

## **ADMINISTRATIVE PANEL DECISION**

Skyscanner Limited v. Dibyajyoti mistry

Case No. D2022-4729

### **1. The Parties**

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

The Respondent is Dibyajyoti mistry, Portugal.

### **2. The Domain Name and Registrar**

The disputed domain name <skyscannerflight.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on December 21, 2022.

The Center verified that the Complaint together with the amendment to 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 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 Respondent of the Complaint, and the proceedings commenced on December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Respondent sent several emails to the Center from December 21, 2022, to January 13, 2023, but did not submit any formal response. On January 13, 2023, the Center informed the Parties that it would proceed to Panel Appointment.

The Center appointed Zoltán Takács as the sole panelist in this matter on January 26, 2023. 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 operates a global search engine that allows visitors to plan and book direct from millions of travel options. It employs over 1000 people at offices in Barcelona, Beijing, Budapest, Edinburgh, Glasgow, London, Miami, Palo Alto, Shenzhen, Singapore and Sofia. The Complainant's free mobile app has been downloaded over 70 million times and its services are available in over 30 languages and 70 currencies.

The Complainant owns a worldwide portfolio of trademark registrations for the mark SKYSCANNER, including the International Trademark Registration ("IR") No. 1030086, registered since December 1, 2009 for among others travel information and arrangement services provided from an Internet website of class 39 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks.

The Complainant owns the domain name <skyscanner.net>, which was registered on July 3, 2002 and which links to its corporate website.

The disputed domain name was registered on November 15, 2022 and resolves to a website that copies the layout and significant content of the Complainant's website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to its SKYSCANNER trademark, since the only distinctions between the trademark and the disputed domain name are the Respondent's omission of a letter "n" from and addition of the term "flight" to the disputed domain name.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant submits that the Respondent has registered the disputed domain name and is using it in bad faith because the Respondent's website at the disputed domain name imitates its own website and misleads consumers into believing that the travel arrangement and information services originate from or are otherwise affiliated with the Complainant.

The Complainant requests that the disputed domain name <skyscannerflight.com> be transferred from the Respondent to the Complainant.

##### **B. Respondent**

The Respondent has not formally contested the allegations in the Complaint.

Instead, in its emails sent to the Center the Respondent among others claimed that he bought the domain name for affiliate marketing and that it is not similar to the Complainant's domain name. The Respondent stated that he would sell the disputed domain name to the Complainant for USD20,000 and suggested that in case the Complainant is not ready to pay him the requested amount of money he will sell the disputed domain name to a big travel company from the Russian Federation.

## 6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a nationally or regionally registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the SKYSCANNER trademark, and for the purpose of this proceeding the Panel establishes that the IR No. 1030086 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assessed whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("[WIPO Overview 3.0](#)") the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

In the Panel's view, the Respondent's mere omission of a letter "n" from the Complainant's SKYSCANNER trademark results in obvious misspelling of the trademark and after all, the disputed domain name still contains sufficiently recognizable aspects of the Complainant's trademark. Moreover, the Respondent's addition of the term "flight" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the SKYSCANNER trademark.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent.

As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Except for disputing the similarity of the disputed domain name and the Complainant's rights in informal emails sent to the Center, the Respondent chose not to formally respond to the Complaint, to the facts and circumstances brought forward by the Complainant. By doing so, the Respondent failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant's *prima facie* case.

The Complainant states that the Respondent is not affiliated with the Complainant in any way and that it has not granted any authorization for the Respondent to make use of its SKYSCANNER trademark, in a domain name or otherwise.

As shown by the Complainant, the Respondent is using the disputed domain name to deceive Internet users presumably looking for the Complainant through redirecting them to its own website, which is basically a replica of the Complainant's website. Such use cannot be deemed legitimate for the purpose of the Policy and the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (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 website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Complainant's SKYSCANNER trademark, which intentionally misspelled variant the Respondent incorporated into the disputed domain name, has no dictionary meaning; it is a term invented by and unique to the Complainant and therefore highly distinctive for the corresponding services.

The Complainant presented sufficient evidence that its SKYSCANNER trademark is widely known in the relevant sector that is in the travel and tourism industry. The well-known status of the Complainant's SKYSCANNER trademark has also been recognized by previous UDRP panels (see *Skyscanner Limited v. Mohit Bajaj*, WIPO Case No. [D2016-1481](#) and *Skyscanner Limited v. Domain May Be For Sale, Check afternic.com Domain Admin / Hulmiho Ukolen*, WIPO Case No. [D2017-1946](#)).

According to section 3.1.4 of the [WIPO Overview 3.0](#), "the mere registration of a domain name that is identical of confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known mark by an unaffiliated entity can by itself create a presumption of bad faith."

The Respondent has been using the disputed domain name to lure Internet users to its own website that replicates the Complainant's website. This, along with the Respondent's use of the Complainant's signature "sunrise" logo in view of the Panel is evidence of the Respondent's actual knowledge and targeting of the Complainant's SKYSCANNER trademark at the time of registration of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy.

In addition, the Panel's finding of bad faith registration and use of the disputed domain name is supported by the following facts of the case: (i) the disputed domain name is composed in a way that it results in obvious, intentional misspelling of the Complainant's widely-known trademark plus a descriptive term; (ii) the Respondent clearly lacks any rights or legitimate interests in the disputed domain name; (iii) after having been notified of this administrative proceeding the Respondent's signaled to the Center its intent to sell the disputed domain name to the Complainant for USD 20,000, which is an amount the Panel finds in excess of any out-of-pocket costs directly related to the disputed domain name.

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain names in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

## 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 disputed domain name <skyscannerflight.com> be transferred to the Complainant.

/Zoltán Takács/

**Zoltán Takács**

Sole Panelist

Date: February 8, 2023