

ADMINISTRATIVE PANEL DECISION

Airbus SAS v. Privacy Service Provided by Withheld for Privacy ehf /
Mark Jones
Case No. D2022-0303

1. The Parties

The Complainant is Airbus SAS, France, represented by CSC Digital Brand Services AB, Sweden.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Mark Jones, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <airbuscourierservice.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 28, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2022 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 February 3, 2022.

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 February 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on March 4, 2022. 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 one of the largest aerospace company in Europe and operates through approximately 180 locations worldwide and has more than 130,000 employees. It owns numerous trade mark registrations for its AIRBUS mark including International registration 1112012 registered on June 24, 2011 and designated in numerous countries worldwide. It maintains a strong Internet presence with its main website at its primary domain name <airbus.com> which was registered in 1995.

The disputed domain name was registered on June 18, 2021 and resolves to a website branded as “Airbus Courier” which advertises freight transportation and storage services.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it owns trade mark rights for its AIRBUS mark as set out above and that the disputed domain name wholly incorporates its trade mark and is therefore confusingly similar to it. It says that the addition of the generic, descriptive term “courier service” only serves to underscore and increase the confusing similarity between the disputed domain name and the Complainant’s trade mark and does not prevent a finding of confusing similarity.

The Complainant submits that the Respondent is not sponsored by or affiliated with the Complainant in any way, has not licensed or given the Respondent permission to use the Complainant’s marks in any manner and that the Respondent is not commonly known by the disputed domain name. It notes that at the time of filing the Complaint, the Respondent was using a privacy Whols service and that where there is no evidence to suggest that the Respondent was commonly known by the disputed domain name then this means that the Respondent cannot be regarded as having acquired rights or legitimate interests in the disputed domain name. According to the Complainant, past panels have found that using a privacy service at the time of filing of the Complaint equates to a lack of legitimate interest.

The Complainant submits that on the website to which the disputed domain name resolves, the Respondent promotes and offers logistics and transportation services that directly compete with the Complainant’s own material management services. This says the Complainant is neither a *bona fide* offering of goods or services nor a legitimate, non-commercial fair use of the disputed domain name.

The Complainant says that it has found numerous websites containing information identical to that found in the “About Us” section of the website at the disputed domain name. While this alone is not direct proof of fraudulent activity, the identical content does suggest that the Respondent and the third parties operating those websites are connected in some way. It says that the fact that the Respondent, or the third parties presumably connected to it, operate numerous websites with a similar look/feel and content, but under different entity names, is evidence of the Respondent’s lack of rights or legitimate interests in the disputed domain name.

It should also be noted, says the Complainant, that while no evidence has been found that the disputed domain name has actively been used as part of a fraud, the presence of Mail eXchanger (“MX”) records on the domain name, coupled with the Respondent’s use of the disputed domain name to offer services that may confuse unsuspecting users into believing it is associated with or affiliated with the Complainant, strongly implies that the disputed domain name could be used as part of an email phishing scheme in the future.

The Complainant notes that the Respondent registered the disputed domain name on June 18, 2021, which is significantly after the Complainant first filed for the registration of its AIRBUS trade mark and after its first use in commerce in 1970 as well as being long after the date of registration of the Complainant's own domain name on May 23, 1995.

It says that by registering a domain name that incorporates the Complainant's AIRBUS trade mark in its entirety, with the mere addition of the descriptive term "courier service", the Respondent has created a domain name that is confusingly similar to the Complainant's trade mark. It submits that the AIRBUS brand, as a core trade mark and company name, is one of the most well-known brands associated with transportation worldwide, so it is highly unlikely that the Respondent happened to register the disputed domain name to offer international transportation and logistics services without being aware of the Complainant and its rights in the AIRBUS name. It notes that numerous prior UDRP panels have recognised the fame and notoriety of the AIRBUS trade mark and says that its use by the Respondent in these circumstances amounts to opportunistic bad faith.

