

ADMINISTRATIVE PANEL DECISION

AeroTurbine Inc. v. chris chill

Case No. D2023-2726

1. The Parties

The Complainant is AeroTurbine Inc., United States of America (“United States”), represented by Stradling Yocca Carlson & Rauth, United States.

The Respondent is chris chill, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <aeroturbinesinc.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 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 July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 7, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on August 21, 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 provider of maintenance, repair, and overhaul (“MRO”) services and consultative repair solutions for military engines and accessories on certain aircraft platforms and has been continually providing these services under the AERO TURBINE name and mark since at least as early as January 1, 1998.

The Complainant is the owner of the domain name <aeroturbineinc.com>, as well as of the following trademark applications:

- United States trademark application No. 98046992, for AERO TURBINE INC. and device, filed on June 16, 2023, claiming first use in commerce on January 1, 1998, in class 37;
- United States trademark application No. 98047025, for AERO TURBINE INC. and device, filed on June 16, 2023, claiming first use in commerce on January 1, 2021, in class 37; and
- United States trademark application No. 98047046, for AERO TURBINE, filed on June 26, 2023, claiming first use in commerce on January 1, 1998, in class 37.

The disputed domain name was registered on January 19, 2023, and presently does not resolve to an active webpage. The disputed domain name has been used in connection with a fraudulent email scheme in which the Respondent sought to impersonate the Complainant and contacted the Complainant’s customers (Annexes 3 and 4 to the Complaint).

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant’s trademark, corporate/trade name, and primary domain name, being the Complainant’s trademark recognizable in the disputed domain name and the addition of an “s” at the end of the word turbine is not capable of lessening the confusion, what is further corroborated by the use made of the disputed domain name in connection with fraudulent emails sent to customers of the Complainant also reproducing the Complainant’s logo (Annexes 3 and 4 to the Complaint).

Also according to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name given the attempt to impersonate the Complainant in a fraudulent scheme to confuse those in the aircraft industry.

The Complainant thus contends that the registration of the disputed domain name was done clearly in bad faith given that the Respondent intentionally registered the disputed domain name in order to deceive the public at large and to misguide them; being the Respondent unequivocally aware of the Complainant in view of the fraudulent emails sent unduly reproducing the Complainant’s logo in an attempt to impersonate the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

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. 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.

The disputed domain name incorporates the Complainant's trademark (not to mention, corporate/trade name and primary domain name) with a typo adding the letter "s" to the term "turbine". This is a typical case of typosquatting, which is designed to confuse Internet users, and does not prevent a finding of confusing similarity. As section 1.9 of the [WIPO Overview 3.0](#) states, "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element." (The fact of this being a typo of the relevant mark also bears on the second and third elements.)

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.

While 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 such as those enumerated in the Policy or otherwise.

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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [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 trademark or service mark at issue. 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.

Moreover, panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent used the disputed domain name in an attempt to pass off as the Complainant reproducing the Complainant's logo in fraudulent email messages to customers of the Complainant.

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As to the present inactive use of the dispute domain name, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the composition of the disputed domain name and the implausibility of any good faith use to which the disputed domain name may be put and finds that in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; and (ii) the indication of what appears to be a false or incomplete address.

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, <aeroturbinesinc.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 4, 2023