

ADMINISTRATIVE PANEL DECISION

Gulfstream Aerospace Corporation v. Artisan Services and Lyndon Damien Yeates

Case No. DAU2024-0012

1. The Parties

The Complainant is Gulfstream Aerospace Corporation, United States of America (“United States”), represented by AJ Park IP Pty Ltd, New Zealand.

The Respondents are Artisan Services and Lyndon Damien Yeates, Australia, internally represented (hereinafter, the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <gulfstream.au> 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 April 19, 2024. On April 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 23, 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 (“Respondent’s contact details for the Disputed Domain Name are hidden”) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 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 April 29, 2024. The Respondent sent emails to the Center on April 30, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 3, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was May 23, 2024. The Response was filed with the Center on May 8, 2024.

The Center appointed John Swinson as the sole panelist in this matter on May 24, 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 manufactures and sells jet planes. These planes include the Gulfstream G700 and Gulfstream G800. The Complainant is a subsidiary of General Dynamics and has been in business for over 60 years.

The Complainant owns a portfolio of trademark registrations, including Australian Trademark Registration No. 372438 for GULFSTREAM in class 12 for aircraft. This registration was filed on March 4, 1982, and the registration is effective from that date.

The Complainant's main website is located at "www.gulfstream.com".

The Respondent is a business located in South East Queensland, Australia. "Artisan Services", the name listed in the Whois records as the Registrant of the disputed domain name at the time of filing the Complaint, is not a legal entity. "Artisan Services" is a registered trading name of Lyndon Damien Yates, a sole trader. This trading name was registered on February 8, 2012. According to Australian Government records, Mr Yates is not currently registered for GST purposes. Mr Yates is listed as the Registrant Contact and Technical Contact for the disputed domain name. The Response was filed by Mr Yates. At the time of the decision, the Registrant in the Whois is listed as Lyndon Damien Yeates with the same Australian ABN number as previously displayed. The Registrar confirmed that the disputed domain name is registered by the same entity.

The Respondent operates the Australian Cannabis Directory, located at "www.cannai.com". The Respondent does not sell or promote aircraft products. According to this website, Mr Yates is a beekeeper.

The disputed domain name was registered on July 30, 2023.

The Respondent states that he intended to use the disputed domain name to market a cannabis product "Gulf Stream". According to the Response, the reason that "Gulf Stream" was selected by the Respondent for the name of this product was "The Gulf of Carpentaria (Australia) illustrated by a cloud of smoke (mass of water) originating from a narrow Stream (Origin of smoke)."

It appears that the Respondent did not proceed with the Gulf Stream cannabis product, and then listed the disputed domain name for sale "due to a better concept being formed".

Currently, the disputed domain name redirects to a website listing the disputed domain name for sale for USD 180,000.

After the filing of the Complainant, to try to resolve the present dispute, the Respondent offered the disputed domain name to the Complainant "for \$60,000 (negotiable)."

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 there can be no doubt that the Respondent was aware of the Complainant's GULFSTREAM trademark when the disputed domain name was chosen and registered well after the Complainant's lengthy and worldwide use of the trademark.

The Complainant also contends that given the sum of money being sought for purchase of the disputed domain name, the Respondent could not have chosen or subsequently used the word "gulfstream" in the disputed domain name for any reasons other than for the purpose of selling the disputed domain name to the Complainant for financial gain.

B. Respondent

In summary, the Respondent submits that the Complainant did not register the disputed domain name during the .au Priority Allocation Process, and thus the disputed domain name was now available to be registered by the Respondent and other eligible members of the public on a first come, first-serve basis.

The Respondent intended to market a cannabis product called "Gulf Stream" and he had "no intent to infringe IP or redirect traffic from the complainant." The Respondent's proposed product would not infringe the Complainant's rights because the Respondent's proposed product was not related to aviation.

The Respondent asserts: "I believe I am within my legal rights as an Australian Citizen to sell [the disputed domain name] without hinderance".

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights; and
- (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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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 the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns registered trademarks for GULFSTREAM as discussed in section 4 above.

