

## **ADMINISTRATIVE PANEL DECISION**

Navitaire LLC v. Domain admin, Domain Sales - (Expired domain caught by auction winner)

Case No. D2024-2669

### **1. The Parties**

The Complainant is Navitaire LLC, United States of America (“United States”), represented by Ubilibet, S.L., Spain.

The Respondent is Domain admin, Domain Sales - (Expired domain caught by auction winner), Hong Kong, China.

### **2. The Domain Name and Registrar**

The disputed domain name <navitairenavigate.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (Privacy protected) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 5, 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 July 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on August 8, 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**

Headquartered in Minneapolis, Minnesota, United States, the Complainant is a company which specializes in serving technological solutions, products, and services to low-cost carriers and hybrid airlines internationally. By 2014, the Complainant reports that it served almost half of the top 30 such carriers. The Complainant also works with railway operators. The Complainant's reported revenues for the most recent financial period amount to USD 118.5 million. Since at least 2010, the Complainant has won industry awards, notably for innovation, and various certifications from the competent authorities.

The Complainant is the owner of United States Registered Trademark Number 2707647 for the word mark NAVITAIRE, registered on April 15, 2003, in Classes 9, 35, 39, and 42.<sup>1</sup>

On May 17, 2024, the Complainant filed an application for a further United States trademark, namely, the word mark NAVITAIRE NAVIGATE (serial number 98555992). Said mark has not yet proceeded to grant.

The disputed domain name was registered on May 17, 2024, and as of June 28, 2024, redirected to the domain name aftermarket website "www.dan.com", on which it is offered for sale at a "buy it now" price of USD 2,850.

#### **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 that the disputed domain name is identical to its trademark application in respect of NAVITAIRE NAVIGATE.

The Complainant asserts that it has not authorized, licensed, or allowed the Respondent to use its trademark in the manner that is being carried out through the disputed domain name or in any other way that, directly or implicitly, could lead to providing legitimacy to such use. The Complainant submits that there is no proof of any prior or actual utilization by the Respondent of the name "navitairenavigate" in association with a genuine offering of products or services, and there is no indication that the Respondent has been widely recognized by the term in the disputed domain name. The Complainant notes that the disputed domain name is listed for sale on a well-known domain marketplace site, adding that the disputed domain name redirects to this site, noting also that a search for the term "navitairenavigate" in a popular search engine yields no results other than those relating to the Complainant's company.

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<sup>1</sup>The Complainant did not cite this trademark in the Complaint. It provided details only of its pending trademark application, which would not confer standing upon it for Policy purposes. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.1.4. However, when reviewing said application on the official website, the Panel noted the Complainant's registered trademark and has added this to the factual background section. As the Panel considers that such mark is owned by the Complainant and is sufficient to confer standing for Policy purposes, it has proceeded accordingly. On the subject of the Panel performing its own research, such as consulting the website of the trademark office concerned, see the [WIPO Overview 3.0](#), section 4.8. The Panel did not put the outcome of such research to the Parties because said mark may be presumed to be within the Complainant's knowledge, and in the case of the Respondent, the mark is on the same national register as the applied-for mark cited by the Complainant.

The Complainant notes that the disputed domain name was registered immediately following the publication of the Complainant's trademark application for NAVITAIRE NAVIGATE, adding that it has been registered and used for the unique purpose of selling it. The Complainant asserts that the primary purpose of the sale is to target the Complainant or a competitor thereof, contending that the fact that it is offered for general sale does not obviate this. The Complainant submits that this constitutes registration and use in bad faith within the meaning of the Policy, noting that the purpose of the Policy is to deter individuals from opportunistically speculating in domain names closely resembling or associated with a registered and well-known trademark.

## **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 3.0](#), section 1.7.

As described in the factual background section above, the Panel has noted that the Complainant has rights in respect of the NAVITAIRE trademark 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 terms, here, "navigate" 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 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.

