

ADMINISTRATIVE PANEL DECISION

Windstar Cruises Marshall Islands, LLC v. feixiang lin
Case No. D2022-4244

1. The Parties

The Complainant is Windstar Cruises Marshall Islands, LLC, United States of America (“United States”), represented by Freeborn & Peters, United States.

The Respondent is feixiang lin, United States.

2. The Domain Name and Registrar

The disputed domain name <windstar.homes> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 9, 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 (Privacy Service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 November 16, 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 November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on December 29, 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 Marshall Islands Limited Liability Company that provides cruise ship and related services. Operating a six-ship fleet of small sailing and all-suite ships visiting approximately 330 ports, the Complainant sails throughout Europe, the Caribbean, Costa Rica, the Panama Canal, Asia, Alaska, Canada, New England, Central America, Mexico, the West Coast of the United States, and cruises year-round in Tahiti.

The Complainant owns numerous trademarks, including, but not limited to: WINDSTAR CRUISES, United States Registration No. 5,599,646, registered on November 6, 2018, in international class 39; WINDSTAR, United States Registration No. 1,425,182, registered on January 13, 1987, in international class 39; WINDSTAR, New Zealand Trademark Registration No. 1075653, registered on October 28, 1992, in international class 39; and WINDSTAR, Philippines Trademark Registration No. M/1/1352131, registered on February 18, 2018, in international class 39. The Complainant also owns registered trademarks for the WINDSTAR trademark worldwide, specifically in Italy, Iceland, Israel, Australia, Singapore, Germany, France, the European Union, and Canada.

The foregoing registered trademarks will hereinafter collectively be referred to as the “WINDSTAR Mark”.

The Complainant also owns, among others, the following domain names: <windstarcruises.com>, <windstar.cruises>, <windstar.info>, <windstar.mobi>, <windstar.net>, and <windstar.xyz>.

The Disputed Domain Name was registered on October 25, 2022 and initially resolved to a parked landing page containing pay-per-click (“PPC”) sponsored hyperlinks, that are competitors of the Complainant. Such hyperlinks included, among others, “Windjammer Cruises”, “Caribbean Cruise Deals”, “Windstar Cruise”, “Windstar Cruises”, and “Alaska Cruise Deals”. As of the writing of this Decision, the Disputed Domain Name resolves to a page stating that “the Whois verification is pending” and “the domain has been suspended”.

5. Parties’ Contentions

A. Complainant

The following are the Complainant’s contentions:

- the Disputed Domain Name is confusingly similar to the Complainant’s WINDSTAR Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a):

- (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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the WINDSTAR Mark as explained below.

It is uncontroverted that the Complainant has established rights in the WINDSTAR Mark based on its years of use as well as its registered trademarks for the WINDSTAR Mark in the United States (where the Respondent purportedly resides) and other jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the WINDSTAR Mark.

The Disputed Domain Name consists of the WINDSTAR Mark in its entirety, followed by the generic Top-Level Domain ("gTLD") ".homes". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy where, as here, the trademark is recognizable.

Finally, the addition of a gTLD such as ".homes" in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant's WINDSTAR Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its WINDSTAR Mark. Nor does the Complainant have any type of business relationship

with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

As the Disputed Domain Name initially resolved to a landing page with PPC hyperlinks, the Panel finds that the Respondent was not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Respondent attempted to use the PPC hyperlinks to monetize the links when Internet users visiting the Disputed Domain Name clicked on the sponsored links. Therefore, the Panel finds that nothing on the record before it would support a finding that the Respondent has any rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

This Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be sufficient evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#). Based on the circumstances here, the Respondent registered and used the Disputed Domain Name in bad faith to target the Complainant's WINDSTAR Mark for commercial gain.

Second, the Panel finds that the Respondent had actual knowledge of the Complainant's WINDSTAR Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Based on the widespread use of the WINDSTAR Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its WINDSTAR Mark when registering the Disputed Domain Name. The Respondent's awareness of the Complainant and its WINDSTAR Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's WINDSTAR Mark and to disrupt the Complainant's business. Such conduct indicates that the Respondent registered and used the Disputed Domain Name in bad faith.

Third, the Panel concludes that the Respondent registered and used the Disputed Domain Name in bad faith in an attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's WINDSTAR Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name's resolving website. The Respondent's registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its WINDSTAR Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Finally, the Respondent attracts users for commercial gain by displaying third party PPC links on the landing page to which the Disputed Domain Name initially resolved. The use of a confusingly similar domain name to display third party sponsored hyperlinks competing with or capitalizing on a complainant's trademark and apparently collecting click-through fees is evidence of bad faith under paragraph 4(b)(iv) of the Policy. Thus, as here, the Panel concludes that such conduct constitutes bad faith. See *Fox News Network, LLC v. Warren Reid*, WIPO Case No. [D2002-1085](#); *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No. [D2005-0556](#); *Lewis Black v. Burke Advertising, LLC*, WIPO Case No. [D2006-1128](#).

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <windstar.homes> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: January 12, 2023