

ADMINISTRATIVE PANEL DECISION

Navitaire LLC v. Kizzy Bradley
Case No. D2023-4019

1. The Parties

Complainant is Navitaire LLC, United States of America (“United States”), represented by Ubilibet, Spain.

Respondent is Kizzy Bradley, United States.

2. The Domain Name and Registrar

The disputed domain name <navitaire.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2023. On September 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date 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) and contact information in the Complaint. The Center sent an email communication to Complainant on September 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 29, 2023.

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 Respondent of the Complaint, and the proceedings commenced on October 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 23, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on October 27, 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 following facts appear from the Complaint (as amended solely to add the Registrar-provided registrant information as the formal Respondent) and its annexes, which have not been contested by Respondent.

Complainant provides technology services to the airline and rail industries under the trademark NAVITAIRE (the "NAVITAIRE Mark"). Headquartered in Minneapolis, Minnesota, United States, Complainant serves low-cost carriers ("LCCs") and hybrid airlines, establishing itself as the foremost passenger service and ticketing system provider catering to the LCCs market. As of 2014, the company's extensive reach extended to serving 43% of the top 100 LCCs, including Air Canada, Ryanair, Air Italia, Spirit Airlines, Azul Brazilian Airlines, HK Express, and Volaris. Complainant also has a strong international presence, with offices in key locations such as London, United Kingdom; Manila, Philippines; Salt Lake City, Utah, United States; and, Sydney, Australia.

In support of claims of widespread recognition of Complainant's NAVITAIRE Mark, Complainant has submitted evidence of recognition and awards in its industry, including in March 2019, Complainant became the very first passenger revenue accounting provider to receive the esteemed ONE Order (OO) Capable certification from the International Air Transport Association (IATA) and on March 1, 2022 solidified its position as the primary LCC provider by obtaining Airline Retailing Maturity status as a System Provider within the newly introduced IATA Airline Retailing Maturity (ARM) index program.

Complainant also shows it incorporates the NAVITAIRE Mark into its official domain name <navitaire.com>, registered in November 2000, and used since that time to access Complainant's official NAVITAIRE website ("Official Website") to promote and offer its products and render its services to its customers under the NAVITAIRE Mark.

Complainant holds multiple trademark registrations in numerous jurisdictions worldwide, incorporating the NAVITAIRE Mark for its products and services, including the following:

United States Registration No. 2,707,647, NAVITAIRE, registered on April 15, 2003, for a range of services in computer software and hardware for accounting and financial management for use in the travel, transportation and lodging industries in International Class 9, claiming a first use date of January 2001;

European Union Trademark No.003139961, NAVITAIRE, registered on October 31, 2005, for goods and services in International Classes 9, 35, 36, 39, 42, and 43; and

Canada Trademark Registration No. 1174311-00, NAVITAIRE, registered on October 25, 2004, for goods and services in International Classes 9, 35, 39, 42, and 43.

The Whois record shows the disputed domain name was registered on February 15, 2023, and Complainant shows that the disputed domain name resolves to a Pay-Per-Click ("PPC") parking page with sponsored links to travel related sites.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name 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 disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the NAVITAIRE Mark for its transportation technology services in its registrations for the NAVITAIRE Mark dating back to 2003, as listed above. Therefore, Complainant has demonstrated it has rights in the NAVITAIRE Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the NAVITAIRE Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's NAVITAIRE Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7.

A side-by-side comparison between the disputed domain name and Complainant's Mark shows the disputed domain name is almost identical to the NAVITAIRE Mark. Complainant's NAVITAIRE Mark is incorporated in its entirety except the addition of the "i" after the "t" to reconfigure Complainant's mark, which alteration Complainant contends is an intentional misspelling of Complainant's NAVITAIRE Mark. Complainant's registered NAVITAIRE Mark remains recognizable in the disputed domain name, followed only by the Top-Level Domain ("TLD") ".com". Prior UDRP panels have found that the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11.1; see also *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Complainant contends that the disputed domain name must be considered confusingly similar to Complainant's Mark because the additional inserted "i" reconfiguration noted above is a purposeful misspelling of Complainant's NAVITAIRE Mark, yet Complainant's Mark remains recognizable within the disputed domain name. Prior panels have held that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse Internet users, must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9; see also In *Bureau Veritas v. Wolfgang Robert*, WIPO Case No. [D2021-2376](#); *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#).

