

ADMINISTRATIVE PANEL DECISION

Airbus SAS v. Thomas Venturini, Venturini Thomas
Case No. D2023-0271

1. The Parties

The Complainant is Airbus SAS, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Thomas Venturini, Venturini Thomas, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <airbuspc.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2023. On January 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing additional contact details. The Center sent an email communication to the Complainant on January 31, 2023, providing the additional contact details disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on the same date. On January 31, 2023, the Respondent sent an email communication to the Center.

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 Respondent of the Complaint, and the proceedings commenced on February 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2023. The Response was filed with the Center on February 19, 2023.

The Center appointed Andrew D. S. Lothian 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 is a designer and manufacturer of commercial aircraft, satellites and related vehicles, and is responsible for various innovations in the field of aviation. Its history dates back to 1970, with the formation of the Airbus Industrie GIE consortium. As at September 2021, the Complainant has delivered over 13,500 aircraft to airlines worldwide, and 12,000 helicopters operated by over 3,000 customers. The Complainant offers training services on its various aircraft types. With a complement of 131,000 employees, the Complainant maintains a wide global presence, comprising 180 locations across Europe, the Americas, Africa and the Middle East, and Asia. The Complainant maintains a strong Internet presence via its primary domain name, <airbus.com>, registered since May 23, 1995. The related website received 1.8 million individual visits in December 2022 alone, and is ranked as the 22,449th most popular website worldwide.

The Complainant is the owner of the trademark AIRBUS in various jurisdictions, either in its own name or via its wholly-owned affiliate, Airbus Operations GmbH. For example, the Complainant is the owner of International Registered Trademark No. 1112012 for the word mark AIRBUS, registered on June 24, 2011 in Classes 3, 6, 7, 8, 9, 12, 13, 14, 16, 17, 18, 21, 24, 25, 28, 35, 36, 37, 38, 39, 40,41, 42, 43, and 45, designated in respect of some 30 territories. The Complainant is the owner of several AIRBUS registered trademarks in the territory where the Respondent is based, including for example, Hong Kong Registered Trademark No. 301860381 for the word mark AIRBUS, registered on March 16, 2011 in Classes 7, 9, 12, 25, 28, 35, 36, 37, 38, 39, 40, 41, and 42.

The disputed domain name was registered on August 2, 2022. The Respondent appears to be a private individual who provides or proposes to provide training on Airbus aircraft types via the website at the disputed domain name. According to a screenshot produced by the Complainant, the website associated with the disputed domain name is headed “AIRBUS Training / Get Ready for Your Take Off” and notes below “Are you looking for Revalidation/Renewal/Skill test for your EASA Airbus 320/330/350 Type Ratings, IR, PBN? / You’ll enjoy an excellent atmosphere and TRI/TRE committed to professional [...]” On said website, the Respondent refers to itself as “Airbuspc.com” in phrases such as “As a student at Airbuspc.com [...]” and “To find out more information about your training/check at Airbuspc.com [...]”. The website features the image of one of the Complainant’s A330neo AIRBUS aircraft in flight, which the Complainant asserts is copyrighted and has been extracted from its own Media Center. Said website does not mention any affiliation or non-affiliation that the Respondent may have with the Complainant.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant is the owner of the AIRBUS mark. In a comparison with the disputed domain name, the applicable Top-Level Domain (“TLD”) should be disregarded as it is a standard registration requirement. The disputed domain name incorporates the Complainant’s trademark in its entirety, merely adding the letters “pc” to the end. Such addition does not prevent the Complainant’s trademark from being recognizable in the disputed domain name, and this is insufficient to overcome a finding of confusing similarity. The Respondent’s use of the disputed domain name contributes to the confusion by the relative website displaying a copyrighted image including the Complainant’s logo while offering training courses. Although content is usually disregarded in the first element assessment of the Policy, panels have taken note of such content where it appears *prima facie* that the respondent seeks to target a trademark through the domain name concerned.

Rights or legitimate interests

The Respondent is not sponsored by or affiliated with the Complainant in any way, and the Complainant has not given the Respondent permission to use its trademarks in any manner. The Respondent is not commonly known by the disputed domain name and the registrant name in the pertinent WhoIs information does not resemble the disputed domain name in any manner. The Respondent is not making a *bona fide* offering of goods or services or legitimate noncommercial fair use of the disputed domain name. On the website available at the disputed domain name, the Respondent offers and attempts to offer its own, unauthorized, pilot training courses, that compete directly with the Complainant's own training programs. The Respondent attempts to confuse users into believing that it is affiliated with or sponsored by the Complainant. Offering competing goods or services coupled with the unauthorized use of a complainant's trademarks in a confusingly similar domain name, does not qualify as a *bona fide* offering of goods or services.

Registered and used in bad faith

It is more likely than not that the Respondent knew of and targeted the Complainant's trademark, and the Respondent should be found to have registered and used the disputed domain name in bad faith.

