



NATIONAL ARBITRATION FORUM

DECISION

American Airlines, Inc. v. MegaWeb.com Inc.
Claim Number: FA1001001305263

PARTIES

Complainant is **American Airlines, Inc.** (“Complainant”), represented by **Kristin Jordan Harkins**, of **Conley Rose, P.C.**, Texas, USA. Respondent is **MegaWeb.com Inc.** (“Respondent”), Delaware, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**americanairways.com**>, registered with **Tucows Inc.**

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on January 27, 2010. With its Complaint, Complainant also chose to proceed entirely electronically under the new Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”) and the new Forum’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) by submitted an “opt-in” form available on the Forum’s website.

On January 28, 2010, Tucows Inc. confirmed by e-mail to the National Arbitration Forum that the <**americanairways.com**> domain name is registered with Tucows Inc. and that the Respondent is the current registrant of the name. Tucows Inc. has verified that Respondent is bound by the Tucows Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On January 28, 2010, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of February 17, 2010 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent’s registration as technical, administrative, and billing contacts, and to postmaster@americanairways.com.

A timely Response was received and determined to be complete on February 16, 2010. Respondent chose to opt-in to the electronic process with its submission and submitted its Response in electronic copy only.

An Additional Submission was received from Complainant on February 22, 2010 and found to be timely and complete pursuant to the National Arbitration Forum's Supplemental Rule 7.

On February 25, 2010, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Houston Putnam Lowry, Chartered Arbitrator, as Panelist.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

A. Complainant's Legitimate Rights to the Mark AMERICAN AIRLINES®

Complainant, American Airlines, Inc. is engaged in the business of air transportation and related goods and services and is one of the world's largest airlines. Complainant has acquired a nationwide reputation for quality goods and services, and has accumulated substantial public goodwill. In the course of its business, Complainant has acquired extensive rights in numerous trade names, trademarks and service marks. Complainant advertises, promotes and sells its goods and services directly to the ultimate consumer as well as through travel agencies and other third parties. The methods of advertising, promoting and sales are many, including on the Internet.

Complainant's mark AMERICAN AIRLINES®, which Complainant has continuously used in connection with air transportation services since at least as early as April 1934, has acquired significant goodwill, widespread public recognition, and fame as a means by which Complainant and its various goods and services are known to the public and their source of origin are identified.

Complainant has also adopted and developed substantial rights and goodwill in an entire family of trademarks and service marks that incorporate the term "AMERICAN AIRLINES", some identifying Complainant's air transportation services, and others identifying Complainant's related goods and services. The marks identifying Complainant's air transportation and related travel services include AMERICAN AIRLINES TRAVEL ACADEMY®, AMERICAN AIRLINES TRAVEL CENTER®, AMERICAN AIRLINES TRAVEL CENTER (and Design)® and AMERICAN AIRLINES INCENTIVE TRAVEL (and Design)®.

Complainant also offers related goods, such as clothing, toys, paper goods and writing instruments under the marks AMERICAN AIRLINES (Stylized)® and AMERICAN AIRLINES (and Design)®.

Complainant has expanded its service offerings to include: publication of magazines provided under the AMERICAN AIRLINES PUBLISHING (and Design)®, AMERICAN AIRLINES PUBLISHING® and AMERICAN AIRLINES NEXOS® marks; financial services provided under the AMERICAN AIRLINES FEDERAL CREDIT UNION® mark; and museum services and related goods provided under various AMERICAN AIRLINES C.R. SMITH MUSEUM (and Design)® marks and under the AA AMERICAN AIRLINES C.R. SMITH MUSEUM (and Design)® mark.

Moreover, Complainant continues to expand its widespread public recognition and fame through naming rights to multiple sports and entertainment facilities, namely, an arena in Miami, Florida offering entertainment services under the mark AMERICAN AIRLINES ARENA®, a theatre in New York, New York offering entertainment services under the mark AMERICAN AIRLINES THEATRE®, and an arena in Dallas, Texas offering promotional services under the marks AMERICAN AIRLINES CENTER® and AA AMERICAN AIRLINES CENTER (and Design)®.