Based on the above, this Panel finds that the insertion of the letter "i" after the "t" in Complainant's registered NAVITAIRE Mark does not prevent a finding of confusing similarity between the disputed domain name and Complainant's NAVITAIRE Mark, in which Complainant has established trademark rights.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often impossible 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. 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 record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant authorized or given Respondent permission or license to use Complainant's trademarks in any manner, including in domain names. Prior UDRP panels have found a respondent has no rights or legitimate interests in respect of a disputed domain name where a complainant trademark owner has not authorized, licensed, or permitted Respondent to use its mark in a domain name or any other use. See *Sport Supply Group, Inc. v. Kendell Lang*, WIPO Case No. [D2004-0829](#).

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the Whois information evidence submitted in its annexes that Respondent, as registrant of the disputed domain name, identified as “Kizzy Bradley” is not commonly known by the disputed domain name because it clearly bears no resemblance to it, nor to the NAVITAIRE Mark or Complainant’s official <navitaire.com> domain name.

Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, being unauthorized for Respondent’s use, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Compagnie de Saint Gobain v. Com-Union Corp*, WIPO Case No. [D2000-0020](#); *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#).

Third, Complainant’s evidence shows the disputed domain name resolves to a parking page featuring PPC sponsored links. While engaging in such activity for economic benefit is not inherently considered bad faith, prior UDRP panels found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. Respondent, therefore, is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a *bona fide* offering of goods or services to confer rights or legitimate interests within the meaning of Policy paragraphs 4(c)(i) and (iii). See *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); see also [WIPO Overview 3.0](#) in section 2.9.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends that since Complainant has developed a distinctive and widely recognized reputation in the NAVITAIRE Mark, Respondent was no doubt aware of the NAVITAIRE Mark and intentionally targeted Complainant and its mark in making the decision to configure and register the disputed domain name to appear essentially identical to Complainant’s NAVITAIRE Mark except for the inserted additional “i” as noted in section 6A above.

Given the widespread recognition of Complainant’s NAVITAIRE Mark worldwide shown in the evidence noted under Section 4 above, including the United States, where Respondent appears to be located, Complainant’s 20 plus years of use of the NAVITAIRE Mark prior to Respondent’s assumed registration of the disputed domain name on February 15, 2023, Respondent likely had actual knowledge of Complainant’s rights when it registered the disputed domain name, which shows bad faith registration in the circumstances of this proceeding. See *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); see also *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#).

The record set forth above makes it reasonable for the Panel to conclude it is more likely than not that Respondent targeted Complainant’s trademark to use it to trade on Complainant’s reputation and goodwill, and Respondent is found, therefore, to have registered and used the disputed domain name in bad faith.

See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#).

Complainant's NAVITAIRE Mark has a strong reputation and is widely known, as evidenced by its substantial use in the United States and around the world, in use for over 20 years before the registration of the disputed domain name. Moreover, the composition of the disputed domain name encompasses the NAVITAIRE Mark in its entirety, merely inserting an additional "i", and it is nearly identical to Complainant's official domain name <navitaire.com>, on which Complainant hosts its Official Website.

Finally, Complainant contends Respondent's use of the disputed domain name for a parking page with PPC sponsored links is evidence of Respondent redirecting Complainant's customers to Respondent's website for Respondent's commercial gain, which constitutes bad faith use within the meaning of paragraph 4(b)(iv) of the Policy. As noted in 6B above, the disputed domain name resolves to a parking page featuring PPC sponsored links which generate PPC revenue. Prior UDRP panels have held that, "while the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use." *Mpire Corporation v. Michael Frey, supra*; see also [WIPO Overview 3.0](#), section 2.9.

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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, <navitaire.com>, be transferred to Complainant.

/Scott R. Austin

Scott R. Austin

Sole Panelist

Date: December 5, 2023