

ADMINISTRATIVE PANEL DECISION

American Airlines, Inc. v. daniel smith
Case No. D2024-1716

1. The Parties

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

Respondent is daniel smith, United States.

2. The Domain Name and Registrar

The disputed domain name <envoy-air.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2024. On April 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on April 25, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 29, 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 Respondent of the Complaint, and the proceedings commenced on May 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 23, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on May 29, 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

Complainant is a corporation organized in the State of Delaware, United States. Complainant is one of the world's largest airline companies doing business in many countries. Complainant's shares are publicly traded on the New York Stock Exchange under the ticker symbol AAL. Envoy Air, Inc. is a wholly owned subsidiary of American Airlines that operates as a regional air carrier within the United States using the trademark ENVOY. Complainant maintains a commercial website relating to employment at Envoy Air at the domain name <envoyair.com>.

Complainant is owner of registration for the word trademark ENVOY on the Principal Register of the United States Patent Trademark Office ("USPTO"), including registration number 4867612, registration dated December 8, 2015, in international classes 37 and 39, covering, inter alia, repair and maintenance of aircraft and related facilities. Complainant has provided evidence of additional registrations of the ENVOY trademark in jurisdictions outside the United States, including Canada, Mexico, the European Union, and under the Madrid System.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to the WhoIs database, the disputed domain name was created on April 1, 2024. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

Respondent has used the disputed domain name in connection with a search parking page that includes, inter alia, a link to "Cheap Tickets Flights", which further directs Internet users to search links for various air travel booking services. Complainant has provided evidence that Respondent established MX records associated with the disputed domain name.

There is no evidence on the record of this proceeding of any commercial or other relationship between Complainant and Respondent.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Complainant alleges that it owns rights in the trademark ENVOY and that the disputed domain name is confusingly similar to that trademark.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent registered the disputed domain name without Complainant's consent; (2) Respondent is not commonly known by the disputed domain name; (3) Respondent has not used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services; (4) Respondent registered the disputed domain name for the purpose of perpetrating a fraud on employees of Complainant.

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) long after Complainant registered its trademark Respondent acquired the disputed domain name to direct Internet traffic to competitive websites to garner pay per click (PPC) or affiliate advertising revenue; (2) the active MX records associated by Respondent with the disputed domain name evidence a likelihood of additional bad faith use of the disputed domain name to engage in fraudulent email or phishing communications; (3) Respondent's use of false contact information on its record of registration for the disputed domain name is evidence of bad faith; (4) Respondent was clearly aware of Complainant's well-known trademark when it registered the disputed domain name. Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent could not be completed because of an inaccurate physical address in Respondent's record of registration. There is no indication of difficulty in transmission of email notification to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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 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.

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 another term, here “-air”, 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 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Respondent has used the disputed domain name which is confusingly similar to Complainant’s trademark in connection with directing Internet users to a PPC parking page that includes links to services competitive with those with Complainant, namely selling of air travel tickets including for air carriers other than Complainant. Such use is not a bona fide offering of services as it takes unfair advantage of Complainant’s rights in its trademark.

Respondent’s registration and use of the disputed domain name does not otherwise evidence rights or legitimate interests.

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 Respondent registered the disputed domain name substantially following Complainant’s registration of its trademark and use in commerce. Respondent was manifestly aware of Complainant when it selected the disputed domain name as Respondent created a combination term specifically associating Complainant’s trademark with its line of business. Moreover, the disputed domain name is virtually identical to the domain name used by Complainant for its business, with the sole addition of a hyphen/dash.

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.

Complainant has used the disputed domain name in connection with what is presumably a PPC parking page that includes links to services competitive with those of Complainant, relying on Internet user confusion between Complainant's trademark and the disputed domain name. Respondent registered and is using the disputed domain name for commercial gain by creating Internet user confusion regarding an association between Complainant's trademark and the disputed domain name, suggesting that Complainant is the source, sponsor, affiliate or endorser of Respondent's website. Such conduct constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Respondent's creation of an MX record for purposes of enabling email transmission suggests that Respondent may intend to use the disputed domain name - which is virtually identical to the domain name used by Complainant in connection with its employee-directed website - for purposes of transmitting deceptive email taking improper advantage of Complainant's employees. Given the prevalence of this type of deceptive practice, and in the absence of any response by Respondent suggesting a legitimate reason for registering the disputed domain name, it is appropriate for the Panel to take a precautionary approach with respect to Respondent's conduct.

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy, including under paragraph 4(b)(iv).

The Panel finds that 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 <envoy-air.com> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: June 12, 2024