

## **ADMINISTRATIVE PANEL DECISION**

American Airlines, Inc. v. Privacy service provided by Withheld for Privacy ehf / KD TWS

Case No. D2022-3107

### **1. The Parties**

The Complainant is American Airlines, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf / KD TWS, India.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on August 24, 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 August 29, 2022.

The Center verified that the Complaint 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 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 22, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on September 27, 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, American Airlines, Inc. is one of the largest air carrier in the world and enjoys a reputation in the United States and internationally as a premier airline for business and leisure travelers. Envoy Air, Inc. (“Envoy”) is a wholly owned subsidiary of American Airlines, Inc., as well as the largest regional carrier for the American Airlines Group. Through Envoy, the Complainant operates more than 185 aircraft on 1,000 flights to over 150 destinations. Envoy also has more than 18,000 employees that provide regional flight services to American Airlines travelers. The Complainant has used the ENVOY trademark in commerce with travel related goods and services for almost 25 years.

The Complainant has obtained trademark registrations that incorporate the ENVOY trademark in several jurisdictions around the world including United States Registration No. 4867612 for ENVOY, registered on December 5, 2015, for services in classes 37 and 39 and International Registration No. 1197890 for ENVOY, registered on January 13, 2014, also for services in classes 37 and 39.

The Complainant has used the ENVOY trademark on the official Envoy Air website at “www.envoyair.com” to promote travel and transportation services, and the Complainant also has a portal for Envoy customers to manage their reservations which can be accessed at “www.my.envoyair.com”.

The Registrant registered the disputed domain name on May 24, 2022. The disputed domain name resolves to a website that appears to offer information on the Complainant in general and on the Complainant’s customer portal “my.envoyair.com” in particular.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant asserts that the disputed domain name is virtually identical and confusingly similar to the Complainant’s ENVOY mark in full, changing the mark only by adding the generic terms “my” and “air”, which directly describe the Complainant’s services, and the generic top-level domain (“gTLD”) “.xyz”. Notably, the term “air” is identical to the Complainant’s subsidiary’s corporate name Envoy Air, Inc. as well as being confusingly similar to the URL for the Complainant’s official Envoy Air website at “www.envoyair.com” and the Envoy Air customer portal at “www.my.envoyair.com”.

The Complainant further asserts that the Respondent registered the disputed domain name without the Complainant’s authorization or consent. The Respondent is not commonly known by the disputed domain name, and the Respondent has registered the disputed domain name for the purpose of perpetrating a fraud on the public. As such, the Respondent clearly lacks rights to and legitimate interests in the disputed domain name. Furthermore, the Respondent has never operated any *bona fide* or legitimate business under the disputed domain name and is not making a protected noncommercial or fair use of the disputed domain name. Instead, the Respondent is using the disputed domain name to divert Internet traffic to a website that impersonates the Complainant’s official Envoy Air website and prominently displays the Complainant’s ENVOY mark, as well as other of the Complainant’s trademarks. The website that the disputed domain name resolves to purports to provide information about the “MyEnvoyAir Official Login” and to provide information on how to log in to the Envoy Air customer portal, but at worst, the Respondent’s website is used to steal personal information from consumers, and at best, it defrauds consumers.

The Complainant finally asserts that it is obvious that the Respondent had actual knowledge of the Complainant's ENVOY mark when he registered the disputed domain name. The Complainant thus asserts that the Respondent's actual knowledge of the Complainant's ENVOY mark is the entire reason behind the Respondent's registration of the disputed domain name. Furthermore, the mere fact that the Respondent has registered a domain name that incorporates the trademark of a well-known company is alone sufficient to give rise to an inference of bad faith, which is supported by the fact that the disputed domain name is used to host a website passing itself off as the Complainant's website, which at worst is used to steal consumers' personal or company information, and at best, to defraud consumers.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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

The Panel finds that under the Policy, the disputed domain name <myenvoyair.xyz> is confusingly similar to the Complainant's registered trademark ENVOY because it contains the mark in its entirety. The addition of the terms "my" as prefix and "air" as suffix do not dispel a finding of confusing similarity in the present case. The generic Top-Level Domain ("gTLD") ".xyz" is typically disregarded under the confusing similarity test.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

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

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights in the disputed domain name on the part of the Respondent in these proceedings, leaving the Complainant's *prima facie* case un rebutted. The Respondent has used and is using the disputed domain name for a website that purportedly provides information on the

Complainant and on the Complainant's Envoy Air customer portal and which contains a picture that depicts one of the Complainant's American Airlines aircrafts as well as the ENVOY logo. The Panel finds that both the composition of the disputed domain name itself and the content of the website is such that the use of the disputed domain name effectively impersonates or suggests sponsorship or endorsement by the Complainant, which does not constitute legitimate use of the disputed domain name under the Policy. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's trademark ENVOY, and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, the Panel finds that the Respondent could not have been unaware of the fact that it chose a domain name, which based on its composition could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

As mentioned above in Section 6B the Respondent has used and is using the disputed domain name for a website that purportedly provides information on the Complainant and on the Complainant's Envoy Air customer portal and which contains a picture that depicts one of the Complainant's American Airlines aircrafts as well as the ENVOY logo. The Panel therefore found that the use of the disputed domain name effectively impersonates or suggests sponsorship or endorsement by the Complainant. Such use does not only not constitute legitimate use of the disputed domain name, but it is furthermore clearly apt to disrupt the business of the Complainant. Under these circumstances, the Panel finds that the disclaimer at the footer on the website under the disputed domain name, which reads "This website is not associated with the MyEnvoyAir" does not cure the bad faith. See section 3.7 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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 <myenvoyair.xyz> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: October 11, 2022