

## **ADMINISTRATIVE PANEL DECISION**

Société Air France v. Domain Administrator, Fundacion Privacy Services LTD  
Case No. D2022-0255

### **1. The Parties**

The Complainant is Société Air France, France, represented by MEYER & Partenaires, France.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

### **2. The Domain Names and Registrar**

The disputed domain names <airfranca.com> and <airfrence.com> are registered with Media Elite Holdings Limited dba Register Matrix (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2022. On January 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2022, 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 February 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 24, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on March 2, 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 French airline passenger and freight company established in 1933 and is the owner of an international portfolio of registered trade marks for the AIR FRANCE mark including:

- International trade mark AIR FRANCE registration number 828334, registered on October 20, 2003;
- United States trade mark AIR FRANCE, registration number 3274207, registered on August 7, 2007;
- European Union trade mark AIR FRANCE, registration number 2528461, registered on October 07, 2003; and
- Panamanian trade mark AIR FRANCE registration number 130125, registered on September 4, 2013.

The registrations have been duly renewed and are still valid. These registrations will jointly be referred to in singular as the "Trade Mark".

The disputed domain name <airfranca.com> was registered on September 17, 2005. The disputed domain name <airfrence.com> was registered on November 7, 2007.

The disputed domain names each activate several scripts and 302 forwarding before redirecting the user towards random contents:

- either the Complainant's web portal;
- either a mousetrapping website;
- or a "Too many requests" message.

The only information available about the Respondent is that provided in the Complaint, the Registrar's Whois, and the information disclosed by the Registrar in response to the Center's enquiry in this proceeding. The Respondent appears to be a company that provides Whois proxy and privacy services.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant relies on its rights in the Trade Mark acquired through its abovementioned registrations and its extensive use of the Trade Mark for many years in association with its well-known airline business.

The Complainant asserts that the disputed domain names are confusingly similar to the Trade Mark because each of the disputed domain names replicates the Trade Mark in its entirety with the exception of replacing a single letter: the substitution of the letter "a" with the letter "e" in the disputed domain name <airfranca.com>, and letter "e" with the letter "a" in the disputed domain name <airfrence.com> have no distinctive purpose, but are only a common typosquatting trick.

The Respondent has no rights or legitimate interests in the disputed domain names, is not related in any way to the Complainant, not commonly known by the disputed domain names and is not authorised by the Complainant.

The disputed domain names activate several scripts and 302 forwarding before redirecting the user towards random content. None of these activations can be considered as being a *bona fide* offering of goods or services pursuant to Policy Paragraph 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy Paragraph 4(c)(iii).

The Complainant has previously demonstrated the strong reputation and the widely known character of its Trade Mark throughout the world and for a long time so that the Respondent could not have ignored Air France's international reputation at the time it registered the disputed domain names.

In the event that the Respondent is a privacy service provider, the Panel notes that the underlying registrant has been using Fundacion Privacy Services LTD, that has an extensive history of refusing to disclose the details of the underlying registrant, and where in nearly all such cases the underlying registrant succeeded through the proxy service to keep private her/his personal identity. Having considered the *prima facie* presumption and the lack of rights or legitimate interests, the Complainant claims that the concealment of the Respondent's identity should be construed as a fraudulent manoeuvre demonstrating its bad faith registration.

The Respondent is using the disputed domain names to activate several scripts and 302 forwarding that randomly redirect the user towards specific contents:

a) either the Complainant's web portal

However, by analysing the different forwarding steps that precede the activation of its web portal, the Complainant discovered that the disputed domain names were implied in some click-to-pay scheme/fraud. The disputed domain names are activating a specific URL of a company that offers a loyalty and consumer rewards program. This means that the Respondent is using the disputed domain names so as to benefit from the Complainant's reputation and earn out of pocket revenues;

b) either a mousetrapping website

Such use consisting:

- in displaying false virus alert so as to determine the user to provide her/his personal data, and/or
- in implementing a real virus/malware in a web content so as to infect the users' device;

c) or a "Too many requests" message

That message is detrimental to the Complainant's brand image since any of its regular user may consider that the disputed domain names are related to its online activities (or have been endorsed by it). From this perspective one may wrongly infer that Air France has low standard website, causing recurring traffic overload errors.

