

**IN THE MATTER OF A COMPLAINT MADE PURSUANT TO
THE CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY AND RULES**

Complainant: Skyscanner Limited
Registrant: mike morgan
Domain Names: skyscannner.ca; sycscanner.ca; skscanner.ca; skiscanner.ca; skysanner.ca;
skyscannr.ca; sykscanner.ca; scyscanner.ca
Registrar: Namespro Solutions Inc.
Arbitrator: Craig R. Chiasson
Service Provider: British Columbia International Commercial Arbitration Centre
BCICAC File: DCA-2180-CIRA

DECISION

I. THE PARTIES

1. The Complainant is Skyscanner Limited ("Skyscanner") with an address at Stamp Office (5th Floor) 10 Waterloo Place, Edinburgh, EH1 3EG, United Kingdom. The Complainant's authorized representative is Charlotte McDonald of the Toronto Office of Gowling WLG (Canada) LLP.
2. Based on information provided to the Complainant by the Canadian Internet Registration Authority ("CIRA"), the Registrant is mike morgan with an address of Box 276, 130-8191 Westminster Highway, Richmond, British Columbia, Canada, V6X 1A7 and an email address of 760-b529396e@namesproprivacy.ca.

II. THE DOMAIN NAME AND REGISTRAR

3. The domain names at issue are skyscannner.ca; sycscanner.ca; skscanner.ca; skiscanner.ca; skysanner.ca; skyscannr.ca; sykscanner.ca; and scyscanner.ca (the "Domain Names").
4. The Registrar of the Domain Names is Namespro Solutions Inc.
5. The domain name scyscanner.ca was registered on 2 October 2018; all of the other Domain Names were registered on 9 March 2019.

III. PROCEDURAL HISTORY

6. This is a proceeding under the CIRA Domain Name Dispute Resolution Policy (the "Policy") and the CIRA Dispute Resolution Rules (the "Rules").
7. The British Columbia International Commercial Arbitration Centre ("BCICAC") is a recognized Provider as defined in the Policy.
8. The Complainant filed a complaint with respect to the Domain Names pursuant to the Policy on 6 January 2020 (the "Complaint").
9. In a letter dated 8 January 2020, the BCICAC confirmed compliance of the Complaint and commencement of the dispute resolution process.

10. The Complaint was delivered by the BCICAC to the Registrant on 8 January 2020 in accordance with the Rules, including notice that any response under the Rules was due not later than 28 January 2020.
11. The Registrant did not provide a response under the Rules. As a result, on 4 February 2020, the Complainant elected under Rule 6.5 to convert from a panel of three arbitrators to a single arbitrator.
12. On 10 February 2020, the BCICAC appointed Craig R. Chiasson as sole arbitrator in the Complaint.
13. On 11 February 2020, I wrote to the parties confirming my appointment and receipt of the file, and advised that a decision would be rendered in this matter by 2 March 2020 in accordance with the Rules.

IV. REMEDY SOUGHT

14. The Complainant requests that the Domain Names, skyscanner.ca; syscanner.ca; skscanner.ca; skiscanner.ca; skysanner.ca; skyscannr.ca; sykscanner.ca; and scyscanner.ca be transferred to the Complainant pursuant to paragraph 4.3 of the Policy.

V. ELIGIBILITY OF COMPLAINANT

15. The Arbitrator has reviewed the materials submitted by the Complainant and is satisfied that the Complainant meets the eligibility requirements under the Policy and the Rules, on the basis that the Complaint relates to a trademark registered in the Canadian Intellectual Property Office (“CIPO”) and the Complainant is the owner of the trademark.

VI. FACTS

16. The Complaint sets out the following facts and attaches a number of documents relating to them.
17. The Complainant, Skyscanner Limited, is a leading online global travel search site specializing in offering a comparison website particularly for customers seeking inexpensive flights.
18. The Complainant was founded in 2003 and in late 2016 was sold to the Chinese Ctrip group. The Complainant has over 1,000 staff with 10 offices worldwide. It estimates that it currently has over 100 million monthly active users.
19. The Complainant is the owner of more than 60 trademark registrations comprised of, or containing, the mark “SKYSCANNER” (the “Mark”) in jurisdictions throughout the world, including Canadian registration No. TMA786689 for SKYSCANNER, registered in Canada since 2011. The Complainant also owns Canadian registration No. TMA881976 for SKYSCANNER & DESIGN.
20. The Complainant is the owner of numerous websites bearing the Mark, including www.skyscanner.ca, which was registered on 11 April 2007. As of December 2019, Alexa Internet Inc. ranked www.skyscanner.ca 467th for Canadian internet traffic engagement and 21,048th for global internet traffic engagement.
21. The Complainant has invested significantly in its core “SKYSCANNER” brand, which it says is associated with vast reputation and goodwill, and is considered to be of material importance to its business.

