

DISPUTE RESOLUTION SERVICE

D00013844

Decision of Independent Expert

Societe Air France

and

Hostnex Web Solutions

1. The Parties:

Complainant:

Societe Air France
45 Rue De Paris
Roissy Cdg Cedex
95747
France

Respondent:

Hostnex Web Solutions
Village Mera Hassnal Post office Nagri tutial
Abbottabad
North-West Frontier
44000
Pakistan

2. The Domain Name:

airfranceuk.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

12 February 2014: Dispute received
13 February 2014: Complaint validated
13 February 2014: Notification of complaint sent to parties
4 March 2014: Response reminder sent
7 March 2014: No Response Received
7 March 2014: Notification of no response sent to parties
18 March 2014: Expert decision payment received

4. Factual Background

The Nominet records show that the Domain Name was registered on 19 February 2011.

Based on the Complainant's submissions (see section 5 below) and a review of the materials annexed to the Complaint, set out below are the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant is the French airline company which operates under the name AIR FRANCE. It was established in 1933.
- b. The Complainant has operated on a substantial scale for many years.
- c. As a consequence, the Complainant is a very well-known business.
- d. The Complainant owns numerous trade mark registrations for the AIR FRANCE mark, including registrations covering the UK.
- e. The Complainant has operated an international website at www.airfrance.com and a UK-specific website at www.airfrance.co.uk since the 1990's.
- f. The Complainant has not authorised the Respondent to register or use the Domain Name.
- g. The Respondent has operated a website using the Domain Name, the verbal and pictorial content of which imitates the Complainant's own websites.
- h. On its website, the Respondent has set up access to certain information in such a way that the user must first enter his name and mobile number

- i. The Respondent has also registered numerous other domain names corresponding closely to the names of other airlines and has used those domain names in a similar way to how it has used the Domain Name.

5. Parties' Contentions

Complaint

The Complainant's submissions are set out below.

The Complainant has rights in respect of a name and mark which is identical or similar to the Domain Name:

(1) The Complainant is a French airline passenger and freight company known as one of the largest in the world. The company was created on October 7, 1933 from the merger of Air Union, Air Orient, Société Générale de Transport Aérien (SGTA), Compagnie Internationale de Navigation Aérienne (CIDNA) and Compagnie Générale Aériopostale.

(2) As a result of the merger between Air Inter and Air France in 1997, "Compagnie Nationale Air France" became "Société Air France". The Complainant is also a member of the Skyteam alliance since 2000. In 2003, another alliance occurred between two pioneer companies, the Complainant and KLM, which forms the European's leading airline group.

(3) With a fleet of 374 aeroplanes, the Complainant serves 165 destinations in 86 countries and runs 1,500 flights every day (2013).

(4) In 2012, the Complainant had 51 million passengers and operating revenues of 24.4 million Euros. More than 70,000 people work for the company throughout the world.

(5) The Complainant has developed a wide communication through television, radio and printed media on the one hand, online advertising, promotions and incentive programs on the other hand.

(6) The Complainant has registered a large number of trade marks consisting or including the wording "AIR FRANCE" in many countries in the world, including in the UK and Pakistan (where the Respondent has its address):

- "AIR FRANCE" UK trade mark No. 1137848 dated July 28, 1981 and registered in class 16;
- "AIR FRANCE" UK trade mark No. 1137847 dated July 28, 1981 and registered in class 12;
- "AIR FRANCE" Community (EU) trade mark No. 2528461 dated January 9, 2002 and registered in classes 6, 8, 9, 12, 14, 16, 18, 19, 20, 21, 24, 25, 28, 29;

- “AIR FRANCE” Pakistan trade mark No. 210617 dated June 18, 2005 and registered in class 39.

(7) Since 1994, the Complainant has operated an international web portal under the URL <http://www.airfrance.com>. The Complainant also operates national websites, activated through “airfrance” domain names registered in the relevant ccTLD. As a result, the Complainant has registered numerous ccTLD domain names (more than 100), including:

<http://www.airfrance.fr>
<http://www.airfrance.de>
<http://www.airfrance.ir>
<http://www.airfrance.es>
<http://www.airfrance.pt>
<http://www.airfrance.it>

(8) More particularly, the domain names AIRFRANCE.CO.UK (<http://www.airfrance.co.uk>) and AIRFRANCE.ORG.UK have been registered by the Complainant since March 25, 1998 and May 15, 2003 respectively. These domain names activate the Complainant's local website dedicated to United Kingdom.

(9) The Complainant has recovered various domain names through negotiation or arbitral proceedings: air-france.co.uk, airfranceuk.com, airfranceklm.co.uk (DRS 2009), airfrance-klm.co.uk (DRS 2009), wwwairfrance.co.uk (DRS 2006), airfranceflights.co.uk, air-france-flights.co.uk (DRS 2008), airfrance.co.uk (DRS 2009).