The Complainant thus considers that the disputed domain names have been registered and are being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain names are identical or confusingly similar to a trade mark 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 names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

A domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.9).

The disputed domain names <airfranca.com> and <airfrence.com> consist of a misspelling of the Complainant’s AIR FRANCE mark.

The generic Top Level Domain (“gTLD”), “.com” is viewed as a standard registration requirement and as such is disregarded under the first element.

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark. The first condition of the Policy is met.

### **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or legitimate interests in respect of the disputed domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

The Complainant alleges that the Respondent lacks rights to or legitimate interests in the disputed domain names for the reasons set out in section 5.A above. The Panel finds that the Complainant has fulfilled the obligation to establish *prima facie* that the Respondent has no rights to or legitimate interests in the disputed domain names. Because of its failure to submit a response, the Respondent has not rebutted the arguments of the Complainant and/or shown rights to or legitimate interests in the disputed domain names.

The Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain names, under paragraph 4(a)(ii) of the Policy.

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

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the disputed domain names, the Respondent was or should have been aware of the Complainant’s Trade Mark, since the Complainant has been very well known as an international airline for a long time, and since a trade mark register search, or even a simple online search prior to the registration of the disputed domain names would have informed the Respondent of the existence of the oldest Trade Mark and the Complainant’s extensive use of the Trade Mark as a source identifier.

It is well established from previous panel decisions that the mere registration of a domain name that is confusingly similar to a well known trade mark by a non-affiliated or unauthorized entity as here can of itself create a presumption of bad faith. Moreover, the construction of the disputed domain names itself, which replicates the Trade Mark in its entirety with the exception of replacing a single letter, is only a common typosquatting trick. Typosquatting is evidence of relevant bad faith registration and use. Also, the fact that the Respondent filed and used two disputed domain names, each of which is a typosquatting, is a reason to assume bad faith.

As an additional factor that supports the finding of bad faith in this case, the Panel observes that the Respondent is apparently concealing its identity in the registration of the disputed domain names through a privacy service and Fundacion Privacy Services LTD in particular (see section 3.6 [WIPO Overview 3.0](#) and

*Pet Plan Ltd v. On behalf of pet-plan-claim-form.com owner, Whois Privacy Service / Vadim Yasinovsky, PDFfiller inc.*, WIPO Case No. [D2018-1943](#)).

In *Discover Financial Services v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1514](#), the Panel stated with respect to Fundacion Privacy Services LTD that “the Respondent has chosen to use a particular register and a particular privacy service that now has an extensive history of refusing to disclose the details of the underlying registrant and where in nearly all such cases the complainant succeeded. As the Panel has already recorded in the context of the Registrar’s conduct, that history strongly suggests that the Registrar together with Fundacion Privacy Services LTD, has adopted a business model of providing registrar and privacy services either to a single or multiple cybersquat[t]ers. If that is so, the use of this particular service arguably now carries with it a presumption of bad faith registration and use”.

Furthermore, the lack of response to this Complaint is further evidence of bad faith, given all the circumstances of the case (see *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#), and *Pet Plan Ltd. v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-2514](#)).

The use of the disputed domain names, as described above under 5 sub A, is in bad faith. It comes down to the hidden use of a click-to-pay system, the spreading of malware, to determine the user to provide personal data or it is detrimental to the Complainant’s brand image.

Based on the evidence and circumstances of this case, the Panel concludes that the requirement of registration and use of the disputed domain names in bad faith under paragraph 4(a)(iii) of the Policy has been fulfilled.

## **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 names, <airfranca.com> and <airfrence.com> be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: March 8, 2022