The entire family of trademarks and service marks that incorporate the term "AMERICAN AIRLINES" is used in commerce in connection with Complainant's goods and services in the United States and throughout the world.

Complainant has devoted considerable efforts to advertise and promote its services under the mark AMERICAN AIRLINES® and has developed widespread recognition and fame in the marketplace for the goods and services offered under the mark AMERICAN AIRLINES®. Because AMERICAN AIRLINES® is a well-known and famous mark by which Complainant American Airlines, Inc. is identified, and also as a result of longstanding, continuous use throughout the United States and the world since at least as early as April 1934, AMERICAN AIRLINES® is accepted by the purchasing public as distinguishing Complainant's goods and services from the goods and services of others. Complainant has also extensively advertised and promoted its services offered under the mark AMERICAN AIRLINES® on the Internet, including on the web site aa.com, to which Internet traffic is redirected when an Internet user types in americanairlines.com. Both aa.com and americanairlines.com are registered to Complainant.

Complainant's presence on the Internet promotes Complainant's AMERICAN AIRLINES® air transportation services and related goods and services, and identifies Complainant as the source of such goods and services. The maintenance of high standards of quality and excellence for Complainant's air transportation and related goods and services has contributed to this valuable goodwill and reputation. The goodwill embodied in Complainant's family of marks, and consequently Complainant's valuable reputation and credibility in the airline industry, depend on the integrity of the marks as identifying Complainant as the sole source of its goods and services, and not any other source.

B. Respondent's Illegitimate Activities Relating to the Disputed Domain Name

[a]. In accordance with ICANN Rule 3(b)(ix)(I); ICANN Policy ¶4(a)(i): The Disputed

Domain Name is Confusingly Similar to the Family of Marks in which Complainant has Rights:

The disputed domain name "americanairways.com" is confusingly similar to Complainant's registered AMERICAN AIRLINES® mark because the domain name incorporates a dominant portion of Complainant's mark and merely changes the term "airlines" to the term "airways" and adds the top-level domain ".com." Thus, the dominant portion of the disputed domain name is similar to the Complainant's famous mark AMERICAN AIRLINES®, and the replacement of a term in a mark that shares a dominant element with that term, and addition of a top level domain fails to detract from the overall commercial impression provided by the AMERICAN AIRLINES® mark. *See IMT Services Corp. v. Texas International Property Associates-NA.*, FA 1259913 (Nat. Arb. Forum Jun. 15, 2009) (finding replacing a term in a mark with another that shares a dominant element with that term will not sufficiently distinguish a domain name from a mark for the purposes of policy ¶4(a)(i)); *see also Isleworth Land Co. v. Lost in Space, SA*, FA 117330 (Nat. Arb. Forum Sept. 27, 2002) ("[I]t is a well established principle that generic top-level domains are irrelevant when conducting a Policy ¶4(a)(i) analysis.").

Respondent's registration and use of the disputed domain name, which is confusingly similar to the famous mark owned by Complainant, is misleading and causes confusion to consumers who are diverted away from Complainant's web site at aa.com where Internet users can purchase air transportation and other services directly from Complainant.

[b]. In accordance with ICANN Rule 3(b)(ix)(2); ICANN Policy ¶4(a)(ii), 4(c): The Respondent Has No Rights or Legitimate Interests in the Disputed Domain Name:

Upon information and belief, Respondent has not and does not use the disputed domain name in connection with a *bona fide* offering of goods or services. When an Internet user types in "americanairways.com", the disputed domain resolves to a web site featuring the headings "American Airline Flights", "Book A Flight", "American Airline Tickets" and "Cheapest Airplane Tickets". Clicking on any of these category links brings up a "Sponsored Links" list of various commercial web sites offering travel and vacation planning services which compete with Complainant, and from which Respondent presumably receives click-through fees. Alongside the "Sponsored Links" are additional lists of category links under the headings "Best Deals", "Top Picks" and "Most Popular." The category links include additional travel-related categories, such as "Airlines", "Flight Prices" and "Low Cost Airlines". Clicking on "Flight Prices" brings up another "Sponsored Links" list of commercial web sites offering travel and vacation planning services, and from which Respondent presumably receives click-through fees, as well as additional category listings. Category links similar to the headings at the top of the home page are also found at the bottom of the home page.

