



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. KR-2100233

Complainant1: HANJIN KAL Corp.

Complainant2: Korean Air Lines Co, Ltd.

Respondent: Quyen Tran

Disputed Domain Name(s): <korean-airline.com>

1. The Parties and Contested Domain Name

The Complainant1 is HANJIN KAL Corp., Seoul, Republic of Korea, represented by Lee & Ko.

The Complainant2 is Korean Air Lines Co, Ltd., Seoul, Republic of Korea.

The Respondent is Quyen Tran, Dong Nai Province, Vietnam.

The domain name at issue is <korean-airline.com>, registered with NameSilo.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on November 11, 2021, seeking for a transfer of the domain name in dispute.

On November 11, 2021, the Center sent an email to the Registrar asking for the detailed data of the registrant. On November 11, 2021, NameSilo transmitted by email to the Center its verification response, advising 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"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on November 16, 2021 and the due date for the Response was December 6, 2021. No Response was filed by the due date.

On December 9, 2021, the Center appointed Mr. Ho-Hyun Nahm as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Centre has discharged its responsibility under Paragraph 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in the Rules. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the Rules, the Centre's Supplemental Rules and any rules and principles of law that the Panel deems applicable.

3. Factual background

A. Complainant

Complainant 1 is the trademark holder of the "Korean Air" mark and the "Korean Airlines" mark in the U.S., Republic of Korea and Vietnam, among other countries. "Korean Air Lines" is the English company name of Complainant 2, an affiliate of

Complainant 1. Complainant 2 owns and has been operating three domain names incorporating the “Korean Air” trademark to this date. Complainant 2 operates a successful global airline business under “Korean Air” and “Korean Airlines” marks. The official English name of Complainant 2 is Korean Air Lines, but ‘Korean Air’ has been used interchangeably.

B. Respondent

The Respondent is currently posting flight information of Complainant 2 in the Vietnamese language on the disputed domain name’s resolving website.

4. Parties’ Contentions

A. Complainant

i) Complainant 2 has become a major leading player in the passenger air transport business in the world since its founding in the late 1960s. Complainant 2 ranked No. 1 in Global Customer Satisfaction Competency Index in the air passenger transportation service category for 17 consecutive years. The marks “Korean Air” and the “Korean Airlines” are highly reputable and well known around the world. Complainant 1 has rights in the “Korean Air” and the “Korean Airlines” marks through the registration of the marks with various trademark authorities around the world. The disputed domain name is confusingly similar to the marks “Korean Air” and the “Korean Airlines.” The disputed domain name is identical or confusingly similar to Complainant 1’s marks, except for the hyphen between “korean” and “airline” with such hyphen carrying or adding no meaning at all.

ii) The Respondent lacks rights or legitimate interests in the disputed domain name. The Complainants did not authorize the Respondent to use the Complainants’ marks in any way. The Respondent fails to make a *bona fide* offering of goods or services or legitimate noncommercial or fair use. Instead, the disputed domain name resolves to a website that displays flight information of Complainant 2, Complainants’ ‘Korean Air’ mark, photos of aircrafts bearing the Complainants’ ‘Korean Air’ logo mark, etc.

iii) The Respondent registered and used the disputed domain name in bad faith as the Respondent attempts to pass off as Complainant 2 by making use of the “Korean Air” and the “Korean Airlines” marks and offering infringing versions of the services. The Respondent also had actual knowledge of rights in the Complainants’ marks due to the longstanding use and fame of the marks in commerce. The Respondent intentionally concealed its identity and information.

B. Respondent

The Respondent did not submit a Response in this proceeding.

5. Findings

i) The disputed domain name was registered on January 10, 2018.

ii) The Complainants have established rights in the “Korean Air” mark based upon registration with the USPTO (*e.g.*, Reg. No. 1379608, registered January 21, 1986), the Korean Intellectual Property Office (KIPO) (*e.g.*, Reg. No. 40-0035166, registered on February 28, 1997), and the Vietnamese trademark authorities (*e.g.*, Reg. No. 259267, registered on March 9, 2016), among others. The Complainants have also established rights in the “KOREAN AIR LINES combined with its conceptual equivalent and a device” mark based upon registration with the KIPO (*e.g.*, Reg. No. 41-0001045, registered on May 9, 1975).

iii) The disputed domain name resolves to a website displaying flight information of Complainant 2, Complainants’ ‘Korean Air’ mark, photos of aircrafts bearing the Complainants’ ‘Korean Air’ logo mark, etc.