The Complainant and its mark have been known internationally since 1970. Previous panels have recognized the Complainant's notoriety. The Respondent has created a domain name that is confusingly similar to the Complainant's mark, adding the generic term "pc", and has thereby demonstrated a knowledge of and familiarity with the Complainant's brand and business, also evident from the use of the disputed domain name to promote unauthorized pilot training courses for the Complainant's aircraft. The AIRBUS mark is so closely linked and associated with the Complainant that the Respondent's use strongly implies bad faith.

By registering the disputed domain name and including the Complainant's trademark in its entirety, by using its website to promote pilot training courses, and by using a copyrighted image of the Complainant's A330neo aircraft and the Complainant's logo, the Respondent attempts to profit nefariously from confusing unsuspecting users into believing that there is a connection between the Parties, and violates paragraph 4(b)(iv) of the Policy. The Respondent's website gives the impression that the Respondent is somehow associated with the Complainant when it is not. Such confusion could be dangerous given that the Respondent is offering unauthorized pilot training for commercial aircraft. The Respondent is using the fame of the Complainant's trademark to increase traffic improperly to the website listed at the disputed domain name for the Respondent's own commercial gain. It is well established that such conduct constitutes bad faith.

The Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under paragraph 4(b)(iii) of the Policy. The disputed domain name is confusingly similar to the Complainant's trademarks and offers pilot training courses that compete with the Complainant's own offerings.

The Respondent ignored the Complainant's attempts to resolve this dispute outside the administrative proceeding. Previous panels have held that failure to respond to a cease-and-desist letter may properly be considered a factor in finding bad faith registration and use of a domain name.

B. Respondent

The Respondent did not file a formal Response but, in summary, made the following contentions in its email of February 19, 2023.

The website associated with the disputed domain name was never intended to be built in bad faith. It is very evident from the spelling of the disputed domain name that it is not the Complainant's domain name and

does not belong to the Complainant. The disputed domain name was available for registration without restrictions when it was registered.

The Complainant is not the only entity authorized to provide training on Airbus aircraft for professionals who hold an Airbus type rating. It is clear that this is what is offered at the disputed domain name, and it is neither against the law nor offending against the Complainant's rights. The Respondent is not a manufacturer, and mentioning types which are manufactured and sold worldwide by the Complainant on any aviation-related website neither implies a business relationship nor affiliation with the Complainant. There is no statement declaring any such relationship on the website associated with the disputed domain name.

"Training on Airbus" is not a trademark of the Complainant, and the Respondent is providing training on Airbus, not for Airbus. The Complainant does not offer training in the facilities where the Respondent offers training, as mentioned on its website. The A320, A330, and A350 are all aircraft sold by the Complainant, and their type simulators are present in many private facilities which require certified instructors/examiners. By analogy, a driving school can use a Mercedes brand car for driver training and could mention the car manufacturer's name on its website.

The disputed domain name is good, free, positive advertising for the Complainant and is not a competitor. The Respondent has been in the aviation industry for 30 years and does not see the point of the Complaint. The Respondent will shut down the website and drop the disputed domain name if the Complainant will reimburse it for its domain purchase and web development costs, and its customer collateral damage, in the sum of USD 700. Alternatively, the Respondent will modify the website content with a disclaimer specifying that the Respondent is a private training organization domain that is not affiliated with the Complainant.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is 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 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

The first element assessment under the Policy is typically conducted in a two stage process. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark. Secondly, such trademark is compared to the disputed domain name, usually on a straightforward side-by-side comparison, to determine identity or confusing similarity. The TLD of the domain name concerned (in this case ".com") may be disregarded for the purpose of this comparison exercise, on the basis that it is merely a technical requirement of registration. If, when compared, the trademark is alphanumerically identical to the disputed domain name, identity will generally be found. If the trademark is not so identical but is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its AIRBUS registered trademark. Turning to the comparison exercise, the disputed domain name reproduces said mark, merely adding the letters "pc" at the end. The addition of such letters does not change the fact that the Complainant's trademark is fully recognizable in the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your 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
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

The Panel finds that the Complainant has made out a *prima facie* case based on its submissions that the Respondent is not sponsored by or affiliated with the Complainant, that it has received no permission from the Complainant to use the Complainant's trademark, that it is not commonly known by the disputed domain name, and that it is not making a *bona fide* offering of goods or services or a legitimate, noncommercial or fair use of the disputed domain name. The Complainant adds that the Respondent's offer of competing training services, coupled with the unauthorized use of the Complainant's trademark in a confusingly similar domain name, does not qualify as a *bona fide* offering of goods or services. In these circumstances, the burden of production shifts to the Respondent to bring forward submissions and related evidence regarding any rights or legitimate interests which it might claim in respect of the disputed domain name.

The essence of the Respondent's case is that it is making fair referential use of the Complainant's trademark within the disputed domain name, and on the corresponding website, to describe the aircraft types manufactured by the Complainant (which also reflect the Complainant's AIRBUS trademark as they are named “Airbus A320”, etc.) in respect of which the Respondent offers training services. The core factors that panels typically consider in assessing such a claim of fair use are (1) the nature of the domain name, (2) circumstances beyond the domain name (including website content), and (3) the nature of any commercial activity associated with the disputed domain name (see paragraph 2.5 of the [WIPO Overview 3.0](#)).