The americanairways.com home page also features lists of category links along the left side of the page under the headings "Top Picks", "Most Popular", "Best Deals" and "Hot Favorites", including the categories "Last Minute Airfares", "Online Flight Bookings" and "Book a Flight". Clicking on "Last Minute Airfares" brings up a "Sponsored Links" list of various commercial web sites offering travel and vacation planning services which compete with Complainant, and

from which Respondent presumably receives click-through fees, as well as additional category listings.

The americanairways.com home page also features lists of category links under travel-related photos, including the categories "Vacation Packages", "International Travel" and "Cheapest Airplane Tickets". Clicking on "Vacation Packages" brings up a "Sponsored Links" list of various commercial web sites offering travel and vacation planning services which compete with Complainant, and from which Respondent presumably receives click-through fees, as well as additional category listings.

The americanairways.com web site also provides a search engine that allows Internet users to input a search string to bring up relevant "Sponsored Links" of commercial web sites. For example, when the search string "airline tickets" is entered, the Internet user is presented with "Sponsored Links" of commercial websites offering travel and vacation planning services in competition with Complainant. Alongside the "Sponsored Links" are additional lists of category links under the headings "Best Deals", "Top Picks" and "Most Popular". The category links include additional travel-related categories, such as "Cheap Air Line Tickets", "Round Trip Airfares" and "Low Cost Airlines". Clicking on "Cheap Airline Tickets" brings up another "Sponsored Links" list of commercial web sites offering travel and vacation planning services which compete with Complainant, and from which Respondent presumably receives click-through fees, as well as additional category listings.

Respondent's use of a domain name that is confusingly similar to Complainant's mark for the purpose of diverting Internet users to Respondent's site for its own commercial gain is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. *See Intrawest ULC v. Tex. Int'l Prop. Assocs.*, FA 1108455 (Nat. Arb. Forum Jan. 17, 2008) (finding no *bona fide* offering of goods or services or legitimate noncommercial or fair use where the disputed domain name resolved to a web site displaying links to web sites offering services in direct competition with Complainant).

No available evidence suggests that Respondent has ever been commonly known by the disputed domain name. Complainant submits that the domain name at issue is not the nickname of Respondent or in any other way identified with or related to a legitimate interest of Respondent.

Complainant has not licensed or otherwise permitted Respondent to use any of Complainant's marks or to apply for or use any domain name incorporating any of Complainant's marks, including AMERICAN AIRLINES®.

[c]. In accordance with ICANN Rule 3(b)(ix)(3); ICANN Policy ¶4(a)(iii), 4(b): Respondent Has Registered and Is Using the Disputed Domain Names in Bad Faith:

Respondent registered a domain name that is confusingly similar to Complainant's mark AMERICAN AIRLINES®, and Respondent is not commonly known by the domain name. The disputed domain name resolves to a web site featuring category links which bring up "Sponsored Links" to various commercial web sites from which Respondent presumably receives referral fees. Some of these web sites offer travel and vacation related services in direct competition with

Complainant, which is evidence of bad faith. *See The Wooden Soldier Ltd. v. RareNames, WebReg*, FA 778960 (Nat. Arb. Forum Oct. 11, 2006 (posting links to direct competitors of Complainant is, in itself, evidence of bad faith). These factors support a conclusion that Respondent registered the domain name americanairways.com for the primary purpose of intentionally attempting to attract, for commercial gain, Internet users to Respondent's web site or other online locations, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of Respondent's web site or of a product or service on Respondent's web site. *See Grounded Nomads, LLC d/b/a Vocation Vacations v. Tex. Int'l Prop. Assocs.*, FA 999659 (Nat. Arb. Forum Aug. 1, 2007) ("Respondent is benefiting from the likelihood of confusion between Complainant's mark and Respondent's disputed domain name for commercial gain, and has therefore demonstrated bad faith registration and use under Policy ¶4(b)(iv).").

