

## ADMINISTRATIVE PANEL DECISION

British Airways Plc v. Ferhat YILDIRIM

Case No. DAI2024-0009

### 1. The Parties

The Complainant is British Airways Plc, United Kingdom, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Ferhat YILDIRIM, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <britishairways.ai> is registered with 1API GmbH (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted | EU Registrar) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2024, 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 January 30, 2024.

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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent sent an email communication to the Center on January 26, 2024, mentioning amongst others his availability to sell the domain name. With email of January 30, 2024, the Complainant underlined that it is not interested in purchasing the disputed domain name and prefers to continue with the UDRP-proceedings. Consequently, on February 26, 2024, the Center informed the parties that it would proceed to panel appointment.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on March 5, 2024. 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 global airline that has been operating for over 100 years achieving a passenger revenue of 6,6 billion EUR in the first half of 2023.

The Complaint is based amongst others on United Kingdom Trademark, No. 00001454014 for BRITISH AIRWAYS registered on June 17, 1994, for goods and services in classes 16, 28, 36, 39 and 42. This mark has duly been renewed and is in force.

The disputed domain name was registered on February 11, 2023.

It results from the undisputed and documented evidence provided by the Complainant that the disputed domain name redirects to a website where the disputed domain name is offered for sale, along with other domain names at an asking price of 999 USD.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to the registered mark in which the Complainant has rights.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not sponsored by or affiliated with the Complainant in any way. Furthermore, the Complainant has not authorized the Respondent to use its BRITISH AIRWAYS marks as part of the disputed domain name. Finally, the Respondent is not commonly known under the disputed domain name and is offering the disputed domain name for sale for an amount that far exceeds the costs for such a domain name.

Thirdly, the Respondent's registration and use of the disputed domain name constitutes – in the Complainant's view – bad faith under several aspects: The disputed domain name is advertised for sale to the general public at an asking price of 999 USD. Furthermore, the Respondent creates a likelihood of confusion with the Complainant and its trademarks by registering a domain name that incorporates the Complainant's BRITISH AIRWAYS trademark, which demonstrates that the Respondent is using the disputed domain name to confuse unsuspecting Internet users looking for the Complainant's services, and to mislead them as to the source of the disputed domain name and website.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and 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 the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, i.e., United Kingdom Trademark, No. 00001454014 for BRITISH AIRWAYS registered on June 17, 1994, which has duly been renewed and is in force, [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element, [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

First, it results from the Complainant's uncontested evidence that the disputed domain name redirects to a website where it is offered for sale at an asking price of 999 USD. Such use cannot – in this Panel's view – be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since the BRITISH AIRWAYS mark is well reputed and the use of the disputed domain name appears to be intended to capitalize on the reputation and goodwill of the Complainant's mark (*cf.* [WIPO Overview 3.0](#) at section 2.9). In addition, the Respondent did not submit any evidence of bona fide use of the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized the Respondent's use of the BRITISH AIRWAYS trademark for registering the disputed domain name, which is identical to the Complainant's mark.

Secondly, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel is satisfied that the registered trademark BRITISH AIRWAYS is distinctive so that it is unlikely that the Respondent wanted to fairly use the disputed domain name consisting of this term. In addition, the disputed domain name is offered for sale. Such use is commercial, so that a legitimate noncommercial use is excluded from the outset.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith, [WIPO Overview 3.0](#), section 3.2.1.

One of these circumstances is that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy).

It is the view of this Panel that the Respondent has actually registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third parties, in particular to one of the Complainant's competitors, likely for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. According to the Complainant's uncontested allegations and evidence, the Respondent has offered the disputed domain name for sale to the public for an asking price of 999 USD. (see *Skyscanner Limited v. New Ventures Services, Corp.*, WIPO Case No. [D2020-0498](#); *Linatex Limited v. Yunkook Jung*, WIPO Case No. [D2019-1784](#)).

In addition, this finding of bad faith registration and use is further supported by the further circumstances resulting from the case at hand, which are the following:

- (i) the Respondent's failure to submit a response or to provide any evidence of actual or contemplated good faith use;
- (ii) the implausibility of any good faith use to which the disputed domain name may be put;
- (iii) the disputed domain name's redirection to a webpage where it is offered for sale among other domain

names that contain other third party trademarks (see [WIPO Overview 3.0](#), section 3.2).

The Panel finds that the Complainant has established the third element of the Policy.

## **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 <britishairways.ai> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: March 19, 2024