

ADMINISTRATIVE PANEL DECISION

Western Flyer Express, LLC v. Name Redacted Case No. D2024-3985

1. The Parties

Complainant is Western Flyer Express, LLC, United States of America (“United States”), represented by Jackson Walker, LLP, United States.

Respondent is Name Redacted. ¹

2. The Domain Name and Registrar

The disputed domain name <westernflyerexpress.com> (the “Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2024. On September 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (“REDACTED FOR PRIVACY”) and contact information in the Complaint. The Center sent an email communication to Complainant on October 1, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on October 1, 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”).

¹Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. A third party sent an email communication on October 8, 2024. The Center commenced the panel appointment process on October 29, 2024.

The Center appointed John C. McElwaine as the sole panelist in this matter on November 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

Complainant is a freight transportation company headquartered in Oklahoma City, Oklahoma, United States. Complainant asserts common law trademark rights in the WESTERN FLYER EXPRESS and WESTERN FLYER XPRESS marks dating back to 1996 and 2013, respectively. Complainant also provided evidence of registered trademarks, such as United States Registration No. 5,962,244 for WFX, registered on January 14, 2020.

The Domain Name was registered on September 23, 2024. The Domain Name resolves to a website displaying "We're under construction. Please check back for an update soon." The Domain Name is being used to send purportedly fraudulent emails impersonating Complainant's employees.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Complainant asserts common law trademark rights in the WESTERN FLYER EXPRESS and WESTERN FLYER XPRESS marks dating back to 1996 and 2013, respectively. To support these rights, Complainant has alleged extensive use of these trademarks in commerce for over 27 years, growing from four trucks to over 1,000 trucks and 3,000 trailers. Complainant asserts that these allegations demonstrate that it has established common law trademark rights in the WESTERN FLYER EXPRESS trademark (hereinafter, the "WESTERN FLYER EXPRESS Mark").

With respect to the first element of the Policy, Complainant contends that the Domain Name is confusingly similar to its WESTERN FLYER EXPRESS Mark, as it incorporates the entirety of WESTERN FLYER EXPRESS with only the addition of the letter "s" to the word "western". This minor alteration is alleged to do nothing to distinguish the Domain Name from Complainant's trademark.

With respect to the second element, Complainant alleges Respondent has no rights or legitimate interests in the Domain Name. Complainant has not licensed or authorized Respondent to use its WESTERN FLYER EXPRESS Mark. Moreover, Respondent is using the Domain Name as part of a fraudulent scheme to impersonate Complainant and deceive customers into providing banking information.

With respect to the third element, Complainant alleges bad faith registration and use based on Respondent's fraudulent scheme. Specifically, Respondent has used email addresses associated with the Domain Name to impersonate Complainant's employees and attempt to deceive customers into changing banking/ACH information by falsely claiming Complainant had "transitioned" bank accounts. The emails made prominent use of Complainant's marks and legitimate company address to appear authentic.

B. Respondent

Respondent did not substantively reply to Complainant's contentions. However, on October 8, 2024, a person claiming to be the named registrant contacted the Center stating his identity and contact details were used without authorization to register the Domain Name.

6. Discussion and Findings

To succeed in this UDRP proceeding, paragraph 4 of the Policy requires Complainant to prove its assertions with evidence demonstrating:

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

Because the submission filed was from a third party unrelated to the registration of the Domain Name, there was no substantive response filed to the allegations of the Complaint, and the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules (“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”).

Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel’s findings on each of the above-cited elements are as follows.

A. Identical or Confusingly Similar

As stated in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), to establish unregistered or common law trademark rights, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Here, Complainant has demonstrated extensive use of its WESTERN FLYER EXPRESS mark since 1996 and WESTERN FLYER XPRESS mark since 2013. Over this 27-year period, Complainant has grown from four trucks to operating more than 1,000 trucks and 3,000 trailers across the United States, evidencing substantial commercial success and market presence under the marks. Complainant also provided evidence that Respondent must have intentionally targeted Complainant by engaging in a scheme to attempt to have Complainant’s customers make payments to Respondent. See [WIPO Overview 3.0](#), section 1.3 (“The fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier.”) In light of the long use of the WESTERN FLYER EXPRESS Mark and this intentional targeting of Complainant’s name and reputation by Respondent, the Panel finds that Complainant has sufficiently established unregistered trademark rights in the WESTERN FLYER EXPRESS Mark.

The Domain Name incorporates Complainant’s WESTERN FLYER EXPRESS Mark in its entirety, merely adding the letter “s” to the word “western.” This minor alteration does not prevent a finding of confusing similarity. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

B. Rights or Legitimate Interests

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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy² or otherwise.

As an initial matter, there is no evidence that Respondent is commonly known by the Domain Name. Rather, the record indicates that Respondent made unauthorized use of the identity of a third party when registering the Domain Name. The Panel therefore finds, based on the record, that Respondent is not commonly known by the Domain Name for the purposes of the Policy.

The Panel finds that the purpose of registering the Domain Name was to engage in a fraudulent scheme, which is not a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *Startup Group v. Whois Agent, Domain Protection Services, Inc. / Dominique Geffroy*, WIPO Case No. [D2020-3303](#) (finding an employment offer scam to be an example of the use of a domain name for the illegitimate purpose of impersonating the complainant in the furtherance of a fraudulent scheme).

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Here, the evidence demonstrates that Respondent registered the Domain Name to perpetrate a fraudulent scheme. Complainant’s WESTERN FLYER EXPRESS Mark was intentionally chosen when the Domain Name was registered with the intent to impersonate Complainant for the purpose of targeting its customers to engage in fraud. Knowledge of Complainant’s business and its WESTERN FLYER EXPRESS Mark is established by the use of Complainant’s Western Flyer Express logo, its correct domain name, correct mailing address, and the title “A/R Collection Supervisor” in the signature line of the fraudulent email. In light of the evidence proving the fraudulent use of the Domain Name, there could be no other legitimate explanation except that Respondent intentionally registered the Domain Name to cloak its actions and deceive recipients into believing the emails were from Complainant. Such activity constitutes a disruption of

² The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name: “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Complainant's business and also establishes bad faith registration and use. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) Respondent used several other indicia of Complainant in addition to the Domain Name when communicating with third parties with the fraudulent purpose. In light of the actions undertaken by Respondent, it is inconceivable that Respondent coincidentally selected the Domain Name without any knowledge of Complainant. See e.g., *Arkema France v. Steve Co., Stave Co Ltd.*, WIPO Case No. [D2017-1632](#). In addition, registering a domain name with false contact details is commonly held to support a finding of bad faith under the Policy.

In finding a disputed domain name used only for an email scam was evidence of bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email communications. See, e.g., *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with [...] an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active websites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'").

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(ii) of the Policy and has established that Respondent registered and is using the Domain Name in bad faith.

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 Domain Name, <westernsflyerexpress.com>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: November 27, 2024