



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Decision ID	DE-0500038
Case ID	HK-0400054
Disputed Domain Name	www.cathaypacificairline.com
Case Administrator	Dennis Choi
Submitted By	Nigel Francis
Participated Panelist	Nigel Francis
Date of Decision	04-02-2005

The Parties Information

Claimant	Cathay Pacific Airways Limited
Respondent	Tang Nguyen

Procedural History

1. THE PARTIES AND CONTESTED DOMAIN NAME

The Complainant is Cathay Pacific Airways Limited.

The Respondent is an individual, Tang Nguyen of 1 Sogong-Dong, Chung-Ku, Seoul, Ku 3500, Korea.

The domain name at issue is “cathaypacificairline.com” (the “Disputed Domain Name”) the Registrar of which is Primus Telco Pty Limited DBA (trading as “Planet Domain” or “Primus Domain”) of Level 3, 538 Collins St., Melbourne, Victoria 3000, Australia.

2. PROCEDURAL HISTORY

A complaint in respect of the Disputed Domain Name was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC”) in terms of the prescribed Form C on 2nd November 2004.

No Response from the Respondent was filed with the ADNDRC within the prescribed time.

Notice of Appointment of Nigel Francis as the Panellist in this matter was issued to the parties by the Hong Kong Office of the ADNDRC on 6th December 2004.

Factual Background

For Claimant

3. FACTUAL BACKGROUND

A ‘WHOIS’ database search record provided by the Complainant shows that the Disputed Domain Name; (i) is registered with Primus Telco Pty Limited DBA trading it appears as “Planet Domain - Snapnames”; (ii) was first registered on 15th October 2003; and (iii) is owned by the Respondent. The Complainant has also provided a copy of the standard services agreement of Primus Telco Pty Limited DBA which the owner of a domain name registered with it is required to agree and bind themselves to. The agreement expressly incorporates by reference (and a weblink) the ICANN Uniform Domain Name Dispute Resolution Policy (the “Policy”) as amended from time to time.

4. MANDATORY ADMINISTRATIVE PROCEEDING

For the Complainant it is said that in accordance with Paragraph 4.a. of the Policy, the Respondent is required to submit to a mandatory administrative proceeding because:

- (1) The Disputed Domain Name 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 Disputed Domain Name; and
- (3) The Disputed Domain Name was registered and is being used in bad faith.

For Respondent

The Respondent has failed to provide a Response or evidence to counter the complaint despite being given notice in accordance with the requirements of the Policy (the fact that the Respondent is on notice being supported by the suspension of the website to which the Disputed Domain Name is linked).

Parties' Contentions

Claimant

5. "IDENTICAL OR CONFUSINGLY SIMILAR" - RULE 4.a.(i)

In this regard the Complainant has provided and relies on the following information:-

(1) The Complainant was founded on 24 September 1946 and is an international airline based in Hong Kong. The Complainant offers scheduled passenger and cargo services to 85 destinations around the world including Beijing, London, Brisbane, Frankfurt, Vancouver, Amsterdam, Rome, San Francisco, Paris, and Zurich. The Complainant now carries approximately one million passengers each month and is listed on the Stock Exchange of Hong Kong. A new record of 45,803 passengers carried in a single day was set on 4th July 2004. In the first 6 months of 2004, the Complainant carried 469,909 tonnes of freight, an increase of 15.8% on 2003 and a 21.8% increase on 2002. The Complainant's fleet is now comprised of 86 aircraft and it would exceed 100 aircraft with new acquisitions to be completed by 2006. A copy of the printout of the Complainant's interim report 2004 has been provided.

(2) The Complainant has grown tremendously since its set up over 50 years ago. The average attributable profits of the Complainant and its subsidiary and associated companies ("the Complainant's Group") for the last 5 years are in excess of thousands of millions Hong Kong dollars. The average turnover of the Complainant's Group for the past 5 years is over HK\$20,000 million. The Complainant's Group employs over 21,000 staff in Hong Kong and the Complainant itself employs 14,800 staff in 30 countries and territories.

