

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. Domain Privacy, Domain Name Privacy Inc.  
Case No. D2024-3741

### **1. The Parties**

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

The Respondent is Domain Privacy, Domain Name Privacy Inc., Cyprus.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2024. On September 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (Contact Privacy, Inc., Customer 0172209503) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 23, 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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

The Center appointed Torsten Bettinger as the sole panelist in this matter on October 23, 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 an air carrier located in the US. Envoy Air, Inc. (“Envoy”) is a wholly owned subsidiary of the Complainant.

The Complainant is the proprietor of registered trademarks incorporating the ENVOY mark in jurisdictions covering 36 countries, including:

- Canadian Trademark Registration No. TMA959729 ENVOY, registered on January 10, 2017;
- Canadian Trademark Registration No. TMA535540 ENVOY CLASS, registered October 24, 2000;
- Canadian Trademark Registration No. TMA535712 ENVOY LOUNGE, registered on October 25, 2000.

The disputed domain name was registered on August 25, 2024.

The Respondent is using the disputed domain name to divert Internet traffic to various third-party websites. Website visitors are re-directed to one of a number of rotating websites.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that Envoy Air, Inc (“Envoy”) is the largest regional carrier in the American Airlines Group, and that through Envoy, the Complainant operates more than 185 aircraft on 1,000 flights to over 150 destinations. The Complainant states that it has used the ENVOY trademark in commerce with travel related goods and services for almost 25 years and has a portal at <myenvoyair.com> for Envoy employees to manage their benefits and other aspects of their employment.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that:

- the disputed domain name consists of the ENVOY mark in its entirety changing the mark only by adding the term “mhy”,
- “mhy” is a misspelling of the generic term “my”,
- the generic term “air” directly describes the Complainant’s services,
- the addition of the terms “mhy” and “air” to the Complainant’s ENVOY mark does not distinguish the disputed domain name but instead increases the likelihood of confusion based on the direct association of that word with the Complainant’s airline and travel reservation services.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submitted that:

- the Respondent registered the disputed domain name without the Complainant’s authorization or consent;
- 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 a protected non-commercial or fair use of the disputed domain name;
- the Respondent is using the disputed domain name to divert Internet traffic to various third party websites to earn a commission through an affiliate advertising program and that website visitors are re-directed to one of a number of rotating websites;
- the Respondent has also listed the disputed domain name for sale for USD \$2,888.00 on GoDaddy;
- the Respondent's attempts to sell the disputed domain name well in excess of its out-of-pocket costs, while the Respondent was well aware it contains the Complainant's ENVOY mark, does not create rights and legitimate interests under the Policy.

Finally, with regard to the disputed domain name having been registered and being used in bad faith, the Complainant contends that:

- the Respondent acquired the disputed domain name long after the Complainant established its rights in its ENVOY Marks, and with knowledge of those marks, in order to divert Internet traffic intended for the Complainant to websites featuring advertising for unrelated goods and services through an affiliate advertising program;
- the Respondent's registration and commercial use of the disputed domain name in such a manner demonstrates registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy, because the Respondent is intentionally attempting to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites;
- the Respondent has also listed the disputed domain name for sale for USD 2,888.00 on GoDaddy, which is clearly far in excess of the Respondent's investment in the disputed domain name;
- the attempt to sell a domain name consisting of a trademark where the Respondent has knowledge of such trademark in excess of the Respondent's investment relative to the disputed domain name constitutes bad faith registration and use of the disputed domain name;
- the disputed domain name has active MX (mail exchange) records which evidences a likelihood of additional bad-faith use of the disputed domain name to engage in fraudulent email or phishing communications;
- at the time of registration of the disputed domain name, it is obvious that the Respondent had actual knowledge of the Complainant's ENVOY Mark;
- the Respondent's actual knowledge of the Complainant's ENVOY Mark is the entire reason behind the Respondent's registration of the disputed domain name.
- the mere fact that the Respondent has registered a domain name that incorporates the trademark of a well-known company is alone sufficient to give rise to an inference of bad faith;
- the Respondent use of a proxy service to shield its identity and elude enforcement efforts by the legitimate trademark owner demonstrates the Respondent's bad faith use and registration of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

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

## **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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain names are 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 "mhy", which is possibly a misspelling of the term "my", and the generic term "air", which describes the Complainant's services, may bear on the assessment of the second and third elements, the Panel finds the addition of "mhy " and "air" do not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy.

The Panel therefore 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.

Based on the record, the Respondent is using the disputed domain name to divert Internet traffic to various third-party websites through an affiliate advertising program. Furthermore, the Respondent also listed the disputed domain name for sale for USD 2,888.00 on GoDaddy.

The Panel considers it likely therefore that the disputed domain name has been registered for fraudulent purposes by means of typosquatting to direct Internet users who mistype "myenvoy" with a view to benefitting financially from affiliate marketing programs. In the Panel's view, such activity does not establish use of the disputed domain name in connection with a bona fide offering of goods or services and therefore does not give rise to rights or legitimate interests in respect of the disputed domain name.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

### **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 Complainant provided evidence of multiple trademark registrations for the ENVOY mark that predate the registration of the disputed domain name.

In light of the nature of the disputed domain name, comprising the entirety of the Mark with the addition of “mhy” and “air”, mimicking the Complainant’s <myenvoyair.com> domain name, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the disputed domain name.

Furthermore, as stated above, in the absence of any response by the Respondent, the Panel has no reason to doubt that the Respondent has used the disputed domain name for fraudulent purposes by means of typosquatting to direct Internet users who mistype “myenvoy” with a view to benefitting financially from affiliate marketing programs, and thus was intentionally attempting to attract Internet users to the Respondent’s website for commercial gain by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites.

The use of a domain name for such activity, in the view of the Panel, amounts to paradigm bad faith registration and use for the purposes of the Policy.

The Panel therefore 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 <mhyenvoyair.com> be transferred to the Complainant.

*/Torsten Bettinger/*

**Torsten Bettinger**

Sole Panelist

Date: November 7, 2024