ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

—— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No. HK-1200447
Complainant: Cathay Pacific Airways Limited
Respondent: Tran Hai Bang

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1. The Parties and Contested Domain Name

The Complainant is Cathay Pacific Airways Limited, of Hong Kong.

The Respondent is Tran Hai Bang, of Hoh Chi Minh City, Vietnam.

The domain name at issue <cathay-pacific.net> (the "Disputed Domain Name") was registered by Respondent with eNom Inc., of Washington, USA.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the "ADNDRC") on July 17, 2012. On July 18, 2012, the ADNDRC transmitted by email to eNom a request for registrar verification in connection with the Disputed Domain Name. On July 19, 2012, eNom transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The ADNDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the ADNDRC formally notified the Respondent of the Complaint, and the proceedings commenced on July 23, 2012. In accordance with the Rules, paragraph 5(a), the due date for Response was August 12, 2012. No Response was filed by the Respondent in the proceedings.

The ADNDRC appointed Jacques de Werra as the sole panelist in this matter on August 27, 2012.

The Panel determines that the appointment was made in accordance with para. 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

3. Factual background

The Complainant is a company incorporated under the laws of Hong Kong the main business activity of which is to offer air transportation of passengers and cargo services at the international level. The high qualities of Complainant's services has been confirmed by many international awards. The Complainant operates flights in many countries of the world, including to/from Vietnam.

The Complainant is the owner of many "CATHAY PACIFIC" trademarks around the world, including in Vietnam which is the country where the Respondent is based (trademark No 28597 registered on May 31, 1997, "the Trademark").

The Complainant operates various corporate websites, including its main official corporate website at the domain name < cathaypacific.com> which was registered on September 15, 1995.

The Disputed Domain Name was registered on February 9, 2012. At the time when the Complainant discovered it (in May 2012), it was used in connection with a website which presented Complainant's activities in the travel industry in Vietnam (whereby the services are offered by a Vietnamese company operated by the Respondent) and used official logos and pictures of the Complainant (without authorization of the Complainant).

The Complainant sent a cease and desist letter to the Respondent on June 6, 2012 requesting the cancellation/transfer of the Disputed Domain Name to the Complainant. The Respondent replied on June 20, 2012, that it had removed all trademarks from the website and that there was no confusion given that airplane tickets are sufficiently high so that customers cannot be mislead, that Respondent was selling flight tickets of the Complainant and that the website associated with the Disputed Domain Name contained a notice showing that it did not belong to the Complainant.

The Respondent has refused to cancel or transfer the Disputed Domain Name to the Complainant which is still used to present Respondent's travel agency services including airline ticketing services. The website associated with the Disputed Domain Name still contains official pictures of events of the Complainant.

The Respondent has registered other domain names corresponding to the names of airlines, including <japan-airlines.vn>, <united-airlines.vn>, <air-france.vn>, and uses them for the same purpose as the Disputed Domain Name.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i. The Disputed Domain Name is identical or at least confusingly similar to the Trademark;
ii. The Respondent is not commonly known by the Trademark and its use of the Disputed Doman Name does not constitute a bona fide offering of goods or services. The Respondent has registered the Disputed Domain Name in order to secure business off the back of the Complainant;

iii. The Respondent has registered the Disputed Domain Name in order to prevent the Complainant from reflecting the Trademark in a corresponding domain name and has engaged in pattern of such conduct. The Respondent has also attempted to attract for commercial gain internet users to its website by creating a likelihood of confusion with the Complainant and with the Trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's activities in connection with the Disputed Domain Name. In view of the Complainant and the Trademark's fame and reputation, there is no other conceivable motive for the Respondent's registration and use of the Disputed Domain Name if not by making reference to the Complainant's business activities.

B. Respondent

The Respondent did not file a response in these proceedings.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution 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 must be 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

The Panel is satisfied that the Complainant has rights to the Trademark in Vietnam (where the Respondent is based) as well as in many other countries.

