

ADMINISTRATIVE PANEL DECISION

Western Flyer Express, LLC v. Brian Henderson
Case No. D2024-0558

1. The Parties

Complainant is Western Flyer Express, LLC, United States of America (“United States”), represented by Jackson Walker, LLP, United States.

Respondent is Brian Henderson, United States.

2. The Domain Name and Registrar

The disputed domain name <westernflyersexpress.com> (the “Domain Name”) is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2024. On February 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 8, 2024, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on February 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 4, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 5, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 7, 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

According to the Complaint:

“Complainant is a freight transportation company headquartered in Oklahoma City. Complainant began in 1996 with just four trucks and four refrigerated trailers. Complainant now has a fleet of more than 1,000 trucks and 3,000 trailers and transports goods across the country. Complainant is the owner of a family of trademarks in connection with these services, including its house marks (collectively, the ‘WFX Marks’), some of which are registered in the United States.”

Complainant alleges that it has used the mark WESTERN FLYER EXPRESS to identify and distinguish its freight transportation services in commerce since 1996. In addition, Complainant alleges, it has used WESTERN FLYER XPRESS (omitting the first “e” in “express”) as a trademark in commerce since 2013.

Complainant holds various trademark registrations with the United States Patent and Trademark Office (“USPTO”), including WFX, USPTO Reg. No. 5,962,244, registered on January 14, 2020 in connection with “transportation of freight by truck” with a December 15, 1996 date of first use in commerce, and DRIVEWFX, USPTO Reg. No. 5,858,290, registered on September 10, 2019 in connection with “personnel recruitment for commercial truck drivers” with a February 10, 2014 date of first use in commerce.

Complainant owns the domain name <westernflyerexpress.com> and uses that domain name for its company email addresses.

Complainant owns the domain name <drivewfx.com> and uses that domain name to host a commercial website, which site uses the mark WESTERN FLYER XPRESS.

The Domain Name was registered on January 14, 2024. The Domain Name does not resolve to an active website. According to Complainant, however, the Domain Name is “affiliated with following webmail: mx1.hostinger.com (henceforth, the ‘Webmail).” Complainant states:

“An ‘MX record’ is the acronym for ‘mail exchange record.’ If a mail exchange exists, then it appears in the DNS records associated with that domain name; basically a technical entry on how email messages are routed.”

Complainant asserts further:

“MX records demonstrate the Webmail remains active and is, upon information and belief, continuing efforts to phish information from unsuspecting internet users and/or for use in active fraudulent email schemes.”

In addition, Complainant alleges that the Domain Name “is being used as a fraudulent and fictitious domain, allowing Respondent to pose as Complainant.” Complainant alleges that it “has received reports of transportation brokers being misled into believing the Disputed Domain Name and/or associated Webmail is affiliated with Complainant to be engaged as a carrier for various transportation loads.” According to Complainant:

“For example, on or about January 16, 2024, a transportation broker and innocent third party (“Victim #1”) emailed Complainant regarding the status of a load that Victim #1 believed Complainant was transporting. [...] Complainant had no record of the load and had not picked up the shipment. Instead, Victim #1’s communications about the shipment had been with Respondent, who had been using the email address ‘[...]@westernflyerexpress.com.’ After Respondent picked up the load, the truck’s GPS tracking system stopped working, and Respondent stopped all communications with Victim #1 shortly thereafter. Upon information and belief, Victim #1 never recovered the load from Respondent.”

Complainant annexes to the Complaint emails from brokers to Complainant to corroborate the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that Complainant holds rights in the unregistered trademarks WESTERN FLYER EXPRESS and WESTERN FLYER XPRESS through use demonstrated in the record, including on Complainant's commercial website. The Panel finds that the Domain Name is confusingly similar to those marks. Notwithstanding the extra "s" in "flyer," this typo does not overcome the fact that Complainant's marks are recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward to dispute Complainant's serious allegations or articulate some bona fide basis for registering the Domain Name. On the undisputed record, the Panel concludes that Respondent targeted Complainant's mark to impersonate Complainant and send fraudulent emails to Complainant's business partners. Such a use of the Domain Name is plainly illegitimate.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the “Rights or Legitimate Interests” section. The Panel finds, on this undisputed record and on a balance of probabilities, that Respondent had Complainant and its marks in mind when registering the Domain Name. This is clear from the fact that the Domain Name is being used to send bogus emails to Complainant’s business partners.

As discussed above, the Panel concludes that Respondent targeted Complainant’s mark in order to impersonate Complainant for commercial gain. This use of the Domain Name falls within the above-quoted Policy paragraph 4(b)(iv), and hence constitutes bad faith registration and use of the Domain Name.

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <westernflyersexpress.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 13, 2024