(3) The Complainant has won a number of awards in recognition of its outstanding quality and customer service. For example, the Complainant were named "Best of the Best" in the Top Service Aware in the readers' poll of Next Magazine in Hong Kong and it is the eighth consecutive year that the Complainant has won this award. Further, the Complainant received a Platinum award in the Reader's Digest in Hong Kong's SuperBrand Survey from 2000 to 2004 and a Gold award in the Reader's Digest Asia's SuperBrand Survey from 1999 to 2004. Copies of publications related to these awards have been provided.

(4) The Complainant has registrations for the mark "CATHAY PACIFIC" (the "Mark") registered in respect of a variety of goods and services throughout the world and it is said common law rights generated as a result of use of the Mark by the Complainant.

(5) The Complainant has registered the Mark and other marks incorporating "Cathay Pacific" in respect of a wide range of goods and services throughout the world (evidence of these registrations has been provided). The Complainant has also used and advertised these marks extensively throughout the world for over 50 years. It is said that as a result the public will associate the Mark and the name "CATHAY PACIFIC" exclusively with the Complainant.

(6) The Complainant has spent considerable sums in advertising and promoting its goods and services under and by reference to the Marks over the many years in which the Marks have been used. In Hong Kong, the Complainant and its services have been advertised inter alia through television, outdoor advertising, in international magazines and newspapers, and in the local press.

(7) The Complainant has registered, inter alia, the domain name "CATHAYPACIFIC.COM" on September 15, 1995. The web-site "www.cathaypacific.com" has been in active use since early 1996. A copy of the printout of a WHOIS

database search result of “CATHAYPACIFIC.COM” conducted on 27 October 2004 has been provided.

(8) Finally comparing the Disputed Domain Name and the Mark, it can be seen that the Dispute Domain Name has incorporated the entirety of the Mark (with only the addition of the word “airline”).

No response has been received from the Respondent in relation to (any of) these matters.

6. “NO RIGHTS OR LEGITIMATE INTERESTS” - RULE 4.a.(ii)

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because:-

(1) The Respondent has not set up any dedicated website under the Disputed Domain Name. Internet users seeking to connect to the Disputed Domain Name are (though no longer) directed to the website of an entity known as “FlightReservationsOnline.com” operated under the domain name www.flightreservationsonline.com. Copy printouts of the website printed on 29 May 2004 have been provided.

(2) The website “FlightReservationsOnline.com” does not provide any goods or services by itself either. Instead, the website is further linked to the website of another entity known as “BookAirlineTickets.com” operated under the domain name www.bookairlinetickets.com which apparently provides a flight tickets reservation service. By clicking the link “Who are we? - FlightReservationsOnline.com” (now removed) a web page reveals that FlightReservationsOnline.com is an affiliate of BookAirlineTickets.com and that all flight tick bookings and enquiries are in fact handled by BookAirlineTickets.com. Similarly the “About” page redirects the user to the BookAirlineTickets.com website. Printouts to support the above have been provided.

(3) It is therefore submitted that the Respondent uses the Disputed Domain Name to redirect Internet traffic to the website at www.flightreservationsonline.com or an affiliated website at www.bookairlinetickets.com. Reference is made to MSNBS Cable, LLC v Tsys.com D2000-1204 (WIPO Dec 8, 2000) in which it is established that the Respondent does not have any right or legitimate interest in respect of the domain name if he attempts to profit using the Complainant’s mark by redirecting Internet traffic to its own website. Accordingly, in light of the above, the Respondent’s use in this case therefore does not qualify as a legitimate or bona fide use of the Disputed Domain Name.

