

ADMINISTRATIVE PANEL DECISION

Comair Limited v. sui wang ma
Case No. D2022-1955

1. The Parties

The Complainant is Comair Limited, South Africa, represented by Adams & Adams Attorneys, South Africa.

The Respondent is sui wang ma, China.

2. The Domain Name and Registrar

The disputed domain name <kululaexpress.com> is registered with Hong Kong Juming Network Technology Co., Ltd (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 30, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 2022, 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 May 31, 2022.

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 June 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 6, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on July 28, 2022. 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 South African company offering airline services within South Africa, sub-Saharan Africa, and the Indian Ocean Islands. The Complainant launched South Africa's first low-fare air carrier in 2001 under the trademark KULULA.

The Complainant is the owner of trademark registrations for the mark KULULA in various African territories. Those registrations include, for example:

- Zimbabwe trademarks numbered 2003000032 to 2003000039 inclusive for the word mark KULULA, registered on January 24, 2003, in Classes 9, 12, 16, 25, 35, 36, 38, and 41;
- Malawi trademarks numbered 2003000050 to 2003000053 inclusive for the word mark KULULA, registered on October 24, 2003, in Classes 9, 12, 16, and 25; and
- Kenya trademarks numbered 1003067 to 1003070 inclusive for the word mark KULULA, registered on April 6, 2004, in Classes 35, 36, 38, and 41.

The Complainant is also the owner of various domain names consisting of "kulula", for instance, <kulula.com>, registered since May 7, 2001.

The disputed domain name was registered on May 19, 2022, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical to the KULULA trademark registration of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complaint mentions that the Complainant previously successfully lodged a domain name complaint in respect of an identical domain name, albeit in the hands of a different registrant, in 2019 under WIPO Case No. [D2019-2213](#), *Comair Limited v. Privacy Protect LLC / Shengamo Malenga, Shengamo Media Limited*. The disputed domain name was not renewed and subsequently fell into the hands of the current Respondent.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the trademark KULULA in many jurisdictions. The Panel is satisfied that the Complainant has established its ownership of the trademark KULULA.

The disputed domain name comprises the Complainant's trademark KULULA combined with the dictionary word "express", which does not prevent a finding of confusing similarity with the trademark KULULA.

The trademark is clearly recognizable within 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](#)"). The generic Top-Level Domain ("gTLD") ".com" should typically be ignored when assessing confusing similarity as established by prior UDRP decisions. See section 1.11 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the respondent's rights or legitimate interests in the disputed domain name:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: "[...] 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark KULULA and claims that it has not granted the Respondent any authorization to use the disputed domain name. The Respondent has not rebutted this *prima facie* case.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Panel accepts the Complainant's evidence that the Complainant's trademark KULULA is distinctive in nature and has become widely known, particularly in Africa, as referring to the Complainant and its low-cost airline services. Having conducted a Google search against the term "kulula", the Panel is not of the view that the term has any meaning in commerce (or otherwise) other than to refer to the Complainant and its services.

The Panel is of the view that the inclusion of the term "express" in the disputed domain name may be suggestive of travel services. In the circumstances, including the failure of the Respondent to provide any explanation for its choice of the disputed domain name, the Panel can only infer that the Respondent registered the disputed domain name with the Complainant's trademark in mind and with the intention of obtaining a commercial advantage by virtue of the reputation of that trademark.

While there is no evidence that the Respondent has made active use of the disputed domain name, that factor is not a bar to a finding of bad faith if that is the conclusion which results from all the circumstances of the case (see *e.g. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In this case, the Panel finds that the disputed domain name constitutes an impersonation of the Complainant that will inevitably lead a significant number of Internet users mistakenly to believe that the disputed domain name is registered or authorized by the Complainant. Noting once again the absence of any explanation on the part of the Respondent, the Panel is unable to conceive of any legitimate use that the Respondent could make of the disputed domain name and finds therefore that the Respondent is using the disputed domain name in bad faith.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <kululaexpress.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: August 10, 2022