

ADMINISTRATIVE PANEL DECISION

LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A. v. 雪林,
Cheng XIAN

Case No. D2023-0437

1. The Parties

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

The Respondents are 雪林, Hong Kong, China and Cheng XIAN, China.

2. The Domain Names and Registrars

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

The disputed domain name <luxairtours.club> is registered with Paragon Internet Group Ltd t/a Paragon Names (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On January 31, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 31, 2023 and February 2, 2023, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 3, 2023 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 6, 2023.

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 Respondents of the Complaint, and the proceedings commenced on February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondents did not submit any response.

Accordingly, the Center notified the Respondents' default on March 1, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 9, 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, LUXAIR, Société Luxembourgeoise de Navigation Aérienne S.A., is the national airline of the Grand Duchy of Luxembourg and has its headquarters in Luxembourg. The Complainant operates scheduled services to many destinations over the world and has been active for over 60 years in four aviation-related activities: passenger air transport, tour operating, airport services and air freight handling.

The Complainant offers a wide range of packages and thematic holidays through its tour operating division. LuxairTours is the travel agency of the Complainant and proposes travel packages in more than 50 destinations.

The Complainant holds worldwide trademark registrations for LUXAIR and LUXAIRTOURS, such as the following:

- the European Union Trade Mark No. 001348986, for the mark LUXAIR (word) filed on October 18, 1999, and registered on December 12, 2000, covering services in the International Classes 37, 39 and 42; and
- the European Union Trade Mark No. 008620924, for the mark LUXAIRTOURS (stylized) filed on October 16, 2009, and registered on April 26, 2010, covering services in the International Classes 35, 37, 39, 43 and 45.

The Complainant holds domain names reflecting the marks LUXAIR and LUXAIRTOURS, such as <luxair.com> registered on February 24, 1998 and <luxairtours.com> registered on March 1, 1999.

The disputed domain name <luxairtour.club> was registered on January 5, 2023, and, the disputed domain name <luxairtours.club> was registered on January 7, 2023.

At the time of filing the Complaint, both disputed domain names resolved to a website featuring the Complainant's LUXAIR and LUXAIRTOURS trademarks and were reproducing pictures from the Complainant's official website, and were used in connection with a fraudulent scam designed to attract consumers into believing that they are on the Complainant's official websites, requesting personal data, in order to mislead and probably obtain illegal personal information about the Internet users accessing such website under the disputed domain names.

Also, according to Annex 13 to the Complaint, which contains an email correspondence received by the Complainant from a customer, it seems that the disputed domain name <luxairtour.club> was also used in connection with a "phishing scheme" namely for sending email advertising an advent calendar for a crypto currency promotion.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are highly similar to its trademarks LUXAIR and LUXAIRTOURS and corresponding domain names, the Respondent has no rights or legitimate interests in

the disputed domain names, and the Respondent registered and is using the disputed domain names in bad faith. The Complainant requests the transfer of the disputed domain names to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Preliminary Procedural Issue. Consolidation of Multiple Disputed Domain Names and Respondents

According to the provisions of paragraph 10(e) of the Rules, the Panel has the power to decide the consolidation of multiple domain names disputes. Further, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In the present case, there are two disputed domain names, two sets of registrant details and two Registrars.

According to the information provided by the Registrars, the disputed domain name <luxairtour.club> was registered by 雪林, and the disputed domain name <luxairtours.club> was registered by Cheng XIAN.

The present disputed domain names: (i) are referring to websites with identical content, graphical user interface, and layout since, *inter alia*, they have the same pictures, same color codes yellow and black and same mention "Hi, Welcome to Luxair Tours" in white colors; (ii) were created in a similar manner, reproducing the Complainant's trademark LUXAIRTOURS with one missing letter in the disputed domain name <luxairtour.club> and both contain the extension <.club>; (iii) the Respondents' addresses are apparently in China but the information provided in the WhoIs was inaccurate or incomplete for both; and (iv) were registered in January 2023, within two days distance of each other.

The Respondent had the opportunity to comment on the consolidation request made by the Complainant but it chose to remain silent.

For the above, the Panel finds that the disputed domain names are registered by the same person or are under common control, and would be equitable and procedurally efficient to decide the consolidation of multiple disputed domain names and the Respondents in the present procedure. See also section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

B. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the LUXAIR and LUXAIRTOURS trademarks.

The disputed domain name <luxairtours.club> reproduces the trademark LUXAIRTOURS exactly and incorporates in its entirety the trademark LUXAIR.

The disputed domain name <luxairtour.club> incorporates the Complainant's LUXAIRTOURS trademark with a typo, the final letter "s" removed (at the end of the term "luxairtours"). However, such alteration does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name. Furthermore, numerous UDRP panels have considered that a domain name consisting of a misspelling of the complainant's trademark (*i.e.*, typosquatting) does not prevent a finding of confusing similarity. See section 1.9 of the [WIPO Overview 3.0](#).

It is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (*e.g.*, ".com", ".info", ".club") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name <luxairtours.club> is identical to the trademark LUXAIRTOURS and confusingly similar to the trademark LUXAIR; and that the disputed domain name <luxairtour.club> is confusingly similar to the Complainant's trademarks pursuant to the Policy, paragraph 4(a)(i).

C. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the marks LUXAIR / LUXAIRTOURS, that the Respondent is not commonly known by the disputed domain names and that the Respondent has not used the disputed domain names in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain names. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names. The Respondent has not replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain names.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain names or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain names.

According to the records before it, the Panel finds that the disputed domain names have been used to fraudulently impersonate the Complainant in a complex illicit scheme: the website under the disputed domain names was featuring the Complainant's trademarks and visuals, the Respondent sent phishing emails to the Complainant's clients from the email address corresponding to the disputed domain names. In this regard, previous panels have categorically held that the use of a domain name for illegal activity (such as swindle, fraud, identity theft, phishing and impersonation) can never confer rights or legitimate interests in a respondent. See section 2.13 of the of the [WIPO Overview 3.0](#).

Further, prior UDRP panels have held that where a domain name is identical to a trademark, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement

by the trademark owner. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain names, pursuant to the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

The Complainant has held registered trademark rights in LUXAIR and LUXAIRTOURS, and corresponding domain names since at least 1999.

The disputed domain names were registered in 2023 and incorporate the Complainant's trademark exactly, or with a minor obvious alteration.

From the above, the Panel finds that the Respondent was aware of the Complainant, its business, and trademarks at the registration of the disputed domain names.

At the time of filing the Complaint the Respondent was using without permission the Complainant's trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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" is evidence of registration and use in bad faith.

Given that the disputed domain names reproduces identically or with a slight alteration the Complainant's trademark LUXAIRTOURS together with a gTLD related to the Complainant's business, *i.e.* <.club>, the website operated under the disputed domain names displays the Complainant's trademarks, visuals and has no disclaimer, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain names who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

As noted above, the disputed domain names were used in connection with a "phishing scheme" namely for sending emails, impersonating the Complainant. The findings that the Respondent targeted and impersonated the Complainant compel the Panel to conclude that the Respondent used the disputed domain names in bad faith to impersonate the Complainant, and take unfair advantage of the Complainant's trademark, attempting to mislead third parties. See also section 3.4 of the [WIPO Overview 3.0](#).

The Respondent failed to participate in this proceeding and the physical addresses listed in the WhoIs were inaccurate or incomplete. The majority of the UDRP panels view the provision of false contact information as an indication of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain names in bad faith, pursuant to the 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 names <luxairtour.club> and <luxairtours.club> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 23, 2023