price of USD 1,749.

The Complainant has produced evidence that the Respondent has been the subject of numerous adverse decisions by prior UDRP panels relating to the registration by her of domain names which incorporate or comprise well-known third party trade marks.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name and, in particular, that;

- the disputed domain name is identical or confusingly similar to the Complainant's AMERICAN AIRLINES trade mark. In this respect, it is appropriate to take into account the fact that, save for the period following the subdomain, the composite disputed domain name matches the Complainant's mark and it was evidently the Respondent's intention to capitalize on this identity in order to confuse Internet users; see *Valero Energy Corporation, Valero Marketing and Supply Company v. Adda Abang*, WIPO Case No. [D2021-0036](#);
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. Specifically, there is no evidence that the Respondent is commonly known by the disputed domain name or that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods and services, or that the Respondent has been authorized or otherwise permitted by the Complainant to register and use the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. The Respondent acquired the disputed domain name in order to divert Internet traffic intended for the Complainant to websites featuring advertising for unrelated goods and services. Such conduct falls within the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy. Moreover, the registration of a domain name so

closely connected with the Complainant suggests opportunistic bad faith. Additionally, the offering for sale of the disputed domain name for a sum in excess of the Respondent's investment relative to it constitutes a further basis for a finding of bad faith registration and use. Lastly, the previous decisions by prior UDRP panels against the Respondent establishes that the Respondent has engaged in a pattern of bad faith registration and use of domain names, including the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark 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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. At first blush, whether the relevant portion of the disputed domain name, that is "icanairlines" is confusingly similar to the Complainant's AMERICAN AIRLINES mark may seem borderline. However, as is evident from, for example, *Valero Energy Corporation, Valero Marketing and Supply Company v. Adda Abang* (supra) and *MGLM Holdings B.V. v. Yungu Jo, DOMAIN-FOR-SALE---*, WIPO Case No. [D2021-3826](#), prior UDRP panels have found that, for the purpose of applying the test for confusing similarity under the first element, it can be material to compare the complainant's mark with the composite sign produced by the subdomain and domain name in issue. On this basis, the Panel finds that the disputed domain name is, at least, confusingly similar and arguably identical, to the Complainant's mark. For this reason, based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Whilst the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Specifically, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2. In particular, the uses which the Respondent is making of the composite disputed domain name have been to capture and likely monetize traffic from Internet users who will have been looking for the Complainant's website but have mistyped its name into their browser. Such uses are plainly not *bona fide*;
- there is no evidence that the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy, and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not 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 trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Accordingly, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant has established the widespread and established repute of its AMERICAN AIRLINES mark to the extent that the Panel finds that the Respondent cannot have been unaware of the Complainant's mark as at the date of registration of the disputed domain name. Prior UDRP panels have regularly found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith; see section 3.1.4 of the [WIPO Overview 3.0](#) and, by way of example, *Verkada, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Teresa Swanzy*, WIPO Case No. [D2021-0484](#).

The Panel considers that the record of this case reflects that:

- Internet users aware of the Complainant's AMERICAN AIRLINES mark who accidentally mistyped the composite disputed domain name into their web browser will almost certainly have been seeking the Complainant's website. Whilst they are soon likely to realize the lack of any connection between the Respondent's website and the Complainant, nonetheless, the Respondent will by then have had the opportunity to seek to derive financial benefit from their visit. In this respect see, for example, (in the context of pay-per-click links) *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#). Irrespective of the content of the website to which the disputed domain name resolves, it is the

confusing similarity between the disputed domain name, particularly the composite disputed domain name, and the Complainant's mark which will have attracted Internet users to it. Such conduct falls within the circumstance of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website;

- having regard to the fact that the disputed domain name is offered for sale at a price of USD 1,749, which is very likely substantially in excess of the Respondent's costs of acquisition, and that the only likely parties who may be interested in acquiring it are the Complainant or a competitor of it, the Panel finds also that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor of the Complainant, for valuable consideration likely in excess of its documented out-of-pocket costs directly related to the disputed domain name;
- lastly, the evidence the Complainant has adduced of numerous adverse decisions by prior UDRP panels relating to the registration by the Respondent of domain names which incorporate or comprise well-known third party trade marks the Panel further finds that the circumstance of bad faith registration and use fall within paragraph 4(b)(ii) of the Policy, namely that the Respondent has registered the disputed domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, and the Respondent has engaged in a pattern of such conduct.; see the [WIPO Overview 3.0](#), section 3.1.2.

In the light of the findings above, based on the available record, the Panel finds the third element of the Policy has been established.

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 <icanairlines.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: July 1, 2023