

ADMINISTRATIVE PANEL DECISION

Skyscanner Limited v. Samir Ismail
Case No. D2022-4736

1. The Parties

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

The Respondent is Samir Ismail, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <skyscannercheapflights.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 12, 2022, 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 December 12, 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 amended Complaint on December 12, 2022.

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 December 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 5, 2023. Informal email communications were filed by the Respondent on December 12, 16, and 20, 2022.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on January 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 offers options across flights, hotels, and car hire to book trips, and is active in the travel sector. The Complainant has submitted evidence that it is the owner of the following trademarks:

SKYSCANNER, United Kingdom trademark number 2313916, registered on October 23, 2002.

SKYSCANNER, EU designation of international trademark number 900393, registered on March 3, 2006.

SKYSCANNER, New Zealand trademark number 816550, registered on December 1, 2009.

SKYSCANNER, EU designation of international trademark number 1030086, registered on December 1, 2009.

SKYSCANNER, Canadian trademark number TMA786689, registered on January 10, 2011.

Skyscanner & Cloud Device, Indian trademark application number 2287020, with the application date of February 22, 2012.

Skyscanner & Cloud device, United States designation of international trademark number 4420284, registered on October 22, 2013.

SKYSCANNER, Indian trademark number 1890840, with the application date of December 2, 2019.

The disputed domain name <skyscannercheapflights.com> was registered on November 16, 2022, and resolved to a website that was an almost identical copy of the Complainant's official website.

5. Parties' Contentions

A. Complainant

The Complainant's website at "www.skyscanner.net" attracts 100 million visits per month and, to date, its SKYSCANNER smart device app has been downloaded over 70 million times. The Complainant's services are available in over thirty languages and in seventy currencies. Further, as of November 2019, the Complainant's website was ranked 1,671st globally for Internet traffic, and engagement and 107th in the United Kingdom.

The disputed domain name <skyscannercheapflights.com> is virtually identical to the Complainant's SKYSCANNER trademark. The disputed domain name includes the descriptive term 'flight', which serves to describe the flight arrangement services provided through the disputed domain name, in direct competition with the Complainant.

So far as the Complainant is aware, the Respondent does not own any registered rights in any trademarks which comprise part or all of the disputed domain name. The term "Skyscanner" is not descriptive in any way, nor does it have any generic, dictionary meaning. The Complainant has not given its consent for the Respondent to use a near identical variation of its registered trademarks in a domain name. The disputed domain name resolves to a website that reproduces the Complainant's trademark and copyright without the

Complainant's authorization. The Respondent's website provides travel information services and travel arrangement services, in direct conflict with the Complainant's rights.

The Respondent has chosen to pose as the Complainant in an attempt to deceive consumers into believing that they are purchasing flights from the Complainant. By its very nature, such use cannot constitute a legitimate noncommercial interest in the disputed domain name, nor is it use of the disputed domain name in connection with a *bona fide* offering of goods and services.

Given the famous nature of the Complainant's trademark and the fact that no other individual or business owns registered trademark rights in the SKYSCANNER trademark, not only is it likely that the Respondent was aware of the Complainant's rights prior to registering the disputed domain name but it is inevitable that visitors to the disputed domain name would mistakenly believe that there is an association with the Complainant.

The Complainant has submitted a *prima facie* showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Whilst the burden of proof lies on the Complainant, that burden is shifting and it now falls on the Respondent to rebut the Complainant's *prima facie* showing. In the absence of a Response or assertion that any such right or interest exists, this must lead to a presumption that the Respondent is unable to show that such right or interest exists.

Given that the Complainant's registered trademark rights date back to 2002, the Complainant submits that the Respondent was aware of the reputation of the Complainant's business under its SKYSCANNER trademark at the time the disputed domain name was registered, by which point the Complainant already enjoyed global fame in its trademarks. Within days of registering the disputed domain name, the Respondent pointed it to a website that poses as the Complainant's website. There can be no plausible explanation for this, other than the Respondent sought to profit illegitimately by misleading consumers into believing that the travel arrangement and information services provided through the disputed domain name originate from or are otherwise affiliated with the Complainant, when this is not the case. In the circumstances, therefore, the Respondent uses the disputed domain name in bad faith insofar as it points a website that is designed to create, for financial benefit, a likelihood of confusion with the Complainant's rights. The Complainant subsequently filed a takedown notice with the Respondent's hosting company, upon receipt of which the hosting company suspended all hosting services provided to the disputed domain name.

