

## **ADMINISTRATIVE PANEL DECISION**

LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A. v. 雪林  
Case No. D2023-0106

### **1. The Parties**

The Complainant is LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A., Luxembourg, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is 雪林, China.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2023. On January 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 16, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on February 20, 2023. 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 the national airline of the Grand Duchy of Luxembourg. It was founded in 1961 and operates services to many destinations over the world. The Complainant has also developed a tour operating activity through its travel agency LuxairTours.

The Complainant is the owner of several registered trademarks, including:

- the European Union Trade Mark LUXAIR, Number 001348986, registered on December 12, 2000, in classes 37, 39 and 42;

- the international trademark LUXAIR, Number 1631814, registered on September 1, 2021, in classes 37, 39, 42, 43, 45;

- the European figurative trademark,  Number 008619835, registered on April 26, 2010, in classes 35, 37, 39, 43, 45,

- the European figurative trademark,  Number 008620924, registered on April 26, 2010, in classes 35, 37, 39, 43, 45; and

- the international figurative trademark,  Number 1030715, registered on January 13, 2010, designating Egypt, Morocco and Turkey, in classes 35, 37, 39, 43, 45.

The Complainant also owns the following domain names:

- <luxair.com> registered on February 24, 1998, and

- <luxairtours.com> registered on March 1, 1999.

The disputed domain name <luxairtour.com> was registered on November 19, 2022, and, at the time of the Complaint resolved to an active website reproducing the Complainant's Trademarks and pretending to be its travel agency LuxairTours. At the time of the decision, the disputed domain name was inactive.

#### 5. Parties' Contentions

##### A. Complainant

First of all, the Complainant asserts that the disputed domain name is confusingly similar to its prior trademarks, since it is almost identical to LUXAIRTOURS trademark, the only difference being the missing letter "s" within the disputed domain name. The Complainant adds that the disputed domain name is also highly similar to its LUXAIR trademarks as it includes the entire said trademark in first position.

Secondly, the Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since the Complainant has not licensed or otherwise authorized the Respondent to use its trademarks or to apply for any domain name incorporating the said trademarks. The Complainant adds that there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name and that by using the "LUXAIRTOURS" logo on its website and pictures from Luxairtours website, without any authorization, it is sure that there is no legitimate interest in respect of the disputed domain name.

Finally, the Complainant claims that the disputed domain name was registered and is being used in bad faith.

The Complainant states that the disputed domain name resolves to a website that prominently features the Complainant's trademarks and that the Respondent has chosen and registered it with the intent to profit from the Complainant's reputation.

The Complainant adds that the disputed domain name is being used in connection with a fraudulent scam designed to attract consumers into believing that they are on the Complainant's website, requesting personal data as users and password, in order to mislead and probably obtain illegally personal information about these consumers. The Complainant also points out that the disputed domain name has been reported by one of Luxair's customer who thought that it was visiting the Complainant's website.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has right;
- (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 and is being used in bad faith.

### **A. Identical or Confusingly Similar**

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the LUXAIR and LUXAIRTOURS trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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 name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Regarding the disputed domain name, the Panel notices that it is composed of (i) the LUXAIRTOURS trademark without its last letter "s", (ii) the generic Top-Level Domain ("gTLD") ".com".

The applicable gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Moreover, the Panel considers that the one letter difference between the Complainant's trademark and the disputed domain name does not prevent a finding of confusing similarity.

Therefore, the Panel holds that the Complainant has established the first element of paragraph 4(a) of the Policy and that the disputed domain name is confusingly similar to the Complainant's trademark.

## **B. Rights or Legitimate Interests**

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

These circumstances are:

- before any notice of the dispute, the respondent's 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
- 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
- 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.

According to prior UDRP panel decisions, it is sufficient that the complainant shows *prima facie* that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while 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 often-impossible 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 *prima facie* 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Indeed, the Complainant has not licensed or otherwise authorized the Respondent to use its trademarks or to apply for any domain name incorporating the said trademarks. Moreover, it appears that the Respondent is not using or has prepared to use the disputed domain name with a *bona fide* offering of goods or services, nor is it making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. On the contrary, at the time of the Complaint, the disputed domain name reverted to a website trying to pass off as the Complainant and reproducing the Complainant's Trademarks.

Finally, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have rights or legitimate interests in the disputed domain name.

### C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the disputed domain name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

According to prior UDRP decisions, particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's area of activity or natural zone of expansion), (ii) the chosen top-level domain (e.g., particularly where corresponding to the complainant's area of business activity or natural zone of expansion), (iii) the content of any website to which the domain name directs, including any changes in such content and the timing thereof (see section 3.2.1 of the [WIPO Overview 3.0](#)).

First of all, the Panel finds that it is established that the Complainant's trademarks were registered and used before the registration of the disputed domain name. Therefore, there is a presumption of bad faith registration of the disputed domain name given that it reproduces the Complainant's LUXAIRTOURS trademark, without its last letter "s".

Moreover, the Panel points out that, at the time of the Complaint, the disputed domain name reverted to a website trying to pass off as the Complainant and reproducing the Complainant's Trademarks, so that there is no doubt that the Respondent was aware of the Complainant and has precisely chosen and registered the disputed domain name in bad faith.

Furthermore, the Respondent is using the disputed domain name to impersonate the Complainant in order to obtain information and data from consumers believing they are on the Complainant's site.

This use of the disputed domain name constitutes an intentional attempt of the Respondent to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, which is a scenario constituting evidence of the Respondent's bad faith in using the disputed domain name.

Consequently, in view of all the circumstances of this case, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to Policy, paragraph 4(a)(iii).

## **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 <luxairtour.com> be transferred to the Complainant.

*/Christiane Féral-Schuhl/*

**Christiane Féral-Schuhl**

Sole Panelist

Date: March 6, 2023