



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Southwest Airlines Co. v. TRN

Case No. D2002-0893

1. The Parties

The Complainant is Southwest Airlines, Co., a corporation of the State of Texas, having a principal place of business in Texas, United States of America.

The Respondent is TRN also located in Texas, United States of America.

2. The Domain Name and Registrar

The contested Domain Name is <southwest-airline.com>.

The Registrar is Intercosmos Media Group d/b/a directNIC.com located at 650 Poydras Street, Suite 2311, New Orleans, Louisiana, United States of America.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved on October 24, 1999, and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and by the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) in e-mail form on September 25, 2002, and in hard-copy form on September 30, 2002, along with Annexes 1-14 and the appropriate payment.

The Complainant's attorney stated that, on September 25, 2002, he served a copy of the Complaint itself together with a copy of the cover sheet, on the Respondent and the Registrar by e-mail and postal mail, and on the Registrar by postal mail.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single person panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, determined whether the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on September 27, 2002, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the contested domain name; specifically, contact and registrant information for that domain name, as well as whether the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the Policy applies to the contested domain name, (b) the current status of that domain name, (c) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name, (d) specify the language of the registration agreement, and (e) whether the domain name will remain "locked" during the pendency of this proceeding.

Subsequently, on September 27, 2002, the Registrar provided its response to the Center through which the Registrar provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that Intercosmos Media Group, Inc. d/b/a directNIC.com is the registrar of that name, confirmed that it had received a copy of the Complaint and that the Policy applied to the domain name, stated that the language of the registration agreement is English and that the domain name was then in an "active" but "locked" status while this proceeding is pending. The Registrar also informed the Center that the Respondent, through its registration agreement, submitted to the jurisdiction at the location of the principal office of the Registrar for court adjudication of disputes concerning or arising from the use of the domain name.

On October 1, 2002, the Center notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint, both in email and hard-copy form, to the Respondent (with the latter method forwarding a copy of all the annexes as well). In addition, the Center forwarded a copy, without annexes, of the Complaint by email and in hard-copy form, with annexes, to the Registrar. The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on October 1, 2002, under paragraph 4(c) of the Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and succeeding correspondence between the Center and the Registrar, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on October 21, 2002, to file its Response with the Center and serve a copy of the Response on the Complainant.

As of October 21, 2002, the Center had not received a substantive response to the Complaint from the Respondent; hence, the Center, in an email letter dated October 24, 2002, notified the Complainant and the Respondent of the Respondent's default.

Accordingly, pursuant to the Rules and Supplemental Rules, by email letter dated November 5, 2002, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. Later that day, Mr. Michaelson accepted and returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an email letter dated November 7, 2002, notified the parties of the appointment of Mr. Michaelson as sole panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before November 21, 2002.

This dispute concerns one domain name, specifically <southwest-airline.com>.

The language of this proceeding is English.

4. Factual Background

A copy of the WHOIS registration record for the contested domain name appears in Annex 1 to the Complaint. As indicated on this record, the Respondent registered this name with the Registrar on August 19, 2000.

A. SOUTHWEST AIRLINES Marks

The Complainant owns various service mark registrations issued by the United States Patent and Trademark Office (US PTO). In Annex 6, the Complainant has provided copies of the registrations for four of those marks (collectively the "SOUTHWEST AIRLINES" Marks), with pertinent details as follows.

- a) SOUTHWEST AIRLINES (with logo)
US registration no.: 2,244,316; registered: May 11, 1999

This mark was registered for use in connection with: "Transportation of passengers and parcels by air" in international class 39. This mark claims first use and first use in interstate commerce of January 10, 1989.

- b) SOUTHWEST AIRLINES A SYMBOL OF FREEDOM (block letters)
US registration no.: 2,112,041; registered: November 11, 1997

This mark was registered for use in connection with: "Air transportation services" in international class 39. This mark claims first use and first use in interstate commerce of October 7, 1996.

- c) SOUTHWEST AIRLINES RAPID REWARDS (block letters)
US registration no.: 2,028,640; registered: January 7, 1997

This mark was registered for use in connection with: "Airline passenger services in the nature of a frequent flyer program" in international class 39. This mark claims first use and first use in interstate commerce of May 7, 1996.

