

ADMINISTRATIVE PANEL DECISION

AIRLINK (PTY) LIMITED v. Derrick Smith and Bhaga Sarraf
Case No. D2024-3933

1. The Parties

The Complainant is AIRLINK (PTY) LIMITED, South Africa, represented by Adams & Adams, South Africa.

The Respondents are Derrick Smith, United States of America, and Bhaga Sarraf, India.

2. The Domain Names and Registrar

The disputed domain names <airlinkcr.com> and <airlinkexp.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 25, 2024. On September 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 26, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (AIRLINK EXPRESS COURIER SERVICES / Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 27, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint for the disputed domain name associated with different underlying registrant or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on October 2, 2024.

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 Respondents of the Complaint, and the proceedings commenced on October 4, 2024. In accordance with the Rules, paragraph


5, the due date for Response was October 24, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 25, 2025.

The Center appointed Áron László as the sole panelist in this matter on November 5, 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 privately owned regional airline based in South Africa. Its origins date back to the early 1990s. Initially having its corporate name as SA Airlink (Pty) Limited, the Complainant changed its name to Airlink (Pty) Limited in 1994. The Complainant has grown to become one of the largest privately owned regional airline in Southern Africa, operating on 47 routes in 15 different Southern African countries. Approximately 3 million passengers fly with the Complainant annually on approximately 75 000 flights. The Complainant's social media accounts have tens of thousands of followers. The Complainant's cargo division operates under the name "AIRLINK CARGO" and provides cargo services to approximately 40 destinations in Africa.

The Complainant is the proprietor of the trademarks AIRLINK (word) and SUNBIRD & SUN (device) which it has registered in numerous jurisdictions around the world as per the certificates attached to the Complaint, inter alia:

- AIRLINK (word) United Kingdom trademark No. UK00003312328, registered on October 19, 2018; and
-  (device) United Kingdom trademark No. UK00003312346, registered on August 17, 2018 (hereinafter, "SUNBIRD & SUN logo").

The Complainant owns the domain name <flyairlink.com>, registered on July 12, 2005, and operates its principal website offering information and services related to its flights at that domain name. The domain name <airlinkcargo.co.za> resolves to the subdomain of the same website. The website had 750,000 visitors per month in 2022.

The disputed domain name <airlinkexp.com> was registered to Derrick Smith on February 10, 2024, and the disputed domain name <airlinkcr.com> was registered to Bhaga Sarraf on February 13, 2024. The identities of both Respondents were masked by a privacy service.

The website at the disputed domain name <airlinkexp.com> advertised a purported global leader in domestic and international courier and logistics services, providing services in over 240 countries. The disputed domain name <airlinkcr.com> resolved to a website with almost identical content, both websites indicating that the company operating the websites was Airlink Express Courier. The websites displayed the Complainant's SUNBIRD & SUN logo in prominent positions. According to a letter of complaint from a third party, the said companies did not fulfill the orders.

According to the Complaint, following the Complainant's complaints to the web hosting company, the content of both websites was removed. As of the date of this Decision, the disputed domain names do not resolve to any website.

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 names.

In particular, the Complainant contends that the disputed domain names fully incorporate the Complainant's AIRLINK trademark. The inclusion of the letters "exp" and "cr" in the disputed domain names is not sufficient to distinguish the disputed domain names, in particular when "exp" can be understood as "express" and is therefore descriptive of the relevant services. The disputed domain names are significantly similar to the AIRLINK trademark, and the additional letters should not prevent a finding of confusing similarity, as the AIRLINK trademark remains recognizable and dominant within the disputed domain names (see, for example, *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#)).

The Complainant further contends that it is the owner of well established statutory and common law rights in the AIRLINK mark and that it has established substantial rights of use in the marks prior to the registration of the disputed domain names. Given the evidence of the Complainant's longstanding use and the manner in which the disputed domain names have been used, it is unlikely that the Respondents were unaware of Complainant's rights in the AIRLINK mark or its other marks at the time of registration of the disputed domain names. It is well established that rights or legitimate interests cannot be created if the owner of the domain name in question would not choose such a name unless he or she wanted to create a false impression of identification or association with the particular complainant (*Compagnie D'assurances Belair Inc. v. Merab*, WIPO Case No. [D2011-0562](#)).

There is no evidence that the Respondents have been or are commonly known by the name "Airlinx" or that they have acquired any rights in that mark. The burden of production shifts to the Respondents to rebut the Complainant's evidence in this regard, although the overall burden of proof remains with the Complainant (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); and *Statoil ASA ("Statoil") v. Anoop Chetty, Telas*, WIPO Case No. [D2017-1884](#)). If the Respondents fail to meet their burden, it should be accepted that they have no legitimate interests in the disputed domain names.

The Complainant contends that the Respondents have registered and are using the disputed domain names in bad faith. The Complainant became aware of the disputed domain names on July 15, 2024, through an email from an aggrieved consumer who had used the purported services offered at the disputed domain name <airlinkexp.com> to transport goods from Türkiye to Indonesia. The goods were never delivered by the company operating under the name Airlinx. The content of both websites under the disputed domain names was virtually identical and indicated that the entity operating the websites was AIRLINK EXPRESS COURIER SERVICES, also trading as Airlinx. Through both websites, consumers were induced to contact the Respondents to use their purported freight services at a cost of USD 650.

