

ADMINISTRATIVE PANEL DECISION

Etihad Airways PJSC v. Hildegard Gruener Case No. D2022-3072

1. The Parties

The Complainant is Etihad Airways PJSC, United Arab Emirates, represented by Clyde & Co LLP, United Arab Emirates.

The Respondent is Hildegard Gruener, Austria.

2. The Domain Names and Registrar

The disputed domain names <etihad-airways-airlines.com>, <etihad-airways.com>, <etihadairwaystickets.com>, <etihad-check-in-services.com>, and <etihad-flight-status.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 19, 2022. On August 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 22, 2022, the Complainant requested the addition of two additional domain names, and the Registrar disclosed the registrant and contact information of these additional domain names on August 25, 2022. The Complainant filed an amended Complaint on September 2, 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 September 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on September 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, established in 2003, is a national airline of the United Arab Emirates. It commenced operations in November 2003, and has since developed into one of the fastest growing airlines in the world.

As of June 2022, the Complainant served 71 passenger and cargo destinations across 45 countries, and to date has carried over 4 million passengers.

The Complainant owns a large portfolio of trademarks around the world consisting of or comprising the term ETIHAD, including the International Trademark Registration (“IR”) No. 1141271 for the word mark ETIHAD, registered since April 24, 2012 for *inter alia* airline services of Class 39 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks.

Since October 18, 2001, the Complainant owns the domain name <etihad.com>, which links to its corporate website.

The disputed domain name <etihad-airways-airlines.com> was registered on March 4, 2022 and has been redirecting to a website displaying pay-per-click links to third party sites, all related to booking of air transport.

The disputed domain name <etihad-airways.com> was registered on March 4, 2022 and has linked to a website that was replicating the Complainant’s official website. At the time of rendering of this decision, this disputed domain name resolved to a website stating: “403 Forbidden” in English, and “Site blocked by administrator” in Russian.

The disputed domain names <etihadairwaystickets.com> and <etihad-check-in-services.com> were registered on August 21, 2022 and have been redirecting to websites displaying pay-per-click links to sites related to airline tickets, flight bookings and air cargo.

The disputed domain name <etihad-flight-status.com> was registered on March 4, 2022 and has been redirecting to a website displaying pay-per-click- links to third party sites related to plane booking and flight tickets.

5. Procedural Issue – Consolidation of Multiple Domain Names

The case before the Panel involves an individual brand owner who brought a single consolidated Complaint in relation to five domain names against a single Respondent.

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

Paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

The Registrar confirmed that the holder of each of the disputed domain names in this case is the same individual, and accordingly the Panel concludes that this single Complaint is properly brought against all five of the disputed domain names.

6. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to its ETIHAD trademark since they all contain the trademark entirely, with the addition of various descriptive terms.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain names and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant submits that the Respondent has registered and is using the disputed domain names in bad faith. The Complainant is one of the largest airlines in the world, and since all of the disputed domain names contain references to airlines and travel, it is clear that the Respondent has deliberately registered them in order to take unfair advantage of the fame and reputation of the Complainant and its trademark.

In addition, the website to which the disputed domain name <etihad-airways.com> points features images and photographs copied directly from the Complainant's official website, while the websites to which the other four disputed domain names link feature pay-per-click links to third party content in direct competition with the Complainant's business, which is also indicative of bad faith.

The Complainant requests that the disputed domain names be transferred from the Respondent to the Complainant.

B. Respondent

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

7. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (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

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish: first, that it has rights in a trademark or service mark; and second, that the disputed domain names are identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if a complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the ETIHAD trademark, which satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainants' trademark rights, the Panel next assessed whether the disputed domain names are identical or confusingly similar to the trademark.

