

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. John Mal, Mar Inc
Case No. D2024-1324

1. The Parties

The Complainant is American Airlines, Inc., United States of America (“United States” or “U.S.”), represented by Greenberg Traurig, LLP, United States.

The Respondent is John Mal, Mar Inc, United States.

2. The Domain Name and Registrar

The disputed domain name <aairlinesg.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 2024, 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 / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 2, 2024, 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 April 4, 2024.

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 April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 14, 2024.

The Center appointed Gary Saposnik as the sole panelist in this matter on May 16, 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, American Airlines, Inc., ("American" or "Complainant") is more than 90 years old, and one of the largest air carriers in the world for business and leisure travelers, in the United States and internationally. American and its affiliates serve over 350 destinations in over fifty countries, with nearly 7,000 daily flights.

The Complainant has used and continues to use its name American Airlines, and numerous trademarks and services marks, including AA, AMERICAN, and AMERICAN AIRLINES, and others, alone and in connection with other words and designs. The Complainant alleges that it has significantly invested in its brands, trade names, and other intellectual property, and that they are worth billions of dollars.

The Complainant has used the AA trademarks, both alone and in combination with other words and designs in connection with travel and transportation services, travel agency services and travel reservation services, along with numerous other goods and services.

The Complainant is the owner of multiple trademark registrations in the United States for the AA marks, many of which have achieved incontestable status. In addition to the U.S. registrations, the Complainant has obtained trademark registrations incorporating its AA mark in over 75 countries. The registrations include the following marks:

- AA, U.S. Registration No. 514292, registration date August 23, 1949, in class 39, for air transport of passengers and freight, first use date of December 1935.
- AA.COM, U.S. Registration No. 2339639, registration date April 11, 2000, in class 39 for transportation of passengers and cargo by air, first use date of February 5, 1998.
- AA with Eagle Design, U.S. Registration No. 514293, registration date August 23, 1949, in class 39, for air transport of passengers and freight, first use date of August 1946.

In addition to the certificates of registration for the above marks, the Complainant submitted a list of registrations in numerous countries around the world, including for AMERICAN AIRLINES, AMERICAN AIRLINES & Design or Stylized, AMERICAN AIRLINES in Chinese Characters, AA & Classic Eagle Design, AA & Scissor Eagle Design, AA & Scissor Eagle Design & American Airlines, AA (Stylized/Design), AA.COM, and AA.COM & Scissor Eagle Design.

The Complainant is the registrant of the domain names <aa.com> and <americanairlines.com>, which redirects to the Complainant's website "www.aa.com". The Complainant is the registrant of numerous other domain names incorporating the terms "American" and American Airlines". The Complainant's website features general information about American and traveling, along with allowing customers to book and coordinate travel reservations around the world. The Complainant's website also features information about American's leadership, including its current Chief Executive Officer, Robert Isom and current Chief Commercial Officer, Vasu Raja.

The Complainant submitted web analytics evidence showing that the Complainant's website has been ranked number one website in the world in the category of Air Travel. Evidence was also submitted reflecting that the Complainant is very active on social media, with over 2.6 million followers on Facebook and 1.6 million followers on X (formerly Twitter). The Complainant submits that AA marks have achieved worldwide fame and recognition. Numerous other UDRP panels have recognized that the AA Marks are well-known globally and that it is unlikely that anyone would be unaware of the Complainant and its marks.

The Respondent registered the disputed domain name <aairlinesg.com> on March 12, 2023. The Respondent is an individual living in Chicago, Illinois, United States. The Respondent has been using an email address with the disputed domain name, along with the name of Vasu Raja, Chief Commercial Officer of the Complainant, to masquerade as the Complainant. The Respondent, claiming to be Vasu Raja, Chief Operating Officer of the Complainant, has sent fraudulent email messages to Complainant's vendors and partners to elicit sensitive financial and account information and engage in fraudulent transactions. The disputed domain name does not currently resolve to content.

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.

The Complainant contends that Respondent's registration of the disputed domain name is identical or confusingly similar to the Complainant's mark, as it incorporates Complainant's AA mark in full, changing it only by combining it with the term "airlines", which directly describes Complainant's airline services, and adding the letter "g", and the generic Top-Level Domain ("gTLD") ".com" at the end.

The combination of "airlines" with the Complainant's AA mark, does not distinguish the disputed domain name but instead actually increases the likelihood of confusion, based on the direct association of those words with the Complainant's airline services.

The Complainant alleges that the Respondent, without the Complainant's authorization or consent, registered the disputed domain name which is confusingly similar and misappropriates Complainant's AA marks. 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.

The Respondent has never operated any bona fide or legitimate business under the disputed domain name and is not making protected noncommercial or fair use of the disputed domain name. Instead, the Respondent is using the disputed domain name to impersonate Complainant by creating email addresses on it which purport to be from Complainant's executive to send fraudulent email messages to Complainant's vendors and partners. The Complainant contends that there is no likely or conceivable legitimate purpose for which Respondent would need to send such email correspondence, and therefore the disputed domain name cannot be considered fair or legitimate.

The disputed domain name was registered long after the Complainant established its rights in its trademarks and service marks. The Respondent acquired and began commercially using the disputed domain name to impersonate the Complainant by creating email addresses on it which appear to be from the Complainant's executive, attempting to get Complainant's sensitive financial and account information and to engage in fraudulent transactions. The Complainant claims that this brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows the Respondent registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. Such use is considered evidence of Respondent's bad faith registration and use of the disputed domain name.

Additional factors of bad faith use and registration of the domain name include prior knowledge by the Respondent of the Complainant's rights. The fact that Respondent registered the disputed domain name incorporating its well-known AA mark is alone sufficient to give rise to the inference of bad faith, as prior UDRP Panels have found. See, e.g., *American Airlines, Inc. v. Registration Private, Domains by Proxy, LLC/Carolina Rodrigues et al.*, WIPO Case No. D2021-1093.

Complainant is not aware of any use of the AA Marks or "A Airlines" in connection with travel and transportation services or travel booking services, anywhere in the world other than in connection with Complainant.

B. Respondent

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

6. Discussion and Findings

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 Panel finds the AA mark is recognizable 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 terms, here "airlines" and the letter "g", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: impersonation/passing off of Complainant and a Complainant's executive for fraudulent purposes, or other types of fraud, can never confer rights or legitimate interests on a respondent. WIPO Overview 3.0, section 2.13.1.

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 registered the disputed domain name many years after the Complainant registered its AA marks. The Complainant's mark had achieved significant use, sales, and fame in the U.S. (where the Respondent is apparently located), as well as around the world. The Respondent then used the disputed domain name within emails attempting to fraudulently obtain funds and financial information from Complainant's vendors and partners.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. WIPO Overview 3.0, section 3.2.1.

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 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.

In addition to the passive holding of a well-known mark that the Respondent was aware of, Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off of the Complainant and its executive, to solicit fraudulent payment of funds or provide confidential financial information, constitutes bad faith. WIPO Overview 3.0, section 3.4. *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. D2016-2213.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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, <aairlinesg.com> be transferred to the Complainant.

/Gary Saposnik/

Gary Saposnik

Sole Panelist

Date: May 30, 2024