Notably, the Complainant has asserted that it has not authorized the Respondent to register the disputed domain name, and that there is no evidence that the Respondent is commonly known thereby. The Respondent is making commercial use of the disputed domain name by offering it for sale. The Complainant has also shown that the timing of the registration of the disputed domain name corresponds to the Complainant's application for a registered trademark in the term "NAVITAIRE NAVIGATE", suggesting that the Respondent is targeting the Complainant's nascent rights in such mark. The Respondent also appears to the Panel to be targeting the Complainant's existing registered rights in the mark NAVITAIRE. The Respondent has remained silent in the face of the Complainant's contentions regarding said nascent mark and has provided no evidence of any rights or legitimate interests which it might possess in the disputed domain name. In the absence of an appropriate rebuttal, and on the basis of the record before it, the Panel can conceive of no rights or legitimate interests that the Respondent might possess and could have asserted in the disputed domain name.

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 appears to have registered the disputed domain name on the same day as the Complainant filed a trademark application for the corresponding term. The term in the disputed domain name also represents an exact match of the Complainant's distinctive NAVITAIRE registered trademark along with an additional dictionary word. The Panel cannot conceive of any way in which the Respondent might have arrived at this term independently or without knowledge of the Complainant's rights, and the proximity in time between the filing of the Complainant's trademark (May 17, 2024, erroneously noted by the Complainant as April 17, 2024) and the registration of the disputed domain name (also May 17, 2024, erroneously noted by the Complainant as April 18, 2024) suggests otherwise.

The Panel considers that the disputed domain name was registered to capitalize on the Complainant's nascent (as yet unregistered) trademark rights in the term "NAVITAIRE NAVIGATE" following the Complainant's filing of a trademark application. [WIPO Overview 3.0](#), section 3.8.2. Furthermore, the first and dominant portion of the disputed domain name is an alphanumerically exact match for the Complainant's distinctive NAVITAIRE registered trademark. As noted in the preceding section, there is no evidence before the Panel suggesting that the Respondent might have come up with this term independently of knowledge of the Complainant's rights and without intent to target these.

The fact that the disputed domain name was offered for general sale shortly after its registration at an amount likely exceeding the Respondent's out-of-pocket costs constitutes circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling it to the Complainant who is the owner of the NAVITAIRE trademark or to a competitor thereof, for valuable consideration likely in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name in terms of the Policy, paragraph 4(b)(i). There is no evidence, for example, that the term "navitaire" whether coupled to the word "navigation" or not, is associated with any person or entity other than the Complainant.

Despite the Complainant's allegations of the Respondent's knowledge and targeting of its rights (and of its nascent rights) the Respondent has not come forward with any submissions or evidence tending to suggest that the disputed domain name was registered in good faith. In the absence of such, the Panel cannot conceive of any possible good faith motivation that the Respondent might have possessed regarding the registration and use of the disputed domain name.

The Panel notes for completeness that it has not overlooked the mention in the Respondent's registration data of the words "Expired domain caught by auction winner". There is no evidence before the Panel to

suggest that the disputed domain name is an expired domain name which has been acquired at auction. Even if there were, it would not alter the outcome of this administrative proceeding, given the clear targeting of the Complainant and its registered rights in the distinctive NAVITAIRE mark by the immediate offering for sale of the disputed domain name, and given that the value of the disputed domain name derives primarily from those rights.<sup>2</sup> In the absence of any suitable explanation by the Respondent, the Panel considers that the inclusion of this wording is merely a smokescreen to cover its contemporaneous targeting of the Complainant's corresponding trademark application.

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 <navitairenavigate.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: August 22, 2024

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<sup>2</sup>See also *Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#), "Where, as in this case, the drop-catching registrant fails to take any steps to determine if such rights exist, then the registrant is taking the risk that such rights do exist. Where such rights do exist, where the value of the domain name derives primarily from those rights, and where the registrant's only meaningful use of the domain name is to offer it for sale, then the registrant is liable to be considered as having registered the domain name primarily for the purpose of selling it to the person who has those rights."