(10) The Complainant also has regional offices in the UK.

(11) In addition, the Complainant's trade mark "AIR FRANCE" is well and widely known throughout the world and easily recognizable as such. Several Courts of Justice and Administrative Panels have already recognized the well-known character of the trade mark "AIR FRANCE", including:

- UDRP cases D2007-0528 regarding <airfrancebooking.info>, <airfranceticket.info>, <airfrancetickets.info>, and <flightairfrance.info>; D2005-1337 regarding <airfrancereservation.com>, <carairfrance.com>, <airfrancecanada.com>, <airfranceinternational.com>, <airfranceflights.com>, and <qairfrance.com> ; D2004-0993 regarding <airfrancereservations.com>; D2003-0830 regarding <airfrance-klm.net/org/biz>; D2004-0170 regarding <airfrancedirect.com>; D2004-0239, regarding <airfranceholiday.com>; D2004-0446 regarding <airfrance.com> ; D2003-0417 regarding <arifrance.com> ; D2002-0158 regarding <my-airfrance.com> ; and D2010-2244 regarding <corporateairfrance.com>.
- The Prague Court of Justice in its decision dated November 24, 2004 (case 19 Cm 55/2002-47) regarding the bad faith registration and use of the domain name <airfrance.cz>.
- A decision handed down by the Bucharest Court of Justice regarding bad faith registration and use of the domain name <airfrance.ro>.

(12) As a consequence, it should be indisputably considered that the Complainant's trade mark "AIR FRANCE" is not only registered and used in commerce in a great majority of countries in the world, but is well-known in the sense of article 6 bis of the Paris Union Convention.

The Domain Name, in the hands of the Respondent, is an abusive registration:

(1) The Respondent is a Pakistan company named HOSTNEX WEB SOLUTIONS. The Respondent has no rights either to register or to use a domain name reproducing the trade mark AIR FRANCE. The Respondent is not commonly known under the name AIR FRANCE.

(2) The Complainant asserts that it is not in a business relationship with the Respondent. No licence or authorization has been granted to the Respondent to make any use, nor apply for registration of the confusingly similar domain name AIRFRANCEUK.CO.UK.

(3) On April 19, 2011, the Complainant was informed that the Respondent had on February 19, 2011 registered the Domain Name. At this time, the Domain Name was directing to the website of a travel agency which was apparently selling tickets under its apparently own name TRAVEL CHEAP UK. The Complainant decided not to take action against the Domain Name at that time.

(4) However, in October 2013 the Complainant identified this Domain Name again, with a new activation. The Domain Name was at that time directing to a website that was a clear imitation of the Complainant's own former web portal, dating from 2011 [screenshots annexed]. In addition, the written and pictorial content of www.airfranceuk.co.uk was close to the former web portal www.airfrance.co.uk. The Respondent's website imitated the graphic and corporate identity that the Complainant was using on its own website in 2011. It also reproduced the trade mark AIRFRANCE, the related red logo, the logo and trade mark SKYTEAM, and used the same colours as the AIR FRANCE official website used at this time. Both websites had the very same overall impression.

(5) Further, the Respondent's website contained, as on the official AIR FRANCE website, different headings dedicated to flight booking, AIR FRANCE news, AIR FRANCE destinations, information about cheap flights, etc. These headings were similar, regarding their wording, their appearance and their content, to those displayed on the AIR FRANCE official website, i.e.:

- on the left side of the genuine website, the search box "Book your trip" vs. the search box "Book your Flights" on the same side of the imitating website;
- the title "Special offers" on each website.

(6) However, while browsing the Respondent's website, a user was only able to access general information about AIR FRANCE, not anything specific to the UK, the served destinations and cheap flights. Each page returned the user to call a phone number: 0121 270 9491. Further, by using the flights research browser, the

user was invited to enter his name and mobile number; otherwise no result or information was provided.

(7) The website www.airfranceuk.co.uk did not provide any updated information about Air France flights and the user was unable to get tickets or specific information through this website. All what was available on the Respondent's website was global information about the company AIR FRANCE. This is deceptive to Internet users, especially regarding the relevance of the domain name to the Complainant.

(8) Additional research revealed that the Respondent is the holder of or is connected to numerous domain names, which are tailored on the same pattern "brand of an airlines company + suffix UK.COM or UK.CO.UK". Almost all these domain names redirect to a webpage similar to that of the Domain Name, i.e. a webpage reproducing or imitating the trade mark, the logo and the graphical elements of the company, dealing with general information about the company and offering a search browser in which the user has to enter name and mobile phone number. Some of these domain names are for sale and some others direct to commercial parking pages with links related to the field of tourism and online travel booking which redirect to competing third-parties' websites.