- d) SOUTHWEST AIRLINES (block letters)
US registration no.: 1,738,670; registered: December 8, 1992

This mark was registered for use in connection with: "Transportation services; namely, transportation of cargo and passengers by air" in international class 39. This mark claims first use of June 8, 1971, and first use in interstate commerce of February 7, 1980.

B. The Parties and their Activities

The Complainant has provided airline transportation services in the United States since June 18, 1971. In more than 30 years since that time, the Complainant has become the fourth largest airline in the US (in terms of passengers carried on domestic flights), flying more than 64 million passengers a year to 59 airports throughout the US, with approximately 2,800 flights a day. The Complainant is the only major short-haul, low-fare, high-frequency, point-to-point carrier in the US and provides 90% of all discount air travel in the US.

The Complainant has spent significant amounts of money to ensure that, as a result of its extensive advertising, its trade name Southwest Airlines Co., and its "SOUTHWEST AIRLINES" Marks are recognized and widely known throughout the United States. In that regard, the Complainant spends over US \$ 100,000,000 per year in production and publication of advertising.

In the March 4, 2002, issue of *FORTUNE*, the Complainant ranked second among companies across all industry groups, and first in the airline industry, in that magazine's list of "2002 America's Most Admired Companies".

The Complainant relies on the Internet to conduct a significant portion of its business. In fact, the Complainant was the first major US airline to establish a home page on the Internet. Approximately 46 percent, or over \$500 million, of the Complainant's passenger revenue for first quarter 2002, was generated by online bookings via its web site located at <southwest.com>. Internet users search for the Complainant more than any other airline on the web according to *The Lycos 50* report, which documents the fifty most popular user internet searches for 2001 (a copy of this report appears in Annex 3 to the Complaint). Furthermore, on May 30, 2002, the *Jupiter Media Metrix*, named the Complainant as the airline that best utilizes the Internet and provides brand synergy between its main line and online presence. The results were part of a new index, the Jupiter Airline CORE (Composite Rating of Online Effectiveness) Index (a copy of a corresponding press release appears in Annex 4 to the Complaint). In the June 11, 2001 issue of *InternetWeek*, the Complainant's web site was named one of the top 100 e-businesses in the United States as determined by the 2001 *InternetWeek* 100 survey (a copy of the survey results appears in Annex 5 to the Complaint).

To further its on-line activities, the Complainant owns the domain names <southwestairlines.com> and <southwestair.com>, both of which point Internet users to the Complainant's web site located at <southwest.com>.

When Internet viewers reach the Respondent's web site -- which provides competitive services to the Complainant's offerings, they find links to discount travel services, including hotel reservation services, car reservation services and a search engine that allows users to search for "cheap flights." The Complainant states that none of its products or services are available, linked to or featured on the Respondent's web site.

In that regard, the Complainant states that the only place online where any of its customers may purchase Southwest Airline tickets is at the Complainant's web site located at <southwest.com>.

The Respondent's home page, accessible through the contested domain name, prominently features the phrase "Southwest Airlines – For Fares, Flights, and Schedules" prominently, in large type, at the top of the page. The page (a copy of which appears in Annex 7 to the Complaint) invites an Internet user to:

Simply select the region from the listings on the right, and be on your way to exploring the various dining, shopping, sightseeing, night life, and cultural opportunities in one of 274 cities of your choice. Cheap Airline Tickets, Cheap Cruises, Discount Hotels, Discount Car Rentals and Travel Information with "**Southwest-Airline.com**".

In addition, the following copyright notice appears at the bottom of that home page:

© Copyright 2002 **Southwest-Airline.com Travel Reservations Network**. All Rights Reserved.

The underlined section in the copyright notice, i.e., "Southwest-Airline.com Travel Reservations Network", serves as a link to the Respondent's other travel web site located at <lowest-airfare.com>. The Complainant states that the Respondent's travel site is not connected to the Complainant, nor does that site contain any information relating to the Complainant's services. Furthermore, the Complainant states that all references on that site to the Complainant occur entirely without the permission of or license from the Complainant.

