



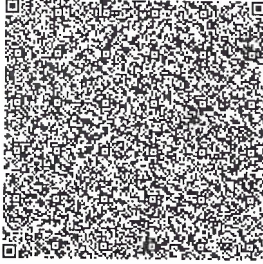
सत्यमेव जयते

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BEFORE SH. SANJAY KUMAR SINGH ARBITRATOR.  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)  
American Airlines, Inc. — Complainant.  
vs.  
Ding Ri Guo — Respondent.

Sanjay Kumar Singh  
16-04-2018

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**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR**  
**IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**IN THE MATTER OF:**

American Airlines, Inc.,  
4333 AMON CARTER BLVD, FORT WORTH,  
TEXAS 76155, UNITED STATES OF AMERICA

E-mail: lhines@ckr.com

THROUGH

Authorized Representative

Nirupam Lodha,

Partner- Luthra & Luthra Law Offices, New Delhi,

E-mail: [NLodha@luthra.com](mailto:NLodha@luthra.com))

**..Complainant**

**Versus**

Ding Ri Guo

8F, No. 199 Shifu Road

Taizhou Zhejiang 318000, China

E-mail: juc@qq.com

**..Respondent**

**1. THE PARTIES:**

The complainant is American Airlines, Inc., 4333 AMON CARTER BLVD, FORT WORTH, TEXAS 76155, UNITED STATES OF AMERICA.

(Complaint has been filed through its authorized representative Nirupam Lodha, Partner- Luthra & Luthra Law Offices, New Delhi, E-mail: [NLodha@luthra.com](mailto:NLodha@luthra.com))

The Respondent is Ding RiGuo, 8F, No. 199 Shifu Road, Taizhou Zhejiang 318000, CHINA, E-mail: juc@qq.com

**2. DOMAIN NAME AND TRADEMARK IN DISPUTE:**

Domain name of the respondent is "[www.americanairlines.co.in](http://www.americanairlines.co.in)"

The trademark of the complainant is "AMERICAN AIRLINES".

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**I. FACTUAL AND LEGAL GROUNDS:**

**A. The Domain name is identical or confusingly similar to a trademark in which complainant has rights:**

- I. The complainant has stated in the instant complaint that it is the owner and proprietor of several well-known trademarks around the world such as AMERICAN AIRLINES, AA.COMAADVANTAGE EXECUTIVE, PLATINUM, ADVANTAGE and ADVANTAGE PLATINUM, to name a few.
- II. The complainant has also stated in the instant complaint that the trademark AMERICAN AIRLINES (hereinafter subject mark) is a highly distinctive and globally well-known mark which was adopted by the complainant in the year 1926 for inter alia services related to the transportation of passengers and cargo by the air, as well as a part of its corporate name, and since then it has been continuously used by the complainant throughout the world. Complainant is the owner of the various other variants of the mark AMERICAN AIRLINES as well.
- III. The complainant has further stated in the instant complaint that on account of high quality services provided by the complainant under the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks, coupled with vast promotion and publicity thereof, the said marks enjoy an impeccable reputation, unparalleled goodwill and a well-known status across the world. The same is evident from the worldwide operating revenue figures of the complainant, for the past few years, in respect of its business operated under the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks:

<u>Period</u>	<u>Annual Turnover (in USD Billion)</u>
2011-2012	23.979
2012-2013	24.855
2013-2014	26.743
2014-2015	42.650
2015-2016	40.990

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IV. The complainant has further stated in the instant complaint that apart from its offerings under the AMERICAN AIRLINES marks and other AMERICAN AIRLINES formative marks through print media and broadcast media, the complainant also promotes them through websites operated, owned and controlled by the complainant which are accessible globally. The complainant's websites are accessible on various domain names which are owned by the complainant, including websites hosted at the following domain names www.americanairlines.com, www.americanairlines.in, www.aa.com and www.aavacations.com. It is pertinent to note that the date of registration of each of the said domain names by the complainant is much prior to the date of registration of the domain name under dispute www.americanairlines.co.in which was registered on February 16, 2005 specially caters to the public in India and the registration of the domain names www.americanairlines.com and www.aavacations.com which are also accessible to Indians, dates back to April 17, 1998 and October 14, 1997 respectively. The complainant has annexed and relied on whois records of the aforesaid domain names of the complainant as Annexure-B.

V. The complainant has further stated in the instant complaint that it first used the mark AMERICAN AIRLINES in India in the year 1981. The said mark and the services provided there under are quiet popular amongst Indian public. Documentary evidence of the use of the mark AMERICAN AIRLINES and the other AMERICAN AIRLINES formative marks in India and other parts of the world has been annexed and relied upon by the complainant in Annexure-C.

