

## **ADMINISTRATIVE PANEL DECISION**

Skyscanner Limited v. Shi Lei

Case No. D2023-4157

### **1. The Parties**

The Complainant is Skyscanner Limited, United Kingdom, represented by Lewis Silkin LLP, United Kingdom (“UK”).

The Respondent is Shi Lei, China.

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

The disputed domain name <skyscannerusa.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7, 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 for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 amendment to the Complaint on October 16, 2023.

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 October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on November 23, 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 is a UK company running a global travel platform, providing travelers with access to flights, hotels, car hire and other travel related content. Incorporated in 2003 as a Scottish travel start-up it soon became an international success. In 2012, it opened its first office in China and expanded in the United States of America (“US”) launching its office in Miami, Florida. In 2014, it consolidated its position in China acquiring a local company. In January 2016, the Complainant raised USD 192 million based on a USD 1,6 billion valuation for the company. In November 2016, it was sold for USD 1,75 billion to one of the Chinese’s largest online travel agencies. The acquisition was reported by the most important international media at that time.

The Complainant’s main website at “www.skyscanner.net” attracts ten millions of visits per month and, to date the SKYSCANNER app has been downloaded over 70 million times. The Complainant’s services are available in over thirty languages and in seventy currencies. In the month of August 2023 alone, the Complainant’s website was visited 46,59 million times and is ranked 706th globally for Internet traffic and engagement, and 66th in the UK.

The Complainant is the owner of a large portfolio of SKYSCANNER trademarks, protected in many jurisdictions worldwide, including the following:

- SKYSCANNER (word), International registration No. 900393, registered on March 3, 2006, designating the US (since August 14, 2008) and the European Union (since January 31, 2013), for services in classes 35, 38 and 39;
- SKYSCANNER (figurative), International registration No. 1133058, registered on August 16, 2012, designating various jurisdictions including China (since January 22, 2014) and the US (since February 13, 2014), for services in classes 35, 39 and 42;

The disputed domain name was registered on September 21, 2023 by an individual located in China, and resolves to a parking page containing pay-per-click links to websites of the Complainant’s competitors.

#### **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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its SKYSCANNER mark as it identically reproduces this trademark, while sole addition of the geographical term “usa”, which cannot prevent a finding of confusing similarity.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent does not own any registered trademark right over the term “skyscanner” or “skyscannerusa”. The term “skyscanner” is not descriptive, nor has any generic or dictionary meaning. The Complainant did not consent to the Respondent’s use the Complainant’s registered SKYSCANNER trademark in the disputed domain name. The disputed domain name resolves to a pay-per-click website containing links to competitors of the Complainant. Such use does not amount to a noncommercial use of the disputed domain name, nor can confer legitimate interests to the Respondent as it specifically targets the Complainant for financial gain.

Lastly, the Complainant maintains that the Respondent registered and is using the disputed domain name in bad faith. The SKYSCANNER trademark enjoys strong reputation worldwide. Moreover, the Complainant’s rights date from several years before the date of registration of the disputed domain name.

The Complainant's trademark appeared on the main international media in November 2016, when one of the Chinese's largest online travel agencies acquired the Complainant. Accordingly, the Complainant submits that the Respondent was aware of the Complainant's rights when it registered the disputed domain name.

The Complainant also contends that the Respondent registered the disputed domain name to confuse consumers as to an affiliation or connection with the Complainant's business, to generate pay-per-click revenue for the Respondent. The incorporation of the term "usa" merely serves to mislead consumers into believing that they can procure the Complainant's services in the United States via the disputed domain name. Finally, the Complainant notes that the Respondent has set up Mail exchanges ("MX records") for the disputed domain name, which indicates a willingness to communicate with those same consumers, which increases confusion. Accordingly, the disputed domain name poses a significant fraud risk to the Complainant's consumers.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its SKYSCANNER service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Although the addition of other terms here, "usa", may bear on assessment of the second and third elements, the Panel finds the addition of such term and the omission of one letter "n" in the SKYSCANNER mark 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](#), sections 1.8 and 1.9. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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. In particular, the Panel notes that the Complainant has no relation with the Respondent, has not authorized the Respondent to incorporate its SKYSCANNER mark in the disputed domain name and does not appear to be commonly known by the disputed domain name. The addition of the term “usa” to the Complainant’s mark in the disputed domain name, enhances the confusion of the consumers looking for the Complainant in the US, or trying to book one of the services offered by the Complainant through its online platform in the US. Indeed the term “usa” is the common acronym for “United States of America” and, if added to the Complainant’s trademark in the disputed domain name, refers to one of the main territories of operation of the Complainant. As such, the disputed domain name is highly misleading for the potential consumers of the Complainant, as they might believe that the disputed domain name belongs to the Complainant and leads to a website specifically focused on the US territory, or that the disputed domain name resolves to the Complainant’s official website in this geographical area.

The disputed domain name leads to a parking page displaying links to competitors’ websites. From each click on these links the Respondent is likely to derive an income. Such use cannot confer to the Respondent any rights or legitimate interests in the disputed domain name, as the links appearing on the Respondent’s parking page compete with, or capitalize on the goodwill of the Complainant’s mark or otherwise mislead Internet users (see section 2.9 of the [WIPO Overview 3.0](#)).

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.

Based on the available record, 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 incorporated the misspelling of the Complainant’s trademark SKYSCANNER (omitting one letter “n”) in the disputed domain name, followed by the acronym “usa”, which designates one of the most relevant geographical areas of interest to the Complainant. The SKYSCANNER trademark is certainly one that enjoys strong reputation in various countries worldwide, including in the US and China, where the Complainant owns registered trademarks since long before the registration of the disputed domain name, and where the Complainant has established its presence through local offices more than 10 years ago. Moreover, one of the Chinese largest online tourism companies acquired the Complainant in 2016 and this acquisition was heavily promoted on the international and Chinese media of the time. Hence, the Panel concludes that the Respondent, who is located in China, was certainly aware of the Complainant’s trademark when it registered the disputed domain name. The registration of a domain name incorporating a third party’s trademark without rights or legitimate interests is a registration in bad faith. In light of the use that the Respondent is making of the disputed domain name, it is clear that the Respondent registered the disputed domain name to take unfair advantage from the goodwill and reputation of the Complainant’s mark for its own profit.

The disputed domain name resolves to a parking page containing pay-per-click links to the Complainant competitors’ websites. The Respondent is probably deriving an income from each click on these links. Such use amounts to use in bad faith as it capitalizes on the Complainant’s mark to attempt to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

In addition to the above, the Panel notes that the Respondent set up MX-Records for the disputed domain name, which enable the Respondent to communicate via email with the Complainant's potential customers through an email address reproducing misspelling of the Complainant's SKYSCANNER mark (omitting one letter "n"). Any possible use of the disputed domain name for communication purposes without the Complainant's consent would certainly be illegitimate and in bad faith.

Finally, the Respondent has registered the disputed domain name through a privacy service provider. Given the circumstances of this case, the Panel considers the adoption of a privacy service as a further indication of bad faith. The Respondent has decided to conceal its identity behind a privacy shield in order to render more difficult its identification and thus prevent or at least delay the Complainant's defense.

Based on the available record, 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 <skyscannerusa.com> be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: December 7, 2023