

ADMINISTRATIVE PANEL DECISION

Case No.	AIAC/I/ADNDRC-1367-2024
Complainant:	AIRASIA BERHAD
Respondent:	Cong Ty Co Phan Viet Nam Booking
Disputed Domain Name(s):	<airasiar.com>

1. The Parties and Contested Domain Name

The Complainant is AirAsia Berhad, Kuala Lumpur, Malaysia

The Respondent is Cong Ty Co Phan Viet Nam Booking, Vietnam

The domain name at issue is <www.airasiar.com>, registered with Mat Bao Corporation

2. Procedural History

The Complainant filed the Complaint on September 25, 2024 with the Asian Domain Name Dispute Resolution Center (“ADNDRC”) Kuala Lumpur Office. The Kuala Lumpur Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the Asian Domain Name Dispute Resolution Supplemental Rules (the “Supplemental Rules”).

The Kuala Lumpur Center formally notified the Respondent on November 1, 2024 of the commencement of proceedings on October 29, 2024. Under Article 5 of the Rules, the Response was due within 20 days from the date of notice, on or before November 18, 2024. The Respondent did not submit a Response within the stipulated time.

The Complainant opted for a single member panel and the Center appointed Harini Narayanswamy as the Panel on November 22, 2024. The Panel confirmed by email to the Kuala Lumpur Center acceptance to serve as an impartial panel in this matter.

3. Factual background

The Complainant is a multinational budget airline. Its parent company is Capital A Berhad (formerly AirAsia Group Berhad) airline. The Complainant’s parent company started as a low-cost carrier in Malaysia, Indonesia, Thailand, Philippines and India.

The Complainant owns the trademarks AIR ASIA. The trademark registrations for the AIR ASIA marks under class 39 that are owned by the Complainant *inter alia* include the following:

- (i) Vietnam trademark registration No. 4-0063801-000 for AIR ASIA device mark registered on June 16, 2005 in class 39.
- (ii) Vietnam trademark registration No. 4-0066623-000 for AIR ASIA device mark registered on September 19, 2005 in class 39.

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (KUALA LUMPUR OFFICE)

- (iii) Vietnam trademark registration No. 4-0328136-000 for AIR ASIA device mark registered on August 23, 2019 in class 39.

The Complainant registered the domain name <www.airasia.com> on May 29, 1997 from which it hosts main website. The website is used by its customers to book airline flight reservations, check-in and for viewing flight status and other travel related bookings.

The Respondent is an airline ticketing agency located in Vietnam with offices in Ho Chi Minh, Hanoi and Da Nang. The Respondent's name is "Cong Ty Co Phan Viet Nam Booking" which translates to "Vietnam Booking Joint Stock Company". The Respondent's LinkedIn page states that it has been operating since 2009.

The disputed domain name was registered on June 12, 2015. The Complainant states that it had made a formal report to the Registrar on October 12, 2023 regarding the disputed domain name. The Complainant states that it had also sent a cease and desist notice to the Respondent on January 26, 2024, despite which, the Respondent's website still displays its trademarks and other proprietary material.

4. Parties' Contentions

A. Complainant

The Complainant states it's a pioneer for low cost airlines in Asia and has received several international awards. It has been recognized as the World's leading Low-Cost airline for 15 consecutive years at the Skytrax World Airline Awards 2024.

The Complainant states that the aviation arm of Capital A Berhad, "Air Asia the airline", was originally founded in 1993 under a government owned conglomerate, DRB-HICOM. It was subsequently acquired by Tune Air Sdn Bhd in 2001 and the group company was renamed to Air Asia Group Berhad and eventually to Capital A Berhad in January 2022.

The Air Asia Group of Companies, comprises its affiliate airlines Air Asia Cambodia, Thai AirAsia, AirAsia India, Philippines Air Asia and Indonesian Air Asia. Its sister airline Air Asia X, focuses on long haul routes. The Complainant alleges that it has carried more than 800 million guests to over 130 destinations across Asia, Australia, Middle East and the United States of America.

The Complainant contends that the Respondent appears to advertise and market airline tickets of Air Asia, but actually sells tickets of other airlines such as Bamboo Airlines and Vietjet Air. The Complainant states that the Respondent uses images, keywords, color scheme that belong to its group to confuse customers.

The Complainant contends that its AIR ASIA mark is widely known and has been used extensively. The disputed domain name is confusingly similar to its AIR ASIA trademark except for the addition of a letter "r", which does not lessen the confusing similarity adds the Complainant.

The Complainant contends that the Respondent lacks rights in the disputed domain name. The Complainant is the prior adopter of the mark, therefore the use of the AIR ASIA mark by the Respondent with no authorization or rights in the name, indicates the Respondent's use of the disputed domain name is not *bona fide* or legitimate use.

The Complainant states that it has built a significant reputation associated with its mark through years of use and promotion. The Respondent's website has used the trademark and other copyright material owned by the Complainant's business which misleads customers. The Complainant contends the disputed domain name was registered and is being used in bad faith with the intention of exploiting the goodwill associated with its mark.

The Complainant requests that the disputed domain name is cancelled.

B. Respondent

The Respondent did not file a response in these proceedings.

5. Findings

Preliminary Issue

Language of the Proceedings

According to Article 11(a) of the Rules, unless otherwise agreed to by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. The Panel decides that the language of these proceedings is English, which is the language of the Registration Agreement.