(9) As the content displayed by the disputed Domain Name might be used to steal personal data (name and phone number) or even for phishing purposes, the Complainant decided to send a cease and desist letter to the hosting company to disable the access to the content. The US hosting services provider SoftLayer Technologies therefore suspended the account and disabled the access to the content.

(10) A few weeks later, the activation of the Domain Name changed and AIRFRANCEUK.CO.UK is currently displaying a commercial links parking page [annexed].

(11) The Domain Name should not be left in the hands of the Respondent, which has no legitimate reason to have registered or to use it.

(12) The Domain Name is also confusingly similar to the Complainant's famous trade mark "AIR FRANCE". The only difference with the Complainant's trade mark is the addition of the two-letter suffix "UK", for "United Kingdom". This is not sufficient to distinguish the disputed Domain Name from the Complainant's trade mark, as has already been found in previous decisions, including:

- Nominet DRS Decision D00011954 Skyscanner Limited v. Hostnexus Web Solutions, skyscannerflights.co.uk and skyscanneruk.co.uk : *"The addition of the words "flights" and "uk" respectively are in the Expert's view insufficient to distinguish the Domain Names from the Complainant's name and marks. As the Complainant has pointed out there are a number of previous decisions both under the Nominet and UDR procedures which demonstrate that the addition of "UK" or other geographical suffixes do not distinguish a domain name from a trade mark."*

- UDRP Case D2013-2062 regarding <petrobrasuk.com> and others: *“the Panel finds that the distinctive element of each of the relevant Disputed Domain Names is the Trade Mark. The addition of the geographic indicators “London” and “UK” (the country abbreviation for the United Kingdom) do not prevent the confusing similarity of the relevant Disputed Domain Names with the Trade Mark.”*

(13) Furthermore, the Domain Name is also a very close imitation of the Complainant’s domain name AIRFRANCE.CO.UK, which is directing to AIR FRANCE’s official website www.airfrance.co.uk dedicated to its British customers.

(14) AIRFRANCEUK.CO.UK was registered in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights. The similarity between the Domain Name and the Complainant’s trade mark cannot be a mere coincidence: the Respondent must have had in mind the Complainant at the time it registered the Domain Name and it has undoubtedly chosen the Domain Name in order to attract Internet users looking for AIR FRANCE’s British web portal.

(15) The Respondent has registered the Domain Name precisely because it knew the well-known character of the trade mark "AIR FRANCE" and undoubtedly in order to attract, easily and without costs, traffic to its own website. Such behaviour is evidence of the Respondent’s intention to take unfair advantage of the Complainant’s rights.

(16) The risk of confusion between the Domain Name and the trade mark is reinforced by the website to which the Domain Name has been directing. As stated before, this website reproduces the trade marks AIR FRANCE and SKYTEAM, the associated logos and AIR FRANCE’s graphic charter, so that it is quite similar to AIR FRANCE’s former website. Such use of its trade mark and of its brand image has never been authorised by the Complainant. The Respondent was clearly using the Domain Name in order to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant (Paragraph 3.a.ii of the Policy).

(17) Moreover, the flights search box available on the Respondent’s website was obviously intended to collect users’ name and mobile phone number, which are personal data. This may lead to theft of personal data for phishing or other illegal purposes.

(18) Furthermore, the Complainant’s additional investigations have found that the Respondent has registered and used numerous other domain names in the same way. These domain names are built on the same model and reproduce airlines company trade marks to which is added a generic word, generally “uk” or “flights”. The vast majority of these domain names direct to a webpage imitating the official website of the targeted company, with the same search box as on www.airfranceuk.co.uk, which is collecting personal data. The relevant information is as follows:

- The Respondent is also the holder of:
 - ETIHADUK.CO.UK

- LUFTHANSAUK.CO.UK,
 - AIRWAYSBRITISHUK.CO.UK
 - AMERICANAIRWAYSUK.CO.UK
 - BRITISHAIRWAYSUK.CO.UK
 - KLMKLM.CO.UK [details annexed]
- Numerous domain names built on the same pattern are related to the Respondent:
 - EGYPTAIRUK.COM
 - BRITISH-AIRWAYSUK.COM
 - EMIRATESAIRLINESUK.COM
 - EMIRATESFLIGHTSUK.COM
 - ETHIOPIANAIRLINESUK.COM
 - ETIHADAIRWAYSUK.COM
 - ETIHADUK.COM
 - AIRWAYSBRITISHUK.COM
 - AMERICANAIRWAYSUK.COM
 - FLIGHTSBRITISHAIRWAYS.COM
 - ROYALAIRMAROCUK.COM
 - SINGAPOREAIRLINEUK.COM
 - THAIAIRWAYSUK.COM [details and screenshots annexed]

(19) This evidence demonstrates that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise), which correspond to well-known names, or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern (Paragraph 3.a.iii. of the Policy).

