

**Domain Name Dispute Resolution Center (DNDRC)**

**Arbitration and Mediation Center**

**COMPLAINT PANEL DECISION**

**Airblue vs. WCL**

**Case No. C2017-0002**

**Also in PDF C2017-0002**

**1. The Parties**

The Complainant is Mr. Tariq M. Chaudhry, resident of 8 Corporate Park, Suite 100, Irvine, CA 92606, United States of America, Director and Chief Executive of M/S Airblue Limited.

As per the PKNIC Whois database, the Respondent is WCL and the contact details are [leon@digite.co.uk](mailto:leon@digite.co.uk) [provided by Registry].

**2. The Domain Names and Registrar**

The domain name in dispute is <airblue.com.pk>, hereinafter referred to as the Disputed Domain Name and has been registered by WCL since 23.06.2015.

**3. Procedural History**

Under the Supplemental Rules of DNDRC which override the ICANN Rules for Uniform Domain Name Dispute Resolution Policy in terms of paragraph 2 of the PKNIC - Internet Domain Registration Policy v 4.2, which states that “*DNDRC may consider and issue a recommendation in the matter in accordance with its own rules for such disputes or in default of such rules apply the Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999) and/or the Rules for Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999).*” As such DNDRC applies its Supplemental Rules to these proceedings as well as the UDRP and in case of any conflict the DNDRC Supplemental Rules to the ICANN Rules for the UDRP and UDRP apply.

A complaint was received and accepted by the Domain Name Dispute Resolution Center (the “DNDRC”) with all completed formalities as on 18.01.2016.

In accordance with the PKNIC - Internet Domain Registration Policy and the Rules of ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP], paragraphs 2(a) and 4(a), DNDRC formally notified the Respondent of the Complaint via email dated 30.01.2017 and the Respondent was asked to provide DNDRC with the Response in the format provided. The Respondent was informed that if a Response in accordance with the Rules, on the Response Form provided was not received within 10 days from the notification, the dispute would proceed *ex parte*. The Respondent failed to provide a response within the stipulated time period.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the *Rules*), DNDRC appointed Ms. Zahra D’souza as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

## **Factual Background**

The domain name upon which the Complaint is based is <airblue.com.pk>.

PKNIC has confirmed via their email dated 26.01.2017 that the Disputed Domain Name has been registered by the Respondent WCL and that their email address is [leon@digite.co.uk](mailto:leon@digite.co.uk).

## **4. Parties Contentions**

### **A. Complainant**

The Complainant submits as follows:

*Airblue Ltd ([www.airblue.com](http://www.airblue.com)) is the registered trademark in Pakistan and operating as an international airline from Pakistan with its Headquarter at 12<sup>th</sup> & 8<sup>th</sup> Floor, ISE Towers, 55-B Jinnah Avenue Islamabad.*

The Complainant contends that the Complainant had obtained registration of the Disputed Domain Name prior to the Respondent, but due to negligence on part of officers of the Complainant, registration of the Disputed Domain Name expired and the Respondent soon thereafter on 23.06.2015 registered the Disputed Domain Name.

The Complainant seeks the following remedy in accordance with Paragraph 4(b)(i) of the Policy:

*The domain name [www.airblue.com.pk](http://www.airblue.com.pk) may please be transferred to M/S airblue Ltd.*

## **B. Respondent**

The Respondent has not submitted any response to DNDRC.

Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint.

## **5. Jurisdiction**

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules.

The Respondent applied for and was granted registration of the Disputed Domain Name on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver. 4.2 and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

## **6. Discussion and Findings**

It is well-established that the Panel considers four heads under which to analyze cases, under the PKNIC - Internet Domain Registration Policy, dated 07-Aug-2007, version 4.2 and the UDRP:

- 1. Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
- 2. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
- 3. Legitimate interest in Domain Name (a UDRP criteria)*
- 4. Registration and use in bad faith (a UDRP criteria)*

Thus, the decision of the dispute shall be addressed with respect to the following aspects:

- I. Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy Aug 7, 2007 ver 4.2 criteria).
- II. Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).
- III. Legitimate interest in the Disputed Domain Name (a UDRP criteria).
- IV. Registration and use of the Disputed Domain Name in bad faith (a UDRP criteria).

### **I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration**

The PKNIC - Internet Domain Registration Policy Aug-07-2007 version 4.2 states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. infringes upon a registered tradename,*
- b. is not bona fide as recognized by international best practice,*
- c. in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law), or*
- e. in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy Aug-07-2007, version 4.2,

*If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name, is not bona fide as recognized by international best practice, is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.*

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the Disputed Domain Name, the application and registration of the Disputed Domain Name shall be assessed in consideration of the following criteria:

- i. Whether the Disputed Domain Name infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the Disputed Domain Name is bona fide?
- iii. Whether the application and/or registration of the Disputed Domain Name contravenes the Pakistan Penal Code, 1860 (the “Penal Code”) or any applicable criminal law?

The Panel will deal with each of these sub-issues sequentially below.

**i. Whether the Disputed Domain Name infringes upon, or is an obvious derivation of, a registered trade name / trade mark?**

The Complainant has contended that “Airblue Ltd ([www.airblue.com](http://www.airblue.com)) is the registered trademark of the Complainant. However, the Complainant has not annexed any evidence that it has been issued a certificate of registration for such a trademark in any class and in any jurisdiction.

In the absence of any information supporting the claim that the Complainant has such a trademark, the Panel finds that the Disputed Domain Name does not infringe upon any trade mark held by the Complainant.

**ii. Whether the application and/or registration of Disputed Domain Name is bona fide?**

The Complainant has been offering its services using the name and brand of “AIRBLUE” across the world, and in particular in Pakistan. The Complainant has provided a number of documents that suggest that the Company was incorporated as a registered company in Pakistan since 2003.

