

## **ADMINISTRATIVE PANEL DECISION**

Skyscanner Limited v. Mickey heab  
Case No. D2022-1462

### **1. The Parties**

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

The Respondent is Mickey heab, Israel.

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

The disputed domain name <skyscannernow.com> (the “Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2022. On April 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 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 April 29, 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 May 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2022. The Respondent did not file a formal Response. Accordingly, the Center notified commencement of panel appointment process on May 23, 2022.

The Center appointed Olga Zalomiy as the sole panelist in this matter on May 25, 2022. 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 provider of travel search services and other travel related services. The Complainant owns numerous trademark registrations for its SKYSCANNER mark, such as:

- United States of America registration No. 3242752 for the word mark SKYSCANNER registered on May 15, 2007;
- Canadian registration No. TMA786689 for the word mark SKYSCANNER registered on January 10, 2011; and
- United Kingdom registration No UK00002313916 for the word mark SKYSCANNER registered on April 30, 2004.

The Respondent registered the Domain Name on December 20, 2021. The Domain Name used to point to a website in Hebrew and English that offered travel arrangement services. Currently, the Domain Name does not point to an active website.

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

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

The Complainant claims that it the owner of numerous trademark registrations for the SKYSCANNER mark in many countries around the world. The Complainant contends that its trademark enjoys considerable reputation among potential customers. The Complainant contends that the Domain Name is confusingly similar to its SKYSCANNER trademark, because it consists of the Complainant's trademark and the additional term "now", which makes the trademark immediately identifiable in the Domain Name. The Complainant asserts that it is permissible to ignore the generic Top-Level Domain ("gTLD") for the purposes of assessing confusing similarity between the Domain Name and the mark.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name, because the Respondent does not own any registered rights in any trademarks which comprise part or all of the Domain Name. The Complainant argues that the terms "skyscanner" or "skyscannernow" are not descriptive in any way, nor do they have any generic, dictionary meaning. The Complainant asserts that it has not given its consent for the Respondent to use its registered trademarks in a domain name registration. The Complainant alleges that the Respondent uses the Domain Name that is virtually identical to the Complainant's trademark to offer travel arrangement services in direct competition with the Complainant's core services in which the Complainant enjoys a reputation.

The Complainant submits that the Respondent registered and is using the Domain Name in bad faith. The Complainant alleges that the Respondent was aware of the reputation of the Complainant's business under its SKYSCANNER trademark at the time the Domain Name was registered, by which point the Complainant already enjoyed global fame in its trademarks. The Complainant argues that the Respondent is using the Domain Name in bad faith because the Domain Name points to a website that offers travel arrangement services, which are identical to the Complainant's services. In the Complainant's opinion, the Respondent uses the Domain Name to mislead consumers in to believing that the travel arrangement services provided through the website to which the Domain Name points originate from the Complainant.

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

The Respondent did not reply to the Complainant's contentions. However, the Respondent sent an email communication to the Center on April 29, 2022, submitting that he informed "hostinger" to delete the Domain Name.

On May 27, 2022, the Respondent sent another email that read as follows:

“Ders,  
i did responc  
i dont wont this domin, i was sudy and learn  
is no good  
i try cancel but regester refose  
my brother want me to learn websit  
teach me english  
dont now why its problem to make websit”.

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns numerous trademark registrations for the SKYSCANNER trademarks. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

The Domain Name consists of the Complainant’s SKYSCANNER trademark, the term “now”, and the gTLD “.com”. “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.”<sup>1</sup> It is well-established that the applicable gTLD should be disregarded under the confusing similarity test as a standard registration requirement.<sup>2</sup>

In this case, because the Complainant’s SKYSCANNER trademark is recognizable within the Domain Name, the inclusion of the term “now” does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s trademark. The gTLD “.com” is disregarded from the assessment of confusing similarity. Therefore, the Domain Name is confusingly similar to the Complainant’s SKYSCANNER trademark.

