

## ADMINISTRATIVE PANEL DECISION

WK Travel, Inc. v. John Doe

Case No. D2023-3353

### 1. The Parties

The Complainant is WK Travel, Inc., United States of America (United States), represented by Mitchell, Silberberg & Knupp, LLP, United States.

The Respondent is John Doe, Türkiye.

### 2. The Domain Name and Registrar

The disputed domain name <onetravel.world> is registered with Porkbun LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 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 (Private By Design, LLC,) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 8, 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 amended Complaint on August 9, 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 August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Response was filed with the Center on September 4, 2023. The Respondent sent an email communication to the Center on September 4, 2023.

On September 4, 2023, the Respondent requested a 90-day extension to the Response period (“September 4 letter”).

On September 6, 2023 the Center communicated to the Parties that based on paragraph 5(b) of the Rules, the Response due date was automatically extended until September 8, 2023.

Pursuant to paragraph 5(e) of the Rules, the Complainant was also invited to comment on the Respondent's further extension request by September 8, 2023.

On September 8, 2023, the Complainant sent a communication regarding the Respondent's request for an extension of the response period.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 20, 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.

On September 29, 2023, the Panel issued Administrative Panel Order No. 1 for the reasons set out in that Order (a copy is included in Annexure 1):

1. extending the time for a Response to be filed to October 6, 2023; and
2. providing for a supplemental filing from the Complainant by October 11, 2023 in reply.

In the event, no further communication was received from the Respondent.

#### **4. Factual Background**

The Complainant is a wholly-owned subsidiary of Fareportal Inc. which is described in the Complaint as a technology company that, amongst other things, provides through the Complainant "high-value, low-cost travel-related services including airfare, temporary lodging, car rentals, and vacation packages" from a website at "www.onetravel.com".

The website features the trademark "OneTravel" and a banner headline "Compare and Book Cheap Flights on Over 500 Airlines". The website also appears to offer accommodation, car rental and packages.

According to the Complaint, the Complainant has been providing its services under the "OneTravel" trademark since December 31, 1998. Also, according to the Complaint, the Complainant has invested millions of dollars in developing, advertising and promoting its Internet-based online travel agencies under, amongst other things, the "OneTravel" trademark. The Complaint does not include evidence to support this claim of the kind which would usually be required to show rights in an unregistered trademark. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.3. A search of Facebook, however, discloses that the Complainant's Facebook page, @onetravel, has some 156,000 followers.

The Complaint includes evidence that the Complainant owns United States Registered Trademark No. 4,545,969, ONETRAVEL, which has been registered in the Principal Register since June 10, 2014 in respect of services in International Class 39:

"for providing an on-line computer database in the field of travel information services; travel and tour information services; travel and tour ticket reservation services; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; providing travel information and news via computer".

The disputed domain name was registered on May 23, 2023.

It resolves to a website apparently offering highly personalized travel design and concierge services to the discerning traveler who values time and access. It has features for Special Tours, Vacations, Private Travel, Corporate Travel and Events. It features the trademark “OneTravel” prominently although with a different device to that used by the Complainant.

Although the Whois information provided by the Registrar identifies the Respondent with an obvious pseudonym and address in Türkiye, the September 4 letter requesting the extension of time identified the registrant as Matt Cohen.

The website is in English. It includes a copyright notice “Copyright 2023 OneTravel” and provides an American telephone number for contact, the 612 area code indicating a location in Minneapolis, Minnesota, United States.

## **5. Discussion and Findings**

No formal response has been filed. The Respondent’s communication to the Center on September 4, 2023, however, stated that the Notification of Complaint and the documents in the proceeding had been received at least seven days earlier. It also appears from that communication that the Respondent was actively pursuing the advice of an experienced legal specialist. In these circumstances, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

Accordingly, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate 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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used 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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the United States registered service mark, ONETRAVEL, identified in section 4 above for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical with the Complainant’s trademark for the purposes of the Policy as this is an appropriate case to disregard the “.world” Top Level Domain. [WIPO Overview 3.0](#), section 1.7 and 1.11.

Based on the available record, therefore, the Panel finds the first element of the Policy has been established.

## B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

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.

While 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 often impossible 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. 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.