B. Respondent

The Respondent submitted several informal communications, stating e.g. "This domains registration is suspended, and all content on it is removed, you can check this for your reference". The informal email communications between the Center and the Respondent subsequently indicate that the Respondent denies having registered the disputed domain name and that the Respondent, after receiving the Complaint, submits to have suspended the website and requested removal of the Respondent's name from the Whois database.

6. Discussion and Findings

According to 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; and
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Preliminary Finding: Respondent Identity

The Respondent submits as follows: “Yes please consider this as my response my details are misused as I'm not the one who registered this domain, upon notification from you I immediately requested the suspension of this domain or at least removal of my name from registry as I'm not the one who registered it.” The Panel has considered whether an identity theft would have occurred in this matter. After having carefully considered all the informal submissions from the Respondent, the Panel finds, on the balance of probabilities, that the Registrar identified registrant of record is the appropriate Respondent in this matter.

A. Identical or Confusingly Similar

The Complainant is, according to the submitted evidence, the owner of the registered trademark SKYSCANNER. The disputed domain name <skyscannercheapflights.com> incorporates the trademark in its entirety with the addition of the terms “cheap” and “flights”. The addition of the above-mentioned terms to the SKYSCANNER trademark in the disputed domain name does not prevent a finding of confusing similarity.

Having the above in mind, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to the notice of the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Panel finds that the nature of the disputed domain name (incorporating the Complainant’s trademark in its entirety, with the additional terms of “cheap” and “flights”, which are related to the Complainant’s activities) may be seen as impersonating or suggesting sponsorship or endorsement by the Complainant. In addition, the evidence demonstrates that the disputed domain name <skyscannercheapflights.com> resolved to a website offering flight arrangement services in direct competition with the Complainant. Given that the Respondent’s website was an almost identical copy of the Complainant’s official website and that it reproduced the Complainant’s trademark, consumers risked being misled and falsely led to believe that the travel arrangement and information services provided via the disputed domain name originated from the Complainant. In addition, consumers could also be misled and falsely believe that the disputed domain name belongs to or is associated with the Complainant.

Given the above, the Respondent is not making a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case. The Respondent has not submitted any Response or any evidence in this case to demonstrate that the Respondent is the owner of any trademark rights similar to the disputed domain name or that the Respondent is or has been commonly known by the disputed domain name.

By not submitting a response, the Respondent has failed to invoke any circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case file that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an 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 trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The Complainant's trademark registrations for SKYSCANNER predate the registration of the disputed domain name <skyscannercheapflights.com>. The Complainant has submitted evidence demonstrating that the Respondent, shortly after registering the disputed domain name, used it for a website which was an almost identical copy of the Complainant's official website. The evidence also demonstrates that the website, to which the disputed domain name resolved before it was suspended, reproduced the Complainant's trademark. This, and the fact that the disputed domain name comprises the Complainant's trademark in its entirety with the addition of the terms "cheap" and "flights" make it inconceivable that the Respondent coincidentally selected the disputed domain name without any knowledge of the Complainant's trademark and business. Consequently, the Panel finds, in the absence of contrary evidence, that the Respondent knew or should have known of the Complainant's trademarks when registering and using the disputed domain name.

By using the disputed domain name, which is confusingly similar to the Complainant's trademark, in combination with a website which is almost an identical copy of the Complainant's official website, there is a risk that consumers may be confused or misled into believing that the disputed domain name and website belong to or are in some way associated with or endorsed by the Complainant. Thus, the evidence in the case before the Panel indicates that the disputed domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's SKYSCANNER trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the website.

There is no evidence in the case that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name has been registered and used in bad faith.

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, <skyscannercheapflights.com>, shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: January 30, 2023