VI. The complainant has further stated in the instant complaint that in statutory rights in the AMERICAN AIRLINES and the other AMERICAN AIRLINES formative marks, the complainant has obtained registration of the name in various countries, including France, Switzerland, Benelux, Brazil, Italy, Philippines, Portugal, Mexico, Sweden, Greece, Hungary, Japan, Morocco, Turkey, Korea, U.S, U.K, Canada, and India

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as well as with OHIM. The complainant has provided the details of the registrations of the mark in India.

<b>Trade Mark &amp; Registration No.</b>	<b>Date of Application</b>	<b>Class &amp; Goods Services</b>	<b>Validity</b>
AMERICAN AIRLINES Reg No. 605108	25/08/1993	Class 14 Bracelets, personal Accessories, brooches Cuff links, rings, tie pins And clips, watches, Souvenir and promotions Pins, necklaces included in Class 14.	Registered and valid till 25/08/2023
AMERICAN AIRLINES Reg No. 605109	25/08/1993	Class 16 promotional and Sales brochures, Magazines, newspapers Printed time tables and Schedules, postcards, Playing cards, handbooks And manuals.	Registered and valid till 25/08/2023
AMERICAN AIRLINES Reg No. 1245961	24/10/2003	Class 39 Transportation Of passengers and, Cargo	Registered and valid till 24/10/2023

The certificates of registrations owned by the complainant in India and Worldwide in respect to AMERICAN AIRLINES and AMERICAN AIRLINES formative marks has been Annexed by the complainant as Annexure-D.

VII. The complainant has further stated in the instant complaint that it also owns the domestic domain names [www.americanairlines.com](http://www.americanairlines.com),

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[www.americanairlines.in](http://www.americanairlines.in), [www.aa.com](http://www.aa.com) and [www.aavacations.com](http://www.aavacations.com) all of which were registered by the complainant prior to the date of registration of the domain name by the respondent and the websites operated on the said domain names promote complainant's services provided under the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks, which websites are also accessible from India.

- VIII. The complainant further has stated in the instant complaint that it is the exclusive owner of the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks. The disputed domain name fully incorporates and is identical to complainant's registered and well-known trademark AMERICAN AIRLINES as well as to the complainant's domain name [www.americanairlines.in](http://www.americanairlines.in). The complainant has further stated that any use of the said domain name whatsoever is likely to cause confusion amongst the public or deception as to the source and would amount to infringement of complainant's marks as well as passing off.
- IX. The complainant has further stated that the respondent, in complete disregard of the complainant's statutory and common law rights over its well-known and registered trademark AMERICAN AIRLINES and AMERICAN AIRLINES formative marks has dishonestly obtained registration of a deceptively similar domain name [www.americanairlines.co.in](http://www.americanairlines.co.in). The complainant has further stated that no legitimate use of the domain name is being made by the respondent and the registration has been done solely to block the domain name and to gain undue profits by selling the domain name further. The complainant has further stated that the address line and admin details provided in the whois record also reflect much malafide of the respondent as the name states that "this-domain-may-be-for-sale".

**B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME:**

The complainant has stated that the respondent has no legitimate interest in "the disputed domain name [www.americanairlines.co.in](http://www.americanairlines.co.in)" in

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view of several reasons. The complainant has given the reasons as under:

- I. The respondent is not commonly known by the disputed domain name nor has it conducted any business using the mark AMERICAN AIRLINES, to the best of complainant's knowledge;
- II. The respondent has not been authorized by the complainant to use the trademark AMERICAN AIRLINES in any manner and / or to seek registration of any domain name incorporating this mark, nor is it affiliated or associated with the complainant in any manner;
- III. The respondent has no prior rights or legitimate interests in the disputed domain name. The adoption and registration of trademark AMERICAN AIRLINES and the registration of the domain names www.americanairlines.com, www.americanairlines.in by the complainant all precede the date of creation of the disputed domain name. The mark AMERICAN AIRLINES was adopted by the complainant way back in the year 1926 and has been used in India at least since May 31, 1981. Further, the registration of the mark AMERICAN AIRLINES in India under No. 1245961 dates back to October 24, 2003. This precedes the date of creation of the disputed domain name, which was created on February 25, 2011, as per information received from whois database.
- IV. The respondent ought to have been aware of complainant's trademark AMERICAN AIRLINES in view of the well-known status and the complainant having widely used and advertised its business conducted under the said mark and AMERICAN AIRLINES formative marks. The respondent cannot reasonably evidence having any legitimate purpose to register the disputed domain name, other than to illegally sell the same for commercial gain.

