



THE CHARTERED INSTITUTE OF ARBITRATORS AUSTRALIAN BRANCH

.au Dispute Resolution Provider

ADMINISTRATIVE PANEL DECISION

Singapore Airlines Limited
v.
Scott Hoggett and Meredith Hoggett

Reference: 0301

1. The Parties

- 1.1 The Complainant is Singapore Airlines Limited (Incorporated in Singapore) Singapore Airlines House, 17-19 Bridge Street, Sydney NSW 2000 ("Complainant").
- 1.2 The Respondents are Scott Hoggett and Meredith Hoggett, of the Internet Booking Centre (Registered Business Name BN01350316) 15 Thistle Down Huntingfield TAS 7055 ("Respondent").

2. The Domain Name and Registrar

The domain name at issue is <www.singaporeairlines.com.au> ("Domain Name"), currently registered by the Respondent. The Registrar is PlanetDomain (www.planetdomain.com).

3. Procedural History

- 3.1 This is an administrative proceeding pursuant to the .au Dispute Resolution Policy ("auDRP") adopted by auDA on 13 August 2001, which commenced operation on 1 August 2002; the auDA Rules for .au Dispute Resolution Policy ("Rules") and the CIArb Supplemental Rules for .au Domain Name Dispute Resolution Policy ("Supplemental Rules").
- 3.2 The Complaint was submitted to the Chartered Institute of Arbitrators (Australian Branch) (the "Dispute Resolution Provider") by the Complainant on 4 December 2002. Proceedings were instituted by a panelist appointed by the Dispute Resolution Provider, but on 4 April 2003, auDA determined that the proceedings should be re-administered. Confirmation of this course of action was confirmed with the Complainant on 7 July 2003.

- 3.3 A copy of the Complaint was sent by the Dispute Resolution Provider to the Respondent on 18 July 2003 requiring them to submit all materials that it wished to have considered by the Panel by 11 August 2003.
- 3.4 The Respondent submitted its reply to the Dispute Resolution Provider by email on 11 August 2003 and a hard copy of the response as required pursuant to Paragraph 5 of Schedule B of the Rules was received by the Dispute Resolution Provider on 13 August 2003.
- 3.5 The Dispute Resolution Provider appointed a single member Panel on 18 August 2003. The Panelist had submitted a Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Dispute Resolution Provider in compliance with paragraph 7 of the Rules.
- 3.6 The Panel finds that the Complaint complies with the requirements of the .au Domain Administration Dispute Resolution Policy, its Rules and the Supplemental Rules of the Dispute Resolution Provider.

4. Factual Background

- 4.1 The Complainant is a company incorporated in Singapore that operates a large, well known international airline with long standing commercial interests and trade with Australia. It presently operates 70 scheduled passenger services, and 4 scheduled cargo services, between Australian cities and Singapore each week. In 2001-02, Singapore Airlines was the largest foreign airline flying to Australia in terms of passenger numbers.
- 4.2 The Respondent is the owner of a travel agency, *Internet Booking Centre*, (a business name registered in Tasmania in June 2002) that provides an internet and telephone booking service for domestic air travel in Australia. The domain name, the subject of this complaint, was registered by the Respondent on 14 October 2002.

5. Parties' Contentions

Complainant

The Complainant stated that:

- 5.1 the domain name is identical to a name over which it has proprietary rights. Singapore Airlines is a well-known and established name in Australia, and is registered as a business in Australia (ARBN 001 056 195).
- 5.2 the Singapore Airlines Mark is strong and distinctive and is universally held to represent the products and services uniquely provided by the Complainant. This Mark is a well-known trademark within the meaning of Article 16 of the Agreement on Trade Related Aspects of Intellectual Property ("TRIPs"). TRIPs extends the Paris Convention provision on the protection of well-known marks to service marks (such as Complainant's marks) and further extends the protection of well-known trademarks to cases of dilution for use for different goods and services where that use is damaging.

- 5.3 the addition of “.com.au” at the end of the name offers no substantive, meaningful or material change to the usage or meaning of the “Singapore Airlines” name which would differentiate it, in the eyes of any customer or reasonable person, from the products or services provided by the Complainant.
- 5.4 the licensee has no rights to use the name “Singapore Airlines” in connection with its business. A search of our records shows no dealings or authorisation on the part of Singapore Airlines for “Internet Booking Centre” to act as an agent for Singapore Airlines, and Singapore Airlines warrants that no authority has been given to that business, or to the principals of that business, for them to act for, or as an agent of, Singapore Airlines; and

Respondent

The Respondent stated that:



