

## **ADMINISTRATIVE PANEL DECISION**

Expedia, Inc. v. Ngooi Kok Keong  
Case No. D2023-0715

### **1. The Parties**

The Complainant is Expedia, Inc., United States of America (“United States”), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is Ngooi Kok Keong, Malaysia.

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

The disputed domain name <booking-wotif.com> is registered with 101domain GRS Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2023. On February 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (Redacted for Privacy / Digital Privacy Corporation) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2023, 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 amended Complaint on February 17, 2023.

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 Respondent of the Complaint, and the proceedings commenced on February 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on March 31, 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 is one of the largest online travel booking services provider. It operates more than 200 travel booking websites in more than 70 countries around the world under a portfolio of numerous brands, including EXPEDIA, EXPEDIA.COM, EXPEDIA PARTNER SOLUTIONS and EXPEDIA CRUISES, HOTELS.COM, TRIVAGO, HOTWIRE, TRAVELOCITY, ORBITZ, EGENCIA, HOMEAWAY, ABRITEL, VRBO, and WOTIF. Overall, the Complainant's supply portfolio includes 2.9 million lodging properties, including more than 880,000 hotels, over 500 airlines, numerous car rental companies, packages, cruise companies, insurance, as well as activities and experiences across 200 countries and territories.

The WOTIF brand is used in connection with an online travel booking website that is primarily targeted to Australian and New Zealand consumers. It was acquired by the Complainant in July 2014, and the Complainant and its predecessors have used the trademark WOTIF for nearly 23 years in relation to travel booking services. Per the Complaint, this website currently offers 590,000 property listings around the world, 1,800,000 online bookable vacation rentals, over 500 airlines to search, 175 car rental companies, and 35,000 other bookable activities. The WOTIF brand is largely promoted through online, print, and television advertising campaigns, and sponsorships, it is used and promoted in the main social media platforms, and on mobiles through mobile applications ("app") available on the Apple's App Store and on Google Play.

The Complainant owns various trademark registrations for its WOTIF brand, including:

- Australian Trademark Registration No. 829270, WOTIF, word, registered with the priority date of March 28, 2000, in classes 35, 39, and 42;
- Australian Trademark Registration No. 1218135, WOTIF, word, registered with the priority date of January 8, 2008, in class 43;
- New Zealand Trademark Registration No. 718092, WOTIF, word, filed on September 7, 2004 and registered on December 8, 2005, in classes 35, 39 and 43;
- International Trademark Registration No. 966914, WOTIF, word, registered on February 4, 2008, in classes 35, 39, 42 and 43, which designates China;
- European Union Trade Mark Registration No. 2931632, WOTIF.COM, word, filed on November 13, 2002 and registered on December 16, 2003, in classes 35, 39 and 43; and
- United Kingdom Trademark Registration No. UK00002235316, WOTIF.COM, word, filed on June 8, 2000 and registered on May 3, 2002, in classes 35, 39 and 43, (collectively the "WOTIF mark").

The Complainant further owns various domain names corresponding to the WOTIF mark, including <wotif.com> (registered on March 23, 2000), which resolves to its corporate website where the Complainant promotes and offers its travel booking services. This website further allows the Complainant's customers to create online accounts to facilitate their bookings and to receive travel deals, special offers and other information via email.

The disputed domain name was registered on October 31, 2022, and it is currently apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a landing page that promoted a travel related website by the name of "Travala.com" (capture dated October 31, 2022, Exhibit M to the Complaint), and, afterwards, it

resolved to a landing page featuring the WOTIF mark and the WOTIF logo, with the same graphic representation used by the Complainant, which offered online travel booking services (capture dated December 31, 2022, Exhibit N to the Complaint).

## **5. Parties' Contentions**

### **A. Complainant**

Key contentions of the Complaint may be summarized as follows:

The WOTIF mark has acquired a high degree of public recognition and distinctiveness, widely known as a source of online travel and hospitality booking services. It embodies valuable reputation and goodwill belonging exclusively to the Complainant.

The disputed domain name is confusingly similar to the WOTIF mark. The disputed domain name incorporates the WOTIF mark preceded by the term "booking" separated by a hyphen, which does not distinguish the disputed domain name from the Complainant's trademark. The WOTIF mark is clearly identifiable and the primary and dominant element of the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name is not a legitimate name or nickname of the Respondent, there is no relationship between the Parties, and the Respondent has not been authorized to use the Complainant's trademarks. The Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain name. The Respondent has used the disputed domain name for commercial gain, to attract and redirect traffic to websites that promoted competing travel services and to a website that attempted to pass itself off as one operated by the Complainant.

The Respondent registered and is using the disputed domain name in bad faith, for commercial gain, and to benefit from the notoriety associated with the Complainant's trademark. The disputed domain name was registered long after the WOTIF mark became known to consumers, and the Respondent has sought to impersonate or exploit the notoriety of this trademark in connection to travel services by using the disputed domain name for a website promoting competing travel related services that prominently displayed the Complainant's trademark and logo. The Respondent has chosen to conceal his or her identity by using a privacy service.

