

ADMINISTRATIVE PANEL DECISION

Travelscape, LLC v. Mengtian Zhao
Case No. D2023-0220

1. The Parties

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

The Respondent is Mengtian Zhao, China.

2. The Domain Name and Registrar

The disputed domain name <usatravelocity.com> is registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2023. On January 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 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 January 29, 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 January 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on March 2, 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, Travelocity, is a member of the Expedia group. It was founded in 1996 and is a provider of consumer-direct travel services for the leisure and business traveler. The Complainant promotes and offers its services online and through social media. It operates in particular a website hosted at "www.travelocity.com", and through dedicated apps. According to the evidence filed with the Complaint, the Facebook page of the Complainant has over 570,000 followers, and its main website receives an average of 3,700,000 visitors per month, which makes it the 7th most visited website in the United States in the category of travel and tourism. 75% of visitors of this website are based in the United States. Also, the Complainant won the United States's Leading Online Travel Agency 2021 of the Word Travel Awards.

As a basis for its Complaint, the Complainant relies in particular on the United States federal registration TRAVELOCITY (word) No. 2,254,700, which was registered on June 22, 1999.

The disputed domain name was registered on July 17, 2022. In the course of this proceeding, the Registrar disclosed the identity of the Respondent, an individual with an address in China.

The disputed domain name resolves to a pornographic site.

5. Parties' Contentions

A. Complainant

In its detailed submissions, the Complainant indicates in particular the following:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the well-known trademark TRAVELOCITY. Indeed, the latter is fully incorporated in the disputed domain name. It adds that "Respondent's use of the abbreviation 'USA' (which stands for the United States of America) at the head of the Domain Name does not dispel the likelihood of confusion. Such combination suggests that the Domain Name is for a web site connected to Complainant in the United States". The Complainant also claims that, when confronted with the disputed domain name, the relevant consumers will reasonably believe that it is related to its trademark and activities, and that in this respect the Respondent is "attempting to capitalize on the TRAVELOCITY name and mark".

On the second element of the Policy, the Complainant argues that the burden of establishing rights or legitimate interests on the disputed domain name falls on the Respondent, since the Complainant has used and registered the trademark TRAVELOCITY years before. Also, the Complaint indicates that the Respondent can have no rights or legitimate interests in the disputed domain name as the Complainant's trademark is fully reproduced in the disputed domain name.

In any event, beyond these initial statements, the Complainant indicates that the Respondent is not commonly known by the disputed domain name, "particularly as Respondent has chosen to conceal his or her identity both in the Whois records for the Domain Name and in the associated website". Also, the Respondent was not granted any permission whatsoever to incorporate the trademark of the Complainant in a domain name. Finally, the Complainant states that "Respondent has never been given any permission by Complainant to register or use the Domain Name, or any other domain name incorporating or imitating Complainant's TRAVELOCITY name and mark".

Finally, the Complainant highlights that the use of the disputed domain name in connection with a pornographic site is not a legitimate noncommercial or fair use. Rather, the Complainant claims that "it

appears undeniable that Respondent registered the Domain Name in order to use Complainant's TRAVELOCITY mark for profit".

On the third element of the Policy, the Complainant states that the Respondent has registered and used the disputed domain name in bad faith, by benefiting from the goodwill and notoriety associated with its trademark TRAVELOCITY: "Respondent is acting in bad faith by leveraging the notoriety of the TRAVELOCITY mark to attract users to Respondent's website that promotes links to hard-core pornography". The Complainant adds that "Respondent's bad faith registration and use of the Domain Name are also established by the likelihood that Internet users will mistakenly believe the Domain Name is connected to, associated with, or endorsed or sponsored by Complainant. After seeing the TRAVELOCITY mark in the Domain Name, consumers will initially be confused as to the site's association with or sponsorship by Complainant".

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights. Under the case law of the UDRP, this is primarily a standing requirement.

The Complainant owns several trademark rights over the sign TRAVELOCITY. This trademark is fully reproduced, and identifiable, in the disputed domain name. The addition of the initials "usa", prior to the word "travelocity", does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

The disputed domain name is therefore confusingly similar to the trademarks of the Complainant.

The Complainant is deemed to have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has satisfied its burden of evidence here: it has argued that it does not know the Respondent, is not linked to the Respondent, and that to its knowledge the Respondent has no rights or legitimate interests in the disputed domain name.

Besides, the use of the disputed domain name to host a pornographic site does not amount to a *bona fide* offering of goods or services, insofar as the reproduction of the Complainant's trademark is certainly not justified to develop this activity and its incorporation in the disputed domain name carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted 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 the 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.

It is undisputable that the Respondent has registered, and is using, the disputed domain name in bad faith.

On the one side, the Respondent had the Complainant's trademark in mind when it registered the disputed domain name. Indeed, the disputed domain name not only reproduces the trademark TRAVELOCITY, it also contains the initials "usa", which is the common abbreviation for "United States of America". The United States is precisely where the Complainant has its strongest commercial presence. Confronted with the domain name <usatravelocity.com>, the public will believe that it hosts a website of the Complainant dedicated to customers based in the United States, or containing offers relating to the United States. Therefore, the Respondent has configured the disputed domain name to cause initial confusion with the Complainant and its activities.

On the other side, the Respondent is using the disputed domain name to host a pornographic website. Such use contrasts totally with the services offered by the Complainant in the field of travel and tourism, and is clearly likely to damage, to tarnish, the reputation and the image of the well-known brand TRAVELOCITY.

All this amounts to bad faith registration and use as per paragraph 4(b)(iv) of the Policy.

Accordingly, the third criteria set out in paragraph 4(a) of the Policy is also satisfied and the Complaint succeeds.

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 <usatravelocity.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: March 16, 2023