

ADMINISTRATIVE PANEL DECISION

Ansett Aircraft Spares & Services, Inc. v. Roger White
Case No. D2024-2193

1. The Parties

The Complainant is Ansett Aircraft Spares & Services, Inc., United States of America, represented by Roger Doumanian, Attorney at Law, APC, United States of America.

The Respondent is Roger White, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ansett-spares.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 28, 2024. On May 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 30, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 25, 2024.

The Center appointed Dennis A. Foster as the sole panelist in this matter on June 27, 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

Based in the United States of America, the Complainant conducts business globally in the field of aircraft goods and services, especially with regard to aircraft parts supply. The Complainant has operated under ANSETT AIRCRAFT SPARES AND SERVICES as a common law trademark. The Complainant has also been known to customers since 1988 as ANSETT SPARES or simply ANSETT. The Complainant has currently filed for, but not received, a trademark for ANSETT with the United States Patent and Trademark Office ("USPTO").

The Respondent owns the disputed domain name, <anett-spares.com>, which was registered on August 4, 2023. The disputed domain name resolves to a website that is a replica of the Complainant's website found at its domain name, <anett.com>, except that contact telephone numbers within the respective websites differ.

5. Parties' Contentions

A. Complainant

-The Complainant is in the business of providing goods and services relating to aircraft parts on a worldwide basis. The Complainant operates globally under its common law mark, ANSETT AIRCRAFT SPARES AND SERVICES, although it has been commonly known to its customers as ANSETT or ANSETT SPARES since 1988.

-The Complainant currently has an application on file for the mark ANSETT with the USPTO. Prior to 2022, the Complainant utilized for business purposes the domain name <anettspares.com>. The Complainant now uses the domain name <anett.com> for its business.

-The disputed domain name, <anett-spares.com>, is confusingly similar to the Complainant's mark, as the disputed domain name includes in full two of the principal terms found within the Complainant's mark. The additional hyphen and the ".com" generic Top-Level Domain ("gTLD") do not offer any meaningful distinction. Moreover, the disputed domain name is virtually the same as the Complainant's previously used domain name, <anettspares.com>.

-The Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name, which resolves to a website that replicates the Complainant's business website, is used by the Respondent to contact the Complainant's vendors to mislead them into believing that they are interacting with the Complainant. In one instance, the Respondent used some of the Complainant's information on a forged invoice (containing an invalid signature) in an attempt to obtain a product shipment. As the Respondent is neither affiliated with the Complainant nor has been granted authority by the Complainant for such usage, this activity is fraudulent.

-The Respondent registered and is using the disputed domain name in bad faith. The disputed domain name is used by the Respondent to engage in fraudulent interactions with current and potential vendors of the Complainant. By this method, the Respondent is intentionally using the disputed domain name to gain commercially through the likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website connected with the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with Policy paragraphs 4(a)(i) - (iii), the Panel may find for the Complainant and order the transfer of the disputed domain name, <ansett-spares.com>, if the Complainant proves that:

- The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

In order for the Complainant to prevail under this element of the Policy, the Panel must find that the Complainant has sufficient rights in the mark to which the Complainant claims ownership. In this case, the Complainant has admitted that its claimed mark has not been registered with a recognized trademark registrar. However, the Complainant contends that it does own common law trademark rights in ANSETT AIRCRAFT SPARES AND SERVICES. In line with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.3, the Policy does permit a complainant to prevail based on a common law trademark thusly:

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.,

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.

In the present case, the Panel notes that, while the Complainant has asserted that it has engaged in business under its claimed mark for several decades, the Complainant does not provide much specific information with respect to sales, advertising, recognition or surveys. However, through examination of the Complainant's website, the Panel finds that the Complainant appears to be a substantial company conducting operations on an international basis. Also, the Panel appreciates that the initial, and thus dominating term of the mark, ANSETT, is not a descriptive term. Moreover, the Complainant's contention with respect to the use to which the disputed domain name has been put by the Respondent -- *i.e.*, attaching the disputed domain name to a website that virtually duplicates the website found at the Complainant's domain name -- supports the conclusion that the Complainant's mark is a source identifier. See, WIPO Overview 3.0, section 1.3. ("The fact that a respondent is shown to have been targeting the complainant's mark [*e.g.*, based on the manner in which the related website is used] may support the complainant's assertion that its mark has achieved significance as a source identifier."). As a result, the Panel finds that the Complainant has sufficient common law rights in the ANSETT AIRCRAFT SPARES AND SERVICES mark to satisfy Policy paragraph 4(a)(i).

