

ADMINISTRATIVE PANEL DECISION

Italia Trasporto Aereo S.p.A. v. hui min zhang
Case No. D2023-5117

1. The Parties

The Complainant is Italia Trasporto Aereo S.p.A., Italy, represented by Società Italiana Brevetti S.p.A., Italy.

The Respondent is hui min zhang, China.

2. The Domain Name and Registrar

The disputed domain name <alitaliabulgaria.com> (“Disputed Domain Name”) is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2023. On December 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 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 (unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 13, 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 December 15, 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 January 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 30, 2024.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on February 5, 2024. 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 an Italian airline which acquired the business, trademarks and domain names of Società Aerea Italiana S.p.A. (trading as “Alitalia”) in late 2021. Alitalia was the Italian flagship airline that has operated worldwide under the mark ALITALIA since 1947. As of November 2023, the Complainant serves 55 international destinations and is a member of the SkyTeam alliance.

The Complainant is the owner of several trademark registrations for the ALITALIA mark (the “Complainant’s Trademark”) in various jurisdictions, including, inter alia, European Union (“EU”) Trademark Registration No. 000900829 for ALITALIA registered on December 21, 1999 in Classes 37, 39, and 42; International Trademark Registration No. 378816 for  registered on May 6, 1971 in Classes 6, 12, 14, 16, 18, 20, 21, 24, 25, 26, 27, 34, 35, 37, 39, and 42 designating, inter alia, China, France, Germany, and Spain; and EU Trademark Registration No. 016049959 for ALITALIA registered on May 18, 2017 in Classes 3, 9, 12, 14, 16, 18, 20, 21, 24, 25, 26, 28, 30, 33, 34, 35, 37, 38, 39, 42, and 43.

The Complainant’s Trademark is fully incorporated in the Complainant’s domain name <alitalia.it> which was created in 1996 and resolves to the Complainant’s website.

The Disputed Domain Name was registered on September 7, 2023. At the time of the Complaint and when the Panel is rendering her decision, the Disputed Domain Name resolved to an inactive website. The Respondent appears to be an individual residing in China based on the information provided by the Registrar.

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 the following:

- (a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark as it incorporates the Complainant’s Trademark in its entirety. Combined with the country name “bulgaria”, the Disputed Domain Name has led to public confusion that the Disputed Domain Name is associated with the Complainant;
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any license or authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. There is no evidence of the Respondent’s use of, or demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods and services; and
- (c) The Complainant’s well-established, worldwide reputation and the extensive use of the Complainant’s Trademark indicate that the Respondent was or should have been aware of the Complainant’s Trademark prior to registering the Disputed Domain Name. Whilst the Disputed Domain Name does not resolve to an active website, the non-use does not prevent a finding of bad faith under the doctrine of passive holding.

The Complainant further contends that the Respondent has deprived the Complainant from registering the Disputed Domain Name, and the Respondent's concealment of his contact details adds to his bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove 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 by the Respondent 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.

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 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.

Although the addition of other term here, "bulgaria" 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.

The UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#).

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 Respondent's failure to file a 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 *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or be regarded as legitimate noncommercial or fair use.

Moreover, the composition of the Disputed Domain Name, which incorporates the Complainant's Trademark with the geographical term "bulgaria", carries a risk of implied affiliation as it effectively impersonates or suggests a connection with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

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 it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated the Complainant's Trademark in its entirety. As discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the Disputed Domain Name, 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.

The Panel finds that the Complainant has established the third element 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 <alitaliabulgaria.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: February 19, 2024