6. Discussions

Paragraph 15(a) of the Rules instructs this Panel to “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 Complainant must 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 Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) 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.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainants' undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. *See* WIPO Jurisprudential Overview 3.0 at section 4.3; *see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (Forum June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint").

A) Identical / Confusingly Similar

The Complainants assert that Complainant 1 has rights in the "Korean Air" mark based upon registration with the USPTO (*e.g.*, Reg. No. 1379608, registered January 21, 1986), the Korean Intellectual Property Office (KIPO) (*e.g.*, Reg. No. 40-0035166, registered on February 28, 1997), and the Vietnamese trademark authorities (*e.g.*, Reg. No. 259267, registered on March 9, 2016), among others. Complainant 1 has rights in the "KOREAN AIR LINES combined with its conceptual equivalent and a device" mark based upon registration with the KIPO (*e.g.*, Reg.No. 41-0001045, registered on May 9, 1975).

Registration of a mark with the national trademark authorities is a valid showing of rights in a mark. *See DIRECTV, LLC v. The Pearline Group*, FA 1818749 (Forum Dec. 30, 2018) (“Complainant’s ownership of a USPTO registration for DIRECTV demonstrate its rights in such mark for the purposes of Policy paragraph 4(a)(i).”). Since the Complainants have provided the Panel with evidence of registration of the ‘Korean Air’ mark with the USPTO, the KIPO and the Vietnamese trademark authorities, the Panel finds that the Complainants have established rights in the marks under Policy paragraph 4(a)(i).

The Complainants contend that the disputed domain name is identical or confusingly similar to Complainant 1’s “Korean Air” mark, except for the hyphen between “korean” and “airline” with such hyphen carrying or adding no meaning at all. Also, “airline” in the disputed domain name (a mere addition of “line” right after “air”) is substantially identical and confusingly similar to Complainant 2’s official English company name “Korean Air Lines” and exactly identical to the related “Korean Airlines” mark.

The Panel observes that additions to a complainant’s mark such as a generic and/or descriptive term, a hyphen and a gTLD may not negate any confusing similarity between a disputed domain name and mark under Policy paragraph 4(a)(i). *See Microsoft Corporation v. Thong Tran Thanh*, FA 1653187 (Forum Jan. 21, 2016) (determining that confusing similarity exists where [a disputed domain name] contains Complainant’s entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from the other for the purposes of the Policy); *see also Blizzard Entertainment, Inc. v. XINXIU ZENG / haimin liang*, FA 1736365 (Forum July 19, 2017) (finding that the addition of punctuation—specifically, a hyphen—did not sufficiently distinguish the disputed domain name from complainant’s registered mark). Therefore, the Panel finds that the disputed domain name is confusingly similar to Complainant 1’s “Korean Air” and “Korean Air Lines” marks per Policy paragraph 4(a)(i).

B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy, and then the burden shifts to Respondent to show it does have rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA741828 (Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerberg*, FA780200 (Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

The Complainants contend that the Respondent is not related to nor affiliated with Complainant 1 or 2 in any way, and Complainants have neither authorized nor granted a license to the Respondent to use the “Korean Air” and “Korean Airlines” marks. The Respondent thus does not stand to have any legal relationship with the Complainants. The Respondent holds itself out to the public as if it were an official Vietnamese branch of Complainant 2, luring customers to use the Respondent’s webpage whose domain name is substantially similar to that of Complainant 2, and thus creating a false impression of association. The use of a confusingly similar domain name in a deceptive manner to promote its business does not qualify as a legitimate interest because such use cannot qualify as a legitimate noncommercial or fair use. The Respondent is currently posting flight information of Complainant 2 in the Vietnamese language on its website resolved by the disputed domain name in an attempt to deceive visitor-consumers into thinking that the the disputed domain name’s resolving website is actually run by Complainant 2 by exploiting the goodwill that the Complainants have built through decades of investment. Such use cannot be characterized as a legitimate noncommercial or fair use.

The Panel notes that the Respondent passes itself off as Complainant 2 by displaying flight information of Complainant 2 in the Vietnamese language, Complainants' 'Korean Air' mark, photos of aircrafts bearing Complainants' 'Korean Air' logo mark on the disputed domain name's resolving website. Use of a disputed domain name to pass off as a complainant is not a *bona fide* offering of goods or services or legitimate noncommercial or fair use per Policy paragraph 4(c)(i) or (iii). *See Ripple Labs Inc. v. NGYEN NGOC PHUONG THAO*, FA 1741737 (Forum Aug. 21, 2017) ("Respondent uses the [disputed] domain name to divert Internet users to Respondent's website... confusing them into believing that some sort of affiliation exists between it and Complainant... [which] is neither a bona fide offering of goods or services under Policy paragraph 4(c)(i) nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii)."), *see also Russell & Bromley Limited v. Li Wei Wei*, FA 1752021 (Forum Nov. 17, 2017) ("The respondent's use of the disputed domain name to pass itself off as the complainant to advertise and sell unauthorized products of the complainant is not a *bona fide* offering of goods or services pursuant to Policy paragraph 4(c)(i), or a legitimate noncommercial or fair use of the disputed domain name pursuant to Policy paragraph 4(c)(iii).").

