

ADMINISTRATIVE PANEL DECISION

Park 'N Fly Service LLC v. Sleshinsky Valentin Olegovich
Case No. D2024-1887

1. The Parties

The Complainant is Park 'N Fly Service LLC, United States of America ("United States"), represented by Neal, Gerber & Eisenberg LLP, United States.

The Respondent is Sleshinsky Valentin Olegovich, Belarus.

2. The Domain Name and Registrar

The disputed domain name <parknfly.discount> is registered with Reliable Software (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 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 (Reliable Software, d/b/a Hoster.by). and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 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 May 25, 2024.

On May 22, 2024, the Center informed the Parties in Russian and English, that the language of the registration agreement for the disputed domain name is Russian. On May 25, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint in both English and Russian, and the proceedings commenced on May 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on July 1, 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 Park 'N Fly Service LLC ("PNF") and its affiliates operate one of the largest airport parking and shuttle services in the United States, serving business and leisure travelers. PNF and its predecessors have used the PARK 'N FLY trademarks since 1967 in connection with their services.

The Complainant has evidenced to be the registered owner of numerous trademark registrations, containing the term PARK 'N FLY, including, but not limited, to the following:

- United States Registration No. 1,111,956, registered on January 23, 1979, for the word mark PARK 'N FLY, in class 39;
- United States Registration No. 2,666,170, registered on December 24, 2002, for the figurative mark PARK 'N FLY, in class 39;
- European Union Trade Mark No. 010637999, registered on July 9, 2012, for the figurative mark PARK 'N FLY, in class 39.

The Complainant also owns the domain name <parknfly.com>, registered on February 27, 2000, where they promote their services.

These trademarks and the domain name were registered before the disputed domain name, which was registered on July 6, 2023. The disputed domain name currently leads to an inactive webpage displaying a notice: "This Site is Suspended. The Domain Name you have entered is not available. It has been taken down as a result of dispute resolution proceedings pursuant to the Uniform Rapid Suspension System (URS)."

However, evidence provided by the Complainant shows that the disputed domain name previously redirected to a website displaying the PARK 'N FLY trademark and a logo similar to that of the Complainant. On this website, consumers were prompted to select an airport for parking and transportation services, then given the option to choose from multiple service providers. Upon selecting a provider, Internet users were redirected to "www.parkingnearairports.io" to complete their booking. Internet users were unable to reserve parking with the Complainant and could only book with other companies.

According to the Complainant, this indicates that the disputed domain name is a bait-and-switch scheme designed to divert traffic intended for the Complainant's website to the website "www.parkingnearairports.io". This scheme benefits the Respondent financially through commissions from these redirected bookings.

The Respondent, according to the disclosed Registrar's Whois information for the disputed domain name, is located in Belarus.

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 asserts that due to PNF's continuous and extensive promotion and use of the PARK 'N FLY trademarks in commerce, combined with the Complainant's sales success and reputation for quality, the PARK 'N FLY trademarks have gained significant recognition among consumers.

According to the Complainant, the disputed domain name is identical to the Complainant's trademark PARK 'N FLY as it incorporates the entire trademark. The use of the generic Top-Level Domain ("gTLD") ".discount" does not render the disputed domain name dissimilar to the Complainant's trademark. On the contrary, it increases the likelihood of confusion because consumers often seek discounts for PARK 'N FLY branded airport parking and transportation services. Furthermore, the Complainant requests that the Panel disregard the gTLD ".discount" under the first element, as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name since the Complainant has never licensed, contracted, or otherwise permitted the Respondent to apply to register the disputed domain name. Additionally, the Respondent was not using the disputed domain name in connection with a bona fide offering of goods or services, but to offer competing services and intentionally trade on the Complainant's PARK 'N FLY trademarks.

Furthermore, the Complainant asserts that the Respondent registered and was using the disputed domain name in bad faith, fully aware of the Complainant's PARK 'N FLY trademarks. Given the well-known status of the Complainant's trademark, the close resemblance of the disputed domain name, and the promotion of identical services with a similar logo and color scheme on the associated website, it is unlikely that the Respondent registered the disputed domain name without intending to exploit its similarity to the PARK 'N FLY trademarks.

Finally, the Complainant claims that its registrations of the PARK 'N FLY trademarks in the United States and other jurisdictions indicate that the Respondent had at least constructive knowledge of these rights when registering the disputed domain name. The Respondent's bad faith is further demonstrated by the use of a proxy service to conceal contact information and the refusal to respond to the Complainant's letter.

Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith, contrary to the Policy and the Rules.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Considerations

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise

in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English.

According to the Complainant, the Respondent's proficiency in English is demonstrated by their use of the word "discount" in the composition of the disputed domain name and by presenting the Respondent's website's content entirely in English. Therefore, conducting the proceedings in English would not prejudice the Respondent, while the Complainant would face undue hardship if the proceedings were conducted in Russian.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Panel notes that the Center has sent its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a response in either English or Russian or any objections to the Complainant's request that the proceeding be conducted in English.

