

## **ADMINISTRATIVE PANEL DECISION**

Skyscanner Limited v. Sima Soma and Sergei Barkovskih  
Case No. D2022-0032

### **1. The Parties**

The Complainant is Skyscanner Limited, United Kingdom, represented by Lewis Silkin LLP, United Kingdom.

The Respondents are Sima Soma, Russian Federation and Sergei Barkovskih, Russian Federation.

### **2. The Domain Names and Registrars**

The disputed domain name <skyscanneris.com> is registered with Eranet International Limited (the “Registrar”).

The disputed domain name <skyscanneris.org> is registered with Network Solutions, LLC (the “Registrar”).

The disputed domain names <skyscanneris.com> and <skyscanneris.org> are hereinafter together referred to as the “Domain Names”.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2022. On January 5, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On January 6 and 7, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrants and contact information for the Domain Names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 2022, providing the registrants and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 13, 2022.

The Center verified that the Complaint together with the amended 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).


In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents of the Complaint, and the proceedings commenced on January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on February 11, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on February 15, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

The Complainant is a metasearch engine and travel agency based in Edinburgh, United Kingdom. The website of the Complainant connected to the domain name <skyscanner.net> is available in over 30 languages and is used by 100 million Internet users per month.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter together referred to as the "Trademarks"):

- International trademark Registration No. 0900393 for SKYSCANNER, registered on March 3, 2006;
- International trademark Registration No. 1030086 for SKYSCANNER, registered on December 1, 2009; and
- International trademark Registration No. 1133058 for  skyscanner, registered on August 16, 2012.

Further, it is undisputed that the Complainant is the holder of *inter alia* the domain name <skyscanner.net>.

The Domain Name <skyscanneris.org> was registered on December 6, 2021, and the Domain Name <skyscanneris.com> was registered on December 3, 2021. Currently, and at the time that the Complainant filed the Complaint, the Domain Names are inactive.

#### 5. Parties' Contentions

##### A. Complainant

With the Complaint, the Complainant seeks that the Domain Names are transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Names are identical or confusingly similar to the Trademarks of the Complainant, the Respondents have no rights or legitimate interests in the Domain Names, and the Domain Names have been registered and are being used in bad faith.

Firstly, according to the Complainant, the Domain Names are identical or confusingly similar to its Trademarks that enjoy a reputation. The Domain Names fully incorporate the Complainant's Trademarks with the mere addition of the term "is" and the generic Top-Level Domains ("gTLDs") ".org" and ".com" respectively.

Secondly, according to the Complainant, the Respondents have no rights or legitimate interests in the Domain Names. The Complainant argues that the terms "skyscanner" and "skyscanneris" are not descriptive in any way, nor does it have any generic or dictionary meaning. The Complainant has not given its consent to the Respondents to use similar variations of its Trademarks in domain names. The Complainant states that given the famous nature of the Complainant's Trademarks and the fact that no other individual or business owns registered trademark rights in the SKYSCANNER trademark – or confusingly similar variations – it is not only likely that the Respondents were aware of the Complainant's right prior to registering the Domain Names, but it is inevitable that visitors to the Domain Names would mistakenly believe there to be an association with the Complainant.

Finally, according to the Complainant, the Respondents have registered and are using the Domain Names in bad faith. The Complainant submits that the Respondents were aware of the reputation of the Complainant's business under its Trademarks at the time the Domain Names were registered. The Domain Names were registered on December 3, 2021 and December 6, 2021 respectively. The Complainant therefore submits it is implausible that the Respondents did not have the Complainant's business in mind at the time the Domain Names were registered. The Domain Names are currently inactive and held passively. The Complainant suggests there is an overwhelming likelihood that the Respondents registered the Domain Names to make money from them. According to the Complainant, screenshots would show that the websites connected to the Domain Names have previously shown pages of a travel website and of a holding page containing the Complainant's Trademarks. This would lead to the conclusion that the Respondents either tend to pose as the Complainant or to set up a service in direct competition with the Complainant's, which amounts to bad faith.

## **B. Respondents**

The Respondents did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue - Consolidation**

The Complainant requests that the Domain Names be consolidated under a single UDRP complaint.

The key considerations in determining whether cases should be consolidated where they involve multiple respondents are identified in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), as being whether: (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency is also noted as being a relevant consideration.

In this case, there are numerous similarities between the Domain Names themselves and the websites to which they resolved. To begin with, the Domain Names are identical (other than the gTLD) as each of them consists of the Complainant's SKYSCANNER mark together with the term "is". In addition, neither of the Domain Names resolve to an active website, the Domain Names were registered during the short period from December 3, 2021 to December 6, 2021, and the Complainant has submitted that the addresses of the Respondents are both located in the Russian Federation with the same postal area.

Overall, the Panel finds that it is most likely that the Domain Names are under common control. Neither of the Respondents have challenged the Complainant's request for consolidation, and it is clearly most procedurally efficient, and, in all the circumstances, fair and equitable for the Domain Names to be included together in this one case. Accordingly, the Panel grants the Complainant's request for consolidation.

### **6.2. Substantive Issues**

In view of the lack of a response filed by the Respondents as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs (5)(f), 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 factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of the probabilities that:

- (i) the Domain Names are identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;

- (ii) the Respondents have no rights or legitimate interests in respect of the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

#### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Names are (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Names with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant's Trademarks and the Domain Names (see section 1.7 of the [WIPO Overview 3.0](#)). In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the sign SKYSCANNER to which the Complainant has rights is incorporated in its entirety in the Domain Names. The mere addition of the term "is" and the gTLDs ".org" and ".com" do not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11.1 of the [WIPO Overview 3.0](#); *Yahoo! Inc. v. Andy Perlaza*, WIPO Case No. [D2017-0869](#)). Consequently the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

#### **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondents have no rights or legitimate interests in the Domain Names. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If the Complainant does establish a *prima facie* case, the burden of production shifts to the Respondents (see, e.g., [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondents have failed to address the *prima facie* case thus established by the Complainant. Furthermore, based on the record before it, the Panel does not find any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondents have no rights or legitimate interests in respect of the Domain Names. Paragraph 4(a)(ii) of the Policy is thereby fulfilled.

#### **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the Domain Names have been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Names. In light of the reputation that the Trademarks of the Complainant enjoy and the fact that the Domain Names incorporate the Trademarks in their entirety, the Panel agrees with the Complainant that it is not conceivable that the Respondents chose the Domain Names without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The reputation of the Complainant's Trademarks has been confirmed in earlier UDRP panel decisions (see, e.g., *Skyscanner Limited v. Basit Ali*, WIPO Case No. [D2012-1983](#); *Skyscanner Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Miguel Angel*, WIPO Case No. [D2019-3131](#)).

Further, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the reputation of the Trademarks, the lack of any rights or legitimate interest in the Domain Names by the Respondents, and in the absence of any conceivable good faith use of the Domain Names, the Panel finds from the present circumstances that the Respondents have intentionally sought to take unfair advantage of or otherwise abuse the Trademarks. This is reinforced by the strong reputation of the Complainant's Trademarks, as referenced above.

Accordingly, the Panel finds that the Domain Names have been registered and are being used in bad faith, and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <skyscanneris.com> and <skyscanneris.org>, be transferred to the Complainant.

/Gregor Vos/

**Gregor Vos**

Sole Panelist

Date: March 15, 2022