

## **ADMINISTRATIVE PANEL DECISION**

Skyscanner Limited v. orgi11g, eNon,LLC

Case No. D2023-2596

### **1. The Parties**

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

The Respondent is orgi11g, eNon,LLC, Hong Kong, China.

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

The disputed domain name <online-worldskyscanner.com> (“Disputed Domain Name”) is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 19, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 19, 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 amendment to the Complaint on June 19, 2023.

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 June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent did not submit any formal response, but the Center received an email from the Respondent on June 23, 2023. Accordingly, the Center notified the commencement of panel appointment process on July 14, 2023. The Center appointed Haig Oghigian as the sole panelist in this matter on July 24, 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 limited company incorporated in the United Kingdom operating a worldwide travel search website. The website has about 100 million visits per month, and ranks among the one of the most highly-trafficked sites on the Internet. The mobile application has been downloaded more than 70 million times. The Complainant's services are available in over 30 languages and 70 currencies.

The Complainant has further been recognized in previous UDRP panel decisions as enjoying a considerable reputation in various countries: *Skyscanner Limited v. Contact Privacy Inc. Customer 1244355693 / Mrs. K Ananthan*, WIPO Case No. [D2019-0988](#), and *Skyscanner Limited v. Basit Ali*, WIPO Case No. [D2012-1983](#).

As it appears from Annex 2, the Complainant owns numerous trademark registrations worldwide for the word mark SKYSCANNER and related logos in various stylized forms. More specifically, the Complainant refers the Panel to several trademark registrations in various jurisdictions:

- SKYSCANNER, European Union designation of International Trademark Registration No. 900393, registered on March 3, 2006, for goods in classes 35, 38 and 39;
- SKYSCANNER, European Union designation of International Trademark Registration No. 1030086, registered on December 1, 2009, for goods in classes 35, 39 and 42;
- SKYSCANNER, United States of America designation of International Trademark Registration No. 1133058, registered on August 16, 2012, for goods in classes 35, 39 and 42;
- SKYSCANNER, United Kingdom Trademark Registration No. 2313916, registered on April 30, 2004, for goods in classes 35, 38 and 39;
- SKYSCANNER, United Kingdom Trademark Registration No. 3307682, registered on July 27, 2018, for goods in classes 35, 39, 42 and 43;
- SKYSCANNER, Canadian Trademark Registration No. 786689, registered on January 10, 2011, for goods in classes 35, 39 and 42;
- SKYSCANNER, New Zealand Trademark Registration No. 816550, registered on October 7, 2010, for goods in classes 35, 29 and 42;
- SKYSCANNER, Indian Trademark Registration No. 1890840, registered on December 2, 2009, for goods in classes 35, 38 and 39; and
- SKYSCANNER, International Trademark Registration No. 1030086, registered on December 1, 2009, for goods in classes 35, 39 and 42.

The Panel notes that further evidence of active trademark registrations and applications belonging to the Complainant were also submitted.

According to the Whois records, the Disputed Domain Name was registered on May 26, 2023. The Disputed Domain Name resolved to a login page where the Complainant's trademark was prominently displayed. According to the consumer's complaint provided by the Complainant, the website to which the Disputed Domain Name resolved was used in connection with an alleged cryptocurrency scam.

At the time the Panel wrote this decision, the Disputed Domain Name resolves to an inactive website.

## 5. Parties' Contentions

### A. Complainant

Put briefly, the Complainant contends as follows:

First, the Complainant submits that the Disputed Domain Name is identical or confusingly similar to the Complainant's SKYSCANNER trademark. The Complainant asserts that the Disputed Domain Name integrates the SKYSCANNER trademark in its entirety and is only distinguished by the addition of the words "online" and "world." The Complainant submits that the Panel should ignore the generic Top-Level Domain ("gTLD") in its assessment of identity and confusing similarity. In support of its contentions, the Complainant suggests that the effectiveness of the Respondent's alleged fraud is contingent upon the proximity of the Disputed Domain Name to the Complainant's trademark.

