

WIPO Arbitration and Mediation Center  
Case No.: DNL2020-0018  
Date: 24 February 2020

### **1. The Parties**

Complainant is Skyscanner Limited, United Kingdom, represented by Keltie LLP, United Kingdom.

Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

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

The disputed domain name <lskyscanner.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2020. On January 6, 2020, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 7, 2020, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on January 9, 2020 providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 9, 2020.

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 Respondent of the Complaint, and the proceedings commenced on January 13, 2020. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2020. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 4, 2020.

The Center appointed John C. McElwaine as the sole panelist in this matter on February 10, 2020. 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**

Complainant, Skyscanner Limited, is an online travel services company located in the United Kingdom. Complainant is the owner of the SKYCANNER trademark and has obtained numerous trademark registrations worldwide, including but not limited to registrations for the trademark in the United Kingdom, European Union, United States, Canada, Australia, Switzerland, China, Japan, Norway, Russian Federation, Singapore, Turkey, India, and New Zealand. Complainant’s earliest registered rights in the

SKYSCANNER trademark date back to 2002, by virtue of the United Kingdom trademark no. UK00002313916, filed on October 23, 2002 and registered on April 30, 2004 (the “SKYSCANNER trademark”). Complainant has been using its SKYSCANNER trademark for at least 17 years prior to the registration of the Domain Name.

Respondent registered the <lskyscanner.com> domain name on December 6, 2019. As of the filing of the Complaint, the Domain Name redirected to various third-party websites, including redirecting to Complainant’s own website.

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that the Domain Name should be transferred because each of the three elements required in paragraph 4(a) of the Policy has been established.

With respect to the first element of the Policy, Complainant asserts rights in the SKYSCANNER trademark dating back at least as early as 2002. Complainant further alleges that Complainant’s website located 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. Complainant asserts that its services are available in over 30 languages and in 70 currencies. Complainant alleges that the Domain Name is comprised of Complainant’s SKYSCANNER trademark and the mere additional letter “l” preceding the trademark and that the inclusion of an additional letter does not obviate the likelihood of confusion, and thus, the Domain Name is confusingly similar to Complainant’s SKYSCANNER trademark.

With respect to the second element of the Policy, Complainant contends that there is no evidence that Respondent has rights or a legitimate interests in the Domain Name because Complainant is unaware of any trademark rights Respondent has in “LSkyscanner” or “Skyscanner”; Complainant has not authorized Respondent to use the SKYSCANNER trademark; to the best of Complainant’s knowledge Respondent is not commonly-known as “LSkyscanner”; the SKYSCANNER trademark is distinctive and famous; and use of the Domain Name to redirect to various third-party websites, as well as redirecting to Complainant’s own website located at “skyscanner.net” does not equate to use of the Domain Name in connection with a *bona fide* offering of goods or services, nor is such use a *bona fide* noncommercial use of the Domain Name.

With respect to the third element of the Policy, Complainant alleges that at the time the Domain Name was registered Complainant’s SKYSCANNER trademark enjoyed a global reputation as a result of Complainant’s 17 prior years of use and international expansion of the trademark. Furthermore, Complainant contends that as recently as 2016, still three years prior to registration of the Domain Name, that Complainant’s SKYSCANNER trademark enjoyed a great deal of exposure in the international media as a result of Ctrip’s, China’s largest-online travel agency, acquired Complainant in a deal worth approximately GBP 1.4 billion. As a result of the foregoing, Complainant contends that, on the balance of probabilities, Respondent’s registration and use of the Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy is evidenced by the fact that (i) Respondent had actual or contrastive knowledge of Complainant’s SKYSCANNER trademark at the time of registration of the Domain Name, (ii) that Respondent intentionally targeted Complainant’s SKYSCANNER trademark when registering the Domain Name in order to create a likelihood of confusion in order to attract traffic to the Domain Name wherein Respondent redirected said traffic to various third-party websites, including to Complainant’s own website, and (iii) that Respondent registered the Domain Name with the intention of selling the Domain Name, taking advantage of the confusion the Domain Name creates with Complainant’s SKYSCANNER trademark.

### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. D2009-1779; *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. D2007-0605; see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires Complainant to show that the Domain Name in question is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.2. Complainant has provided evidence that it is the owner of numerous trademark registrations globally for the SKYSCANNER trademark.

It is well-established, and the Panel agrees, that the addition of a single, additional letter to an established trademark in a domain name does nothing to avoid a finding of confusing similarity. See *Fendi S.r.l. v. Wenxin Huang, Online Store Co., Ltd*, WIPO Case No. D2018-2877 ("the inclusion of an additional letter does not alleviate the confusing similarity"); *Dollar Bank, Federal Savings Bank v. Dollarabank.com Owner, c/o whoisproxy.com Ltd. / Tulip Trading Company*, WIPO Case No. D2016-0699 ("Panel agrees that the insertion of the additional letter 'a' is not effective to distinguish the disputed domain name from the Complainant's trademark"); *Andrey Ternovskiy d/b/a Chatroulette v. Super Privacy Service c/o Dynadot*, WIPO Case No. D2017-1238 ("the addition of this additional letter is barely perceptible and does nothing to detract from the confusing similarity between the Complainant's mark and the Domain Name").

The Panel finds that Respondent's inclusion of the single, additional letter "l" preceding Complainant's clearly identifiable SKYSCANNER trademark in the Domain Name does not obviate a finding of confusing similarity with Complainant's SKYSCANNER trademark. Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant's SKYSCANNER trademark in which Complainant has valid trademark rights. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need

only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. D2010-1141; see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. D2000-1415; *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. D2000-0252.

Here, Complainant has demonstrated that there is no evidence in the Whois data for the Domain Name indicating that Respondent has been commonly known by the term “LSkyscanner” or “Skyscanner”, rather, the Whois data provided by the Registrar for the Domain Name indicates that the registrant’s name is Carolina Rodrigues, Fundacion Comercio Electronico. Complainant also has established that Respondent is not authorized to register or use the SKYSCANNER trademark. Respondent failed to submit any arguments on this point. Accordingly, Complainant has made a *prima facie* showing that Respondent lacks any rights or legitimate interests in the Domain Name.

Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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.”

As noted above, as it pertains to Complainant’s allegation that Respondent is not authorized by Complainant to use the SKYSCANNER trademark, although Respondent has been properly notified of the Complaint by the Center, Respondent failed to submit a response on this point. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. D2000-0007; *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. D2000-0011. Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the domain name at issue. See *AREVA v. St. James Robyn*, WIPO Case No. D2010-1017; *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. D2003-0269.

Notwithstanding the above, given the unique and well-known nature of Complainant’s SKYSCANNER trademark, and based on the uncontested facts of the record, on balance, it is inconceivable that Respondent can establish rights or legitimate interests in a domain name incorporating a third-party’s well-known trademark. See *Red Bull GmbH v. Premiere-PTC-Network*, WIPO Case No. D2008-1077.

The Panel also finds that Respondent is not making *bona fide* use of the Domain Name under paragraph 4(c), as the Domain Name is currently being used to redirect visitors to various third-party websites, as well as redirecting visitors to Complainant’s own <skyscanner.net> domain name. UDRP panels have previously held that such use of a domain name does not evidence a respondent’s rights or legitimate interests in the domain name. See *Skyscanner Limited v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. D2019-0507 (citing *FXCM Global Services LLC v. WhoisGuard Protected, Whoisguard Inc. / Jenny Sofia*, WIPO Case No. D2018-1111). The Panel agrees; Respondent’s use of the Domain Name to redirect to third-party websites and Complainant’s own website is not evidence of Respondent’s rights or legitimate interests.

Lastly, the Panel takes judicial notice that Respondent is a serial cybersquatter, as discussed in greater detail in the following section, and as such, the Panel is satisfied that it is unlikely that Respondent would have been able to demonstrate any rights or legitimate interests in the Domain Name.