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V. The respondent has registered the disputed domain name solely to block it and sell it further to earn unjust profit. The address line and admin details provided in the whois record also reflect the same as they state "this-domain-may-be-for-sale". Further, each time one visits the disputed domain name, the user is either shown an error message or is automatically directed to another website which has no association with the complainant or with the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks. As on the date filing of this complaint the disputed domain name is not operational. However, using the "way back machine" feature available at <http://archive.org/web/>, which stores an exact copy / replica of various webpages. The complainant has filed and relied upon the copy of the website available on the disputed domain name as on January 18, 2018 (Annexure-E). The complainant has stated that it clearly reflects that the domain name was up for sale.

**C. THE DOMAIN NAME WAS REGISTERED OR IS BEING USED IN BAD FAITH.**

- I. The complainant has stated that the domain name has not been to any use and the address line and admin details provided in the whois record state that "this-domain-may-be-for-sale". Therefore it is evident that respondent has registered the disputed domain name with malafide, and has no intention of using the same except to further re-sell the disputed domain name for unfair commercial gains. The complainant has further stated that on visiting the said the user is either shown an error message or is automatically directed to different websites which has no association with the complainant or with the AMERICAN AIRLINES and AMERICAN AIRLINES formative marks.
- II. The complainant has further stated that the respondent, in the past has also blocked third party domain names through registering them in bad faith. In actions taken against the

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respondent by third parties who owned the concerned marks, adverse orders were passed against the respondent. For instance, separate INDRP complaints were instituted against the respondent by Google Inc. and Carl Karcher Enterprise, for registering domain names which were identical / similar to their respective trademarks. Both the INDRP complaints were decided in favour of the said two entities and against the respondent. These orders indicate that the respondent has in the past also engaged in such illegal activities i.e. wrongfully registered domain names which are identical / similar to the marks owned by third parties with the motive to earn unjust profits, and the same appears to be respondent's modus operandi for making unfair commercial gains. The complainant has annexed Annexure F & G and relied upon the decision in the case Google Inc. v/s Ding RiGuo & Carl Karcher Enterprise v/s Ding RiGuo.

III. The subject mark AMERICAN AIRLINES is a well-known mark and the only reason for the respondent to register the disputed domain name, which fully contains the said mark, appears to be to earn unjust profit through further sale of domain.

3. The complainant has prayed for an award in the above matter for transfer of the domain name "www.americanairlines.co.in" in favour of the complainant.

#### **AWARD**

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The present dispute pertains to the domain name "www.americanairlines.co.in" in favour of the respondent.
3. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "www.americanairlines.co.in".

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4. The complainant herein has filed the instant complaint challenging the registration of the domain name "www.americanairlines.co.in" in favour of the respondent
5. I was appointed as Sole Arbitrator in the matter by NIXI.
6. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
7. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
8. On 16-03-2018 I issued notice to the respondent and informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter / reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.
9. On 23-03-2018, I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter / reply and rejoinder with the supportive document/evidence within seven days of receipt of notice.
10. On 30-03-2018, I again issued notice to the respondent and further directed the respective parties to the complaint, to file their counter / reply and rejoinder with the supportive document/evidence within seven days of receipt of notice. He was given last and final opportunity to file reply and documents.
11. I have perused the records and have gone through the contents of the complaint. The respondent has not filed any reply despite notices dated 16-03-2018, 23-03-2018, 30-03-2018 issued to him. He was given last and final opportunity to file reply and documents on 30-03-2018, it was also made clear to him that no further opportunity shall be granted. However, he failed to file any reply and documents. Hence the complaint is being decided ex-parte on the merits of the complaint and as per law of the land.

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12. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above facts and circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him. The respondent has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth and has nor provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.
13. The INDRP complaint titled as Carl **Karcher Enterprise v/s Ding RiGuo** relied upon by the complainant was also decided against the respondent wherein the domain name of the respondent was held to identical and confusingly similar to the trademark of complainant; the respondent had no right or legitimate interest in the domain name and it was established that the respondent had no right in the trademark he had got it registered his domain name in bad faith.
14. Further it has been held in Indian decision **M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

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15. Thus the conclusion is that the domain name "www.americanairlines.co.in" is identical and confusingly similar to the trademark of complainant "AMERICAN AIRLINES" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "www.americanairlines.co.in" in bad faith.

**RELIEF:**

The domain name "www.americanairlines.co.in" of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have any right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name to him, as it has established its bonafide rights in trademark in facts and circumstances and as per law discussed above. Hence I direct that the Domain name "www.americanairlines.co.in" be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

**Delhi**

**Date: 16-04-2018.**

*Sanjay Kumar Singh*  
**(Sanjay Kumar Singh)**  
**Arbitrator**