

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2024-3354

### **1. The Parties**

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

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

The disputed domain name <anamericanairlines.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 15, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 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 August 20, 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 August 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 11, 2024.

The Center appointed Stefan Bojovic as the sole panelist in this matter on September 13, 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 is a US based airline and one of the largest air carriers in the world. The Complainant and its affiliates serve over 350 destinations in over 50 countries, with nearly 7,000 daily flights. Since 1934, the Complainant operates under the trademark AMERICAN AIRLINES.

The Complainant owns a number of trademark registrations throughout the world for its AMERICAN AIRLINES trademark, including in Panama, where the Respondent is purportedly located. In particular, the Complainant is owner of the following trademarks:

- US trademark registration No. 514294 for AMERICAN AIRLINES, registered on August 23, 1949;
- International trademark registration No. 1266184 for AMERICAN AIRLINES, registered on December 31, 2014; and
- Panama trademark registration no. 53214 for AMERICAN AIRLINES, registered on May 27, 1991.

The disputed domain name was registered on December 28, 2018, and it redirects to a rotating group of third-party websites with various content. The Respondent has also listed the disputed domain name for sale for a minimum offer of 899 USD.

#### **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 confusingly similar to its AMERICAN AIRLINES trademark, as it incorporates the Complainant's AMERICAN AIRLINES trademark in full, changing it only by adding a letter "n" to "american", in combination with the generic top-level domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent didn't have the authorization to register a domain name which is confusingly similar to the Complainant's AMERICAN AIRLINES trademark. The Respondent is not commonly known by 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 divert Internet traffic to a rotating group of websites, including fraudulent Chrome sites, which display notifications purportedly from the Chrome Web Store enticing visitors to install an extension to "enhance" the visitor's searching experience in an attempt to trick the visitor into clicking a button which will actually install malware on the visitor's computer. The Respondent has also listed the disputed domain name for sale on domain name sales and auction platform "www.sedo.com", with a minimum offer of 899.00 USD, a price that is well in excess of its out-of-pocket costs and while the Respondent was well-aware that the disputed domain name contains the Complainant's well-known trademark.

With reference to the circumstances evidencing bad faith, the Complainant states that the mere fact that the Respondent has registered a domain name that is confusingly similar to the Complainant's well-known trademark indicates opportunistic bad faith. Further, the Respondent's pattern of prior bad faith registration of domain names utilizing well-known trademarks in which the Respondent has no rights or legitimate

interests provides further evidence of the Respondent's bad faith registration and use of the disputed domain name in this case. There are an astonishing number (over 200) of prior UDRP decisions under the Policy against the Respondent, the vast majority of which concern the Respondent registering and using in bad faith domain names incorporating famous and well-known marks. In addition, there have been more than 10 panel decisions against the Respondent concerning the Complainant's marks. The attempt to sell a domain name consisting of a well-known trademark where the Respondent has knowledge of such trademark in excess of the Respondent's investment relative to the domain name constitutes bad faith registration and use of the disputed domain name. Long after the Complainant established its rights in its famous AMERICAN AIRLINES trademarks, and with knowledge of those marks, the Respondent acquired the confusingly similar disputed domain name to redirect Internet traffic to rotating group of websites, including a website purporting to be an offer from the Chrome Web Store to download a browsing extension in an attempt to get the user to click a button that will likely download malware on the user's computer. Such conduct demonstrates bad faith registration and use of the disputed domain name pursuant to the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy stipulates that the complainant must prove each of the following:

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

### **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 second-level domain ("SLD") of the disputed domain name "anamericanairlines" is very close to the AMERICAN AIRLINES trademark and the only difference is addition of the letter "n" in the disputed domain name between the letters "a" and "m". The addition of letter "n" in the disputed domain name is insufficient to prevent a finding of confusing similarity. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Therefore, the Panel finds the Complainant's AMERICAN AIRLINES trademark 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.

In addition, it is well established that “.com”, as a generic Top-Level Domain, can be disregarded in the assessment of the confusing similarity between the disputed domain name and the complainant’s trademark. [WIPO Overview 3.0](#), section 1.11.1.

The Panel, therefore, finds that 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.

The Panel notes that there seems to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s AMERICAN AIRLINES trademark. There appears to be no element from which the Panel could infer the Respondent’s rights and legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

On the contrary, the Respondent, who appears to be a serial cybersquatter involved in over 200 UDRP proceedings, has persistently registered domain names that target the Complainant and its AMERICAN AIRLINES trademark. In particular, the Respondent has so far been involved in more than 10 UDRP cases brought by the Complainant, all of which were decided in favor of the Complainant. Under such circumstances, it is difficult to imagine any legitimate interest on the Respondent’s side that would justify its actions.

Based on the undisputed evidence provided by the Complainant, the disputed domain name redirects to a rotating group of third-party websites with different content (including at least one website connected to malicious software). The Panel finds that such use of the disputed domain name cannot be considered as a bona fide offering of goods and services and, as a matter of fact, represents illegal activity. The panels have held that the use of a domain name for illegal activity (such as for distribution of malware as in this case) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel also takes into account the fact that the disputed domain name is offered for sale for the minimum amount of 899 USD. Although offer for sale is not illegitimate activity *per se*, the Panel concludes that in the present case such offer cannot be considered as a bona fide offering of goods and services, nor as a legitimate activity, having in mind all circumstances of this case.

Having in mind the above, 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.

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.

In the present case, the Panel notes that the Respondent must have been aware of the Complainant and its AMERICAN AIRLINES trademark, especially having in mind that the Respondent has repeatedly registered a number of domain names that contain this trademark and which were already subject to over 10 UDRP proceedings. The Respondent's UDRP record shows clear intent of targeting third-party trademarks and it is, therefore, highly unlikely that the Respondent decided to register a domain name containing the misspelled version of the Complainant's trademark without having the Complainant in mind when doing so. It should be also borne in mind that the first registration and use of AMERICAN AIRLINES trademark predates the registration of the disputed domain name by decades, making it unlikely that the Respondent was not aware of the Complainant's trademark at the time of registration of the disputed domain name.

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

As indicated above and based on the undisputed evidence provided by the Complainant, the disputed domain name redirects to a rotating group of third-party websites with different content, including at least one website connected to malicious software. Panels have held that the use of a domain name for illegal activity (here distribution of malware), constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In addition, the Panel deems that the Respondent has actually registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third persons for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. Having in mind that the disputed domain name is offered for sale for a minimum offer of USD 899 USD, the Panel holds that such excessive price is directly connected with the value derived from the Complainant's trademark and indicates clear intention of the Respondent to make an unfair benefit from the Complainant's trademark.

Therefore, The Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently 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 <americanairlines.com> be transferred to the Complainant.

*/Stefan Bojovic/*

**Stefan Bojovic**

Sole Panelist

Date: September 30, 2024