Based on the foregoing, Complainant has made a *prima facie* showing of Respondent's lack of any rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can also be found where respondents "knew or should have known" of complainant's trademark rights and nevertheless registered a domain name in which they had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. D2007-1722. Here, the SKYSCANNER mark represents the goodwill of a well-known online travel services company. Based on Complainant's submission, which was not rebutted, Respondent must have known of Complainant's SKYSCANNER trademark when it registered the Domain Name, which is comprised of Complainant's SKYSCANNER trademark plus the addition of a single letter preceding the trademark. See *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. D2015-0909 (finding that "it is likely improbable that Respondent did not know about Complainant's WHATSAPP trademark at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009".) Based on Complainant's submissions, which were not rebutted by Respondent, the Panel finds that Respondent knew or should have known of Complainant's SKYSCANNER trademark, when it decided to register the Domain Name.

As discussed in the previous section, based on the uncontested facts, Respondent does not appear to have any rights or legitimate interests in the Domain Name and there does not appear to be any legitimate justification for Respondent's choice to register the Domain Name. Accordingly, on balance, there does not appear to be any other reason for Respondent's registration of the Domain Name other than for the possibility to trade off the goodwill and reputation of Complainant's SKYSCANNER trademark or otherwise create a false association with Complainant. With no response from Respondent, this claim is undisputed.

Respondent's registration and use of the Domain Name in bad faith is further borne out by the fact that Complainant also has shown that Respondent's website at the Domain Name is being used to redirect traffic to Complainant's website located at "www.skyscanner.net". The Panel, while visiting the website at the Domain Name, notes that such Internet traffic is being redirected to various third-party websites, as well as redirecting to Complainant's website. Thus, the Panel is satisfied that Respondent is intentionally attempting to attract, for commercial gain Internet users to its website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. According to Policy paragraph 4(b)(iv), this is evidence of registration and use in bad faith of the Domain Name.

Further, as shown by Complainant, Respondent in cooperation with Afternic.com, has been offering to sell the Domain Name by eliciting purchase offers for a minimum amount of USD 899, clearly in excess of its documented out-of-pocket costs directly related to the

Domain Name. This is additional evidence of registration and use in bad faith under Policy paragraph 4(b)(i). Such offers for sale are evidence of registration and use of a domain name in bad faith.

Lastly, while not raised as an issue by Complainant, the Panel notes Respondent has engaged in a pattern of bad faith registration and use within paragraph 4(b)(ii) of the Policy. WIPO Overview 3.0, section 3.1.2. (“This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner.”) In over 80 cases Respondent was found to have targeted some of the world’s most well-known brands and registered and used domain names in bad faith, all of which resulted in decisions against Respondent. See *e.g. Calvin Klein Trademark Trust and Calvin Klein, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-3045; *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2834; *Starbucks Corporation v. Registration Private, Domains by Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-1991; *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-1409; *Philip Morris USA Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-1109; *Société Air France v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues*, WIPO Case No. D2019-0578; *Ford Motor Company v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2018-2787.

Of critical importance to the subject proceeding, however, is the fact that of those eighty 80 cases, Respondent specifically targeted Complainant and Complainant’s SKYSCANNER trademark in 7 cases (nearly 10% of the UDRP cases filed against Respondent), and in each case, Respondent was found to have acted in bad faith and was ordered to transfer the relevant domain names. See *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC, Domains ByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-3097; *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2851; *Skyscanner Limited v. Registration Private, Domains By Proxy LLC, DomainsByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2817; *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2707; *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2702; *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC / Fundacion Comercio Electronico, Carolina Rodrigues*, WIPO Case No. D2019-2466; *Skyscanner Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. D2019-2389.

In view of the foregoing uncontroverted allegations set forth by Complainant and the undeniable fact that Respondent is a serial cybersquatter, specifically having previously targeted Complainant’s SKYSCANNER trademark, the Panel concludes that 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 Domain Name, <Iskyscanner.com> be transferred to Complainant.

John C McElwaine  
Sole Panelist