(20) Furthermore, the Respondent has already been found to have registered and used domain names in bad faith, specifically in similar circumstances. On this, the Complainant refers to DRS cases:

- Nominet Decision D00011954 Skyscanner Limited PJSC vs. HOSTNEX WEB SOLUTIONS regarding skyscannerflights.co.uk and skyscanneruk.co.uk
- Nominet Decision D00013301 Etihad Airways vs. HOSTNEX WEB SOLUTIONS regarding etihadairwaysuk.co.uk, etihaduk.co.uk and etihadairwaysflights.co.uk.

(21) The initial infringing activation of AIRFRANCEUK.CO.UK as described above has been shut down by the hosting company on the request of the Complainant. The Domain Name is currently active again and is directing to a parking page displaying links to websites in the field of travel and flight tickets booking. Following the links leads the Internet user to websites offering booking services for flight tickets or chartering services: <http://www.edreams.com> and <http://atlantiqueairassistance.com>. However, none of these online booking services or chartering offer flights tickets or other services related to the Complainant. Only tickets of competing airline companies are offered on these websites.

(22) This promotion of competing services by creating confusion as to source, sponsorship, affiliation or endorsement by the Complainant demonstrates the Respondent's bad faith use of the domain name AIRFRANCEUK.CO.UK.

(23) In the light of the foregoing, the Complainant submits that the Respondent has clearly registered and used the Domain Name in an abusive way, and requests the transfer of the Domain Name.

Response

The Respondent has not filed a response.

6. Discussions and Findings

General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and*
- ii the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).*

Complainant's Rights

In light of the factual findings set out in section 4 above, it is clear that the Complainant has Rights in the nature of both legally protectable goodwill and registered trade marks in the name AIR FRANCE. Disregarding the generic *.co.uk* suffix, and taking into account that the additional "uk" is no more than a descriptive reference to the United Kingdom, the Domain Name is very similar to the name and mark in which the Complainant has Rights.

I therefore find that the first limb of paragraph 2 of the Policy is satisfied.

Abusive Registration

Paragraph 1 of the Policy defines an "Abusive Registration" as:

"A Domain Name which either:

- i was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or*
- ii has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."*

Paragraph 3 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The factors under paragraph 3a on which the Complainant relies in this case are as follows:

"ii. Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trade marks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern;"

In considering whether the Domain Name is an Abusive Registration, it must firstly be taken into account that the Complainant's name and mark AIR FRANCE is very well-known and the Respondent must have been aware of it at the time when the Domain Name was registered; and during its subsequent use. This conclusion is reinforced by the closely related content which the Respondent has had on the corresponding website www.airfranceuk.co.uk.

The intent of the Respondent is made clear by the fact that the verbal and pictorial content of the website at www.airfranceuk.co.uk has borne a striking resemblance to the Complainant's own websites, including the name AIR FRANCE, the Complainant's logo and the same colour scheme. To all intents and purposes, such content made the website look like it was a website of the Complainant and there was nothing to make clear that this was not in fact the case.

Further, the Domain Name itself does not include any elements to distinguish it from a domain name (and website address) belonging to the Complainant and it is almost identical to the Complainant's own domain name (and corresponding website address) airfrance.co.uk. The combination of this with the content which the Respondent has had on its website makes it inevitable that people will have been confused into believing that the Domain Name is owned or authorised by the Complainant. I find that such confusion will have occurred.

It is also evident that such deception must have been the intent of the Respondent. It is a clear inference that the Respondent intended to gain an unfair advantage by at the least attracting traffic to its website as a result of people being misled into believing that it belonged to the Complainant; and possibly (though I do not need to make a finding on this) by using personal data of people accessing the website for unlawful purposes. I find that the Respondent has gained an unfair advantage. Conversely, it is also obvious that the use made of the Domain Name and the deception caused will have been detrimental to the Complainant

In addition, the Complainant's submissions and evidence relating to other domain names registered by the Respondent and the use which it has made of them (set out in detail in section 5 above) clearly show a pattern of abusive registrations of which the Domain Name forms part.

Finally, it is to be noted that the Respondent has not sought to justify its registration and use of the Domain Name by submitting a Response. I infer from this that the Respondent has no viable justification to put forward.

In light of the above, it is clear that the Respondent's registration and use of the Domain Name has taken unfair advantage of and been unfairly detrimental to the Complainant's Rights, and that the Domain Name is therefore an Abusive Registration.

7. Decision

Having found that the Complainant has Rights in respect of a name and mark which is identical or similar to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *airfranceuk.co.uk* be transferred to the Complainant.

Signed:

Dated: 10 April 2014

Jason Rawkins