Upon information and belief, given the nature of the content on the Respondent's web site, Respondent registered the americanairways.com domain name with knowledge of Complainant's rights in the famous AMERICAN AIRLINES® mark. Respondent's registration of a domain name that is confusingly similar to Complainant's famous mark AMERICAN AIRLINES®, with knowledge of Complainant's rights in the mark, is evidence of bad faith registration and use in violation of ICANN Policy ¶4(a)(iii). *See Samsonite Corp. v. Colony Holding*, FA 0003000094313 (Nat. Arb. Forum April 17, 2000) (finding that actual or constructive knowledge of a commonly known mark at the time of registration evidences bad faith).

Respondent has registered numerous other domain names that have been the subject of recent ICANN proceedings. Specifically, two (2) National Arbitration Forum panels and two (2) WIPO panels have previously held that the Respondent registered and used a total of 28 domain names in bad faith, and therefore ordered transfer of the domain names from the Respondent to the rightful trademark owners. *See America Online, Inc. v. Mega Web. com Inc.*, FA 0463099 (Nat. Arb. Forum May 26, 2005) (transferring 25 domain names to the Complainant, including peopleconnection.com, ajol.com, aoel.com, aoIc.com, aolh.com, aolk.com, aoln.com, aolo.com, aool.com, aqol.com, auol.com, axol.com, ayol.com, caol.com, eaol.com, faol.com, gaol.com, jaol.com, oaol.com, xaol.com, yahol.com, zaol.com, iseeku.com and iseekyou.com, and denying transfer of 10 other domain names); *see also Q Interactive v. MegaWeb.com Inc.*, FA 1240324 (Nat. Arb. Forum Feb. 23, 2009) (transferring the domain name coolsaving.com to the Complainant); *see also Konrad Hornschuch AG v. MegaWeb.com Inc.* D2006-0293 (WIPO May 8, 2006) (transferring the domain name skai.com to the Complainant); and *Golay Buchel & Cie SA v. MegaWeb.com Inc.* D2001-0829 (WIPO Aug. 22, 2001) (transferring the domain name golay.com to the Complainant). The Respondent's pattern of registering and using domain names that infringe upon others' trademarks evidences Respondent's bad faith registration and use of the americanairways.com domain name. *See Armstrong Holdings, Inc. v. JAZ Assocs.*, FA 95234 (Nat. Arb. Forum August 17, 2000) (finding that respondent violated Policy ~ 4(b)(ii) by registering multiple domain names that infringe upon others' famous and registered trademarks); *see also Westcoast Contempo Fashions Ltd. V. Manila Indus., Inc.*, FA 814312 (Nat. Arb. Forum Nov. 29, 2006) (finding bad faith registration and use pursuant to Policy ¶4(b)(ii) where the respondent had been subject to numerous UDRP proceedings where panels ordered the transfer of disputed domain names containing the trademarks of the complainants). Respondent's conduct, knowing full well that it has no right to use Complainant's mark,

demonstrates that it is knowingly, willfully and with a bad faith intent, trading on the value of, and interfering with, Complainant's right to use its mark in commerce.

B. Respondent

1. americanAIRWAYS is not the same or close to americanAIRLINES. americanAirways is a descriptive name for the complete air transportation system. The american airways do not belong to any one airline, american, united, delta or any other one airline company.

There is a clear and distinct difference between airlines and airways.

Therefore, americanairways.com is not identical or confusingly similar to americanairlines.

2. megaweb has legitimate rights and interest in respect to americanairways.com. Megaweb is using the americanairways.com for 12 years, since 1998 online as a directory for all that is connected with the airways in america.

This directory provides a needed and legitimate service for online users to find information about all the services available in the american airways market, including: travel insurance, airline deals, general travel information , weather, luggage, etc.

An online directory is a legitimate use of a domain name, as decided by icann many times already.

3. The domain name was not registered in bad faith.

american airlines/Nor anyone else had any trademark registration of americanairways at the time we registered americanairways.com, nor where we aware of anyone using that name in any shape or form.

icann decided many times in the past that if a domain name was registered prior to a trademark registration, then the domain name owner did not register the domain name in bad faith and has the full right to the domain name.