- 5.5 in June, 2002 it started an internet booking agency, specialising in booking by telephone for those who did not have access to cheaper airfares via the internet, and also for those who could only pay by Bankcard, as some airline sites do not accept Bankcard.
- 5.6 sometime later it commenced a website for those people using the internet to search for the cheapest or most appropriate airfares available. It concentrated purely on domestic airfares, and has done so ever since. This was an e-mail request or telephone service. There were no search engines installed on the site.
- 5.7 to enable it to receive traffic, it registered some airline based domain names. To its surprise it found that the domain name: singaporeairlines.com.au was available. It was said 'to its surprise' because it was aware that Singapore Airlines had previously commenced proceedings against other persons for using the domain name singaporeairlines.com. It registered this name and meant to simply park it until sometime in the future for international operations, however, it was activated in error by the host when propagating the other domain names.
- 5.8 at no time has it acted in bad faith or in any manner to deprive Singapore Airlines of the domain name. Before registering this domain name, it made all reasonable enquiries that could be expected to determine whether or not it was able to register it. At the moment of receiving the original notice of dispute, the domain name was disabled and has not been active since then.
- 5.9 it is only too willing to transfer this particular name to Singapore Airlines if they so desire.

6. Discussion

- 6.1 Paragraph 15(a) of the Rules requires the Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the [auDRP and Rules], and any rules and principles of law that it deems applicable.”

- 6.2 The auDRP is contained in Schedule A, paragraph 4(a) requires a Complainant to prove that:
- 6.2.1 the Disputed Domain is identical or confusingly similar to a name, trade mark or service mark in which the complainant has rights; and
 - 6.2.2 the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
 - 6.2.3 the Disputed Domain has been registered or subsequently used in bad faith.
- 6.3 In Section 4(b) the following are deemed, non–exhaustively, to be evidence of registration or use in bad faith:
- 6.3.1 circumstances indicating that the domain name has been registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name, or
 - 6.3.2 the domain name has been registered in order to prevent the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name, or
 - 6.3.3 the domain name has been registered primarily for the purpose of disrupting the business or activities of another person; or
 - 6.3.4 the domain name has been used to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location.
- 6.4 Section 4(c) states that, in responding to a complaint, rights to and legitimate interest in a domain name may be demonstrated by a Respondent evidencing one of the following, non-exhaustive, situations:
- 6.4.1 before any notice of the subject matter of the dispute, bona fide use, or demonstrable preparations were made to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names acquired for the purpose of selling, renting or otherwise transferring), or
 - 6.4.2 it (as an individual, business, or other organisation) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights, or
 - 6.4.3 it is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue.

7. Findings

- 7.1 The Domain Name, <singaporeairlines.com.au>, is substantially identical to the name, Singapore Airlines, to which the Complainant has proprietary rights.
- 7.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- 7.2.1 The Respondent has not made any bone fide use or preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services. The Complainant is an international airline carrying passengers and freight to and from Australia. It

- does not provide a scheduled domestic airline service in Australia. The Respondent is a travel booking agency domiciled in Tasmania which only provides domestic travel bookings and is not involved in booking international airline travel. In fact the Respondent's admitted intention was to "simply park it until sometime in the future for international operations".
- 7.2.2 The Respondent has never been commonly known by the domain name and has registered as a business name, *Internet Booking Centre*, a name wholly unconnected with the disputed domain name.
- 7.2.3 The Respondent is admitted to be a "totally independent agency from all airlines" and has no formal business connection to the Complainant.
- 7.2.4 The Respondent recognised that the Complainant had asserted legal rights over the domain name <singaporeairlines.com>.
- 7.3 The Disputed Domain has been registered or subsequently used in bad faith.
- 7.3.1 The Respondent's use of the domain name has not been for any legitimate non-commercial purpose, or without intent for commercial gain. In fact the admitted aim in registering "some airline based domain names" was to "enable it to receive some traffic".
- 7.3.2 That is, it is inferred, to misleadingly divert consumers to its website by offering a link that the consumer would immediately associate with a well known and trusted brand name thereby ensuring a flow of customers who could be enticed to purchase the Respondent's own (domestic travel) products which were unconnected with the Complainant's (international travel) brand.
- 7.3.3 As such, the domain name has been used to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name and mark.
- 7.3.4 The Respondent's avowed intention of parking the domain name "until sometime in the future" would have prevented the owner of a name, trademark or service mark from reflecting that name or mark in a corresponding domain name.
- 7.3.5 The Panel notes that although matters of "bad faith" usage are formally found proven, it accepts that the Respondent's operate a legitimate business and made attempts to communicate with the Complainant in order to transfer the domain name to it. The Respondent has also disabled the use of the domain name since being made aware of these proceedings.

8. Decision

The Panel having found that the Complainant has made out each of the three elements required by the abovementioned Section 4(a) of Schedule A of the Rules, it is the decision of the Panel that the Disputed Domain, <singaporeairlines.com.au> be transferred by the Registrar, PlanetDomain, to the Complainant.

Derek Minus

Chartered Arbitrator and Sole Panelist

Date: 29 August 2003