Second, the Complainant submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name because (1) the Respondent does not own any registered rights in any trademarks which comprise part or all of the Disputed Domain Name; (2) the term "Skyscanner" is not descriptive, nor does it have a generic meaning; (3) the Complainant has not authorized the Respondent to use its registered trademarks in a domain name registration; and (4) the Respondent's use of the Disputed Domain Name for the fraudulent purpose of a cryptocurrency scam cannot constitute a legitimate interest in it, or its *bona fide* noncommercial use.

Finally, the Complainant submits that the Disputed Domain Name was registered and used in bad faith. In support of this contention, the Complainant submits that the Disputed Domain Name was quickly registered and immediately set up to exploit the Complainant's trademarks to deceive consumers. The Complainant submits that fraudulently posing as an established business constitutes bad faith.

### B. Respondent

Although the Respondent did not formally reply to the Complainant's contentions, the Panel takes note of the Respondent's June 23, 2023 email to the Center confirming that the resolution of the Disputed Domain Name had been disabled.

## 6. Discussion and Findings

Even in the absence of a substantive response from the Respondent, and in accordance with paragraph 4(a) of the Policy, the Complainant bears the burden of proving to the Panel each of the following elements:

- (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.

The Panel will successively rule on each of these elements.

### A. Identical or Confusingly Similar

The Complainant satisfactorily established its rights in the SKYSCANNER trademark and that the Disputed Domain Name is confusingly similar to the SKYSCANNER trademark.

The Complainant has shown its rights in the SKYSCANNER trademark through the above-cited valid registrations. Evidence of such registrations was sufficient to *prima facie* satisfy the threshold requirement of

having trademark rights in the SKYSCANNER trademark, according to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

As stated in section 1.7 of the [WIPO Overview 3.0](#), a domain name which incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name will normally be considered confusingly similar to that trademark. The test for identity or confusing similarity typically involves a side-by-side comparison of the domain name, to assess whether the trademark is recognizable within the domain name.

In this case, the Disputed Domain Name is composed of three elements: (1) the word "skyscanner" preceded by (2) the word "world" and, (3) the word "online" separated by a hyphen. The SKYSCANNER trademark of the Complainant remains clearly recognizable within the Disputed Domain Name, despite the presence of these additional words, which is consistent with section 1.8 of the [WIPO Overview 3.0](#). Furthermore, the Panel is free to ignore the gTLD ".com", in accordance with section 1.11.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Disputed Domain Name is confusingly similar to the SKYSCANNER trademark and thus the Complainant has discharged its burden under paragraph 4(a)(i) of the Policy.

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

The Complainant satisfactorily established that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Following section 2.1 of the [WIPO Overview 3.0](#), the Complainant must demonstrate, *prima facie*, that the Respondent has no rights to or legitimate interests in the Disputed Domain Name. If the Complainant succeeds, the burden of production of this second element under paragraph 4(a)(ii) of the Policy shifts to the Respondent. Here, the Respondent must now produce relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. Such rights or legitimate interests is defined, non-exhaustively at paragraph 4(c) of the Policy, as use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services, the Respondent being commonly known by the Disputed Domain Name, or a legitimate noncommercial fair use of the Disputed Domain Name, without misleading the consumers or tarnishing the trademark at issue.

The composition of the Disputed Domain Name carries a risk of implied affiliation with the Complainant. In the present case, the Respondent did not file a formal response and thus provided no evidence that it holds any such rights or legitimate interests in the Disputed Domain Name, namely that it has used or made preparation to use the Disputed Domain Name in connection with a *bona fide* offering of goods and services.

There is a clear presence of the SKYSCANNER trademark in the Disputed Domain Name, and in the absence of evidence from the Respondent to the contrary, this is sufficient for the Panel to conclude that the Complainant did not authorize the Respondent to register or use the Disputed Domain Name, that there is no connection between the Complainant and the Respondent and thus, no conceivable basis upon which the Respondent could possibly claim to have any rights or legitimate interests in respect of the Disputed Domain Name.