The Panel finds that the Complainants have made out a *prima facie* case that arises from the considerations above. All of these matters go to make out the *prima facie* case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Bad Faith

The Complainants contend that the Respondent is misappropriating the goodwill of the "Korean Air" and the "Korean Airlines" marks in bad faith. Such goodwill and reputation across consumers around the world is forcefully evidenced by the fact that Complainant 2 has become a major leading player in the passenger air transport business in the world since its founding in the late 1960s; Complainant 2 ranked No. 1 in Global Customer Satisfaction Competency Index in the air passenger transportation service category for 17

consecutive years; and Complainant 2 has received various awards and accolades in and out of the Republic of Korea.

The Panel recalls that the Respondent passes itself off as Complainant 2 by displaying flight information of Complainant 2 in the Vietnamese language, Complainants' 'Korean Air' mark, photos of aircrafts bearing Complainants' 'Korean Air' logo mark on the website resolved by the disputed domain name. Use of a disputed domain name to pass off as a complainant and offer competing or counterfeit versions of its products may be evidence of bad faith per Policy paragraph 4(b)(iii) and (iv). *See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (Forum July 9, 2018) (finding bad faith per Policy paragraphs 4(b)(iii) and (iv) where the respondent used the disputed domain name to resolve to a website upon which the respondent passes off as the complainant and offers online cryptocurrency services in direct competition with the complainant's business), *see also Guess? IP Holder L.P. and Guess?, Inc. v. LI FANGLIN*, FA 1610067 (Forum Apr. 25, 2015) (finding respondent registered and used the domain name in bad faith per Policy paragraph 4(b)(iii) because the respondent used the resolving website to sell the complainant's products, using images copied directly from the complainant's website), *see also Bittrex, Inc. v. Wuxi Yilian LLC*, FA 1760517 (Forum Dec. 27, 2017) (finding bad faith per Policy paragraph 4(b)(iv) where "Respondent registered and uses the <l**ittrex.com**> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website in order to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant.").

The Complainants have provided the Panel with screenshots of the disputed domain name's resolving webpages that show flight information of Complainant 2, the Complainants' 'Korean Air' mark, photos of aircrafts bearing the Complainants' 'Korean Air' logo marks. Therefore, the Panel finds that the Respondent registered and used the disputed domain name in bad faith per Policy paragraph 4(b)(iii) or (iv).

Given the reputation and notoriety of the Complainants' marks, the Complainants further contend that the Respondent registered the disputed domain name with actual knowledge

of rights in the Complainants' marks. The Panel notes that while constructive notice of a complainant's mark is insufficient for a finding of bad faith, actual knowledge is sufficient and may be proven through a totality of circumstances per Policy paragraph 4(a)(iii). *See Custom Modular Direct LLC v. Custom Modular Homes Inc.*, FA 1140580 (Forum Apr. 8, 2008) ("There is no place for constructive notice under the Policy."); *see also Google Inc. v. Ahmed Humood*, FA1411001591796 (Forum Jan. 7, 2015) ("This Panel makes that inference; Respondent has actual knowledge of Complainant's mark at the time of domain name registration based on the fame of Complainant's GOOGLE mark and Respondent's use of one of the disputed domain names to detail Internet domain name registration and maintenance services related to an in competition with Complainant.). The Panel infers, due to the fame and notoriety of the Complainants' marks and the Respondent's manner of use of the disputed domain name to pass the Respondent off as Complainant 2 that the Respondent had actual knowledge of rights in the Complainants' "Korean Air" and the "Korean Airlines" marks at the time of registering the disputed domain name, and thus finds the Respondent's bad faith registration of the disputed domain name per Policy paragraph 4(a)(iii).

7. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**. Accordingly, it is Ordered that the domain name <korean-airline.com> be **TRANSFERRED** from the Respondent to **Complainant 2**.



Ho-Hyun Nahm

Sole Panelist

Dated: December 15, 2021