



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0700125
Case ID	CN-0700143
Disputed Domain Name	www.airchina.com
Case Administrator	lihu
Submitted By	YUN ZHAO
Participated Panelist	

Date of Decision	14-09-2007
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The Parties Information

Claimant	Air China Limited
Respondent	Jinsu Kim

Procedural History

On 16 March 2007, the Complainant submitted a Complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC). Then On 29 May 2007, the Complainant submitted an amended version of the Complaint and elected this case to be dealt with by a three-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 26 June 2007, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. All correspondence to and from the ADNDRC described herein was in the English language. On 12 July 2007, the ADNDRC notified the Respondent of the commencement of the proceedings. On 1 August 2007, the ADNDRC received the Response from the Respondent. On 2 August 2007, the ADNDRC acknowledged the receipt of the Response, transmitted the Response to the Complainant, and notifies the parties for selection of the panelists.

On 14 August 2007, the Complainant submitted to the ADNDRC a Further Statement. The ADNDRC transmitted the Further Statement to the Respondent on 29 August 2007.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, Mr. TANG Guangliang and Ms. Dilek USTUN, the ADNDRC notified the parties on 29 August 2007 that the Panel in this case had been selected.

On 29 August 2007, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 12 September 2007. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

The language of the proceeding is English, as being the language of the Domain Name Registration Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

Factual Background

For Claimant

The Complainant in this case is Air China Limited, a corporation registered under the laws of the People's Republic of China, with its headquarters in Beijing.

For Respondent

The respondent, Jinsu Kim, is the current registrant of the disputed domain name <airchina.com> according to the Whois information.

Parties' Contentions

Claimant

The Complainant is the successor to Air China International Corporation, founded in 1988. On 15 December 2004, the Complainant successfully listed its stock on stock exchanges in Hong Kong and London. As the “flag” airline of China, the Complainant is in the business of operating both domestic and international cargo and passenger service under the “Air China” brand name and logo, both of which are internationally recognized as the symbol of the P.R. China’s most recognized airline, and one of its most recognized leading corporations. The Complainant has clearly established its brand name as a distinctive and famous brand name worldwide.

The Complainant registered the second-level domain “airchina” under “.com.cn” in 1997. “Air China”, as the Complainant’s mark, is displayed throughout the website, as well as on Air China aircraft, ground installations and equipment, promotional literature, brochures and advertising, and all manner of items used in providing services to its many valued cargo and passenger customers, on a daily basis.

The Complainant’s distinctive enterprise logo consists of an artistic phoenix, the Chinese version of Air China and the English translation “Air China”. That logo has the first rank of brand value among domestic airline companies, as evaluated by the World Brand Laboratory in 2006. Within China, the Complainant is the only official airline of the 2008 Olympics in Beijing.

1). “Air China” is the service mark, trademark and entity logo of the Complainant. It is a duly registered trademark by the Complainant in P.R. China and is a distinctive and famous mark used by the Complainant throughout the world. The disputed domain name of “airchina.com” is identical to and therefore confusingly similar to the Complainant’s registered trademarks and service marks. The Complainant has the right to register “Air China” as its second-level domain name under “.com” in order to utilize and protect its trademark rights and brand value

2). The Respondent has no rights or legitimate interests with respect to the “airchina” domain name. Domains by Proxy, Inc. is a domain name registration company, not in the airline business. As reflected in the website accessed by the disputed domain name, the actual apparent beneficial owner of asia.com is a promoter and seller of discounted airline tickets offered by competitors of the Complainant. The Respondent’s use of the disputed domain name is tantamount to the classic “bait and switch” tactic, by which marketers lure potential customers with a well-known brand name or icon, and then at last minutes switch to offering a competitor’s product or service at a discounted price or other supposed competitive advantage.

3). The Respondent’s use of the disputed domain name is in bad faith. The Respondent has no trademark rights to the name “Air China”. “Air China” is not the legal name of the Respondent and/or actual beneficial owner of the disputed domain name. The disputed domain name directs customers to purchase tickets of the Complainant’s competitors, and not the services of the bona fide holder of the Air China registered trademarks. The Respondent is not using the “airchina” mark or the disputed domain name in a bona fide non-commercial fair use manner. By registering “airchina” under “.com”, the respondent uses the Complainant’s widely recognized brand name to divert customers from the trademark owner’s website in a confusing way, not only for its own commercial gain, but for the benefit of the Complainant’s competitors and to the detriment of the Complainant and its actual and potential customers, who are seeking the Complainant’s services but may be enticed by the improper and unauthorized use of the Complainant’s proprietary brand name to a competitor’s services. Such customers, if dissatisfied with the services of these other companies, may associate their negative experiences with the Air China brand, further harming the Complainant’s commercial interests and good will. The above improper use of the disputed domain name by the Respondent is clearly intended to have, and undoubtedly has, the effect of directing potential customers of the Complainant to its competitors, thereby reducing the Complainant’s customer base and revenues. In addition, the Respondent’s use of the Complainant’s name to market and promote its own website and generate revenues, constitutes unauthorized use of Air China name for the commercial gain of the Respondent.

