



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Fall Nummer: D2003-0639

Entscheidung vom 8. Oktober 2003

1. The Parties

The Complainant is ...Air France....

The Respondent is V... Fed..., of Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <wwwairfrance.com> is registered with Tucows.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 14, 2003. On August 15, 2003, the Center transmitted by email to Tucows a request for registrar verification in

connection with the domain name at issue. On August 18, 2003, Tucows transmitted by email to the Center its verification response confirming that the Respondent is listed as the Registrant as well as the administrative and technical contact. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on August 21, 2003. 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"), 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 26, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was September 15, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 17, 2003.

The Center appointed Peter BURGSTALLER as the sole panelist in this matter on September 25, 2003. 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.

The language of the administrative proceeding is English; the decision is due by October 9, 2003.

4. Factual Background

The Complainant asserted, and provided evidence (Annex A ? O) in support of, and the Administrative Panel finds established, the following facts:

The Complainant is one of the world's major airline companies based in France and traces its origins back to 1933. It is the third largest international passenger carrier and the fourth largest freight carrier. It also ranks second world wide for aircraft maintenance.

The Complainant has developed a wide reputation through television, radio and printed media as well as online advertising, promotions and incentive programs. Under the Uniform Resource Locator (URL) "www.airfrance.com" the Complainant has operated an international web-portal since 1997.

The Complainant is the registered owner of a large number of trademarks consisting of or including the words "AIR FRANCE" in a great majority of countries in the world, including Russia. It also registered several generic and country code top level domain names, e.g. <airfrance.ru> and <airfrance.com.ru> activating the Complainant's Russian website.

On April 5, 2001, the Complainant was informed about the registration of the domain name in dispute <wwwairfrance.com> by an entity named "UNICORN MEDIA". The domain name in dispute was pointing to a web-page located at "wwwsuperinternetdeals.com/cheaptickets.html" - this web-page was dealing with discount airline tickets and contained advertisements through hyperlinks to other commercial websites. The domain name <superinternetdeals.com> was registered by "STONYBROOK INVESTMENTS LTD" located at the same address as UNICORN MEDIA. STONYBROOK INVESTMENTS LTD had already been involved as the Respondent in several domain name arbitration proceedings, e.g. in Delta Air Lines, Inc. v. Stonybrook Investments, Ltd, WIPO Case No. D2000-1686 and AltaVista Company v. Stonybrook aka Stonybrook Investments, WIPO Case No. D2000-0886.

UNICORN MEDIA was also Registrant of several other domain names, some of which were constituted like the domain name in dispute, namely a combination of the prefix <www> and a famous trademark, e.g. <wwwqantas.com>, <wwwspanair.com>, <wwwmerrillynch.com>, <wwwcontinentalairlines.com>, <wwwamericanairline.com> etc, some of which were misspelled and/or misleading famous names like <lutfhansa.com>, <contenental.com>, <frontierairline.com>, <hawaiianair.com> or <washingtonpst.com>.

A formal letter on April 9, 2001, from the Complainant to UNICORN MEDIA demanding that it cease and desist from any unauthorized use of the domain name in dispute lasted without response. On April 8, 2002, the Complainant found out that the ownership of the domain name in dispute had been transferred to the benefit of a new Registrant named "SEVENTH SUMMIT VENTURES". This entity had been involved in several domain name arbitration proceedings as the Respondent too, e.g. in <wwwdeltaair.com> National Arbitration Forum FA 0211000133621 and <deltaair.com> National Arbitration Forum FA 0203000106112.

On June 2002, the Complainant noticed that the domain name in dispute was not pointing to an active website anymore, but to an error page on which appears the message "The page can not be found".

Finally in June 2003, the Complainant was informed that the Respondent was the new Registrant for the domain name at issue.

The Complainant sent a formal letter by mail and email to the Respondent on June 17, 2003, requesting that he cease and desist from any unauthorized use of the domain name in dispute and to assign it to the Complainant. Although the email has not been returned, the formal letter by mail came back to the Complainant due to a lack of address details.

