

**CANADIAN INTERNET REGISTRATION AUTHORITY**  
**DOMAIN NAME DISPUTE RESOLUTION POLICY**  
**RESOLUTION OF COMPLAINT**

Dispute Number: DCA - 2179 - CIRA  
Domain Names: wwwskyscanner.ca; kyscanner.ca; skuscanner.ca;  
skyscanner.ca; skyscanner.ca; skyscanner.ca;  
Complainant: Skyscanner Limited  
Registrant: Kerwin Ivan  
Panel: Thomas Manson, Q.C.  
Service Provider: British Columbia International Commercial  
Arbitration Centre

**DECISION**

**1.0 Parties**

1. The Complainant Skyscanner Limited has an address in Edinburgh, United Kingdom.
2. The Registrant of “wwwskyscanner.ca” is Kerwin Ivan, who has an address in Taipei, Taiwan, Province of China. Ivan is also the registrant of other domain names - “kyscanner.ca”, “skuscanner.ca”, “skyscanner.ca”, “skyscanner.ca”, and “skyscanner.ca”.

**2.0 Disputed Domain Names and Registrar**

3. The disputed domain names are wwwskyscanner.ca, kyscanner.ca, skuscanner.ca, skyscanner.ca, skyscanner.ca, and skyscanner.ca (the “Disputed Domain Names”).
4. The Registrar for the Disputed Domain Names is NameSilo Technologies Corp..
5. The Disputed Domain Names were registered on August 5, 2019 (skyscanner.ca) and Aug. 13, 2019 (wwwskyscanner.ca, kyscanner.ca, skuscanner.ca, skyscanner.ca, and skyscanner.ca).

**3.0 Procedural History**

6. The British Columbia International Commercial Arbitration Centre (BCICAC) is a recognized service provider to the Domain Name Dispute Resolution Policy (the “Policy”), and the Rules (the “Rules”) of the Canadian Internet Registration Authority (CIRA).

7. Complainant filed a complaint (the "Complaint") on January 6, 2020 with the BCICAC seeking an order in accordance with the Policy and Rules that the Disputed Domain Names be transferred to the Complainant.

8. BCICAC confirmed the Complaint to be in administrative compliance with the Rules. As the Complaint with attachments was filed exclusively online, BCICAC forwarded a copy of the Complaint to the Registrant in accordance with the Rules. A letter from the BCICAC dated February 11, 2020 stated that delivery of the Complaint was "unsuccessful"; however, the BCICAC subsequently advised by email dated March 2, 2020 that delivery of the Complaint was, in fact, "successful". A second email from the BCICAC also dated March 2, 2020 further confirmed the communications successfully delivered to the Registrant. The Panel accepts that the BCICAC's delivery of the Complaint and other communications to the Registrant were successful.

9. The BCICAC's letter of January 7, 2020 to the Registrant, which was successfully delivered, stated clearly:

**Your response, as registrant, is due not later than January 28, 2020.**

Please note, that if a Registrant does not submit a Response within the period provided under the Rules, the arbitration panel shall decide the matter on the basis of the Complaint.

However, the Registrant did not file a Response with the BCICAC by January 28, 2020 or at all. Given the absence of a Response, the Complainant elected under Rule 6.5 to convert from a three-person panel to a single member panel.

10. By letter dated February 11, 2020 (as corrected March 3, 2020) BCICAC appointed Thomas Manson Q.C. as single member panelist in this dispute. On February 13, 2020, the duly signed Acceptance of Appointment and Declaration, AAASII form, was returned to the BCICAC.

#### **4.0 Eligible Complainant**

11. Complainant is an eligible complainant under paragraph 1.4 of the Policy, as the owner of the mark "SKYSCANNER" (the "Mark"), registered in the Canadian Intellectual Property Office on January 10, 2011 under Canadian registration No. TMA786689. The Complainant also owns Canadian registration No. TMA881976 for SKYSCANNER & DESIGN, also registered January 10, 2011.