22. The fame of the SKYSCANNER Mark has been recognized by the Uniform Domain Name Dispute Resolution Policy (“UDRP”) on numerous occasions: The Complainant refers to two UDRP Cases (D2017-1946 and D20190988) in support of this fact.
23. In the UDRP Case, *Skyscanner Limited v. Basit Ali* (No. D2012-1983), that Panel held that the Complainant enjoys “exclusive rights in the mark SKYSCANNER which when used in connection with its business and 30 million visits per month to its website constituted ‘compelling evidence that its SKYSCANNER trade mark enjoys considerable reputation’.”
24. Without the permission of the Complainant, the Registrant registered the scyscanner.ca domain name on October 2, 2018 and the remainder of the Domain Names on March 9, 2019.
25. The Complainant became aware of the registration of the skyscannner.ca, syscanner.ca and skscanner.ca domain names prior to the others. The identity of the Registrant for these three domain names was “privacy protected” and not visible through publicly accessible WHOIS database searches.
26. On 30 October 2019, the Complainant sent a message to the owner of the skyscannner.ca, syscanner.ca and skscanner.ca domain names requesting that they be transferred. The Complainant did not receive a response.
27. On 20 November 2019, the Complainant requested disclosure of registrant information from the CIRA and on 22 November 2019, CIRA provided the name of the Registrant, a postal address and an e-mail address.
28. The Complainant also requested the Registrant’s dot-ca domain name portfolio from CIRA, which identified the remainder of the Domain Names, and which was submitted with the Complaint.
29. Three of the Domain Names (skyscannner.ca, skiscanner.ca and scyscanner.ca) initially direct the user to an error page which, after a brief time, re-directs the user to the Complainant’s home page (www.skyscanner.ca), of which the Complaint submitted a representative example.
30. The syscanner.ca, skscanner.ca, skysanner.ca, skyscannr.ca and sykscanner.ca domain names point to websites featuring links to competitors of the Complainant, including travel, hotel and flight booking websites. Each of the websites also prominently features a mark that is confusingly similar to the Mark. An example at the skysanner.ca domain name is a link titled “Skyscanner Flights” which directs users to links associated with the Complainant’s competitors.

VII. DISCUSSION AND FINDINGS

A. Summary of the Parties' Positions

Complainant

31. The Complainant submits that: (i) the Domain Names are confusingly similar to and misappropriate the Mark, in which the Complainant had rights prior to the registration of the Domain Names and in which it continues to have rights; (ii) the Domain Names were registered in bad faith; and (iii) the Registrant has no legitimate interest in the Domain Names.
32. The Complainant says that the Registrant is a serial "cybersquatter" or "typosquatter", which has engaged in a pattern of registering domain names that are comprised of, contain, or are confusing with third party marks to which it is not entitled. The Complainant relies on the Registrant's dot-ca domain name portfolio (referred to above), which shows the numerous unauthorized dot-ca domain names' registrations.
33. The Complainant states that many of these "numerous unauthorized dot-ca domain names" are intentional misspellings of well-known trademarks, such as American Express (amerianexpress.ca; americanexprss.ca; and americanexpress.ca). The Complainant provides examples of other well-known brands being subject to the Registrant's "typosquatter" conduct: betsbuy.ca; canandiantire.ca; capitalOne.ca; cinaplex.ca; exepdia.ca; pcfiancial.ca; and transunin.ca.
34. The Complainant submits that the Registrant has wrongfully registered the Domain Names in an attempt to attract, for commercial gain, Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant as to source, sponsorship, affiliation, or endorsement.

Registrant

35. The Registrant did not submit a response in accordance with the Rules.
36. There being no response by the Registrant, this decision is rendered on the basis of the Complaint, in accordance with Article 5.8 of the Rules. My decision is based on my review and consideration of the Complaint, including the prior decisions referred to in it and the documents attached to it, and on the communications referred to above provided to me by the BCICAC.
37. As set out in paragraph 4.1 of the Policy, to succeed, the Complainant must prove, on a balance of probabilities, that:
 - (a) the Registrant's dot-ca domain name is "Confusingly Similar" to a "Mark", as defined in the Policy, in which the Complainant had rights prior to the date of registration of the domain name and continues to have such rights; and
 - (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.5 of the Policy;and the Complainant must provide some evidence that:
 - (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy.