The use of the Complainant's trademarks on the fraudulent websites and in the names AIRLINK EXPRESS COURIER SERVICES and Airlinx was deliberately intended to impersonate the Complainant and to deceive the public into believing that the Respondents were the Complainant, or at least related to the Complainant, and were engaged in an international freight business. The Complainant has not authorized the use of the AIRLINK trademark or the SUNBIRD & SUN logo by any person, particularly in connection with the disputed domain names. The registration and use of the disputed domain names were also not authorized by the Complainant, and the disputed domain names are apparently being used to perpetrate a scam and to defraud unsuspecting consumers who have mistaken the disputed domain names and their respective websites for those owned and operated by the Complainant.

The Complainant had established significant rights and reputation in the AIRLINK trademark prior to the date of registration of the disputed domain names. Therefore, it is unlikely that the Respondents could have registered the disputed domain names without knowledge of the Complainant's rights and reputation in the marks and with good faith intentions. Indeed, the Respondents' attempt to impersonate the Complainant suggests that the Respondents are well aware of the Complainant's rights and that the Respondents have registered the disputed domain names with the intention of deliberately taking unfair advantage of the Complainant's rights and reputation in the AIRLINK marks. Although the content of the related websites has been removed, it is clear that the websites were created to intentionally divert consumers and Internet

traffic away from the Complainant's websites to the Respondents'. Given the existence of the disputed domain names, the Respondents are likely to use them in one way or another and to repeat their fraudulent activities. In addition, both Respondents have chosen to conceal their identities and could not be contacted directly.

B. Respondents

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by the respondent 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 domain name; and
- iii. the domain name has been registered and is being used in bad faith.

In view of the Respondents' failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a), and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

The Panel may accept all reasonable allegations set forth in a complaint. However, the Panel may deny relief where a complaint wholly contains mere conclusory or unsubstantiated arguments. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

Consolidation: Multiple Respondents

The amendment to the Complaint was filed with respect to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity, or mere alter egos of one another, or under common control. The Complainant requests consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Respondents have not commented on the Complainant's request.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are under common control; and (ii) consolidation would be fair and equitable to all parties. See [WIPO Overview 3.0](#), section 4.11.2.

With respect to common control, the Panel notes that the content of the Respondents' websites at the two disputed domain names which both incorporate the Complainant's AIRLINK trademark was virtually identical. Both websites promoted the services of a purported entity operating under the names Airlinx and Airlink Express Courier, and both websites used the Complainant's SUNBIRD & SUN logo in the same manner. The email addresses provided by the Respondents in the registration details for the disputed domain names bear no relation to their purported names. Therefore, there appears to be no likely explanation other than that a single person registered both domain names under different fictitious names.

With respect to fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any party.

Accordingly, the Panel decides to consolidate the disputes concerning the nominally different registrants of the disputed domain names (hereinafter referred to as “the Respondent”) into a single proceeding.

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 names. [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 Panel finds that the mark is recognizable within the disputed domain names. The mere addition of the elements “exp” and “cr” cannot prevent a finding of confusing similarity. Accordingly, the disputed domain names are confusingly similar 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.

Based on its review of the record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie case and has not provided any relevant evidence that it has rights or legitimate interests in the disputed domain names, such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity, here alleged impersonation/passing off and fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

There is no evidence, and the Respondent has not alleged, that the Respondent has been or is commonly known by the disputed domain names or that it has made a legitimate noncommercial or fair use of the disputed domain names. The use of the confusingly similar disputed domain names for websites displaying the Complainant’s trademark and SUNBIRD & SUN logo and advertising similar services as those provided by the Complainant cannot qualify as fair use.

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, given the reputation of the Complainant's AIRLINK mark prior to the date of registration of the disputed domain names, it is unlikely that the Respondent could have registered the disputed domain names without knowledge of the Complainant's rights. The mere addition of "exp" and "cr" at the end of the Complainant's well-known mark may not be noticed by inattentive Internet users. Moreover, the disputed domain names may mislead Internet users into believing that the disputed domain names are associated with the Complainant. Indeed, the Respondent's attempt to impersonate the Complainant by using the Complainant's AIRLINK trademark in the disputed domain names, and on the websites along with the SUNBIRD & SUN logo, together with an indication that the websites are operated by Airlink Express Courier, suggests that the Respondent was well aware of the Complainant's rights and registered the disputed domain names with the intent to intentionally take unfair advantage of the Complainant's rights in the AIRLINK trademarks. This conduct corresponds to paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegitimate activity, here, claimed as impersonation/passing off and fraud, constitutes bad faith.

Although the content of the related websites has been taken down, it is clear that the websites were created to intentionally divert consumers and Internet traffic away from the websites of the Complainant to the Respondent's. Panels have held that non-use of a domain name does not prevent a finding of bad faith under the passive holding doctrine. [WIPO Overview 3.0](#), section 3.3. Upon review of the record, the Panel finds that, given the distinctiveness or reputation of the Complainant's mark, the composition of the disputed domain names, and the website content previously linked to the disputed domain names, the passive holding of the disputed domain names does not preclude a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <airlinkcr.com> and <airlinkexp.com> be transferred to the Complainant.

/Áron László/

Áron László

Sole Panelist

Date: November 19, 2024