

ADMINISTRATIVE PANEL DECISION

Priority Air Express UK Limited v. Priority Airs Ltd
Case No. D2025-0727

1. The Parties

The Complainant is Priority Air Express UK Limited, United Kingdom, represented by HGF Limited, United Kingdom.

The Respondent is Priority Airs Ltd, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <priority-air.com> is registered with REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2025. On February 24, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 2025, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing additional contact details.

On March 3, 2025, the Center informed the Parties in Russian and English that the language of the registration agreement for the disputed domain name is Russian. On March 6, 2025, the Complainant requested English to be the language of the proceedings. The Respondent did not submit any comments on the Complainant’s submission.


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 in Russian and English of the Complaint, and the proceedings commenced on March 10, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2025.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 3, 2025. 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 describes its business as involving the warehousing, transporting and delivery of pharmaceuticals, pharmaceutical samples, bulk active pharmaceutical ingredients, clinical trial materials, product commercialization samples, and states that its global revenues amount to more than USD 4 million. According to the evidence submitted with the Complaint, the Complainant was established in 2011 in the United Kingdom, is part of the Thermo Fisher group of companies, and is primarily engaged in furnishing air transportation over regular routes and on regular schedules.

The Complainant has submitted evidence that the entity Priority Air Express, LLC (its direct parent company) was the owner of the trademark  with registration No. 1563819, registered in the United States of America (“United States”) on October 31, 1989 for “air and truck transportation and delivery services” in International Class 39. The word elements “PRIORITY AIR EXPRESS” in this trademark were disclaimed. This trademark was cancelled on October 15, 2021 because its registrant did not file an acceptable declaration of use of mark in commerce under Section 8 (United States Code, Title 15, § 1058).¹

The disputed domain name was registered on June 23, 2024. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to a website that impersonated the Complainant inter alia by using the Complainant’s physical address and company registration number.

There is no information about the Respondent, and a search in the official website of the United Kingdom Companies House² does not return any results with the name of the Respondent.

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.

The Complainant states that it offers services under the trademark PRIORITY AIR EXPRESS such as air and transport delivery services. The Complainant maintains that it has unregistered trademark rights in the PRIORITY AIR EXPRESS trademark, because it has used it in the United Kingdom and worldwide continuously for 20 years and has developed strong goodwill under the trademark such that consumers will associate this trademark and the services provided under it with the Complainant.

The Complainant states that the disputed domain name is confusingly similar to the PRIORITY AIR EXPRESS trademark, because the element “priority air” is wholly contained within the disputed domain name, and when a consumer initiates a Google search for “Priority Air Express”, the disputed domain name is the first displayed result.

¹When filing this mandatory declaration, the trademark registrant has the following choice: (1) to state that its mark is in use in commerce, to set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce, and to provide specimens showing current use of the mark in commerce; or (2) to set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce and include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

² www.find-and-update.company-information.service.gov.uk/

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it was registered after the Complainant's first use of the PRIORITY AIR EXPRESS trademark. The Complainant points out that on the website at the disputed domain name the Respondent has impersonated the Complainant by using the Complainant's physical address and company registration number, which misleads visitors of this website that the same belongs to the Complainant or is economically connected to it. The Complainant adds that the Respondent has sent letters to customers passing itself off as the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that in addition to setting up a website that impersonates the Complainant, the Respondent has also contacted customers and provided them with quote information portraying itself as a representative of the Complainant. According to it, the Respondent has thus intentionally attempted to attract for commercial gain Internet users by creating a likelihood of confusion with the Complainant's trademark as to the affiliation or endorsement of the Respondent's website and of the services offered by the Respondent. According to the Complainant, the Respondent also had the intention to disrupt the business of the Complainant.

The Complainant adds that in February 2025 it sent a cease-and-desist letter to the Respondent, but received no response.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue – Language of the proceedings

The language of the Registration Agreement for the disputed domain name is Russian. 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 proceedings shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceedings be English with the arguments that the disputed domain name is comprised of the English words "priority" and "airs" and has no specific meaning in the Russian language, and that the website at the disputed domain name is in English and provides a contact phone number in the United Kingdom. According to the Complainant, this shows that the Respondent is familiar with the English language and will not be prejudiced if the proceedings are carried out in English. The Complainant adds that it will be put to considerable expenses to translate its submissions into Russian, which would also delay the proceedings.

The Respondent did not comment on the Complainant's request that the language of the proceedings be English.