Furthermore, the Complainant states that it has not authorized the Respondent to use the Complainant's "SOUTHWEST AIRLINES" mark in any manner or to use that mark as part of the contested domain name which links to competing web sites featuring low fare airline tickets, as well as discount accommodations and car rental.

Early in May, 2002, the Respondent's web site was brought to the attention of the Complainant. A printout of the web site as it then existed appears in Annex 8 to the Complaint. That web site offered Internet users access to low airfares and hotel rates using the contested domain name. Further review of the site by the Complainant revealed that that site does not offer the Complainant's fare information, although it lists the Complainant as "one of the top 20 travel sites we search" for fares. According to the information posted on the site (as shown in the web page provided in Annex 9 to the Complaint), the site is operated by Mr. Marcel Stillekens and Ms. Patricia de la Torre, who appear to run several other travel-related web sites out of their offices in Cancun, Mexico. Mr. Stillekens is also listed as the administrator of the contested domain name.

The Complainant sent Mr. Stillekens and Ms. de la Torre a cease and desist letter (a copy of which appears in Annex 10 to the Complaint), via email and certified mail, to their Texas address listed on the 'Contacts' page of their web site. In this letter, dated May 7, 2002, the Complainant requested that Mr. Stillekens and Ms. de la Torre either stop using the contested domain name, or transfer it to the Complainant by May 21, 2002; otherwise, the matter would be pursued through other legal means.

The Respondent received the receipt from the certified letter shortly thereafter. A week later, on May 30, 2002, when the Complainant checked the Respondent's web site to

see if any action had been taken in response to the letter, the Complainant found that the Respondent was using the term "SOUTHWEST AIRLINES" even more prominently throughout the site than it had been, in particular, on the 'About' page and on the 'Contacts' page. The 'Contacts' page (a copy of which appears in Annex 11 to the Complaint) indicates that Mr. Stillekens is a "Director" of Southwest Airline and provides contact information for him at <southwest-airline.com>.

Furthermore, the Respondent and Mr. Stillekens and Ms. de la Torre have registered, for their own use, the following domain names that are identical or very similar to trademarks of various airlines other than the Complainant (hard-copy printouts of the corresponding WHOIS records, obtained through a WHOIS search conducted through Network Solutions' web site on August 1, 2002, are provided in Annex 13 to the Complaint).

<america-west-airlines.com>
<america-west-airline.com>
<continental-airline.com>
<frontier-airlines.com>
<north-west-airlines.com>, and
<virgin-airline.com>.

As of the date of the Complaint, the Complainant has not received any response from the Respondent to its cease and desist letter.

5. Parties' Contentions

A. Complainant

i. Similarity

The Complainant contends that the contested domain name is virtually identical or confusingly similar to the Complainant's "SOUTHWEST AIRLINES" Marks.

Specifically, the Complainant takes the position that the only differences between the name and the Complainant's "SOUTHWEST AIRLINES" mark are the addition of a hyphen and the deletion of the letter "s" at the end of the word "airlines" -- differences which are insufficient to ameliorate confusion.

Therefore, the Complainant concludes that it has met the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

ii. Legitimacy

The Complainant contends that, for several reasons, the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant states that its rights in and to the "SOUTHWEST AIRLINES" mark long predate the registration date (August 19, 2000) of the contested domain name and accordingly any rights which the Respondent may allege to have in that name.

Second, the Complainant states that it has not authorized the Respondent to use its "SOUTHWEST AIRLINES" mark in any manner, including incorporating that mark as part of the contested domain name which links to web sites featuring low fare airline tickets as well as discount accommodations and car rental and is virtually identical to the web site which the Respondent runs at <lowest-airfare.com>.

Furthermore, the Complainant contends that since the Respondent's web site does not list any fare information or schedules for the Complainant's services, nor does that site link to the Complainant's web site, the Respondent cannot truthfully represent that it is using the contented domain name, <southwest-airline.com>, to sell discount tickets or other products of the Complainant.

Hence, the Complainant contends that the Respondent's sole purpose in using the contested domain name is to direct users who are interested in the Complainant's services to those discount travel services offered by the Respondent.

Thus, the Complainant concludes that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Complainant contends that, also for various reasons, the Respondent has registered and is now using the contested domain name in bad faith.

