

## **ADMINISTRATIVE PANEL DECISION**

WK Travel, Inc. v. SAMI SUHAIL KHUB

Case No. D2023-1653

### **1. The Parties**

The Complainant is WK Travel, Inc., United States of America (“United States”), represented by Mitchell, Silberberg & Knupp, LLP, United States.

The Respondent is SAMI SUHAIL KHUB, United Arab Emirates

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

The disputed domain name <onetravelhaven.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 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 April 24, 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 April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 24, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on June 16, 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 a subsidiary of Fareportal Inc., a US corporation which provides low-cost travel services including air tickets, lodgings, car rentals and vacation packages.

The Complainant is the owner of United States trademark registration number 4545969 for the word mark ONETRAVEL, registered on June 10, 2014 for travel-related services in International Classes 39 and 43.

The Complainant displays and uses the ONETRAVEL trademark to advertise and promote its services, and operates a website at "www.onetravel.com".

The disputed domain name was registered on December 15, 2022. The evidence in the Complaint is that the disputed domain name resolves to an active website offering flight booking services and other services that are directly competitive with the Complainant's services.

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

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

The Complainant submits and contends that:

- The Complainant has been using the ONETRAVEL trademark in commerce since December 31, 1998, and has developed valuable goodwill in the mark as a result of its extensive use and promotion. The Complainant exhibits details of its website at "www.onetravel.com".
- The disputed domain name is confusingly similar to the ONETRAVEL trademark in which the Complainant has rights. In this regard, the Complainant notes that the disputed domain name entirely incorporates the Complainant's trademark. The addition of the term "haven" does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's ONETRAVEL registered trademark.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not received any permission or consent from the Complainant to use its ONETRAVEL mark. The Respondent is using the disputed domain name for the purpose of operating a competing website offering services comparable to those of the Complainant, and this does not represent a *bona fide* offering of goods or services.
- The disputed domain name was registered in bad faith, long after the registration of the Complainant's trademark ONETRAVEL. It is inconceivable that the Respondent did not have in mind the Complainant's mark when registering the disputed domain name.
- The disputed domain name is being used in bad faith to misdirect Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. The Respondent's use of the disputed domain name also creates initial interest confusion on the part of Internet users seeking the Complainant.

Based on the above, the Complainant requests that the disputed domain name be transferred to the Complainant.

## B. Respondent

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii), shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the Respondent, shall be evidence of the Respondent's rights to or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii) above.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark ONETRAVEL based on the evidence submitted in the Complaint.

The disputed domain name consists of the Complainant's trademark ONETRAVEL with the addition of the term "haven" followed by the generic Top-Level Domain ("gTLD") ".com".

The ".com" gTLD is a mere technical requirement for registration. As such, it is typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - ["WIPO Overview 3.0"](#).

As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name, *i.e.*, "onetravelhaven".

The disputed domain name entirely incorporates the Complainant's mark ONETRAVEL and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in 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) does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that disputed domain name is confusingly similar to the mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

## **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) before any notice to it of the dispute, 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 or services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is 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 contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, based on the following: (a) the Complainant hold prior rights in the registered ONETRAVEL mark which is distinctive and well known, (b) the Respondent has not been authorized to use the Complainant's trademark in any way (c) the disputed domain name resolves to a competing website offering services comparable to those of the Complainant, and this does not represent a *bona fide* offering of goods or services.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, 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 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.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By not submitting a Response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy. The disputed domain name (i) consists of the Complainant's trademark plus the addition of the term "haven", and (ii) has been used in relation to a website displaying the Complainant's trademark that offers and promotes services/products that are comparable to those offered by the Complainant. The Panel finds that the disputed domain name is inherently misleading (see section 2.5.1 of the [WIPO Overview 3.0](#)) and that its use, carrying a risk of implied affiliation to the Complainant, cannot confer any rights or legitimate interests on the Respondent.

Therefore, the Panel finds that the Complainant has established element 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, which includes: "(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website 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 website or location or of a product or service on your website or location."

The disputed domain name incorporates the Complainant's ONETRAVEL mark and was registered long after the Complainant started its business and had registered and used the ONETRAVEL mark. The Panel finds that in all likelihood the Respondent could not ignore the Complainant's trademark at the time the disputed domain name was registered. Such fact suggests that the disputed domain name was registered in bad faith (see [WIPO Overview 3.0](#), section 3.2.2).

The Panel further finds that the Respondent has used the disputed domain name with the intention of attracting Internet users to its own website, offering competing travel services, by misleading such Internet users as to a connection with the Complainant's established business. Even if upon arriving at the Respondent's website such visitors would realize it was not the Complainant's, the Respondent would nevertheless have obtained that traffic to its website and potential customers by reason of its misrepresentation. The Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

Based on the above, the Panel finds that the Complainant has established also paragraph 4(a)(iii) 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, <onetravelhaven.com>, be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: June 30, 2023