38. For the reasons that follow, I find that the Complainant has proved its case on a balance of probabilities.

(i) **Do the Complainant's Rights in the Mark Predate the Domain Name Registration and Continue?**

39. To succeed in meeting the onus under paragraph 4.1(a), the Complainant must demonstrate that it has had and continues to have rights in a "Mark" and that the Domain Names are "Confusingly Similar" to that mark.

40. The Complainant alleges that it is the owner in Canada (registered in Canada since 2011) and elsewhere of the Mark and therefore that its rights in the Mark precede the 2 October 2018 and 9 March 2019 registration dates for the Domain Names.

41. The Complainant also alleges that its Mark remains in use and that its associated Canadian trademark registration is in good standing.

42. I find that the materials submitted in support of the Complaint demonstrate that the Complainant has and continues to have enforceable prior trademark rights in the Mark.

(ii) **Are the Domain Names Confusingly Similar?**

43. Pursuant to paragraph 3.3 of the Policy, the determination of whether the Domain Names are "Confusingly Similar" to the "Mark" requires that the arbitrator "shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark."

44. For each of the Domain Names in dispute, the Complainant describes the manner in which it says the Domain Name "so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark", noting that the "dot-ca" suffix is not part of the analysis. I reproduce below a chart from the Complaint which helpfully shows the differences between the Domain Names and the Mark in bolded red letters:

| DOMAIN NAME | MARK |
|----------------|------------|
| skyscannner.ca | SKYSCANNER |
| syscanner.ca | SKYSCANNER |
| skscanner.ca | SKYSCANNER |
| skiscanner.ca | SKYSCANNER |
| skysanner.ca | SKYSCANNER |
| skyscannr.ca | SKYSCANNER |
| sykscanner.ca | SKYSCANNER |
| scyscanner.ca | SKYSCANNER |

45. As discussed below, in the context of the bad faith registration issue, the foregoing chart demonstrates a classic example of “typosquatting”, which has been described as “the registration of domain names that are identical to popular website domain names except for slight differences that may occur as a result of common keyboarding or spelling errors in order to misdirect Internet users to the mis-labeled website” (see *A & F Trademark, Inc., Abercrombie & Fitch Stores, Inc., Abercrombie & Fitch Trading Co., Inc. v. Party Night, Inc.*, UDRP Case No. D2003-017).
46. In my view, each of the Domain Names are confusingly similar to the Mark and I am therefore satisfied that the Complainant has satisfied its burden of proof with respect to paragraph 4.1(a).
47. The Registrant has failed to provide any evidence to rebut this conclusion.

(iii) **Were the Domain Names Registered in Bad Faith?**

48. To succeed in meeting the onus under paragraph 4.1(b) of the Policy, the Complainant must demonstrate that any one of a list of circumstances set out in paragraph 3.5 of the Policy exists.
49. The Complainant relies on paragraphs 3.5(b) to (d) and sets out the bases for each position in the Complaint. My conclusions follow a summary of each of those positions.

Paragraph 3.5(b)

50. Paragraph 3.5(b) provides that bad faith will be found where:

[T]he Registrant registered the domain name or acquired the Registration in order to prevent the Complainant ... from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names.

51. The Complainant says that the Registrant has engaged in a pattern of unauthorized domain name registrations containing third party trademarks, and has prevented the Complainant from registering the Domain Names. The Complainant relies on the Registrant’s dot-ca domain name portfolio which demonstrates that the Registrant has registered more than 500 domain names, many of which are comprised of, contain, or are confusing with third party trademarks to which they are not entitled. The Complainant says that many of the Registrant’s dot-ca domain names contain intentional misspellings or single-letter deviations of well-known trademarks and provides examples (some of which I have referred to above).
52. The Complainant relies on *Yamaha Corporation and Yamaha Motor Canada Ltd. v. Jim Yoon*, CIRA Dispute No. 00089 (2007) at paragraphs 53 to 54 for the proposition that as few as two domain name registrations, including the disputed domain name, is sufficient to establish that a registrant has engaged in a “pattern” of abusive registrations. The Complaint also relies on *Viacom International Inc. v. Harvey Ross Enterprises Ltd.*, CIRA Dispute No. 00015 (2003) at paragraph 39 for the proposition that the registration of multiple domain names which are comprised of third party marks is *prima facie* evidence of bad faith.

