

## ADMINISTRATIVE PANEL DECISION

Airbus SAS v. Ben Riecken  
Case No. D2023-3842

### 1. The Parties

The Complainant is Airbus SAS, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Ben Riecken, United States of America (“United States”).

### 2. The Domain Name and Registrar

The disputed domain name <a320guide.com> is registered with Tucows Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 14, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 15, 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 (Contact Privacy Inc. Customer 0139699845) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 September 28, 2023. The Respondent sent an informal communication to the Center on September 29, 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 September 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2023. The Response was filed with the Center on October 19, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on October 25, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is a French company operating in the aerospace field, and owning several trademark registrations worldwide for A320, in the name of its indirect 100 per cent subsidiary Airbus Operations GmbH, among which the following ones:

- International Trademark Registration No. 573867 for A320, registered on July 15, 1991;
- United Kingdom Trademark Registration No. UK00001388469 for A320, registered on November 19, 1993;
- United States Trademark Registration No. 1,959,463 for A320, registered on March 5, 1996.

The Complainant also operates on the Internet, its main website being “www.airbus.com”.

The Complainant has provided evidence in support of the above.

According to the Whois record, the disputed domain name was registered on March 25, 2015, and it resolves to a website on which unauthorized Airbus A320 training materials are offered for sale.

On June 8, 2023, the Complainant’s representative sent a cease-and-desist letter to the Respondent, to which an exchange of emails with the Respondent’s representative followed with no result.

#### **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 its trademark A320.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website on which unauthorized Airbus A320 training materials are offered for sale, as a “bait and switch” use of the disputed domain name, and where the presence of a disclaimer about the Respondent’s lack of a relationship with the Complainant further demonstrates the Respondent’s awareness of the users’ confusion that can arise from the website at the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark A320 is well known in the aerospace field. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website, disrupting the Complainant's business and creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied all the elements required under the Policy for a transfer of the disputed domain name and therefore requests the denial of the relief requested in the Complaint.

Notably, the Respondent acknowledges that the term A320 is a trademark owned by the Complainant in relation to a specific aircraft model. However, the Respondent asserts that this aircraft model is universally referred to solely by the term A320, and therefore the use of it in the disputed domain name is a need for unequivocal clarity, instead of any intention to infringe the Complainant's rights.

Moreover, the Respondent asserts that no professional pilot would consider the materials provided on the website at the disputed domain name as official training manuals: it is clear to the relevant public that the only authoritative manuals for the operation of a transport category aircraft are those sanctioned by the manufacturer or the airline as the employing operator, while professional pilots may, at their discretion, procure additional educational materials that are secondary and can never replace the official manuals. To corroborate this assertion, the Respondent encloses two sworn affidavits from licensed aviators who attest to their clear understanding of the Respondent's website provenance and autonomous nature.

The Respondent contends that its prominent display of a disclaimer banner on the website at the disputed domain name, explicitly stating that there is no affiliation with the Complainant, is not an admission of guilt as the "bait and switch" modus operandi suggested by the Complainant, but a conscientious effort to ensure unequivocal clarity for the users.

The Respondent submits to have registered the disputed domain name in good faith as the relevant website serves to disseminate knowledge regarding the Airbus A320 and bolster aviation safety.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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.

### **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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here the term “guide”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name, but instead is offering for sale unauthorized Airbus A320 training materials, as a “bait and switch” use of the disputed domain name.

The *prima facie* case presented by the Complainant is enough to shift the burden of production of evidence to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name.

As mentioned above, the Respondent claims to have registered the disputed domain name for disseminating knowledge regarding the Airbus A320 and bolstering aviation safety. The Respondent’s business is comparable to that of unauthorized resellers (of goods).

According to the current state of UDRP decisions in relation to the issue of resellers as summarized in the [WIPO Overview 3.0](#), section 2.8.1:

“[...] resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the ‘Oki Data test’, the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;

(iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and

(iv) the respondent must not try to 'corner the market' in domain names that reflect the trademark."

This summary is based on the UDRP decision in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

From an inspection of the Respondent's website at the disputed domain name, the Panel finds that the Respondent is actually offering for sale Airbus A320 training materials, and – at least on the evidence before the Panel – only Airbus A320 training materials, as the disputed domain name implies, not using the Complainant's trademark to "bait and switch" customers to other products and/or services: the Respondent appears to use the term A320 in a nominative fair use sense to refer to the Airbus A320, adding to it the descriptive term "guide". [WIPO Overview 3.0](#), section 2.8.2. The Panel expresses some concern that while the Respondent's website accurately and prominently explains that the Respondent is an independent entity and is not affiliated with the Complainant, this disclaimer may be removed with a single click and then no longer appears. Finally, and again based on the materials provided by the Parties, there is no evidence that the Respondent has monopolized relevant domain names.

The Panel also notes that a quick search online appears to bolster the Respondent's claim to be a pilot and shows a small handful of other (apparently self-published) airline industry-related publications.

At the same time, the Panel is mindful on the one hand of potential public safety implications of unauthorized publications in this field, and on the other hand of the potential utility of third-party training materials.

Insofar as the disposition of the present case under the terms of the Policy is concerned, in terms of the composition of the disputed domain name (the trademark plus the term "guide"), this case presents a scenario where the added term can be seen as suggesting endorsement or sponsorship of the brand owner, or not, depending on the broader case circumstances. See e.g., WIPO Case No. [D2022-0473](#), *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*. Here, the Panel is reluctant to find that the totality of case circumstances point to an impermissible use of the relevant mark.

Based on the available record therefore, the Panel finds that the second element of the Policy has not been established, and that the disposition of this case touches on matters that would require a fuller evidentiary record, and may be equally addressed by a court of competent jurisdiction.

### **C. Registered and Used in Bad Faith**

Although the Panel's finding under the above section 6.B would be sufficient to enable a decision to be reached in relation to this Complaint, the Panel also finds that there is no evidence that the disputed domain name has been registered and used in bad faith.

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

(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the respondent has] registered 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the 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".

The Complainant claims the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent is trying to attract, for commercial gain, Internet users to its website, disrupting the Complainant's business and creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. On the other hand, the Respondent submits that the disputed domain name was not registered and is not used in bad faith, since the Respondent's website at the disputed domain name serves to disseminate knowledge regarding the Airbus A320 and bolster aviation safety, with no possible confusion with the Complainant's trademark and official training manuals, as corroborated by the two annexed sworn affidavits from licensed aviators, who attest to their clear understanding of the Respondent's website provenance and autonomous nature.

The Panel does not find in the Complaint evidence supporting a finding or even an inference that the Respondent registered the disputed domain name as part of a plan to mislead Internet users for commercial gain. While it is true that the Respondent is attempting to attract consumers to its website for commercial gain, the Panel does not agree that it is doing so by creating a likelihood of confusion. To the contrary, the Respondent has taken steps to avoid confusion, using a clear and sufficiently prominent disclaimer at the top of every page on the website at the disputed domain name. [WIPO Overview 3.0](#), section 3.7.

The Panel also notes that the Complainant has not submitted any evidence of actual or likely confusion, such as anecdotal or survey evidence.

Because the Complainant has failed to establish the second element of the Policy and with no evidence in the available record that the Respondent has engaged in conduct that reveals a bad faith intention to create a likelihood of confusion with the Complainant's trademark, the Panel concludes that the Complainant has not established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: November 8, 2023