A comparison between the Disputed Domain Name and the Trademark shows that the Disputed Domain Name is identical to the Complainant's Trademark (subject to the hyphen which is no relevance here).

As a result, based on the rights of the Complainant in the Trademark and on the identity between the Trademark and the Disputed Domain Name, the Panel finds that the conditions of paragraph 4(a)(i) of the Policy are met.

B) Rights and Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights to or legitimate interests in the Disputed Domain Name by demonstrating any of the following:
(i) before any notice to it 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 or services; or
(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
(iii) the respondent is making a 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.

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, previous panels have consistently ruled that paragraph 4(c) of the Policy shifts the burden to the Respondent to come forward with evidence of a right or legitimate interest in the domain name, once the Complainant has made a *prima facie* showing. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.

In the Panel's opinion, the Complainant has made a *prima facie* case against the Respondent. The Respondent indeed registered the Disputed Domain Name which corresponds to the famous Trademark owned by the Complainant.

The Complainant has also established that the Respondent has no right in the Disputed Domain Name, that he is not authorized or licensed to use the Trademark.

The Panel thus accepts the Complainant's *prima facie* showing and it is consequently up to the Respondent to come forward with evidence of a right to or legitimate interests in the Disputed Domain Name.

The explanations given by the Respondent before the initiation of the proceedings (including the fact that there would be no customer confusion given the high price of airplane tickets) do not create such legitimate rights or interests of the Respondent on the Disputed Domain Name also because the Respondent is clearly using the Disputed Domain Name in connection with a commercial activity affecting the Complainant in the airline industry.

The Panel consequently finds that the Respondent has no right or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of registration and use of a domain name in bad faith:
(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
(ii) circumstances indicating that the respondent 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;
(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) circumstances indicating that the respondent intentionally is using the domain name in an attempt to attract, for commercial gain, Internet users to its website or other on-line 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 its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra*

Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. D2004-0230.

In this case, the Panel holds that the Respondent registered the Disputed Domain Name in bad faith because the Trademark is distinctively identifying the Complainant and the Respondent could not have failed to know of the Trademark before registering the Disputed Domain Name. The use of the Disputed Domain Name in connection with airlines ticketing services clearly confirms that the Respondent had the Complainant and the Trademark in mind when he registered the Disputed Domain Name.

The Panel further holds that the Respondent registered and used the Disputed Domain Name by intentionally attempting to attract users, for commercial gain, to its website by creating a likelihood of confusion with the Complainant's Trademark as the source, sponsorship, affiliation or endorsement of the Respondent's website. See by analogy *Austrian Airlines AG v. Stanley Varanian*, WIPO Case No. D2008-1027 (unauthorized airline ticketing services). The Panel finally notes that the Respondent has also registered other domain names corresponding to famous global airlines companies and similarly uses them for attracting business for its travel ticketing and agency services, thereby showing that the Respondent has engaged in a pattern of conduct of registering domain names in order to prevent the respective owner of the trademark or service mark from reflecting the mark in the corresponding domain names (4(b)(ii) of the Policy).

The Respondent claimed in a communication to the Complainant before these proceedings were initiated that its posting of a disclaimer on the website associated with the Disputed Domain Name would prevent any risk of confusion. The Panel does not agree. The disclaimer comes too late, as the confusion has already occurred before a user discovers (if he ever does) the disclaimer. See *RapidShare AG, Christian Schmid v. BlueHost.com Inc., Ben Ahmed Nejib*, WIPO Case No. D2010-0891 ("The [p]anel accepts the [c]omplainant's contentions that a disclaimer is ineffective to dispel bad faith in the use of the [d]omain [n]ame, as by the time Internet users see the disclaimer, the unauthorised use has already occurred, and Internet traffic has already been diverted to the [w]ebsite").

For these reasons, the Panel considers that the Complainant has established that the Disputed Domain Name was registered and is being used in bad faith by the Respondent pursuant to paragraph 4(a)(iii) of the Policy.

6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name < cathay-pacific.net> be transferred to the Complainant.

Jacques de Werra
Panelist

Dated: September 9, 2012