The Complainant has cited previous decisions under the Policy and various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

### **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

## A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademark WOTIF, both by virtue of its trademark registrations and as a result of the continuous use of this mark for nearly 23 years (by the Complainant and its predecessor) in connection to travel booking services.

The disputed domain name incorporates the WOTIF mark preceded by the term “booking” separated by a hyphen, and followed by the generic Top-Level Domain (“gTLD”) “.com”. The WOTIF mark is recognizable in the disputed domain name, and the addition of the term “booking” does not prevent a finding of confusing similarity. Further, the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, the first element of the Policy under paragraph 4(a)(i) has been satisfied.

## B. Rights or Legitimate Interests

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, that may establish rights or legitimate interests in the disputed domain name in order to rebut the Complainant’s *prima facie* case. See section 2.1, [WIPO Overview 3.0](#).

The Respondent, however, has not replied to the Complainant’s contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that the Complainant has constructed a strong *prima facie* case evidencing that the Respondent has not been authorized to use the WOTIF mark, there is no relationship between the Parties, the Respondent is not known by the terms “booking wotif”, and the disputed domain name has not been used in connection to a *bona fide* offering of goods or services.

The Panel considers that, as the disputed domain name generates an affiliation with the Complainant and its trademark, the use of the disputed domain name cannot be considered fair use under the Policy. The fact that the disputed domain name incorporates the WOTIF mark preceded by a term directly related to the Complainant’s services, “booking”, separated by a hyphen, generates an implied affiliation, suggesting that the disputed domain name is owned by the Complainant, or one of its related or affiliated companies, or it is endorsed by the Complainant. In this respect, the Panel notes that the Complainant operates numerous websites for different jurisdictions as part of its business, so the disputed domain name may be considered by Internet users as a new domain name part of the Complainant’s business.

Furthermore, according to the evidence provided by the Complainant, the disputed domain name has been used for commercial gain to promote competing websites in the same sector where the Complainant operates (online travel booking services). One of these websites that were linked to the disputed domain name further impersonated the Complainant reproducing the look and feel of the Complainant’s WOTIF app, with the same combination of colors green and white, and prominently displaying the WOTIF mark and logo, with the same graphic representation used by the Complainant. This use of the disputed domain name enhances the implied affiliation with the Complainant and its trademark, and cannot be considered a *bona fide* offering or any other legitimate use under the Policy.

It is further remarkable that the Respondent has chosen not to reply to the Complaint, and, apparently, its reaction to the Complaint has been to stop using the disputed domain name.

The Panel, therefore, concludes that under the cumulative facts and circumstances of this case, the Complainant has established that the Respondent lacks any rights or legitimate interests in the disputed domain name. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

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

The Policy, paragraph 4(a)(iii), requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that the cumulative circumstances of this case point to bad faith registration and use of the disputed domain name.

The WOTIF mark is internationally used over a global media, the Internet, and the term “wotif” is a coined term apparently formed by the combination of the terms “what if”.

Furthermore, the WOTIF mark has been extensively used over the Internet for nearly 23 years, and it has developed an international notoriety, particularly in Australia, New Zealand, and neighboring countries where the tourism is an important industry, like Malaysia, where the Respondent is located according to the Registrar verification.

The Panel, under its general powers, has further corroborated that any search over the Internet for the term “wotif” reveals the Complainant and its business.

Additionally, taking into consideration the evidence provided by the Complainant regarding the use of the disputed domain name, the Panel considers that the Respondent targeted the Complainant and its trademark acting in bad faith, in an effort to take unfair advantage of the reputation of the WOTIF mark by creating a false affiliation to this mark, for a commercial gain, which constitutes bad faith under the Policy. The prominent inclusion of the Complainant’s trademark and logo, and the use of the same combination of colors displayed in the Complainant’s app, in one of the websites that were linked to the disputed domain name, leads to this conclusion.

Therefore, on the balance of probabilities, taking into consideration the cumulative circumstances of this case, the Panel considers that the Respondent knew and targeted the WOTIF mark with the registration and use of the disputed domain name.

It is further to be noted that the disputed domain name represents a threat of being used in any type of phishing scam or other type of fraud. The online travel booking industry is particularly propitious for this type of frauds, as it is a media where customers provide sensible information online in order to book the provided services. The disputed domain name temporarily resolved to a website that offered these type of services prominently displaying the Complainant’s trademark and logo, and reproducing the Complainant’s app look and feel, which may have been used or intended to be used, on a balance of probabilities, to obtain sensible information from customers.

The current non-use of the disputed domain name does not change the Panel’s finding on the Respondent’s bad faith.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element of the Policy.

## 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, <booking-wotif.com>, be transferred to the Complainant.

*/Reyes Campello Estebarez/*

**Reyes Campello Estebarez**

Sole Panelist

Date: April 14, 2023