The Respondent is the owner of many domain names, some of which are those originally registered by "UNICORN MEDIA", e.g. <frontierairline.com>, <wwwcontinentalairlines.com>, <wwwamericanairline.com>, <hawaiianair.com>, <lutfhansa.com> and the domain name at issue, <wwwairfrance.com>.

5. Parties' Contentions

A. Complainant

"AIR FRANCE" is the trade name of the Complainant and has been used in commerce since 1933.

The Complainant is the registered owner of a large number of trademarks consisting of or including the words "AIR FRANCE" in a great majority of countries in the world, including Russia. "AIR FRANCE" is well and widely known throughout the world and easily recognizable as such.

The Respondent is engaged in a typo-piracy conduct, because he is using the famous trademark "AIR FRANCE" in combination with the well-known acronym for "world wide web" <www> as an extremely common prefix without inserting a period after this prefix. This usage is not sufficient to confer a distinctiveness to the domain name at issue. The domain name <wwwairfrance.com> therefore is at least confusingly similar to the famous trademark of the Complainant.

The Respondent is not in any way related to the Complainant's business; it is not one of its agents and does not carry out any activity for, or has any business with the Complainant. The Complainant moreover has never given any authorization to the Respondent to make any use of its trademark or to acquire the domain name at issue. The Respondent therefore has no rights or legitimate interests in respect to the domain name at issue.

The Complainant claims that the Respondent has engaged in bad faith registration and use of the domain name in dispute. The trademark "AIR FRANCE" has a strong reputation and a widely known character throughout the world. The Respondent did not answer the formal letter to solve the matter in an amicable way. The first Registrant and the second Registrant of the domain name at issue and the Respondent are the same entity, at least very closely related entities. The fact that Respondent did not himself register the domain name in dispute does not bring it outside of paragraph 4a (iii) Policy.

The Complainant requests the domain name be transferred to its benefit.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant's burden is to prove, in relation to the complaint, that:

(i) the domain name at issue is identical or confusingly similar to a trademark or a service mark in which Complainant has rights; and

(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.

The Complainant must prove that each of these three elements is present in order to make out a successful case, even though the Respondent did not reply.

A. Identical or Confusingly Similar

The Complainant has registered a number of trademarks containing the words "AIR FRANCE".

The domain name at issue consists of the Complainant's trademark "AIR FRANCE", only with the letters "www" inserted in front of said mark. The "www" is an acronym for "World Wide Web" and is by far the most used prefix in URL's for web pages on the Internet.

Because of the fact, that it is a principal, which applies to UDRP Cases, that the addition of the generic top level domain does not affect the confusing similarity or identity between the domain name and the trademark, the only discernible difference between the domain name at issue and the trademark is that the domain name commences with the letters "www" without inserting a period.

The prefix "www" is the well-known acronym for "World Wide Web", and is an extremely common, although not universal, prefix (when succeeded by a period) to the domain name in an URL for a web page on the Internet. The letters "www" thus have no distinguishing capacity in the context of domain name. Many prior Panel decisions have considered domain names that consist of the prefix "www" affixed to a trade mark and have concluded, that such domain names are substantial similarly to the relevant trademark: EasyGroup IP Licensing Limited v. Amjad Kausar, WIPO Case No. D2003-0012; CITGO Petroleum Corporation v. Horace A. "Woofers" Smith, WIPO Case No. D2003-0054; General Electric Company v. Fisher Zvieli, a/k/a Zvieli Fisher, WIPO Case No. D2000-0377; Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

The Panel therefore concludes that <wwwairfrance.com> is confusingly similar to the trademark "AIR FRANCE"; the Panel finds that the Complainant has met its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As noticed above, no response has been filed. The panel therefore follows the Complainant's contentions that it is not in any way related to the Respondent's business. The Respondent is not one of the Complainant's agents and does not carry out any activity for, or has any business with it. The Complainant moreover has never given any authorization to the Respondent to make any use of its trademark, in order to acquire the domain name at issue.

