

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. qu kang

Case No. D2023-2502

### **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 qu kang, China.

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

The disputed domain name <aaccareers.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2023. On June 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 12, 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 June 16, 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 in English on June 21, 2023.

On June 16, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 21, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 14, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on August 1, 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 an airline for business and leisure travelers. The Complainant and its affiliates serve over 360 destinations in nearly 50 countries, with nearly 7,000 daily flights.

The Complainant is the owner of a wide range of trade mark registrations for marks that incorporate the AA, “american”, and/or “american airlines” elements in different jurisdictions, including United States Trade Mark Registration No. 514292 for AA registered on August 23, 1949; United States Trade Mark Registration No. 2356861 for AA registered on June 13, 2000; China Trade Mark Registration No. 616416 for AA registered on October 30, 1992 and China Trade Mark Registration No. 7236315 for AA.COM registered on November 14, 2011.

The Complainant is also the owner of several domain names incorporating the “aa”, “american” and “american airlines” elements, including <aa.com> and <americanairlines.com>.

The Respondent is qu kang, China.

The disputed domain name was registered on November 2, 2022. At the date of this Decision, the disputed domain name does not resolve to any active website. At the time of filing of the Complaint, the disputed domain name resolved to a website in English indicating that a web server was installed but not configured.

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

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

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's AA mark and domain name <aa.com>. The disputed domain name incorporates the Complainant's AA mark in full. The additional term “ccareers” is an intentional misspelling of the term “careers” which directly describes the Complainant's career information and increases the likelihood of confusion. Further, the generic top-level domain (“gTLD”) “.com.” fails to produce a domain name distinct from the Complainant's mark.

The Complainant further alleges that the Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name. Further, the disputed domain name is being passively held by the Respondent as no content is posted on the disputed domain name other than a page showing that a web server was installed but not configured.

The Complainant finally asserts that the Respondent registered and is using the disputed domain name in bad faith. Although no content is being displayed on the disputed domain name, the passive holding of the disputed domain name that incorporates the Complainant's well-known AA mark constitutes evidence of bad faith registration and use of the disputed domain name. Further, the Complainant claims that the disputed domain name has an active mail exchange (MX) record which evidences a likelihood of additional bad faith use of the disputed domain name e.g., through phishing or fraudulent email communications.

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

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

## 6. Discussion and Findings

### 6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the disputed domain name contains English words in Latin script, rather than Chinese script;
- (b) the disputed domain name contains the Complainant's AA mark, which consist of English letters and strongly associated with the Complainant's well-known airline based in the United States; and
- (c) as the Complainant's counsel has no familiarity with reading and writing in the Chinese language, conducting the proceedings in Chinese would add unnecessary cost to the Complainant and delay the proceedings.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below.

- (a) the Complainant is a company based in the United States. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the Respondent's choice of English letters/word for the disputed domain name indicates some familiarity with the English language;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request, but the Respondent did not comment on the language of the proceeding and did not object against the Complainant's request for English to be the language of the proceeding;
- (d) the Respondent has failed to participate in the proceeding even though the Center sent the notification of the Complaint in English and Chinese; and
- (e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

## 6.2 Substantive Issues

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the AA mark.

The Panel notes that the AA mark is wholly encompassed within the disputed domain name and remains easily recognizable. The positioning of the AA mark makes it instantly recognizable as the most distinctive element of the disputed domain name. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Moreover, the additional word "ccareers" (which is an intentional misspelling of the term "careers") does not preclude a finding of confusing similarity between the AA mark and the disputed domain name. It is accepted by previous UDRP panels that the addition to the complainant's trade marks of words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not affect the finding of confusing similarity of the disputed domain name from the registered trade mark under the first element of the Policy. Accordingly, the additional word "ccareers" does not affect the confusing similarity between the disputed domain name and the Complainant's AA mark. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel also notes as indicated in Section 4 above that the Complainant has the domain name <aa.com>.

Lastly, it is permissible for the Panel to ignore the gTLD, in this case ".com", under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's mark. Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests, Registered and Used in Bad Faith

In this instance, the Panel finds that the facts and circumstances of the case would benefit from the second and third elements of the Policy being assessed together.

In circumstances where a complainant has established a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name the burden of production shifts to the respondent. Where the respondent fails to demonstrate that it has rights or legitimate interests in the disputed domain name, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made a *prima facie* case by showing that the disputed domain name is confusing similar to its AA mark, and that it has not authorised, licensed, or otherwise permitted the Respondent to use the AA mark or register and/or use the disputed domain name.

The Complainant's AA mark had been registered well before the registration of the disputed domain name. Through use and advertising, the Complainant's AA mark is known throughout the world. Search results using the terms "aa" on the Internet direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the AA mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's AA mark when registering the disputed domain name or has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *eBay Inc. v. Renbu Bai*, WIPO Case No. [D2014-1693](#); *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that the “mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith”. In this case, the disputed domain name incorporates the Complainant’s widely known AA mark, thus creating a presumption of bad faith.

The Panel finds the previous passive holding and current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considered the reputation of the Complainant’s AA mark, as well as the Respondent’s failure to respond in the face of the Complainant’s allegations of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

The Respondent has kept silent in the face of the Complainant’s allegations of bad faith. While this fact does not automatically result in a decision in favor of the Complainant, the Respondent’s failure to file a formal response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true. See *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#).

On balance, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the Respondent does not possess rights or legitimate interests in the disputed domain name and that the disputed domain name was registered and is being used in bad faith. If the Respondent had filed a formal response justifying the choice of the disputed domain name, the conclusion could have been different.

Accordingly, the Panel finds that the Complainant has satisfied the second and third elements under 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, <aaccareers.com>, be transferred to the Complainant.

*/Rachel Tan/*

**Rachel Tan**

Sole Panelist

Date: August 15, 2023