(4) After the Complainant contacted the Respondent complaining at the registration of the Disputed Domain Name, the Respondent suspended access to the linked website. A copy printout of a page showing that the website under the Disputed Domain Name cannot be found printed on 5 October 2004 has been provided (an attempt by the Panellist to connect to the Disputed Domain Name produced the same result). However, the operation of the flight ticket reservation service offered by the www.flightreservationsonline.com and/or www.bookairlinetickets.com websites is apparently unaffected. It is said that this further reinforces the argument that the Respondent has made no bona fide use of the Disputed Domain Name to offer any goods or services.

(5) It is apparent from the ownership details of the Disputed Domain Name that the Disputed Domain Name is not the name of the Respondent. Furthermore, neither “FlightReservationsOnline.com” nor “BookAirlineTickets.com” bear any similarity with the Disputed Domain Name. The Respondent is therefore not commonly known by the Disputed Domain Name and there is no reason why the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the Disputed Domain Name.

No Response has been received from the Respondent in relation to (any of) these matters.

7. “HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH” - RULE 4.a.(iii)

The Complainant submits that the Respondent has registered and used the Disputed Domain Name in bad faith because:-

(1) The Respondent has registered the Disputed Domain name incorporating the Mark, with an intention of causing confusion in the minds of the public that the Respondent and/or the Respondent’s website is related to or authorised by the Complainant and/or the Complainant’s website.

(2) The name/mark “CATHAY PACIFIC” is an invented mark and is not a term commonly used in the daily English language. The Complainant mainly uses the name/mark “CATHAY PACIFIC” in its global airline business. It is said that it cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name comprising of both the words “CATHAY PACIFIC” and “AIRLINE” as a domain name. Therefore the Respondent is seeking to ride on the name and reputation of the Complainant and uses the Disputed Domain Name, which is substantially similar to the Mark, deliberately in order to attract, for commercial gain, Internet users to the website www.flightreservationsonline.com and to divert them to another website www.bookairlinetickets.com, both of which offer airline ticket reservation services, by creating a likelihood of confusion with the Mark as to the source and affiliation of these airline-related websites.

(3) Given the Complainant's substantial worldwide name and reputation (which the Panellist notes is particularly strong in Asia), it is most unlikely that the Respondent was unaware of the Complainant's rights in the Mark. In particular, it is hard to believe that the Respondent had no knowledge about use of the Mark in the airline industry when the Respondent uses the Disputed Domain Name to redirect Internet users to websites offering flight ticket reservation services.

(4) The Complainant refers to the WIPO decision, *Telstra Corporation Limited v Nuclear Marshmallows* (D2000-0003), in which it was held that the registration of a domain name bearing the Complainant's name is in bad faith if; (i) it is impossible for the Respondent to have not heard of the Complainant's name; and (ii) the Respondent cannot prove any legitimate use of the domain name in dispute. It is submitted that the Respondent has no legitimate or bona fide use of the Disputed Domain Name and they must have been aware of the Complainant's rights in the Mark, and both registration and use of the Disputed Domain Name have therefore been made in bad faith.

(5) The main aim of registration of the Disputed Domain name by the Respondent is to attract Internet traffic to the website www.flightreservationsonline.com or the affiliated website www.bookairlinetickets.com by riding on the Complainant's reputation.

(6) As mentioned above, the Respondent does not operate any website under the Disputed Domain Name. The only use of the Disputed Domain Name is to redirect Internet users to websites which offer airline ticket reservation services, a business directly related to the Complainant. It is said that the Respondent is attempting to ride on the Complainant's reputation in the airline industry with a view to diverting the Complainant's customers to the Respondent's website by registering the Disputed Domain Name. According to the WIPO decision *AT&T Corp v Amjad Kausar* (D2003-0327), a registration of this kind clearly constitutes a bad faith registration.