The Complainant requests the Panel to terminate the use of the disputed domain name “airchina.com” by the Respondent and transfer all rights of the disputed domain name to the Complainant.

Respondent

The Respondent purchased the disputed domain name for the purpose of Airtravel Information Service from Korea to China on 30 September 2005 from Chinese owner through private auction for the amount of \$ 41,000. The Respondent did not use the online airline tickets reservation service. The Respondent just leased the disputed domain name to “Asia.com” for several months. The domain names “air + country.com” are commonly registered and used nowadays. This is common Simple-based-word combination. The Respondent did not use and register for the purpose of

the trademark infringement of the Complainant. The Respondent did not know the Complainant before purchasing the disputed domain name. The Respondent is not involved in showing or selling any airline tickets about the Complainant. The Respondent does not know whether “Asia.com” has shown and infringed the Complainant’s trademark. The Complainant did not produce any evidence to show that the Respondent had used in bad faith. And so the Respondent has the rights and legitimate interests to use and own the disputed domain name for good usage. Accordingly, the Complaint should be denied.

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademark “Air China”, which has been registered in the PRC. The evidence also shows that the complainant has been using this trademark since 1988, well before the year (1999) of the registration of the disputed domain name. Through continuous use, the trademark has become famous among people worldwide. The Panel has no problem finding that the domain name <airchina.com> is identical to the registered trademark “Air China”, given that the “.com” suffix is to be ignored. The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

Under Policy 4 (c), any of the following circumstances, (by way of example) might serve to demonstrate a Respondent’s rights or legitimate interests to a domain name for purpose of Paragraph 4(a)(ii):

- (i) before any notice to the Respondent of the dispute, use of, or demonstrable preparation 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
- (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.

There is nothing in the Response to suggest that any of the above circumstances apply in the present case. The Complainant has established its long-standing rights to the trademark at issue. But the Respondent has acquired no trademark rights or other proprietary interests relevant to support its claim to the disputed domain name. It is, thus, not a bona fide offering of goods or services for the Respondent to link the disputed domain name to a website offering to sell discounted airline tickets.

Furthermore, the Respondent has not produced evidence to show that it is commonly known by the domain name. The Respondent’s leasing the disputed domain name to a third party for sale of discounted airline tickets is not a legitimate noncommercial, or fair use of the disputed domain name.

The Respondent argues that the Complainant does not have exclusive rights to the common Simple-based-word combination (Air + China). This argument has been dealt with by another Panel in Air China Limited vs. Hansoo Bae (ADNDRC Case No. CN-0700135). The Panel held that “As being known universally, in the business line of air passenger service, it is not unusual for a company providing such a service to name itself with the word “Air” and a country name… Thus it is universally understandable why the Complainant, as China’s used-to-be unique and currently the largest state-run civil aviation service provider to be titled Air China which is recognized by the world air service organization IATA… No wonder, the words Air China mean the Complainant in the mind of the consumers’ home and abroad.”

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that you 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 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 website 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 website or location or of a product or service on your website or location.

The Respondent's argument that the initial registration of the disputed domain name in 1999 by another person removes the element of bad faith is not justified. Registration in bad faith must occur at the time the current registrant took possession of the domain name. Thus, we need to examine whether bad faith existed when the Respondent acquired the disputed domain name in 2005.

Evidence shows that the Complainant's trademark "Air China" has achieved a strong reputation throughout the world through a long history of use and the worldwide significance of the brand name. As such, the public has come to recognize and associate the Complainant's trademark "Air China" as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent knew, or should have known, of the existence of the Complainant and its trademark. The fact that the Respondent paid \$ 41,000 to acquire the disputed domain name, suggesting that the Respondent knew of the significant value of the disputed domain name, has further substantiated the above inference. The action of registering and use of the disputed domain name per se has constituted bad faith.

The Panel finds that the Respondent's registration and use of the disputed domain name has the effect of preventing the Complainant from reflecting its trademark "Air China" in a domain name corresponding to its activities; the evidence submitted by the Complainant clearly shows that the Respondent has engaged in a pattern of such conduct by registering a series of domain names, such as <bclife.com>, <stx.com>, <lechateau.com>. This is use of the domain name of the type contemplated by Paragraph 4 (b)(ii) of the Policy.

The Panel further finds that the Respondent, by leasing the disputed domain name to a third party and then redirecting the traffic to airlines that compete with the Complainant, has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark. Accordingly, the example of Paragraph 4 (b)(iv) of the Policy is also applicable in the present case.

As the respondent asserted that, the Respondent did not use the disputed domain name for its own business, but leased the domain name to a third party for several months, who's business was air-ticket service. The Panel finds that such a transaction has been well included in Paragraph 4 (b) of the Policy, i.e. the Respondent had acquired the domain name primarily for the purpose of renting the domain name registration to a competitor of the complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.airchina.com

Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <airchina.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

Presiding Panelist Mr. ZHAO Yun

Panelist Mr. TANG Guangliang Panelist Ms. Dilek USTUN

Dated: 12 September 2007

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