No one was using "american airways" in any shape anywhere at that time/nor is using it up to now as far as publicly known, megaweb is the only company/website using and known as americanairways.com

This domain name "americanairways.com was registered in good faith and was intended to provide information services for the public about exactly what the domain name says and means: american airways.

americanairways.com is a legitimate online service directory operating in good faith.

4. This complaint is a clear attempt by one travel company to claim a right to a generic domain that it does not have any exclusive right to.

icann should find that this is a domain highjacking attempt and american airlines has no right to this domain name more than any other airline, travel service, directory, insurance company or anyone else aside from the current domain name owner: megaweb.

FINDINGS

The Panel makes the following findings:

- (1) the domain name registered by the Respondent is ***not*** identical nor confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical and/or Confusingly Similar

Complainant has not satisfied Policy ¶4(a)(i) because the disputed domain name is not confusingly similar to the mark. While the word “airways” is a synonym for “airlines,” the two are not sufficiently close to be confusingly similar to the average consumer.

Respondent contends the disputed domain name is comprised of common and generic terms and thus cannot be deemed confusingly similar to Complainant’s mark. However, this argument is not applicable under Policy ¶4(a)(i).

The Panel finds Policy ¶4(a)(i) **NOT** satisfied.

Rights or Legitimate Interests

Complainant must first make a *prima facie* case Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶4(a)(ii), and then the burden shifts to Respondent to show it has rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

Complainant alleges Respondent is not commonly known by the <americanairways.com> domain name. Complainant provides the WHOIS information for the disputed domain name which lists the domain name registrant as “MegaWeb.com Inc.,” which Complainant contends is not similar to the disputed domain name. Complainant emphasizes there is no evidence that suggests Respondent is commonly known by the disputed domain names and Complainant asserts Respondent is not authorized or licensed to use the AMERICAN AIRLINES mark. Respondent has not established it is commonly known by the disputed domain name and finds Respondent has not established rights or legitimate interests pursuant to Policy ¶4(c)(ii). *See Charles Jourdan Holding AG v. AAIM*, D2000-0403 (WIPO June 27, 2000) (finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant’s prior rights in the domain name precede the respondent’s registration; (3) the respondent is not commonly known by the domain name in question); *see also Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

Complainant claims Respondent is using the <americanairways.com> domain name to resolve to a website containing a search engine and hyperlinks to Complainant’s

competitors in the air transportation business... including links to American Airlines products. Complainant contends these hyperlinks are sponsored commercial links from which Respondent receives a click-through fee and there is no evidence to the contrary. The Panel finds Respondent is not making a *bona fide* offering of goods or services under Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the disputed domain name under Policy ¶4(c)(iii). *See ALPITOUR S.p.A. v. Albloushi*, FA 888651 (Nat. Arb. Forum Feb. 26, 2007) (rejecting the respondent's contention of rights and legitimate interests in the <bravoclub.com> domain name because the respondent was merely using the domain name to operate a website containing links to various competing commercial websites, which the panel did not find to be a use in connection with a *bona fide* offering of goods or services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶4(c)(iii)); *see also Skyhawk Techs., LLC v. Tidewinds Group, Inc.*, FA 949608 (Nat. Arb. Forum May 18, 2007) (“Respondent is using the <skycaddy.com> domain name to display a list of hyperlinks, some of which advertise Complainant and its competitors' products. The Panel finds that this use of the disputed domain name does not constitute a *bona fide* offering of goods or services under Policy ¶4(c)(i), or a legitimate noncommercial or fair use under Policy ¶4(c)(iii).”).

The Panel finds Policy ¶4(a)(ii) satisfied.

Registration and Use in Bad Faith

Complainant alleges Respondent's use of the <**americanairways.com**> domain name is a part of a pattern of bad faith use and registration. Complainant claims Respondent has been a respondent in multiple UDRP proceedings in which disputed domain names were transferred from Respondent to the complainants in those cases. *See America Online, Inc. v. MegaWeb.com Inc.*, FA 0463099 (Nat. Arb. Forum May 26, 2005); *see also Q Interactive v. MegaWeb.com Inc.*, FA 1240324 (Nat. Arb. Forum Feb. 23, 2009). The Panel finds this constitutes a pattern of bad faith registration and use of domain names under Policy ¶4(b)(ii). *See Westcoast Contempo Fashions Ltd. v. Manila Indus., Inc.*, FA 814312 (Nat. Arb. Forum Nov. 29, 2006) (finding bad faith registration and use pursuant to Policy ¶4(b)(ii) where the respondent had been subject to numerous UDRP proceedings where panels ordered the transfer of disputed domain names containing the trademarks of the complainants); *see also Hachette Filipacchi Presse v. Fortune Int'l Dev.*, FA 96685 (Nat. Arb. Forum Apr. 6, 2001) (finding that where the respondent has registered over 50 domain names that correspond to different well-known trademarks, evidence of a pattern exists).