The Panel therefore finds, that the Respondent has no rights or legitimate interests in the domain name in dispute according to paragraph 4(a)(ii) Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain factors which, if found by the Panel to be present, shall be evidence of registration and use of a domain name in bad faith. This is not an exclusive list, and includes:

(i) circumstances indicating that you [the Respondent] have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove use in bad faith and registration in bad faith. Neither use in bad faith nor registration in bad faith alone is a sufficient ground for obtaining a remedy under the Policy.

"registered in bad faith"

A legal question arises out of the fact, that the Respondent has not registered the domain name in dispute directly with the registrar, but merely became the new Registrant by way of a transfer between the Respondent and its predecessor. It is the Panel's view that this does not mean, that the Respondent has not "registered" the domain name within the meaning of the Policy. Indeed, paragraph 14 of the applicable registration agreement (Annex O to the Complaint) provides:

"The person named as administrative contact at the time the controlling user name and password are secured shall be the owner of the domain name. You agree that prior to transferring ownership of your domain name to another person (the "Transferee") you shall require the Transferee to agree, in writing to be bound by all the terms and conditions of this Agreement. Your domain name will not be transferred until we receive such written assurances or other reasonable assurance that the Transferee has been bound by the contractual terms of this Agreement (such reasonable assurance as determined by us in our sole discretion) along with the applicable transfer fee. If the Transferee fails to be bound in a reasonable fashion (as determine by us in our sole discretion) to the terms and conditions in this Agreement, any such transfer will be null and void."

Therefore, the Respondent's awareness to those terms and conditions can be presumed. Among these terms and conditions of the Agreement, paragraph 7 refers to the Registrar's Dispute Policy that is incorporated in the Registration Agreement by reference, paragraph 8 refers to applicable provisions in the case of a domain name dispute and paragraph 9 explicitly refers to the Policy.

In other words, the Respondent is bound by the same terms and conditions that its predecessor in title, even if it has not necessarily registered the Domain Name directly or personally with the Registrar, *Hebdomag Inc. v. Illuminaty Marketing*, WIPO Case No. D2001-0206.

It is the Panel's opinion, that the original Registrant (UNICORN MEDIA) registered the domain name in dispute in bad faith:

The fact, that UNICORN MEDIA registered several domain names that correspond closely to famous marks (misspelling or using a common prefix) that are owned by others, shows the intention of the Registration - it was an intentional effort to gain Internet traffic from the typing errors of users seeking the Complainant's website. This Panel acknowledges that the practical effect of preceding a trademark with the letters "www" in a domain name is so-called "typo-piracy", that is attracting to a different website the Internet user who mistakenly fails to insert a period after the letters "www" when typing the URL of the intended website (<wwwreuters.com>, *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441; *Pfizer, Inc. v. Seocho and Vladimir Snezko*, WIPO Case No. D2001-1199). The registration of such a domain name by a party other than the trademark owner or an entitled person is done in bad faith, unless there is evidence to show good faith use.

The domain name at issue initially pointed to a webpage which was dealing with discount airline tickets and containing advertisement through hyperlinks to other commercial websites in the field of tourism and travel. Given the Complainant's numerous trademark registrations for, and its wide reputation in, the world, it is not possible to conceive of a plausible circumstance in which UNICORN MEDIA could legitimately use the domain name <wwwairfrance.com>. It is also not possible to conceive of a plausible situation in which Respondent would have been unaware of this fact at the time of registration.

Moreover UNICORN MEDIA has taken deliberate steps that communication with it cannot be made. After a formal letter from the Complainant it transferred the domain name at issue without response to SEVENTH SUMMIT VENTURES, an entity located in the West Indies.

The above said applies also to SEVEN SUMMIT VENTURES, but with the difference that from June 2002, onwards the domain name at issue pointed to an error page. SEVEN SUMMIT VENTURES moreover had been involved in several domain name arbitration proceedings as the Respondent, where it had registered famous trademarks misspelled or with the prefix "www", e.g. <nasdak.com>, *The NASDAQ Stock Market, Inc. v. Seventh Summit Ventures*, WIPO Case No. D2001-1497, and <wwwdeltaair.com> *National Arbitration Forum FA 0211000133621*).

These findings lead the Panel to conclude that the domain name <wwwairfrance.com> has been registered in bad faith by the Respondent.