Paragraph 5 (e) of the Rules directs that if a respondent does not submit a response, then in the absence of exceptional circumstances, the Panel shall proceed to render a decision based on the complaint. There are no exceptional circumstances here, and the Panel shall proceed to make the findings on the merits of the case.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / 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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.7.

The Complainant has provided evidence of its registered trademarks for the AIR ASIA mark. The Panel finds that the Complainant has shown rights in respect of the trademark or service mark for purposes of the Policy.

The disputed domain name contains the AIR ASIA mark in its entirety, except for an additional letter "r". The Complainant has argued that the additional letter does not impact the assessment of confusing similarity. The Panel accepts that it is well established in UDRP cases, that where the trademark is recognizable in the disputed domain name, any additional letters, terms or words do not prevent a finding of confusing similarity between the disputed domain name and the mark.

It has been consistently held that a disputed domain name which contains a reputed trademark with additional letters, words or terms is generally not sufficient to distinguish the domain name from the mark to avoid a finding of confusing similarity with the mark. See for instance *Brooks Brothers Retail Malaysia dn Bhn v. Web Commerce Communications Limited*, Case No. AIAC/ADNDRC -1314-2024, where the disputed domain name <brooksbrothersmalaysia> was found to be confusingly similar to the complainant's trademark despite the addition of a geographic term 'malaysia'.

The Panel finds that in the present case, the addition of the letter 'r' with the trademark does not prevent a finding of confusing similarity of the disputed domain name with the trademark AIR ASIA. The disputed domain name is found to be confusing similar to the mark for the purposes of Paragraph 4 (a) (i) of the Policy. The Complainant has satisfied the first element under the Policy.

B) Rights and Legitimate Interests

The second element of the Policy under paragraph 4 (a) (ii) requires the Complainant to make a case that the Respondent lacks rights or legitimate interests in the disputed domain name. It is well accepted in UDRP cases, that if 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. See for instance *Prudential Plc v. euwioejwq/ PrivacyProtect.org* ADNDRC Case No. HK-1000289 *Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, ADNDRC Case No HK-1000286 and if the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (KUALA LUMPUR OFFICE)

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 for purposes of paragraph 4 (a) (ii) of the Policy, these are:

- (i) Before any notice of the dispute the Respondent's use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services or
- (ii) The Respondent (as an individual, business or other organization) have been commonly known by the domain name, even if no trademark or service mark rights are acquired; or
- (iii) The Respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Having reviewed the available record, the Panel finds the Respondent is not known by the disputed domain name or demonstrated any legitimate reason for the registration of the disputed domain name. The domain name registration record shows the name of the Respondent is Cong Ty Co Phan Viet Nam Booking. The Respondent's business is the area of travel and flight ticket booking which is similar to the Complainant's area of business.

The Respondent lacks permission, authorization or license to use the Complainant's mark or any variants. The Respondent has therefore made unauthorized use of the Complainant's registered trademark in the disputed domain name when no connection or affiliation exists.

The Panel finds that the disputed domain name registered by the Respondent carries an implied affiliation to the Complainant's mark. Furthermore, as the Respondent's business is in the same or similar line of business as the Complainant, it is likely to confuse and mislead Internet users regarding its sponsorship or affiliation. The Panel finds that such use of the disputed domain name is not *bona fide* use and neither is it non-commercial fair use. The Respondent's unauthorized use of the Complainant's mark, under the circumstances discussed is not indicative of the Respondent rights or legitimate interests in the disputed domain name.

For the reasons discussed, the Panel finds that 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 provided any relevant submissions or evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established by the Complainant.

C) Bad Faith

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (KUALA LUMPUR OFFICE)

Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. WIPO Overview 3.0, section 3.2.1.

- (i) Circumstances indicate that the respondent has registered or acquired the domain name primarily for purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant has clearly established in these proceedings its prior rights in the AIR ASIA mark. The Complainant has argued that the registration and use of the disputed domain name by the Respondent shows the intent to benefit from the reputation associated with its mark.

It has been consistently found by UDRP panels that registration of a confusingly similar domain name with a reputed trademark by someone who is not affiliated with the owner of the trademark and has not shown good reason for registration of the disputed domain name or its legitimate use, can by itself create a presumption of bad faith. WIPO Overview 3.0, section 3.1.4.

The Respondent, as discussed in the previous section, has not established any rights or legitimate interest in the disputed domain name. UDRP panels have widely accepted that absence of rights or legitimate interests in the disputed domain name impacts the finding of bad faith registration and use. Furthermore, when the disputed domain name fully incorporates the Complainant's mark and the disputed domain name resolves to an active website that offers competing services it is found to be targeting the Complainant's mark in bad faith. See *Genting International Management Limited. v. Jonglak W*, Case No. AIAC/ADNDRC 632-2018 <gentingprincess.com>.

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (KUALA LUMPUR OFFICE)

The Panel finds, in the light of all that has been discussed, that the Respondent's intention of registration and use of the disputed domain name is to attract Internet users based on the fame and reputation associated with the Complainant's mark, which constitutes bad faith as described under paragraph 4 (b) (iv) of the Policy.

The Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(iii) of the Policy, that the disputed domain name has been registered and is being used in bad faith by the Respondent.

6. Decision

For the foregoing reasons in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <www.airasiar.com> be cancelled.



Harini Narayanswamy
Panelist

Dated December 5, 2024