

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. mengdan qian

Case No. D2023-2461

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 mengdan qian, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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 (DT) / Dynadot Privacy Service”) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 23, 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 June 26, 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 July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on August 9, 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, American Airlines, Inc., is one of the largest air carriers in the world and has a more than 90-year history. According to uncontested figures communicated by the Complainant, prior to the COVID-19 pandemic, the Complainant and its affiliates served over 350 destinations in over 50 countries, with nearly 7,000 daily flights.

The Complainant's activities are protected through the following trademarks among many others:

- AMERICAN AIRLINES, United States Registration No. 0514294, with first use in April 1934, filed on July 27, 1948, registered on August 23, 1949, regularly renewed since then, and designating services of class 39,
- AMERICAN AIRLINES, United States Registration No. 5573314, filed on September 8, 2017, registered on October 2, 2018, and designating products and services of classes 25 (with first use on February 1, 1987), 28 (with first use on February 1, 1987) and 36 (with first use on May 2, 2000).

The Complainant is also the owner of the <americanairlines.com> and <aa.com> domain names, respectively registered on April 7, 1998, and January 2, 1998. They are notably used to redirect to a website providing information about the Complainant's services and enabling consumers to book flights and to manage their reservations. In this respect, the Complainant uses the subdomain <prefunds.aa.com> to redirect to pages where its customers can request refunds related to cancelled airline flights and follow-up their processing.

The disputed domain name, <prefundsamericanairlines.com>, was registered on April 3, 2023. It resolves to a parked website that displays pay-per-click links mainly promoting investment and trading services.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name. In substance, its main arguments are as follows:

The Complainant contends that the disputed domain name is confusingly similar to its AMERICAN AIRLINES trademark, because it reproduces the later, and the added elements do not prevent it from being recognizable.

Then, the Complainant claims that the Respondent has no rights or legitimate interests in respect with the disputed domain name because i) the Respondent is not commonly known by the AMERICAN AIRLINES trademark and does not hold any trademark for the disputed domain name, ii) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, on the contrary he is using the disputed domain name to divert Internet traffic to a website that contains pay-per-click links which presumably generate affiliate revenue for the Respondent when they are clicked by Internet users, iii) The Complainant has not authorized, licensed, or consented to the Respondent's registration and use of any domain name incorporating the Complainant's trademark, or any confusingly similar variation thereof.

At last, the Complainant argues that the disputed domain name has been registered and is being used in bad faith notably because i) the AMERICAN AIRLINES trademark is well known and the disputed domain name is closely connected with the latter, ii) the Respondent acquired the disputed domain name to divert Internet traffic to a website garnering pay-per-click links or affiliate advertising revenue for the Respondent's commercial gain, what is causing disruption of the Complainant's business and creating a likelihood of confusion regarding source, sponsorship, affiliation, or endorsement, iii) several prior UDRP decisions have already ordered the transfer of the domain names that were held by the Respondent, including in a case having involved the Complainant, therefore the Respondent is engaged in a pattern of bad faith registrations

and use of domain names targeting well-known marks, iv) the Respondent has constructive knowledge of the AMERICAN AIRLINES trademark because of the Complainant's trademark registrations, v) the Respondent has also used a proxy service to register the disputed domain name to shield his identity and elude enforcement efforts by the legitimate trademark owner.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three 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.

Besides, paragraph 15(a) of the Rules provides that “[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”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

It results from the documents supporting the Complaint, and in particular from Annex 9 to the Complaint, that the Complainant is the owner of trademark registrations for AMERICAN AIRLINES, notably those detailed in section 4 above.

Turning to whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark [...], the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

This test is satisfied here, as the disputed domain name identically reproduces the AMERICAN AIRLINES trademark in its entirety, and the added element, “prefunds”, does not prevent the Complainant's trademark to be recognizable in the disputed domain name.

Indeed, there is a consensus view among UDRP panels that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the Policy (see [WIPO Overview 3.0](#), section 1.8).

Besides, the generic Top-Level Domains may be ignored for the purpose of assessing the confusing similarity, because they play a technical function (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required 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 burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its AMERICAN AIRLINES trademark in a domain name registration or in any other manner. Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Furthermore, the disputed domain name resolves to a parked page displaying sponsored links, what amounts to a commercial use. It appears not only that the AMERICAN AIRLINES trademark is well known worldwide (see for example *American Airlines, Inc. v. Selina Day*, WIPO Case No. [D2023-2463](#), *American Airlines, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2023-1683](#), and *American Airlines, Inc. v. Ramadhir Singh, WhoisGuard Protected, WhoisGuard, Inc. / Reema Gupta, Ballu Balwant, Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Lucy Lionel, Lucy99, Red Keep*, WIPO Case No. [D2021-0294](#)), but also that the sponsored links displayed on the page to which the disputed domain name resolves promote activities in which the Complainant intervenes (*i.e.*, investment and financial services, which are protected through the Complainant's AMERICAN AIRLINES, United States Registration No. 5573314 covering services of class 36 and used since May 2, 2000). Consequently, the Panel considers that this commercial use of the disputed domain name unduly capitalizes on the value of the Complainant's trademark and misleadingly diverts consumers given the closeness between the Complainant's trademark and the disputed domain name.

In view of all the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden of production now shifts to the Respondent to show that it does have some rights or legitimate interests. The Respondent, which has not replied to the Complainant's contentions, has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel notes that:

- the use of the AMERICAN AIRLINES trademark predates the registration of the disputed domain name by almost 90 years;
- the Complainant has accrued substantial goodwill and worldwide recognition in its AMERICAN AIRLINES trademark;

- the disputed domain name identically reproduces the Complainant's trademark;
- the presence of the term "prefunds" as part of the disputed domain name and the constructions of the latter mimics the pattern of the Complainant's subdomain <prefunds.aa.com> dedicated to the processing of the refunds related to cancelled airline flights;
- the disputed domain name is being used for commercial gain, as it resolves to a website featuring pay-per-click links;
- these pay-per-click links promote services competing with part of the Complainant's activities, what creates a likelihood of confusion given the closeness of the disputed domain name with the Complainant's trademark;
- a dozen of UDRP decisions have already pronounced the transfer of domain names that were hold by the Respondent, included in a case having involved the Complainant (see *American Airlines, Inc. v. Super Privacy Service LTD c/o Dynadot / Mengdan Qian*, WIPO Case No. [D2021-4086](#)).

These elements clearly show that the Respondent was aware of the existence of the Complainant's AMERICAN AIRLINES trademark when he registered the disputed domain name and that he is using the disputed domain name to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's prior rights.

Therefore, this case squarely falls within the scope of paragraph 4(b)(iv) of the Policy, namely: "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."

In addition, as the Respondent is engaged in a pattern of registering trademark-abusive domain names, the present case also belongs to the situation encompassed by paragraph 4(b)(ii) of the Policy, namely: the Respondent has "registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name".

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning 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, <prefundsamericanairlines.com>, be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: August 23, 2023