Typically and as is appropriate in this case, it is permissible to disregard respectively the country-code Top Level Domain, ".au", as a functional component of the domain name system.

Accordingly, the disputed domain name is identical to the Complainant's GULFSTREAM trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to the respondent of the subject matter of the dispute, the respondent's bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that the respondent has acquired for the purpose of selling, renting or otherwise transferring); or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent under this head and the burden of production will shift to the respondent to rebut that prima facie case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). Based on the materials provided in the Complaint, the Complainant has met this onus and has established a prima facie case against the Respondent.

There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name. The disputed domain name does not correspond with the Respondent's personal name or trading name. The Respondent owns no registered Australian trademarks.

The Respondent provided evidence, dated July 30, 2023, of a diagram showing a handful of branding ideas for a proposed Gulf Stream cannabis product. This diagram was abstract and seemingly hand-drawn, including the reported date; no other business plans were provided. Ultimately, according to the Respondent, the Respondent abandoned his plans for the Gulf Stream cannabis product "due to a better concept being formed". The Respondent's evidence is not sufficient by itself to show demonstrable preparations to use the disputed domain name for the purposes of the Policy. In any event, at the present time, the Respondent has no intention to use the disputed domain name beyond for potential resale.

Use of a domain name to resolve to a "domain for sale" page is generally not considered to be a bona fide offering of goods or services such as to give rise to rights or legitimate interests in a domain name.

The Respondent did not rebut the prima facie case against the Respondent.

The Complainant succeeds on the second element of the Policy.

C. Registered or Subsequently Used in Bad Faith

Unlike the Uniform Domain Name Dispute Resolution Policy (the “UDRP”), the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered or is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant and its GULFSTREAM brand are well-known in Australia. The disputed domain name is identical to the Complainant’s Australian trademark. The Respondent does not assert that he was not aware of the Complainant when registering the disputed domain name.

The disputed domain name was registered in July 2023 and then shortly after was listed for sale for large price.

The Panel finds that the Respondent registered the disputed domain name to prevent the Complainant from reflecting its GULFSTREAM trademark in a corresponding domain name. The Panel also finds that circumstances indicate that the Respondent registered the disputed domain name primarily for the purpose of selling or otherwise transferring the disputed domain name registration to the Complainant for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain name. This is evidence of the registration and use of a disputed domain name in bad faith. See Policy, paragraphs 4(b)(i) and (ii).

The evidence also shows that the Respondent registers domain names for the purposes of directing traffic to his Australian Cannabis Directory website. That website states, on the “About” page:

“To make this directory happen, it’s all about Redirection. This is how the big players do it; Simply you buy up commonly searched domain names (DN) or names of things Like ‘Canna’ & ‘Gummies’ for around \$20 year. Then within that domain you put a redirect address that takes people to your main website portal (Cannai.au). You don’t need a website to make these DN work for you. So essentially if you buy hundreds of domains in a specific category you then have market influence. Rest assured we’re in it for the right reasons. You may find your business is effected by our acquisitions, this was done to protect and encourage business to do the right thing. Certainly not to embarrass business.”

Although there is no evidence that the disputed domain name was redirected to the Australian Cannabis Directory website, the Respondent’s “About” page suggests that he has a business model that uses domain names for redirection purposes. Further, the “About” page admits that such use may negatively impact businesses or tarnish the brands of others, which is not evidence of good faith use of domain names incorporating third-party trademarks.

It appears from the evidence that the Respondent is sophisticated in respect of domain name matters.

In the circumstances, even though the Respondent did not approach the Complainant to sell the disputed domain name to the Complainant, the presence of additional facts – such as the Respondent’s website statement extracted above, the fame of the Complainant’s trademark, the short time between registration and the sales listing, and the amount of the advertised sales price – support a finding that the Respondent registered the disputed domain name with the intention of selling it to the Complainant.

Accordingly, based on the materials before the Panel, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <gulfstream.au> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: June 7, 2024