

ADMINISTRATIVE PANEL DECISION

Skyscanner Limited v. Qi Qi
Case No. D2023-5239

1. The Parties

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

The Respondent is Qi Qi, China.

2. The Domain Name and Registrar

The disputed domain name <skyscanner-member.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 15, 2023. On December 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 January 2, 2024, 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 January 2, 2024.

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 sent the notification to the Respondent of the Complaint, and the proceedings commenced on January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. The Respondent did not submit any response. Accordingly, the Center sent the notification of the Respondent's default on January 24, 2024.

The Center appointed Petra Pecar as the sole panelist in this matter on February 7, 2024. 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 the website “www.skyscanner.net”, which enables people to research and book travel options for their trips, including flights, hotels, and car hire.

The Complainant owns a global trademark portfolio of trademark registrations for the trademark SKYSCANNER, including the following marks:

- International Registration No. 900393, registered on March 3, 2006, designating the European Union and the United States of America; and
- International Registration No. 1030086, registered on December 1, 2009, designated to several jurisdictions, including China, among others.

The disputed domain name was registered on December 6, 2023. From the evidence submitted with the Complaint, the disputed domain name initially resolved to a website that reflected the Complainant's SKYSCANNER trademark and requested Internet users' sensitive personal information. At the time of the submission of the Complaint, it resolved to an inactive website.

The Respondent is reportedly an individual, located in China.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that it holds a significant reputation under its SKYSCANNER mark. The reputation is supported by previous UDRP cases in which the panels have recognized Complainant's extensive presence across numerous countries, substantial business transactions under its mark, and substantial publicity over time. The Complainant asserts that their website attracts millions of unique visitors monthly, with its smart device application downloaded over 70 million times. Services are available in over 30 languages and 70 currencies, demonstrating a global reach. In August 2023 alone, the Complainant's core website received nearly 47 million visits and ranks highly in global Internet traffic. The disputed domain name incorporates the Complainant's SKYSCANNER mark alongside the term “member” and has been exploited for fraudulent purposes, imitating the Complainant's business to deceive consumers into booking flights for commission.

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant argue that the Respondent does not hold any registered trademarks related to the disputed domain name and has not obtained consent to use variations of the Complainants marks. Additionally, the term “skyscanner” lacks descriptive or generic meaning, further undermining the Respondent's claim. Moreover, the Respondent's website linked to the disputed domain name was deactivated due to fraudulent activities, indicating an absence of legitimate interests. In light of the above, the burden of production rests on the Respondent to demonstrate any rights or legitimate interests, which they have failed to do so far, leading to the presumption that they lack such rights or legitimate interests.

The Complainant alleges that the Respondent not only registered the disputed domain name long after the Complainant's mark was established but also actively uses it in bad faith. The Respondent has used the disputed domain name to deceive consumers by creating a false association with the Complainant, thereby defrauding them for illicit gain. Additionally, the Respondent has used the disputed domain name to gain access to consumers' sensitive personal information. These actions, combined with the deliberate attempt to mislead consumers, demonstrate a clear pattern of bad faith on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

"A Panel shall decide a complaint 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", as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three 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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Complainant has shown rights in respect of the SKYSCANNER mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the hyphen and other term "member" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Furthermore, it is well accepted practice by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark (see section 1.11 of the [WIPO Overview 3.0](#)). For that reason, the Panel accepts not to take gTLD ".com" when assessing confusing similarity of the disputed domain name.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

According to the Complainant, it seems that the Respondent is not associated or connected with the Complainant in any way, and the Complainant has not granted the Respondent any license or authorization to use or register any domain name that includes the Complainant’s mark. The Respondent has further failed to provide a response to the Complaint, thereby failing to present any information or factors that could potentially justify prior rights or legitimate interests in the disputed domain name. Additionally, there appears to be no evidence of the Respondent engaging in any legitimate or genuine use of the disputed domain name, whether for noncommercial or bona fide activities, since the disputed domain name, at the time of the Complaint filing, resolves to an impersonating website requesting Internet users’ personally identifiable information in an apparent phishing scheme, which can never confer rights upon a response. Panels have held that the use of a domain name for illegal activity, specifically using the Complainant’s mark to deceive Internet users by creating a false association with the Complainant, gaining access to Internet users’ sensitive personal information and achieving economic gain by imitating the Complainant’s business to deceive Internet users into booking flights for commission, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

While the disputed domain name may no longer resolve to said fraudulent website, the Panel finds that the nature of the disputed domain name, which consists of the Complainant’s SKYSCANNER mark, a hyphen, and the additional descriptive term “member”, strongly indicates the affiliation with the Complainant and for that reason a fair use cannot be constituted when the disputed domain name effectively impersonates or suggests affiliation with the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent’s disputed domain name comprises a combination of the Complainant’s SKYSCANNER mark, a hyphen, and the additional part “member” which is closely associated with the Complainant’s business. The Complainant has also an online presence through the domain name <skyscanner.net>. The website hosted on this domain name <skyscanner.net> provides information about the Complainant’s activities. The registration of the disputed domain name which comprise the Complainant’s SKYSCANNER mark, hyphen, descriptive term “member”, and gTLD “.com”, reflects that the Respondent was familiar with the Complainant and SKYSCANNER mark. With regard to the bad faith at the time of registration, the Panel finds that it is likely that the Respondent was aware of the Complainant’s rights and reputation in the SKYSCANNER mark at the time the disputed domain name was registered, particularly when considering the previous content on the disputed domain name that sought to

create a false association with the Complainant and its activities and that the Complainant's trademark predates the registration of the disputed domain name by some 17 years. Therefore, the Panel holds that the disputed domain name was registered in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, such as the claimed impersonation here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

While the disputed domain name no longer resolves to an active website, prior panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Complainant's SKYSCANNER mark should be observed as a mark that is sufficiently distinctive and that enjoy a certain level of reputation based on longstanding use. The Respondent has failed to provide any response to the Complaint and has therefore failed to provide any justification for the registration and use of the disputed domain name. Based on the foregoing reasons, the Panel finds that the Respondent's conduct should be considered as in bad faith.

The Panel finds that the Complainant has established 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 <skyscanner-member.com> be transferred to the Complainant.

/Petra Pecar/

Petra Pecar

Sole Panelist

Date: February 21, 2024