In the present case, the Respondent registered the disputed domain name well after the Complainant began using its trademark and nine years after the Complainant registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent’s name, whether that is “John Doe” or “Matt Cohen”. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

It does not qualify as a good faith offering of goods or services for the purposes of paragraph 4(c)(i) to offer services which appear to fall directly within the scope of the Complainant’s trademark or are so closely related to those services as the Respondent’s are.

While the Complainant’s trademark does consist of two ordinary dictionary words, their combination in the trademark cannot be said to be wholly and directly descriptive of the services in question.

The Respondent’s September 4 statement claims the Respondent’s business is operating in a different market or market segment to that in which the Complainant operates. The website to which the disputed domain name resolves appears to provide support for the contention that the Respondent’s business, if there is a business, may provide a more bespoke service than what the Respondent refers to as online travel agencies which primarily prioritise offering an extensive range of booking options with a strong emphasis on quantity, scale and immediate transactions.

Accepting for the purposes of this proceeding only that the Complainant’s website is fairly characterised as an “online travel agency”, however, does not assist the Respondent. It would seem that at least some of the services the Respondent apparently offers fall within the scope of the Complainant’s trademark. In any event, the services the Respondent apparently offers are not so remote from the Complainant’s services that someone browsing the Internet would be unlikely to think the two are not associated or that they were mistaken about the nature of the services offered under the trademark “OneTravel”.

That is, despite the Respondent’s argument to the contrary, the Panel finds there is likely to be a high risk of confusion between the Complainant’s trademark, the disputed domain name, and the Respondent’s services.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted that *prima facie* case. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant contends that Respondent must have known about the Complainant's trademark and service given the extent to which it has been promoted and used.

First, as noted in section 4 above, the Complainant has not advanced much, if any, evidence in support of that claim. A search of the Complainant's Facebook account does, however, provide some support for the Complainant's claim.

Secondly, the Respondent has not disputed the Complainant's claim but argued they are not competitors as they operate in different market segments.

Thirdly, according to the Whois information provided by the Registrar, the Respondent has given an address in Türkiye. The Respondent's name as disclosed in his September 4 letter is not of obvious Turkish extraction although that of course does not preclude the Respondent being located in Türkiye. As noted in section 4 above, however, the website to which the disputed domain name resolves is in English and provides a contact number in the United States.

Fourthly, as discussed in section 5B above, the Complainant's trademark is not directly descriptive of either the Complainant's or the Respondent's services. It also has no apparent connection with the Respondent's name or any names by which the Respondent is known.

Fifthly, in the September 4 letter, the Respondent contends that what may count as passing off (the Panel's words, not the Respondent's) or infringing conduct must be accommodated to what the Respondent refers to as the expansive nature of the Internet. The Respondent argues:

"In order to provide a more extensive comprehension of the goals and ambitions behind the onetravel.world domain, it is essential to take a broader perspective and analyze the overall digital ecosystem. The expansive nature of the Internet has led to the emergence of numerous platforms, each designed to accommodate specific segments, audiences, and requirements. Within this complex fabric, although certain areas may appear similar on the surface, their fundamental goals, intended recipients, and operational models can differ significantly."

This statement is made by way of introduction to the Respondent's argument that the two entities operate in different markets or market segments. And the Respondent goes on to conclude in this section of his letter:

"Therefore, it can be said that any apparent similarities with well-established OTAs are merely superficial. At a deeper level, our operational models, value propositions, and target demographics not only differ but exhibit orthogonal characteristics. It is crucial to acknowledge and value these subtleties as we contemplate the domain's positioning and purpose."

To the extent this appears to be suggesting that the various top level domains should be treated as independent worlds separate and isolated from each other, the Panel cannot agree. The Panel considers it much more likely that people browsing the Internet are unlikely to appreciate such distinctions.

In these circumstances, the Panel infers it is likely the Respondent did know about the Complainant's trademark and has registered the disputed domain name to take advantage of its resemblance to the Complainant's trademark (particularly having regard to how soon after registration of the disputed domain name it began resolving to the website offering travel related services).

That being so, the Panel finds that the Respondent registered the disputed domain name in bad faith and, having regard to the content of the Respondent's website, has used it in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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, <onetravel.world>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: October 20, 2023