(7) Apart from the Disputed Domain Name, the Respondent appears to have (putting it at the lowest) played a part in the registration of another domain name www.cathaypacificairway.com which also includes the entirety of the Mark. A copy of a WHOIS database search research of this domain name conducted on 18 May 2004 has been provided. Although the Respondent's name is not expressly denoted as the Registrant, the WHOIS search result shows that the Respondent's email address "mrtangnguyen@yahoo.com" is used as both the Administrative and Technical contacts, which suggests (again at its lowest) that the domain name is in fact in some way connected with the Respondent. It is said that this shows that the Respondent has displayed a pattern of registering domain names consisting of both the Mark and other terms denoting the airline industry, and this must be with a view to preventing the Complainant, the owner of the Mark, from reflecting the Mark in the corresponding domain name.

(8) In respect of the domain name www.cathaypacificairway.com, the Respondent acknowledged the Complainant's rights and initially agreed to transfer the domain name to the Complainant as requested. The Administrative contact of the domain name has thus been changed to the Complainant's email address for the purpose of effecting a transfer. A copy of the updated WHOIS database search result conducted on 28 October 2004 has been provided. However, the domain name has not been transferred as the registrant has failed to respond to the emails of the Complainant's representatives.

(9) The Respondent adopted an uncooperative attitude in respect of the Disputed Domain Name. The Respondent failed to respond to a cease and desist letter and a reminder sent to the Respondent on 21 May 2004 and 29 May 2004 respectively by the Complainant's authorised representative. The said letters were sent by email and post and copies have been provided. It is said this is strong evidence showing that the Respondent blatantly ignores the Complainant's rights in the Mark in respect of the Disputed Domain Name.

No response has been received from the Respondent in relation to (any of) these matters.

8. PARTIES' CONTENTIONS

The Complainant contends that the registration of the Disputed Domain Name should be transferred to it. The Complainant has filed evidence to support its Complaint.

Respondent

The Respondent has failed to provide a Response or evidence to counter the complaint despite being given notice in accordance with the requirements of the Policy (the fact that the Respondent is on notice being supported by the suspension of the website to which the Disputed Domain Name is linked).

Findings

Identical / Confusingly Similar

9. FINDINGS

According to paragraph 4.a. of the Policy, the Complainant has the burden of proving that:-

- (1) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (3) The Disputed Domain Name has been registered and is being used in bad faith.

The Complainant has provided a substantial body of evidence in support of its claims in relation to each element above while the Respondent has not provided any evidence to counter or contradict that provided by the Complainant.

Having considered the evidence provided by the Complainant it is the Panel' s finding that:-

- (a) the Disputed Domain Name is confusingly similar to the Mark in which the Complainant has rights both through registration and common law. The addition of the common word "airline" is not sufficient to remove the very real risk of confusion from the Mark or the Complainant' s own website and indeed in this context adds to it.

Rights and Legitimate Interests

- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Though no Response has been provided by the Respondent, Paragraph 4.c. of the Policy sets out circumstances (not exclusive) which may support a claim by Respondent that it has rights and legitimate interests. Of the alternative grounds set out, the only one which the Respondent might have sought to avail themselves of is the use (prior to notification of the dispute) of the Disputed Domain Name in connection with an offering of goods or services. However, the Paragraph requires that the said offering be "bona fide", and given the weight of evidence in relation to the substantial name and reputation vested in the Complainant' s Mark worldwide, and particularly in Asia, something the Respondent must have been aware of (particular given the linked website), the Panel finds that the Respondent' s prior use of the Disputed Domain Name was not bona fide;

Bad Faith

- (c) the Disputed Domain Name was registered and is being used in bad faith. The Panel refers to Paragraph 4.b.(iv) of the Policy and its findings above regarding the Complainant' s substantial name and reputation derived from the Mark, and finds that the Respondent has sought to use the Disputed Domain Name to attract Internet traffic to the linked websites through creating a likelihood of confusion with the Complainant' s Mark.

Status

www.cathaypacificairline.com Domain Name Transfer

Decision

10. ARBITRATION DECISION

In view of the evidence presented to the Panel and the findings set out above, the Panel finds each of the 3 elements of Paragraph 4.a. proven and therefore orders that the Disputed Domain Name be transferred to the Complainant.

Nigel Francis
4th February 2005

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