The Complainant has satisfied the first element of the UDRP.

### B. Rights or Legitimate Interests

To prove the second UDRP element, the Complainant must make out a *prima facie* case<sup>3</sup> in respect of the lack of rights or legitimate interests of the Respondent.

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<sup>1</sup> Section 1.8, [WIPO Overview 3.0](#).

<sup>2</sup> Section 1.11.1, [WIPO Overview 3.0](#).

<sup>3</sup> Section 2.1, [WIPO Overview 3.0](#).

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

(i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent 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 submitted evidence that shows that the Respondent has not been commonly known by the Domain Name. The evidence shows that the Complainant did not authorize the Respondent's use of the Complainant's trademark in the Domain Name.

The Respondent's use of the Domain Name does not satisfy requirements of *bona fide* offering of goods and services. The Respondent used the Domain Name to point to a website in Hebrew and English, which offered travel arrangement services, identical to those of the Complainant. Based on the similarity between the Domain Name and the Complainant's trademark and the Complainant's and the Respondent's services, the Panel concludes that the website at the Domain Name suggested affiliation between the Complainant and the Respondent, but does not accurately and prominently disclose lack of relationship between the Respondent and the Complainant.

Based on the foregoing evidence, the Panel finds that the Complainant has made out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent in the Domain Name. Once a complainant makes a *prima facie* case, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name.<sup>4</sup>

While the Respondent did not submit a formal response, he sent two emails to the Center. Neither of the Respondent's emails demonstrates his rights or legitimate interests in the Domain Name. The April 29, 2022 email indicates the Respondent's knowledge of his lack of rights or legitimate interests because it suggests that he offered its hosting company to delete the Domain Name or the website at the Domain Name. This is further confirmed by the Respondent's May 27, 2022 email, in which the Respondent appears to argue that he registered the Domain Name to create a website and learn English. The Panel finds that unpersuasive. Therefore, because the Respondent has failed to rebut the Complainant's *prima facie* showing and to demonstrate his rights or legitimate interests in the Domain Name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the UDRP.

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

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to source, sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

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<sup>4</sup> Section 2.1, [WIPO Overview 3.0](#).

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”<sup>5</sup>. Evidence on file shows that the Respondent, who is not affiliated with the Complainant, used the Complainant’s widely known mark for its travel arrangements website. Therefore, the Respondent is presumed to have registered and used the Domain Name in bad faith.

Prior UDRP panels have found “the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark:... (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful, (iii) the lack of a respondent’s own rights to or legitimate interests in a domain name, ... (vi) absence of any conceivable good faith use.”<sup>6</sup>

The Panel concludes, on the evidence submitted by the Complainant, that the Respondent has registered and used the Domain Name in bad faith.

Given the renown of the Complainant’s SKYSCANNER mark and the Complainant’s subsisting trademark registrations in numerous countries, the Respondent could not plausibly assert that, in registering the Domain Name, which fully incorporates the SKYSCANNER trademark, he was not aware of the Complainant’s rights in the SKYSCANNER mark. It is likely that the Respondent registered the Domain Name to trade on the goodwill of the Complainant’s trademark. The website at the Domain Name used to offer travel arrangement services similar to those of the Complainant, under the confusingly similar Domain Name. The Panel concludes that the Respondent registered and is using the Domain Name to intentionally attempt to attract, for commercial gain, the Internet users to the Respondent’s website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to source, sponsorship, affiliation or endorsement of the Respondent’s website or location, or of a product or service on the Respondent’s website or location. Such use is in bad faith.

The Complainant has satisfied the third element of the UDRP.

## **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 Domain Name, <skyscannernow.com>, be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: June 8, 2022

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<sup>5</sup> Section 3.1.4, [WIPO Overview 3.0](#).

<sup>6</sup> Section 3.1.4, [WIPO Overview 3.0](#).