53. The Complainant then refers to *A & F Trademark and Bell Canada v. Archer Entreprises*, BCICAC Case No. 00038 (2005), among others, for the propositions that "typosquatting" has been disapproved of in numerous World Intellectual Property Organization decisions and constitutes evidence of bad faith registration.
54. The Complainant concludes by asserting that the Registrant's typosquatting supports a finding of bad faith "as these registrations clearly demonstrate the Registrant's intention to deceive potential consumers in an attempt to reap a commercial benefit."
55. Based on my review of the materials submitted by the Complainant, I am satisfied that the Complainant has satisfied its burden of proof with respect to paragraph 3.4(b) and therefore paragraph 4.1(b).
56. The Registrant has failed to provide any evidence to rebut this conclusion.
57. As noted above, the Complainant need only prove one of the non-exhaustive circumstances listed in paragraph 3.5 of the Policy, which I have found it has done. Accordingly, the only remaining issue that must be determined in relation to the relief sought by the Complainant is with respect to legitimate interests (paragraphs 3.4 and 4.1(c)).
58. Before turning to that, for the sake of completeness, I provide my conclusions on the Complainant's reliance on paragraphs 3.5(c) and (d) with respect to bad faith.

Paragraph 3.5(c)

59. Paragraph 3.5(c) provides that the bad faith will be found where:

The Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant's licensor or licensee of the Mark, who is a competitor of the Registrant.
60. The Complainant submits that the Registrant registered the Domain Names primarily for the purpose of disrupting the Complainant's business. The Complainant refers to *Sleep Country Canada Inc. v. Pilfold Ventures Inc.*, CDRP decision: 00406 (2005), paragraphs 19 to 21 and *Choice Hotels International Inc. v. Cox.*, CDRP decision: 00406 (2006) for the proposition that using a domain name to redirect Internet users to a competitor's website constitutes a disruption of a trademark owner's business contrary to paragraph 3.5(c); even if the Registrant is not a direct competitor of the Complainant.
61. The Complainant submits that this is exactly what has happened with respect to the syscanner.ca, skscanner.ca, skysanner.ca, skyscannr.ca and sykscanner.ca domain names, which contain links that direct users to the Complainant's competitors.
62. With respect to the skyscannner.ca, skiscanner.ca and scyscanner.ca domain names, the Complainant says that its business is disrupted because those domain names "resolve to an error page which then redirects the user to the Complainant's Website", which may cause:
 - (a) potential consumers to be confused into believing that the Registrant is somehow affiliated with, or endorsed by, the Complainant;
 - (b) potential consumers to be suspicious of the Complainant's website, which may cause them to use a different service; and

- (c) reasonable consumers to choose to make travel bookings, which are significant purchases that requires a consumer provide personal and financial information, elsewhere on the basis of perceived insecurity of the Complainant's website.
63. The Complainant also says there is no guarantee that the Registrant's skyscannner.ca, skiscanner.ca and scyscanner.ca domain names will continue to redirect users to the Complainant's website, and not to third party pay-per-click advertising websites or to the websites of the Complainant's competitors.
64. The Complainant says it would a significant burden for it to have to continuously review the Registrant's Domain Names and intervene anytime the Domain Names linked to a different website, with reference to *Victoria's Secret Stores Brand Management, Inc. v. Poustie*, CDRP decision: 00406 (2014), in which the Panel decided to transfer the disputed domain name to avoid such a burden on the complainant.
65. Based on my review of the materials submitted by the Complainant, I am satisfied that the Complainant has satisfied its burden of proof with respect to paragraph 3.4(c) and therefore paragraph 4.1(b).

Paragraph 3.5(d)