The Complainant contends that the Respondent's sole purpose in registering and using the name is to attempt to divert customers of the Complainant to its web site for commercial gain, by creating a likelihood of confusion as to source, sponsorship, affiliation or endorsement of its web site, hence violating paragraph 4(b)(iv) of the Policy.

In that regard, the Complainant points to the fact that the Respondent's web site, since as early as May 2002, (when that site came to the attention of the Complainant), purports, under the trade name "SOUTHWEST-AIRLINE.COM", to offer Internet users -- who might be potential customers for the Complainant's low-cost airline services, low-cost airfares and hotel rates but, in doing so, does not include or offer the Complainant's fare information. In that regard, the Complainant notes that this site lists the Complainant as "one of the top 20 travel sites we search" for fares.

The Complainant also contends, that the Respondent, after it received the Complainant's cease and desist letter and in furtherance of exacerbating user confusion, used the term "SOUTHWEST AIRLINES" even more prominently throughout its site than it had been doing, and also listed, on its 'Contacts' page on its site, Mr. Stillekens as a "Director" of Southwest Airline and provided his contact information.

Hence, the Complainant contends that "[t]he only conceivable purpose of the <southwest-airline.com> web site is clearly to promote the Respondent's services for its financial gain by taking advantage of the strong likelihood of confusion between the Domain Name and Southwest's service marks, and the web site run by Southwest at www.southwest.com, and potentially diverting confused consumers to its own web site" in contravention of paragraph 4(b) of the Policy.

As further evidence of the Respondent's bad faith, the Complainant points to the conduct of the Respondent, Mr. Stillekens and Ms. de la Torre in registering, for their own use, domain names that are identical or confusingly similar to the famous

trademarks of other airlines, these names including: <america-west-airlines.com>, <america-west-airline.com>, <continental-airline.com>, <frontier-airlines.com>, <north-west-airlines.com> and <virgin-airline.com>.

Lastly, the Complainant contends that the Respondent, in using the contested domain name to divert potential customers of the Complainant from the Complainant's site to the Respondent's site and misleading those customers into believing that information about the Complainant's services is available at the Respondent's web site, is damaging the Complainant's reputation. Specifically, those customers, given the commonality of the contested domain name and the Complainant's "SOUTHWEST AIRLINES" mark, would believe that the Complainant is the source of the Respondent's web site or somehow sponsors it or is otherwise affiliated with it, when in fact no such relationship exists. Hence, those same customers, who reach the Respondent's site seeking information about the Complainant's services, will then find the lack of such information frustrating which, in turn, would damage the Complainant's reputation and the valuable goodwill of its registered marks. Therefore, the Complainant contends that the Respondent's registration and use of the contested domain name harms a competitor in direct violation of paragraph 4(b)(iii) of the Policy.

Therefore, the Complainant concludes that the Respondent's conduct constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent has not filed any response to the allegations raised in the Complaint.

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings.

i. Similarity

The Panel finds that confusion unquestionably and inevitably arises -- and in fact is so intended -- as a result of the Respondent's use of the contested domain name as an address of its web site. Further, the Panel can conceive of no situation where confusion would not likely arise out of the Respondent's use of that name with directly competitive service offerings or a transfer of that name to a third-party not affiliated with the Complainant for use with a web site offering similar services to those provided by the Complainant.

In particular, merely inserting a hyphen between the two words of the Complainant's "SOUTHWEST AIRLINES" mark and deleting an "s" from the word "AIRLINES", respectively, to yield the contested domain name, are changes that are so utterly de minimus that the only purpose which the Panel envisions behind the Respondent having done so is to cause and opportunistically exploit inevitable user confusion. There can be no question that this is the Respondent's goal. Otherwise, why would the Respondent have chosen a domain name that, given its slight alterations, remains for all intents and purposes identical to the Complainant's "SOUTHWEST AIRLINES" mark?