Further says the Complainant, the Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under paragraph 4(b)(iii) of the Policy because the disputed domain name is confusingly similar to the Complainant's trade marks and the website at the disputed domain name offers and promotes services that compete with the Complainant's own logistics and material management services. Moreover, the fact that the Respondent, or associated third parties, are operating other websites displaying practically identical information reflects that it is merely using the AIRBUS trade mark to increase its visibility and to confuse unsuspecting users into believing that it is affiliated or associated with the Complainant.

The Complainant also notes that the Respondent employed a privacy service to hide its identity and also ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding, which past UDRP panels have held serves as further evidence of bad faith registration and use. Finally, it says that it is more likely than not that the Respondent knew of and targeted the Complainant's trade mark, and that the Respondent should be found to have registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns registered trade mark rights for its AIRBUS mark including International trade mark registration 1112012 registered on June 24, 2011 and designated in numerous countries worldwide. The Panel finds that the disputed domain name wholly incorporates the AIRBUS trade mark and is therefore confusingly similar to it. The addition of the terms "courier service" does not prevent a finding of confusing similarity. As a consequence, the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent is not sponsored by or affiliated with the Complainant in any way, has not licensed or given the Respondent permission to use the Complainant's marks in any manner and that the Respondent is not commonly known by the disputed domain name. It appears that at the time of filing the Complaint the Respondent was using a privacy Whois service and there is no other evidence to suggest that the Respondent was commonly known by the disputed domain name.

Based on the evidence filed by the Complainant, it is not clear to the Panel that the logistics and transportation services being promoted at the website to which the disputed domain name resolves directly

compete with the Complainant's aerospace business as submitted by the Complainant. In circumstances that the AIRBUS trade mark enjoys a very established worldwide reputation its use in the disputed domain name appears to be for the purposes of trading off the goodwill and reputation attaching to the Complainant's mark as further discussed under Part C below. This is not a legitimate or *bona fide* use of the disputed domain name and in any event there is no evidence to suggest that the Complainant does provide a *bona fide* business service in logistics or transportation, or that it is making a non-commercial fair use of the disputed domain name.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case and also for the reasons set out under Part C below, the Panel finds that the Complainant has successfully made out its case under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered on June 18, 2021 around a decade after the registration of the Complainant's AIRBUS mark and many more years after the Complainant registered its domain name in 1995 and initially commenced its business. Considering the degree of repute attaching to the Complainant's AIRBUS mark internationally as an aircraft manufacturer and also its online presence, it is more likely than not that the Respondent was well aware of the Complainant's AIRBUS mark when it registered the disputed domain name in 2021.

The Complainant provided evidence of 5 other websites at different domain names that display practically identical information to the website at the disputed domain name. Although there is no evidence to suggest that these domain names and websites are necessarily owned by the Respondent, this evidence does suggest that the Respondent is not running a *bona fide* logistics and transportation business with a differentiated website and business offering, but is rather using the disputed domain name incorporating the Complainant's very well reputed AIRBUS mark to divert Internet users and attract traffic to its website at the disputed domain name for its own purposes.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are satisfied in this case. As noted above the Respondent has used the disputed domain name containing the AIRBUS mark to attract and confuse Internet users into thinking that there is some affiliation between the website at the disputed domain name and the Complainant when that is not the case. The Respondent's website is ostensibly for commercial purposes, even if the presence of MX records suggests the possibility that it could be used for a phishing scheme in bad faith. Further, the Respondent has had every opportunity to explain its conduct both before and during these proceedings but has consistently failed to do so. The Respondent's use of a privacy service in an attempt to hide its identity only reinforces the Panel's view of the Respondent's bad faith.

Accordingly, the Panel finds that the Respondent has both registered and used the disputed domain name in bad faith and the Complaint also succeeds under this 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 name <airbuscourierservice.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: March 18, 2022