The Panel is proficient in both English and Russian, capable of reviewing all the documents and materials in both languages and giving full consideration to the Parties' respective arguments.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive issues

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

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

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

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 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

The Respondent was using the disputed domain name to establish a website operating under a name and logo nearly identical to the Complainant’s trademark to offer services similar to those of the Complainant. Such use cannot be considered a *bona fide* offering of goods or services for the purposes of the Policy.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the PARK ‘N FLY trademark or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the PARK ‘N FLY trademark, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

Furthermore, the composition of the disputed domain name carries a risk of implied affiliation with the Complainant, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant, which cannot be considered fair use. [WIPO Overview 3.0](#), section 2.5.1.

Given that the Complainant has established a *prima facie* case under this element of the Policy, the burden of production shifts to the Respondent to present evidence of rights or legitimate interests in the disputed domain name. However, the Respondent has chosen not to engage in the administrative proceeding and has provided no submissions or evidence to support any claim of rights or legitimate interests.

Nevertheless, the Panel acknowledge that the disputed domain name consists of several dictionary words joined together and that conceivably, taken together, these might form a common phrase. While the Complainant’s mark is well-known in the United States, it does itself have something of a descriptive nature. The terms like “park”, “n” (a contraction of “and”), and “fly” are commonly associated with airport parking services and could be used by other companies. The Panel notes that if an Internet search engine is consulted in respect of the “Park ‘n fly” terms, it reveals that these terms are also used in connection with the airport parking services by other operators in Belgium, Canada, and India.

Given these facts, it is conceivable that the Respondent’s choice of name matching the Complainant’s trademark could be coincidental and may constitute a legitimate interest for the purposes of the Policy.

However, after reviewing the evidence submitted by the Complainant, the Panel finds it highly probable that the Respondent intended to trade off the Complainant’s rights. The Complainant has a substantial presence

in the United States, with an extensive network of off-airport parking services across the country. The website “[www.parkingnearairports.io](#)”, to which the disputed domain name redirected, is also active in the United States, making it highly implausible that the Respondent was unaware of the Complainant’s trademarks.

Moreover, when consumers visited the website which has been affiliated to the disputed domain name, they were prompted to select an airport for parking or transportation services. After selecting an airport, they had to choose a parking service provider and were then redirected to “[www.parkingnearairports.io](#)” to complete their booking. This indicates that the Respondent was not using the disputed domain name to promote its own services but rather to redirect Internet users to a competing site. Such use does not support a claim to rights or legitimate interests ([WIPO Overview 3.0](#), section 2.5.3).

Therefore, the Panel concludes that the Respondent intended to target the Complainant’s mark rather than make any legitimate use of the disputed domain name. Under these circumstances, the Panel finds that the Respondent has not rebutted the Complainant’s *prima facie* case on rights and legitimate interests. The requirements of paragraph 4(a)(ii) of the Policy have been satisfied.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith.

The Panel observes that the Complainant’s PARK ‘N FLY trademarks significantly predate the Respondent’s registration of the disputed domain name. The Complainant has a substantial presence in the United States, having developed an extensive network of off-airport parking services throughout the country. The website “[www.parkingnearairports.io](#)”, to which the disputed domain name redirected, is also active in the United States. Therefore, the Panel deems it highly implausible that the Respondent was unaware of the Complainant’s rights in the said trademarks. The Panel considers that with a simple Internet search, the Respondent could have easily discovered the existence of the Complainant. Therefore, the Respondent knew or should have known the Complainant’s trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Moreover, the redirection of the disputed domain name to the website offering competing similar services establishes actual knowledge and targeting of the Complainant and an intention to create a likelihood of confusion. Previous UDRP panels have found that under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. See *PayPal Inc. v. Jon Shanks*, WIPO Case No. [D2014-0888](#) and *Instagram, LLC v. Ingramer, Wiseway SIA* 40203255185 Case No. [D2021-4364](#) and [WIPO Overview 3.0](#), section 3.1.4.

Therefore, in the Panel’s view, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of the services on its website.

Finally, in this context, the fact that the Respondent’s website’s content was removed shortly after the Complainant sent a cease-and-desist letter to the Respondent and the holder of “[www.parkingnearairport.io](#)”, and the lack of response from the Respondent to the Complainant’s claims in these proceedings, were also considered by the Panel as indicators of the Respondent’s bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In the absence of any evidence to contend against the Complainant’s evidence and claims, this Panel accepts the Complainant’s evidence and finds that the Respondent has registered and used the disputed domain name, without the Complainant’s consent or authorization, for the likely purpose of capitalizing on the reputation of the Complainant’s trademarks to target the Complainant’s rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <parknfly.discount> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: July 15, 2024