Such confusion would cause and undoubtedly has caused Internet users intending to access the Complainant's web site, but who reach the Respondent's web site through the contested domain name, to think that an affiliation of some sort exists between the Complainant and the Respondent, when, in fact, no such relationship would exist at all. See, e.g., *Pfizer Inc., A Delaware Corporation v. RE THIS DOMAIN FOR SALE - EMAIL* WIPO Case No. D2002-0409 (July 3, 2002); *Peter Frampton v. Frampton Enterprises, Inc.*, WIPO Case No. D2002-0141 (April 17, 2002); *MPL Communications, Limited and MPL Communications, Inc. v. LOVEARTH.net*, FA 97086 (Nat. Arb. Forum June 4, 2001); *MPL Communications, Limited et al v. IWebAddress.com*, FA 97092, (Nat. Arb. Forum June 4, 2001); *American Home Products Corp. v. Malgioglio*, WIPO Case No. D2000-1602 (February 19, 2001); *Surface Protection Indus., Inc. v. The Webposters*, WIPO Case No. D2000-1613 (February 5, 2001); *Dollar Financial Group, Inc. v. VQM NET*, FA 96101 (Nat. Arb. Forum January 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd*, WIPO Case No. D2000-1463 (January 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum December 18, 2000); and *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.*, AF-0145 (eResolution May 3, 2000).

In view of the Complainant's substantial and widespread use in interstate commerce over the past 22 years (since 1980) of its "SOUTHWEST AIRLINES" mark in connection with its low-cost airline services, this mark has clearly become so distinctive and acquired such significant secondary meaning in the United States to the point where American Internet users are likely to recognize that mark as signifying the Complainant's airline services. Given that, it is utterly inconceivable that the Respondent was completely unaware of that factor when it registered the contested domain name in 2000.

Therefore, the Panel finds that the contested domain name <southwest-airline.com> sufficiently resembles the Complainant's "SOUTHWEST AIRLINES" Marks as to cause confusion; hence, the Complainant has shown sufficient similarity between its mark and the contested domain name under paragraph 4(a)(i) of the Policy.

ii. Illegitimacy

There is simply no question that not only does the Respondent not have any legitimate rights or interests in the contested domain name but it is extremely unlikely that the Respondent could ever successfully make such a claim.

The simple reason is that the contested domain name identically contains, for all intents and purposes, the Complainant's "SOUTHWEST AIRLINES" mark under which the Complainant provides its services and has been doing so, in interstate commerce, for over 20 years. Furthermore, the Complainant has never authorized the Respondent to utilize the "SOUTHWEST AIRLINES" mark or a mark confusingly similar thereto, in conjunction with the specific services which the Complainant provides under those marks, nor does the Complainant have any relationship or association whatsoever with the Respondent.

Hence, any use to which the Respondent were to put the mark "SOUTHWEST AIRLINES" or a mark confusingly similar thereto -- which certainly includes the contested domain name, in connection with airline services as presently provided by the Complainant would directly violate the exclusive trademark rights now residing in the Complainant. See, e.g., *American Family Life Assurance Company of Columbus v. defaultdata.com a/k/a Brian Wick*, FA123896 (Nat. Arb. Forum October 14, 2002);

Regions Financial Corporation v. Defaultdata.com aka Brian Wick, FA118271 (Nat. Arb. Forum October 14, 2002); *AT&T Corp. vs. Roman Abreu d/b/a Smartalk Wireless* WIPO Case No. D2002-0605 (September 11, 2002); *Pfizer Inc. v. Order Viagra Online*, WIPO Case No. D2002-0366 (July 11, 2002); the *MPL Communications*, FA 97086 and FA 97092 decisions, cited *supra*; *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000), and *Treeforms, Inc. v. Cayne Ind. Sales Corp.*, cited *supra*.

It is eminently clear to this Panel that the Respondent, in choosing a domain name that at its very essence is identical to the Complainant's "SOUTHWEST AIRLINES" mark, is intentionally seeking to create a confusingly similar name that opportunistically exploits Internet user confusion by diverting, through re-direction and diversion, Internet users away from the Complainant's site to the Respondent's web site for the latter's own pecuniary benefit. Specifically, those users would think they are purchasing the Complainant's airline services through the Respondent's web site and, by doing so, generate profit to the Respondent from those sales -- to the Complainant's ultimate detriment.

Such parasitic use, which at its essence relies on instigating and exacerbating user confusion, can not and does not constitute bona fide commercial or fair use sufficient to legitimize any rights and interests the Respondent might have in the contested domain name. See *Peter Frampton v. Frampton Enterprises, Inc.*, cited *supra*.