Respondent uses the <**americanairways.com**> domain name to resolve to a website containing hyperlinks to Complainant's competitors in the air transportation industry. Complainant alleges Internet users interested in using Complainant's air transportation services may use a competitor's air transportation service instead because of Respondent's use of the confusingly similar disputed domain name. Respondent's use of the <**americanairways.com**> domain name disrupts Complainant's air transportation business. The Panel finds Respondent's actions constitute bad faith registration and use

under Policy ¶4(b)(iii). *See Am. Airlines, Inc. v. Tex. Int’l Prop. Assoc.*, FA 914854 (Nat. Arb. Forum Apr. 10, 2007) (holding that where the respondent’s website featured hyperlinks to competing websites and included a link to the complainant’s website, the respondent’s use of the <redeemaamiles.com> domain name constituted disruption under Policy ¶4(b)(iii)); *see also Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (concluding that the use of a confusingly similar domain name to attract Internet users to a directory website containing commercial links to the websites of a complainant’s competitors represents bad faith registration and use under Policy ¶4(b)(iii)).

Complainant claims Respondent receives click-through fees from the use of the aforementioned hyperlinks. Complainant argues Respondent is attempting to profit by creating a likelihood of confusion as to Complainant’s affiliation with the disputed domain name and the resolving links to competing air transportation and travel services. Respondent has failed to deny these claims. The Panel finds Respondent’s use of the disputed domain name constitutes bad faith registration and use under Policy ¶4(b)(iv). *See Zee TV USA, Inc. v. Siddiqi*, FA 721969 (Nat. Arb. Forum July 18, 2006) (finding that the respondent engaged in bad faith registration and use by using a domain name that was confusingly similar to the complainant’s mark to offer links to third-party websites that offered services similar to those offered by the complainant); *see also Univ. of Houston Sys. v. Salvia Corp.*, FA 637920 (Nat. Arb. Forum Mar. 21, 2006) (“Respondent is using the disputed domain name to operate a website which features links to competing and non-competing commercial websites from which Respondent presumably receives referral fees. Such use for Respondent’s own commercial gain is evidence of bad faith registration and use pursuant to Policy ¶4(b)(iv).”).

Complainant contends Respondent could not have registered and used the disputed domain name without actual or constructive knowledge of Complainant and its rights in the AMERICAN AIRLINES mark. While constructive notice has not been generally held to suffice for a finding of bad faith registration and use, this Panel finds Respondent registered and is using the disputed domain name in bad faith under Policy ¶4(a)(iii) because of the famous nature of Complainant’s marks. *See Deep Foods, Inc. v. Jamruke, LLC*, FA 648190 (Nat. Arb. Forum Apr. 10, 2006) (stating that while mere constructive knowledge is insufficient to support a finding of bad faith, where the circumstances indicate that the respondent had actual knowledge of the complainant’s mark when it registered the domain name, panels can find bad faith); *see also Yahoo! Inc. v. Butler*, FA 744444 (Nat. Arb. Forum Aug. 17, 2006) (finding bad faith where the respondent was “well-aware” of the complainant’s YAHOO! mark at the time of registration).

The Panel finds Policy ¶4(a)(iii) satisfied.

DECISION

Having failed to establish all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.



Houston Putnam Lowry, Esq.
Arbitrator

Houston Putnam Lowry, Chartered Arbitrator, Panelist
Dated: April 13, 2010

[Click Here](#) to return to the main Domain Decisions Page.

[Click Here](#) to return to our Home Page

NATIONAL ARBITRATION FORUM