The disputed domain name, <ansett-spares.com> is not identical to the ANSETT AIRCRAFT SPARES AND SERVICES mark. However, as noted above, the disputed domain name does include the non-descriptive term, Ansett, as its initial term and then adds the descriptive term, spares, which is also found within the mark claimed by the Complainant. These clear similarities cause the Panel to conclude that the disputed domain name is confusingly similar to the Complainant's mark. Also, the Panel believes that the addition within the disputed domain name of a hyphen and the ".com" gTLD do not meaningfully mitigate this confusing similarity. See, *FANUC Corporation, FANUC UK Limited v. Whois Agent Your Jungle Privacy Protection Service / John Ginley / Neil Ginley*; *Pennine Automation Spares*, WIPO Case No. D2015-1387, (finding <fanuc-spares.com> confusingly similar to the FANUC mark); and *Control Techniques Limited v.*

Lektronix Ltd, WIPO Case No. [D2006-1052](#) (finding <controltechniques-spares.com> to be confusing similar to the CONTROL TECHNIQUES mark).

Accordingly, the Panel finds that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Because the disputed domain name is confusingly similar to the Complainant's common law trademark and the Complainant contends that the Respondent has been granted no authorization to use that mark in any manner, the Panel determines that the Complainant has presented a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden is thus placed on the Respondent to come forward with evidence to rebut that prima facie case although the overall burden of proof remains on the Complainant. See, [WIPO Overview 3.0](#), section 2.1; and *Ustream.TV, Inc. v. Vertical Axis, Inc*, WIPO Case No. [D2008-0598](#) ("...once the complainant has made out a prima facie showing on this element, the burden of production shifts to the respondent.").

Having not filed a Response or submitted any evidence, the Respondent is reliant on the Panel's assessment of the overall record as to whether there is any circumstance that might serve as a rebuttal to the Complainant's prima facie case. In making this assessment, the Panel will accept as true all reasonable contentions presented in the Complaint. See, *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#) ("The Respondent has not submitted a response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true.").

The Complainant contends that the disputed domain name resolves to a website that nearly duplicates that found at the Complainant's own domain name, except with a different contact telephone number. Moreover, the Complaint provides a specific example of how an unauthorized forged invoice, bearing some of the Complainant's business information, was used by the Respondent in an attempt to wrongfully obtain a shipment of goods. Such deceptive activity fails to constitute a "a bona fide offering of goods or services" per Policy Paragraph 4(c)(i), and also fails to fall within "the legitimate noncommercial or fair use" parameters set forth in Policy Paragraph 4(c)(iii). Furthermore, the Panel detects no reason to believe that the Respondent, Roger White, has ever been commonly known as the disputed domain name <ansett-spares.com>, rendering Policy Paragraph 4(c)(ii) inapplicable as well. Therefore, the Panel finds that Policy Paragraph 4(c) offers no rebuttal on behalf of the Respondent to the prima facie case the Complainant set forth above. Ultimately, the fraudulent use of the disputed domain name as engaged in by the Respondent cannot give rise to rights or legitimate interests in that name. See [WIPO Overview 3.0](#), section 2.13.1; and *Les Studios Moment Factory Inc. v. Ahmed Ali*, WIPO Case No. [D2023-0738](#) ("...it is more likely than not that the Domain Name has been used for fraud. Panels have categorically held that use of a domain name for illegal activity can never confer rights or legitimate interests."). As a result, the Panel determines that the Complainant's prima facie case must prevail.

Accordingly, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Policy Paragraph 4(b) specifies four non-exclusive circumstances under which a complainant may establish that the disputed domain name was registered and is being used in bad faith. However, prior Policy panels have concluded that those circumstances are not the only reasons which may give rise to a finding of bad faith under the Policy. See [WIPO Overview 3.0](#), section 3.2.1; *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#) ("...the list of instances of bad faith in Policy, paragraph 4(b) is explicitly non-exclusive."); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

In the present case, the Panel has been persuaded by the Complaint that the Respondent has planted within the website at the disputed domain name an invalid telephone number for use in deceitful communications with current and potential customers of the Complainant. The Panel finds that this fraudulent conduct, by itself, provides sufficient evidence of the Respondent's bad faith registration and use of the disputed domain name. See, *Airports Company South Africa SOC Limited v. Domains By Proxy, LLC / Dill Martine*, WIPO Case No. D2020-2716 ("It is well accepted that use of a domain name to perpetuate fraud constitutes bad faith."); and *Airlink (Pty) Limited v. Contact Privacy Inc. Customer 12410521468 / Farhan*, WIPO Case No. D2021-3591 ("It is well accepted that use of a domain name to perpetuate fraud constitutes bad faith."). Moreover, the failure of the Respondent to file a Response in these proceedings only cements the view of the Panel that the Respondent has registered and used the disputed domain name in bad faith. See, *IMC Trading B.V. v. Easy FX, Easy FX Solutions*, WIPO Case No. D2020-3389 ("...the fact that Respondent did not present any response to the Complaint reinforces Panel's conclusion that Respondent is acting in bad faith.").

Accordingly, the Panel finds that the Complainant has satisfied 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, <ansett-spares.com>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: July 11, 2024