Moreover, the Panel is cognizant of the heavy burden that would be placed on complainants if, in support of their cases on illegitimacy, each of those complainants were to be impressed with a burden of providing detailed proof of any lack of rights or legitimate interests on behalf of their respondents. The Panel believes that where allegations of illegitimacy are made, particularly as here, when coupled with conduct of a respondent that evidences bad faith, it is quite reasonable to shift the burden of proof to that respondent to adequately show that its use of the contested domain name is legitimate, such as by showing that, in conjunction with the contested domain name, it is making a bona fide commercial offering of goods or services or preparations for such offerings, or non-commercial or fair use. Given the situation now facing the Panel, it is absolutely beyond question that the Respondent's conduct here falls far short of meeting this burden -- particularly given that no facts have been proven to support such usage. See *American Family Life Assurance Company of Columbus v. defaultdata.com a/k/a Brian Wick* cited *supra*; *Regions Financial Corporation v. Defaultdata.com aka Brian Wick*, cited *supra*; *Peter Frampton v. Frampton Enterprises, Inc.*, cited *supra*; *American Home Products Corp. v. Malgioglio*, cited *supra*; *Surface Protection Industries, Inc. v. The Webposters*, cited *supra*; *College Summit, Inc. v. Yarmouth Educational Consultants, Inc.*, WIPO Case Nos: D2000-1575 (January 17, 2001); *MSNBC Cable, LLC v. Tsysys.com*, D2000-1204 (December 8, 2000) and *Playboy Enterprises International, Inc.*, D2000-1016 (November 7, 2000).

In light of the above findings, the Panel is not persuaded that the Respondent has any or, based on current facts provided to the Panel, is likely to acquire any rights or legitimate interests in the contested domain name under any provision of paragraph 4(c) of the Policy.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in the contested domain name within paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Panel firmly believes that the Respondent's actions constitute bad faith registration and use of the contested domain name.

It is absolutely inconceivable to this Panel that the Respondent was unaware of the Complainant's "SOUTHWEST AIRLINES" mark when the former registered the contested domain name on August 19, 2000. In fact, by virtue of offering services directly competitive to those then being offered by the Complainant and through a web site resolvable through the contested domain name, the Panel infers that not only was the Respondent very much aware of that mark but moreover it deliberately decided to utilize that mark, without authorization, in an attempt to cause user confusion and, by doing so, misappropriate to itself a portion of the goodwill inherent in the Complainant's "SOUTHWEST AIRLINES" Marks.

The Respondent's intention is not only reflected in but magnified by virtue of the Respondent's actions in registering domain names that include the marks of other well-known air carriers. In that regard and by virtue of the lack of any Response, the Panel infers that the Respondent has the exact same intention to cause and opportunistically exploit inevitable user confusion and diversion through use of each of those other domain names as well and, as such, dilutes the goodwill inherent in each of those marks. Consequently, the Respondent's conduct here regarding the contested domain name directly contravenes paragraph 4(b)(iv) of the Policy.

Furthermore, the Respondent financially benefits from its illicit user diversion to the detriment of the Complainant. Certain Internet users who reach the Respondent's site and choose to transact with the Respondent would probably not do so but for having been diverted to that site. In all likelihood, which the Panel so infers from the lack of any Response, those users who reach the Respondent's site do not do so as a result of having any prior knowledge of the contested domain name and that the Respondent, not the Complainant, is offering airline services through that site. Rather, those users reach that site by virtue of nothing more than the Respondent's actions in intentionally diverting them there. Any resulting sales transactions between those users and the Respondent clearly deprives the Complainant of revenue it would likely have otherwise obtained through those users but lost as a result of user diversion. Such loss clearly disrupts the Complainant's business and hence violates paragraph 4(b)(iii) of the Policy.

Hence, the Panel views these actions as constituting bad faith registration and use in violation of paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations to establish a prima facie case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel now grants the relief sought by the Complainant.

The contested domain name, specifically <southwest-airline.com>, is ordered transferred to the Complainant.

Peter L. Michaelson
Sole Panelist

Dated: November 18, 2002