Turning first to the nature of the disputed domain name, this consists of two elements, first, “airbus” representing the Complainant's AIRBUS trademark, and secondly, “pc”. The Respondent does not explain this second element, although the Panel considers that it may be intended as an abbreviation for “proficiency check” or equally could be taken as the more widely known abbreviation for “personal computer”. Whatever “pc” may stand for in this case, the Panel is of the view that the composition of the disputed domain name tends to signal an affiliation with or endorsement/sponsorship by the Complainant. All of the focus in the

disputed domain name is on the Complainant's mark, suggesting something official which emanates from it. Assuming that the letters "pc" mean anything to the Respondent's market of pilot training, a market in which the Complainant also participates, the disputed domain name would tend to suggest pilot training by the Complainant, not third party training on a type of aircraft that the Complainant manufactures. The Respondent notes that the Complainant does not own a trademark for "training on airbus" but that is nothing to the point. The question is whether the domain name itself makes it clear that the Respondent is providing third party training and references the Complainant's mark no more than is necessary to be able to qualify the aircraft type to which that training relates. The disputed domain name goes beyond this in the Panel's opinion.

Turning to the website content, being the only circumstance beyond the disputed domain name that is before the Panel, the Respondent does not make clear to Internet users visiting such website that it is not operated by the Complainant. The website advertises training services, describing these as "AIRBUS training", and capitalized as such. While the Response suggests that this phrase refers to the offer of training on Airbus type aircraft, the website does not specify that the service is not authorized or endorsed by the Complainant or that it is wholly independent of it. The potential for Internet user confusion is exacerbated by the fact that the Respondent identifies itself only as "Airbuspc.com" in phrases such as "As a student at Airbuspc.com, you'll enjoy an excellent learning atmosphere [...]" and "To find out more information about your training/check at Airbuspc.com contact us today". As far as the Panel is concerned, this use of the Complainant's mark amounts to use as a source-identifier, in a manner that implies an affiliation with the Complainant, and does not in any way indicate that the Respondent is not so affiliated.

To adopt the Respondent's analogy, a driving school could mention in its website copy that its training is provided in a Mercedes brand vehicle, and, carefully used in appropriate circumstances, this could potentially be a permissible referential use of the MERCEDES trademark. However, the present case is more akin to a driving school adopting and advertising the name "MercedesDS" as its identity, both in its domain name and in corresponding website content, giving rise immediately to confusion as to source, sponsorship, or endorsement by the trademark owner. This would go beyond any type of permissible referential use and in fact would suggest that the driving school is provided by, or sponsored or endorsed by, the trademark owner. Accordingly, considering the nature of the Respondent's commercial activity in this case, the Panel is of the opinion that the Respondent's website content could not *prima facie* be viewed as supporting the claimed purpose of referential use, and that it is misleading as to source or sponsorship.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case that it has no rights or legitimate interests in the disputed domain name and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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 of 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."

UDRP panels have typically determined that for bad faith registration and use to be made out there must be a degree of targeting of a complainant or its mark, or at the very least that a respondent must have had the complainant or its trademark in mind when selecting the disputed domain name. In the present case, the Panel is satisfied that the Respondent had the Complainant's trademark in mind when the disputed domain name was registered. The Respondent's use of the well-known AIRBUS trademark in the disputed domain name, coupled with its selection and use of the copyrighted image of the Complainant's aircraft featuring the AIRBUS trademark and logo make this clear. The disputed domain name itself suggests a commercial connection or affiliation between the Complainant and the Respondent where none exists. The corresponding website makes no attempt to dispel the confusion that arises and indeed suggests through the use of the name "Airbuspc" that the training services described are provided by or officially sanctioned by the Complainant, which is the owner of the AIRBUS trademark. The Panel considers that the confusion that would inevitably arise from the disputed domain name and from its intended use cannot have escaped the Respondent's notice both when it registered the disputed domain name and when it used it for the associated website.

In all of these circumstances, the Panel is satisfied that registration and use in bad faith is made out in terms of paragraph 4(b)(iv) of the Policy, namely that the Respondent has used the disputed domain name intentionally to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of that website and the corresponding services offered there.

The Panel adds for completeness that nothing in this decision is intended to prevent the Respondent from operating a business that provides training on Airbus aircraft types. This is permissible, as far as the provisions of the Policy are concerned, provided that any associated domain name does not reproduce the Complainant's mark in a way that is likely to confuse Internet users as to source or sponsorship, that any corresponding website makes the Parties' lack of any commercial connection clear, that there is no confusion generated either by the domain name or website content regarding the source of the training services, and that any use of the Complainant's mark is limited to that which is necessary to identify the aircraft types on which the training is provided.

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 <airbuspc.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: March 23, 2023