Moreover, documents provided suggest that the Complainant is a domestic and international airline commonly and widely known as “AIRBLUE”, and that the Complainant has been providing such services long before the Disputed Domain Name was registered by the Respondent.

In the absence of a response provided by the Respondent, the Panel is unable to infer that the registration of the Disputed Domain Name is bona fide. Therefore, the Panel finds that the Complainant has demonstrated that the registration of the Disputed Domain Name is not bona fide.

**iii. Whether the application and/or registration of the Disputed Domain Name contravene the Penal Code or any applicable criminal law?**

The registration of the Disputed Domain Name does not in the view of the Panel contravene the Penal Code or any applicable criminal law in Pakistan.

## **II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights**

The Complainant has not provided any evidence that it has a trademark in the mark “AIRBLUE”. Hence, the Panel finds that the Disputed Domain Name is not identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

## **III. Legitimate interests in a domain name**

As per paragraph 4(c), the UDRP requires the Respondent’s claim to be of legitimate interest and shall be:

*“proved based on ..... all evidence presented” that “shall demonstrate” the Respondent’s “rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii).”*

Paragraph 4(a)(ii) states that:

*“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or*

*(iii) you are 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.”*

The Complainant has provided a number of documents that suggest that the Complainant has been operating within Pakistan with the name of Airblue since as early as 2003. The Complainant has submitted that they have been using the domain name <airblue.com> in relation to their services, which pertain to the domestic and international airline sector. The Complainant is one of the leading airlines based out of Pakistan, and thus contends that it has a legitimate interest in the ccTLD in Pakistan, i.e. the Disputed Domain Name.

The Respondent has not submitted a Response, nor has it provided any information to support its registration of the Disputed Domain Name and in particular assert a legitimate interest in the Disputed Domain Name.

As has been previously adopted by the discussions and findings in WIPO Authorities, it is for the Respondent to rebut the allegations put forth by the Complainant. Also, with respect to proving rights or legitimate interests in disputed domain name(s), it is for the Respondent to submit evidence pertaining to the same as it would be almost impossible, if not extremely difficult for the Complainant to prove a negative assertion. As such, in order to satisfy the Panel that it has rights or legitimate interests to the Disputed Domain Name, the Respondent was obliged to submit evidence with respect to the same.

In the absence of any information provided by the Respondent in support of his legitimate interest in the Disputed Domain Name, the Panel based on the information provided by the Complainant finds that the Respondent does not have rights or a legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

#### **IV. Registration and use in bad faith**

With respect to registration in bad faith, the Complainant contends that the Respondents are making mala fide use of the Disputed Domain Name. The Complainant further contends that the Complainant had obtained registration of the Disputed Domain Name prior to the Respondent, but due to negligence on part of officers of the Complainant, registration of the Disputed Domain Name expired and the Respondent soon thereafter on 23.06.2015 registered the Disputed Domain Name.

Paragraph 4(b) of the UDRP states that:

*“the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:*

*(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the 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 your documented out-of-pocket costs directly related to the domain name; or*

*(ii) you have 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 you have engaged in a pattern of such conduct; or*

*(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or*

*(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location."*

Paragraph 15(a) of the Rules instructs the Panel to *"decide a complaint on the basis of the statements and documents submitted in accordance with the policy, these rules and any rules and principles of law that it deems applicable"*.

The Respondent has not provided any information or evidence to demonstrate lack of bad faith with respect to registration and use of the Domain Name. In the absence of any response from the Respondent, the Panel infers that the use of the Disputed Domain Name by the Respondent is also in bad faith.

**WIPO Authorities:**

The Panel, for the purpose of assessing the matter and this Decision, has taken into account and relied upon the Discussions & Findings in several WIPO Administrative Panel Decisions, inter alia:

- Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270; Universal City Studios, Inc., supra
- CBS Broadcasting, Inc. v. Gaddoor Saidi, WIPO Case No. D2000-0243,
- Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525
- Nokia Group v. Mr. Giannattasio Mario, WIPO Case No. D2002-0782
- The Ritz Hotel Ltd v. Damir Kruzicevic, WIPO Case No. D2005-1137
- Quintessentially UK v. Mark Schnoreberg / Quintessentially Concierge, WIPO Case No. D2006-1643
- NB Trademarks, Inc. v. Domain Privacy LTD and Abadaba S.A., WIPO Case No. D2008-1984
- The South African Football Association (SAFA) v. Fairfield Tours (Pty) Ltd, WIPO Case No. D2009-0998



## **7. Decision**

Analyzing the details provided by the Complainant, the Panel perceives that the Complainant has a legitimate interest in the Disputed Domain Name, and that the Disputed Domain Name was registered and used in bad faith by the Respondent.

Taking all of the case law and discussion above into consideration, the Panel concludes and decides that:

1. The Respondent has no rights or legitimate interest in the Disputed Domain Name.
2. The Disputed Domain Name has been registered and is being used in bad faith by the Respondent.

Pursuant to Section 4 of the PKNIC - Internet Domain Registration Policy August 7, 2007 version 4.2, and Section (i) of the Policy, the Panel therefore recommends that PKNIC transfer the registration of the domain name in dispute <www.airblue.com.pk> to the Complainant, as prayed within 48 hours of receipt of this decision by email or its being uploaded on to DNDRC's website [www.dndrc.com/cases\\_resolved/](http://www.dndrc.com/cases_resolved/), whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

**Arbitrator: Ms. Zahra D'souza**

**Sole Panelist**

**Date: 25<sup>th</sup> February 2017**