66. Paragraph 3.5(d) provides that bad faith will be found where:

The Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

67. The Complainant relies on its prior submissions to assert that the Registrant registered the Domain Names to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark.
68. The Complainant also refers to *McKee Homes Ltd. v. Honsek*, BCICAC Case No. 00079 (2007) at paragraph 48, and *Bell Canada v. Archer Entreprises*, BCICAC Case No. 00038 (2005) for the proposition that bad faith exists in cases where a domain name, if ever put to use, is likely to cause confusion among Internet users as to affiliation or sponsorship. The Complainant refers to *Greater Toronto Hockey League and Horner, Re*, CDRP decision: 00406 (2018) at paragraph 30 for the proposition that bad faith exists where a registrant adopts a domain name incorporating a well-known mark and uses the domain name for directing internet traffic to third party advertisements.
69. Based on my finding that the Domain Names are confusingly similar and for the reasons set about above under paragraphs 3.5(b) and (c), I am satisfied that the Complainant has satisfied its burden of proof with respect to paragraph 3.5(d) and therefore paragraph 4.1(b).
70. The Registrant has failed to provide any evidence to rebut this conclusion.
71. The Complainant also referred to *Canadian Broadcasting Corporation/Société Radio-Canada v. William Quon*, BCICAC Case No. 00006 (2003) for the propositions that: (a) a registrant's actual or constructive knowledge of a complainant's rights at the time of registration is a

relevant surrounding circumstance that will reinforce a finding of bad faith; and (b) a trademark registration provides constructive knowledge to third parties of a complainant's rights.

72. The Complainant says that the Registrant had actual knowledge of the Complainant and its trademark rights because the Registrant: (a) registered eight domain names that are intentional misspellings of the Mark ("typosquatting"); (b) redirected three of the Domain Names to the Complainant's website and provided links to the Complainant's competitors on the Registrant's websites; and (c) engaged in a pattern of unauthorized domain name registrations.
73. To the extent that the Registrant's actual or constructive knowledge of the Mark is relevant to my finding of bad faith in this case, I find that the Registrant had such knowledge.

(iv) Does the Registrant Have a Legitimate Interest in the Domain Names?

74. To succeed in meeting the onus under paragraph 4.1(c) of the Policy, the Complainant must provide some evidence that the Registrant has no legitimate interest in the Domain Name.
75. The Complainant says that its burden is satisfied because it has provided "some" evidence that it, and not the Registrant, has a legitimate interest in the Domain Names, including that:
- (a) the Mark was used and registered in Canada prior to the Registrant's registration of the Domain Names;
 - (b) there is not, and has never been, any relationship between the Complainant and the Registrant; and
 - (c) the Registrant has never been licensed or otherwise authorized to register or use the Mark in any manner whatsoever, including as part of a domain name.
76. The circumstances which would demonstrate that the Registrant has a legitimate interest in a domain name are set out in paragraph 3.4 of the Policy as follows:
- (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;
 - (b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;
 - (c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;

(d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or

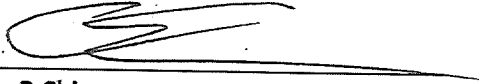
(f) the domain name was the geographical name of the location of the Registrant's non-commercial activity or place of business.

77. The Complainant says that any of the ways in which the Registrant "may have a legitimate interest" do not exist in this case. I agree that none of these circumstances exist in this case, in particular, (a) to (d) require a showing of good faith and as stated above, I have determined that the Registrant's registration of the Domain Names was in bad faith. Paragraphs (e) and (f) clearly have no application on the face of the Domain Names.
78. As mentioned above, in reaching my conclusion, I have relied on the Complaint and the materials submitted with it. With respect to paragraphs 3.4(a) to (d), I find that:
- (a) there is no evidence that the Domain Names are marks used by the Registrant in good faith and with the Registrant having any rights such marks; instead, the evidence is that the Domain Names used by the Registrant were confusingly similar to the Mark and were not legitimately used;
 - (b) the Registrant did not register the Domain Names in association with any wares, services or business offered in Canada and the Domain Names are not "clearly descriptive" in the manner set out in paragraph 3.4(b);
 - (c) the Domain Names were not registered in association with any wares, services or business and were not understood in Canada to be the generic name thereof in any language; and
 - (d) the Registrant has not used the Domain Names in association with any legitimate non-commercial activity such as criticism, review, or news reporting.
79. I am satisfied that the Complainant has satisfied its burden of proof with respect to paragraph 4.1(c).
80. The Registrant has failed to provide any evidence to rebut this conclusion or to submit a response that it has a legitimate interest in the Domain Names.

VIII. ORDER

81. I have concluded that the Complainant has met the requirements of paragraph 4.1 of the Policy.
82. Accordingly, pursuant to paragraph 4.3 of the Policy, I order that the registration of the domain names skyscannner.ca; syscanner.ca; skscanner.ca; skiscanner.ca; skysanner.ca; skyscannr.ca; sykscanner.ca; scyscanner.ca be transferred to the Complainant.

Dated 18 February 2020



Craig R Chiasson
Sole Arbitrator