

ADMINISTRATIVE PANEL DECISION

Western Flyer Express, LLC v. George Mahon
Case No. D2024-0376

1. The Parties

The Complainant is Western Flyer Express, LLC, United States of America ("United States"), represented by Jackson Walker, LLP, United States.

The Respondent is George Mahon, Canada.

2. The Domain Name and Registrar

The disputed domain name <westernflyerexpressllc.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 27, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2024, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2024, 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 amendment to the Complaint on February 5, 2024.

The Center verified that the Complaint together with the amendment to 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 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 28, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on March 1, 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

Launched in 1996 under its WESTERN FLYER EXPRESS mark, the Complainant is a freight transportation company headquartered in Oklahoma City, operating a fleet of more than 1000 trucks and 3000 trailers, transporting goods across the United States. The Complainant has, since 2013, also traded under the WESTERN FLYER XPRESS mark and frequently uses an abbreviation of that mark – WFX.

The Complainant's WFX mark is registered in the United States in various forms, including United States Trade Mark Registration No. 5,962,244 WFX in class 39, with a registration date of January 14, 2020, and a claimed date of first use in commerce of December 15, 1996.

The disputed domain name was registered on November 28, 2023, and currently resolves to a Registrar parking page displaying pay-per-click ("PPC") advertisements for investment and construction businesses. The Complainant's evidence establishes that the disputed domain name has been used for purposes of email-based fraud in which an unauthorised party impersonates the Complainant in order to induce potential customers of the Complainant to deliver goods to the unauthorised third party for transportation. The goods never reach their destination and the customer never hears back from the party impersonating the Complainant.

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 name. Notably, the Complainant contends that the disputed domain name was registered and used in bad faith for purposes of fraud, to impersonate the Complainant and defraud potential customers of the Complainant for the enrichment of the Respondent.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Complainant's evidence establishes that it has traded under its WESTERN FLYER EXPRESS mark since 1996. Based on its general powers articulated inter alia in paragraphs 10 and 12 of the Rules, the Panel's independent Internet searches indicate that the Complainant's WESTERN FLYER EXPRESS mark does enjoy a reputation within its industry in the United States.

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

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here email-based fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Panels have held that the use of a domain name for illegal activity, here email-based fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that the Complainant’s evidence establishes that the disputed domain name has been used for email-based fraud in terms of which the Complainant is impersonated in order to defraud potential customers, as set out in the Factual Background section above. Mail exchanger (“MX”) records remain set for the disputed domain name, thus the disputed domain name remains configured for email use and can continue to be used for fraud.

The disputed domain name is identical to the Complainant’s corporate name which the Complainant has used since 1996, and nearly identical to the Complainant’s reputed WESTERN FLYER EXPRESS mark, which is a clear indicator of targeting.

The Panel draws an adverse inference from the Respondent’s failure to take part in the present proceeding where an explanation is certainly called for. [WIPO Overview 3.0](#) at section 4.3.

The Panel finds that the Complainant has established 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 <westernflyerexpressllc.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: March 13, 2024