

ADMINISTRATIVE PANEL DECISION

Italia Trasporto Aereo S.p.A. v. 杨智超 (Zhichao Yang)
Case No. D2023-3009

1. The Parties

The Complainant is Italia Trasporto Aereo S.p.A., Italy, represented by Società Italiana Brevetti, Italy.

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Names and Registrar

The disputed domain names <aalitalia.com>, <alitalias.com> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on July 13, 2023. On July 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 18, 2023, 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 (Unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 19, 2023, 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 in English on July 21, 2023.

On July 19, 2023, the Center sent an email communication to all Parties in Chinese and English regarding the language of the proceeding. On July 21, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 22, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on August 28, 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 Complainant, Italia Trasporto Aereo S.p.A. (“ITA”), is the Italian flagship airline which in 2021 acquired the former Alitalia - Società Aerea Italiana S.p.A. in Amministrazione Straordinaria’s (Alitalia) business. The acquisition included the purchase of Alitalia’s trade marks and domain names. As of March 2023, the Complainant’s ITA Airways serves 64 destinations, in Italy, Europe, North Africa, Asia, North and South America. From January 2022, the Complainant opened lounges in the main Italian airports of Fiumicino (Rome) and Linate (Milan). The Complainant is also a member of the SkyTeam alliance.

Prior to its demise in 2021, Alitalia was the Italian flagship airline that had been operating worldwide under the mark ALITALIA since its first flight in 1947.

The Complainant owns the ALITALIA trade marks including the following trade mark registrations:

- European Union Trade Mark Registration No. 900829 dated December 21, 1999;
- International Trade Mark Registration No. 378816 dated May 6, 1971; and
- European Union Trade Mark Registration No. 16049959 dated May 18, 2017.
(together, individually and collectively referred to as the “Trade Mark”).

The Respondent, who is based in China, registered the disputed domain names on March 31, 2023. The disputed domain names resolve to pay-per-click (“PPC”) webpages with link headings such as: “Alitalia Voli”, “Ita Voli” and “Voli Alitalia” (the “Websites”).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain names, and that the disputed domain names were registered and are being used in bad faith. The Complainant requests transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint and the amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for the following reasons:

- the disputed domain names are in Latin characters; and
- the Respondent is familiar with English, as confirmed by the fact that he is the respondent in numerous UDRP cases where the language of the proceeding has been English.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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

Based on the available record, the Panel finds the 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.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other letters here, the letter "s" at the end of the Trade Mark in relation to one of the disputed domain names and the other with an additional "a" before the Trade Mark may bear on assessment of the second and third elements, the Panel finds the addition of such letters does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 the 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 the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The 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 names such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent must have been aware of the Trade Mark when he registered the disputed domain names given the Trade Mark was registered prior to registration of the disputed domain names and the reputation of the Trade Mark. The fact that the PPC link headings bear the Trade Mark also demonstrates the Respondent's knowledge of the Trade Mark.

It is therefore implausible that the Respondent was unaware of the Complainant when he registered the disputed domain names.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the disputed domain names without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain names fall into the category stated above and the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the disputed domain names is in bad faith. The Websites are PPC sites which have been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the disputed domain names into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The disputed domain names are likely to confuse Internet users trying to find the Complainant's website. Such confusion may result due to the fact that the disputed domain names contain the Complainant's distinctive Trade Mark in its entirety.

The Respondent employs the reputation of the Trade Mark to mislead users into visiting the disputed domain names instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Websites are that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the disputed domain names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel has also noted that a number of UDRP cases concerning other third party brand owners where the Respondent has been the named respondent and those domain names have been ordered to be transferred. These include *Syneos Health LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2731](#); *Granicus, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-2844](#); *Corning Incorporated v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4227](#); *CenterPoint Energy, Inc. v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4046](#). This is an indication that the Respondent is a serial cybersquatter and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

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

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, <aalitalia.com> and <alitalias.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: September 22, 2023