According to sections 1.7 and 1.8 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain names. This test typically involves a side-by-side comparison of the disputed domain names and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain names. Where the relevant trademark is recognizable within the disputed domain names, the addition of other terms would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

All of the disputed domain names contain the Complainant's ETIHAD trademark in its entirety. The Respondent's addition of the terms "airways", "airlines", "tickets", "check-in", "services", "flight", and "status" to the Complainant's trademark in view of the Panel does not prevent the finding of confusing similarity between the disputed domain names and the Complainant's trademark.

The applicable TLD in the disputed domain names, ".com", should in relation to this administrative proceeding be disregarded.

On the basis of facts and circumstances discussed above the Panel finds that the disputed domain names are confusingly similar to the Complainant's ETIHAD trademark and that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established prior rights in the ETIHAD trademark.

According to section 2.1 of the [WIPO Overview 3.0](#), 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 the relevant evidence demonstrating rights or legitimate interests in a domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise, to counter the Complainants' *prima facie* case.

The Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use its ETIHAD trademark in any manner.

All five disputed domain names consist of the ETIHAD trademark in its entirety, along with the descriptive terms "airways", "airlines", "tickets", "check-in", "services", "flight", and "status".

At the website under the disputed domain name <etihad-airways.com> the Respondent attempted to impersonate the Complainant by replicating its official website and using the images and photographs copied directly from the Complainant's official website. UDRP panels have categorically held that use of a domain name for impersonation/passing off can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

The websites to which the disputed domain names <etihad-airways-airlines.com>, <etihadairwaystickets.com>, <etihad-check-in-services.com>, and <etihad-flight-status.com> have been pointing all feature pay-per-click links to third party content in direct competition with the Complainant's business.

According to section 2.9 of the [WIPO Overview 3.0](#), "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".

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In view of the Panel, the Complainant's ETIHAD trademark enjoys a strong reputation (see also *Etihad Airways PJSC v. Sohail Nazar*, WIPO Case No. [D2013-1608](#)).

The Respondent's full reproduction of the Complainant's trademark in each of the disputed domain names and copying of images and photographs from the Complainant's official website in the disputed domain name <etihad-airways.com>, convinces the Panel that the Respondent clearly had in mind the Complainant's ETIHAD trademark and business at the time of registration of the disputed domain names, and chose to register them in order to target the Complainant and its trademark within the meaning of paragraph 4(b)(iv) of the Policy.

As provided in the Complaint, the disputed domain <etihad-airways.com> name previously resolved to a website copying images and photographs from the Complainant's official website, which appears to be a clear attempt to mislead and/or seek sensitive information from Internet users for profit by creating a likelihood of confusion with the Complainant's well-known trademark. Moreover, the Panel notes that at the time of rendering of this decision the disputed domain <etihad-airways.com> does not resolve to an active website, however, this does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

The Respondent has been using the disputed domain names <etihad-airways-airlines.com>, <etihadairwaystickets.com>, <etihad-check-in-services.com>, and <etihad-flight-status.com> to lure Internet users to websites hosting links to sites providing competing services, which is evidence of bad faith in these circumstances (see *Paris Hilton v. Deepak Kumar*, WIPO Case No. [D2010-1364](#)).

Finally, the Respondent's bad faith is also evidenced by its considerable history of registering domain names confusingly similar to the trademarks of others.

Decisions under the Policy that have condemned the Respondent for misappropriation of third parties' trademarks as domain names include: *Government Employees Insurance Company ("GEICO") v. Hildegard Gruener*, WIPO Case No. [D2015-1410](#); *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#); *1-800-Flowers.com, Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-1883](#); *Virgin Enterprises Limited v. Hildegard Gruener*, WIPO Case No. [D2017-0429](#); and *Trivago N.V. c. Hildegard Gruener*, WIPO Case No. [D2019-3095](#).

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain names in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

8. 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, <etihad-airways-airlines.com>, <etihad-airways.com>, <etihadairwaystickets.com>, <etihad-check-in-services.com>, and <etihad-flight-status.com>, be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: October 13, 2022