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 the above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

A. Identical or Confusingly Similar

As noted in section 4 above, the United States trademark PRIORITY AIR EXPRESS referred to by the Complainant was cancelled in 2021 and is not valid at the moment. This is not stated in the Complaint although it is evident from the documents attached to it. As discussed in section 1.1.3 of the [WIPO Overview 3.0](#), while the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. This requirement is not complied with in respect of PRIORITY AIR EXPRESS trademark previously registered in the United States, so it cannot serve as a basis of the Complaint.

Even if this trademark was still live, it would not suffice on its own as a basis for finding the Complainant's standing under the UDRP. It was indeed registered by an affiliate of the Complainant, which in itself could have been sufficient to support a conclusion that the Complainant had rights in it until its cancellation in 2021 (section 1.4 of the [WIPO Overview 3.0](#)). As however discussed in section 1.10 of the [WIPO Overview 3.0](#), where the trademark registration entirely disclaims the textual elements (i.e., the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant's trademark registration is insufficient by itself to support standing under the UDRP. Here, all textual elements of the United States trademark, i.e., the words "PRIORITY AIR EXPRESS" were disclaimed, and the first two of these elements are the only elements of the trademark that appear in the disputed domain name, so there is no basis for a finding that the disputed domain name is confusingly similar to protectible elements of this trademark.

The Complainant claims having unregistered trademark rights in "PRIORITY AIR EXPRESS", and states that it has used the PRIORITY AIR EXPRESS trademark in the United Kingdom and worldwide continuously for 20 years and as such has developed strong goodwill under the trademark, meaning that consumers will associate this trademark and the services provided under it with the Complainant.

As discussed in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness or secondary meaning.

In support of its claim of having unregistered trademark rights, the Complainant submits a copy of the Form 10-K filed by its ultimate parent company Thermo Fisher Scientific Inc. with the United States Securities and Exchange Commission, the Complainant's Annual Report for the year ended December 31, 2023, and two documents submitted with the United States Patent and Trademark Office in connection with the PRIORITY AIR EXPRESS trademark previously registered in the United States. The Form 10-K includes information that the Complainant and its immediate parent company Priority Air Express, LLC are both subsidiaries of Thermo Fisher Scientific Inc., that Priority Air Express, LLC is primarily engaged in the warehousing and storage of a general line of goods and had sales of USD 26.83 million in 2023, and that the Complainant is primarily engaged in furnishing air transportation over regular routes and on regular schedules, and that its sales for 2023 amounted to USD 14.09 million. The other evidence submitted by the Complainant is a photograph from 1989 showing that the PRIORITY AIR EXPRESS trademark was displayed on the trailer of a truck presumably somewhere in the United States. There is no evidence about the duration and nature of use of the claimed trademark, the nature and extent of advertising using it, and crucially - about the degree of its actual public recognition.

The claimed unregistered trademark includes the words “priority air express” which are descriptive terms that are not inherently distinctive for air transportation services – the services in which the Complainant is primarily engaged according to the submitted Form 10-K. Perhaps unsurprisingly, the same three words were also disclaimed in the now-cancelled United States trademark (registered for air and truck transportation and delivery services), which was cancelled because its holder did not submit an acceptable declaration of use of the trademark. All this puts an even greater onus on the Complainant to present evidence of acquired distinctiveness/secondary meaning in order for its claim of having unregistered trademark rights to succeed.

Considering all the above, the Panel concludes that the evidence provided by the Complainant is not sufficient for a finding that its claimed unregistered trademark PRIORITY AIR EXPRESS has become a distinctive identifier that consumers associate with the Complainant’s services.

The Panel therefore finds that the Complainant has failed to establish that it has trademark rights for the purposes of the Policy, and the first element of the Policy has not been established.

B. Rights or Legitimate Interests and Bad Faith

The Complainant has failed to establish the first element of the Policy, so the Complaint cannot succeed. Nevertheless, the Panel considers that the circumstances of this case justify a concise record of the Panel’s conclusions on the other two elements.

Panels have held that the use of a domain name for illegitimate activity (here, claimed impersonation or other types of fraud) can never confer rights or legitimate interests on a respondent and constitutes bad faith. [WIPO Overview 3.0](#), section 2.13.1 and 3.4.

The evidence shows that the Respondent was well aware of the Complainant and targeted it with the registration and use of the disputed domain name. It attempted to impersonate the Complainant through the content of the website at the disputed domain name which indicated the Complainant’s name, contact details and registration number. The impersonation did not end there, as there is evidence that the Respondent also contacted third parties and entered into dealings with them pretending to be the Complainant or its representative, and these dealings resulted in financial claims against the Complainant. This supports a finding that the Respondent has engaged in illegitimate, and possibly illegal, activities through the registration and use of the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name and that the same was registered and has been used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: April 17, 2025