These considerations alone are sufficient for the Panel to hold that the Respondent has no rights or legitimate interests in the Disputed Domain Name. However, the Complainant further submits that the Respondent's intention to deceive the Complainant's consumers and steal cryptocurrency deposits cannot constitute a legitimate interest or *bona fide*, noncommercial use of the Disputed Domain Name.

Following section 2.13 of the [WIPO Overview 3.0](#), the Panel has no difficulty agreeing with the Complainant that illegal activity can never confer rights or legitimate interests on a Respondent. The Panel notes however that evidence of such illegal activity provided in Annex 4 to the Complaint is incomplete. The Complainant could only provide partial screen captures of the website to which the Disputed Domain Name resolved.

These screen captures were provided to the Complainant by a Skyscanner user (the “User”), and the only detailed description of the alleged scam comes from the User. The screen captures do, however, appear to describe a deposit and withdrawal mechanism, as well as a commission and referral function, on the website to which the Disputed Domain Name resolved. This evidence appears to the Panel as akin to hearsay and the Panel grants little credibility to it to substantiate the Complainant’s claim that the Respondent’s activities were fraudulent.

The Panel also notes that the Complainant offers no conclusive evidence that either the User or any other person was in fact defrauded by the Respondent. Finally, since the Disputed Domain Name no longer resolves to an active website, the Panel could not appraise itself of the content of the Respondent’s website. Absent any authenticated testimony, it is difficult for the Panel to draw definitive conclusions as to the extent of any possible illegal activity, and therefore the Panel lend limited weight to the Complainant’s allegations to that effect.

That said, following sections 4.2 and 4.3 of the [WIPO Overview 3.0](#), the Panel is permitted to draw certain inferences in light of the particular facts and circumstances of the case – the burden of proof being a preponderance of evidence. Therefore, on the basis of the information provided by the Complainant in Annex 4 to the Complaint, the Panel has sufficient information to conclude that the Respondent likely intended to pass it off as the Complainant.

Additionally, the Respondent’s informal email response to the Center confirming that they had disabled the resolution of the Disputed Domain Name, immediately following Notification of the Complaint, allows the Panel to infer that the Respondent knew or ought to have known that they had no rights or legitimate interests in the Disputed Domain Name.

Therefore, the Panel finds that the Respondent does not hold any rights or legitimate interests in the Disputed Domain Name and that the Complainant has discharged its burden under subparagraph 4(a)(ii) of the Policy.

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

The Complainant satisfactorily established that the Respondent used and registered the Disputed Domain Names in bad faith.

Paragraph 4(a)(iii) of the Policy states this double requirement. According to section 3.1 of the [WIPO Overview 3.0](#) bad faith occurs if the Respondent takes unfair advantage of or otherwise abuses the Complainant’s trademark. The same paragraph lists non-exhaustive scenarios which could constitute evidence of bad faith.

The Panel notes that the Complainant has successfully established that the SKYSCANNER trademark became famous and well-known prior to the Respondent’s registration and use of the Disputed Domain Name.

As stated above, the Complainant also established that the Complainant never authorized the Respondent to register and use the Disputed Domain Name. This Panel also concluded that, based on the available evidence and the inherently misleading nature of the Disputed Domain Name, the Respondent knew or ought to have known that they had no rights or legitimate interests in the Disputed Domain Name.

Viewed in light of this evidence, and the Panel’s findings above, even in the absence of contrary evidence from the Respondent, the Panel cannot conceive of any *bona fide* purpose for the incorporation of the Complainant’s SKYSCANNER trademark in the Disputed Domain Name other than for the Respondent to use the Disputed Domain Name in a confusingly similar way so as to pass it off as the Complainant and to tarnish its reputation for their own commercial gain.

## **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 <online-worldskyscanner.com> be transferred to the Complainant.

*/Haig Oghigian/*

**Haig Oghigian**

Sole Panelist

Date: August 7, 2023