"being used in bad faith"

The domain name in dispute points to an error page. There is no evidence that a website or another online presence is in the process of being established which will use the domain name. There is also no evidence of advertising, promotion or display to the public of the domain name or that Respondent has offered to sell, rent or otherwise transfer the domain name to Complainant, a competitor of it, or any other person.

The Panel in *Telstra Corporation Limited v. Nuclear Marshmallows*, (WIPO Case No. D2000-0003) clearly pointed out, that the relevant issue is not a "positive action in bad faith" in relation to the domain name at issue, but "acting in bad faith". The distinction between these two cases is important, because "being used in bad faith" is not limited to positive actions ? inaction is within the concept: In certain circumstances therefore it is possible that inactivity by the Respondent may amount to the domain name being used in bad faith. This understanding of paragraph 4(a)(iii) Policy is also supported by the actual provisions of the Policy ? only paragraph 4(b)(iv) involves a positive action. The circumstances identified in paragraphs 4(b)(i) ? (iii) Policy involve also a passive holding of the domain name registration, even though these provisions requires additional facts. But it must be recalled that the circumstances listed under paragraph 4(b)(i) ? (iv) Policy are "without limitation" ? that is, paragraph 4(b) expressly recognizes also other circumstances giving evidence of bad faith.

The Panel therefore has to examine the following facts and circumstances which amounts to the Respondent acting in bad faith:

- The Complainant's trademarks have strong reputation and are widely known, as evidenced by several trademark registrations, including Russian trademarks (Annex M + N).

- The Respondent has given no evidence whatsoever of any actual or contemplated good faith use by it of the domain name ? it failed to submit a response and did not answer a formal letter by the Complainant.

- The Respondent has provided actively false contact details, in breach of its registration agreement.

- Following Annex L of the Complaint, Respondent is the Registrant of several domain names (besides the one at issue) which include/contain or misspell famous trademarks, such as <frontierairline.com>, <wwwcontinentalairlines.com>, <wwwamericanairline.com>, <hawaiianair.com>, <lufthansa.com>, <washingtonpst.com>, <wwwqantas.com>, <wwwspanair.com>. However, the registration of multiple domain names can not be on its own be sufficient evidence of registration and using in bad faith, it is worth noting that and when combined with other evidence, it might be suggestive of bad faith.

- Moreover the fact that the Respondent acquired several domain names, originally registered by UNICORN MEDIA, which include/contain famous trademarks, extensively used and known also in Russia, shows that the Respondent "free rides" on the merits and the goodwill of other companies because it could not have acquired these domain names (especially the one at issue) without knowing that by doing so, it was either infringing trademark-rights, the terms of its Registration agreement or the terms of the Policy.

- In the absence of any reason of rights or legitimate interests, the registration and use (even passive holding) of the domain name disrupts at least the Complainant's business and is an intentional effort to gain Internet traffic from the typing errors of users seeking the Complainant's website. In the InfoSpace.com, Inc v. Registrar Administrator Lew Blanc, WIPO Case No. D2000-0069 "infospace dispute" it was held, that the addition of "www" to the Complainant's mark is best explained as a deliberate attempt to exploit user's typographical mistakes when seeking the Complainant's website. Absent any reasonable explanation from the Respondent and the Respondent failed to give a response this appears to be a classic and unqualified case of "typosquatting" in which the Respondent sought confusion and error on the part of internet users.

Taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by unfair competition law, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

It is the Panels view therefore, that based on the evidence provided by the Complainant, the domain name <wwwairfrance.com> is being used in bad faith according to paragraph 4(a)(iii) Policy by the Respondent.

7. Decision

Based on Policy paragraph 4 (i) and Rule 15, the Panel finds that the domain name <wwwairfrance.com> is confusingly similar to the trademark "AIR FRANCE" of the Complainant, that the Respondent has no rights or legitimate interests in the domain name and the domain name at issue has been registered and is being used in bad faith.

The Panel therefore orders that the domain name <wwwairfrance.com> be transferred to the Complainant.

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Sole Panelist