#### **5.0 Relief Requested**

12. Complainant requests that the Disputed Domain Names be transferred from the Registrant to the Complainant.

## 6.0 Background

13. The background of this matter is set out in the Complaint and related Exhibits and is summarized below.
14. The Complainant was founded in 2003 and in late 2016 was sold to the Chinese Ctrip group (now apparently Trip.com Group). Complainant has over 1,000 staff with 10 offices worldwide. It estimates that it currently has over 100 million monthly active users.
15. In addition to the SKYSCANNER Mark in Canada, the Complainant is the owner of more than 60 trademark registrations comprised of or containing SKYSCANNER in jurisdictions throughout the world. These SKYSCANNER trademark registrations include the United States, the European Union, China, Australia and the United Kingdom.
16. Further, the Complainant is the owner of numerous SKYSCANNER websites, including [www.skyscanner.ca](http://www.skyscanner.ca), which was registered on April 11, 2007. As of December 2019, [www.skyscanner.ca](http://www.skyscanner.ca) was ranked 467th by Alexa for Canadian internet traffic engagement and was ranked 21,048 for global internet traffic engagement
17. The Complainant has invested significantly in its core SKYSCANNER brand which is associated with vast reputation and goodwill and is considered to be of material importance to the Complainant's business.
18. Without the permission of the Complainant, the Disputed Domain Names were registered in August 2019. The Registrant must have known of the Complainant's reputation and goodwill at that time. The Complainant became aware of "wwwskyscanner.com" first and was unable to identify the identity of the Registrant with a WHOIS search as the identity was shown as "Redacted for Privacy Purposes". The Complainant then sought the information from CIRA who identified the Registrant as Kerwin Ivan. The Complainant also requested the Registrant's dot-ca domain name portfolio from CIRA, exhibit 12, which identified the other Disputed Domain Names.
19. The Disputed Domain Name "wwwskyscanner.ca" resolves to a domain name parking page, which solicits offers from third parties to purchase the domain name.
20. The other Disputed Domain Names - [kyscanner.ca](http://kyscanner.ca), [skuscanner.ca](http://skuscanner.ca), [skyscanner.ca](http://skyscanner.ca), [skyscanner.ca](http://skyscanner.ca), [skyscanner.ca](http://skyscanner.ca) and [skyscanner.ca](http://skyscanner.ca) - point to websites featuring links to competitors of the Complainant, including travel, hotel and flight booking

websites, and each prominently features a mark that is confusingly similar to the SKYSCANNER Mark.

21. The websites located at kyscanner.ca, skuscanner.ca, skyscsnner.ca and skysvanner.ca contain links for “cheap flights” and “cheap hotels” which then direct users to links associated with the Complainant’s competitors

22. The Disputed Domain Name “skyscanner.ca” Domain Name points to different website format featuring links to competitors of the Complainant and prominently featuring a mark that is confusingly similar to the SKYSCANNER Mark. This contains a link titled “Skyscanner Flights” which directs users links associated with the Complainant’s competitors.

## 7.0 Positions of the Parties

### *Position of Complainant*

23. The Complainant Skyscanner Limited operates a leading online global travel search site specializing in offering a comparison website particularly for customers seeking cheap flights.

24. As noted above, it is also the owner of the Canadian Trademark Registration for SKYSCANNER, which issued to prior to the registration dates of the Disputed Domain Names.

25. The Complainant submits (i) that it has rights in a trademark, (ii) that the rights in its trademark predate the registration dates of the Disputed Domain Names, and (iii) that the Disputed Domain Names are confusingly similar with the Complainant’s trademark. It contends the Disputed Domain Names resolve to a page seeking offers to purchase the domain name and to websites featuring links to the Complainant’s competitors and also that the Registrant is an individual located in China and he does not appear to have any Canadian Presence.

26. According to the Complainant, the Registrant demonstrates little regard for the trademark rights of third parties. It submits that the Registrant appears to be a prolific “typo-squatter” and is the owner of numerous domain names to which they do not appear to be entitled to including, without limitation, autotraader.ca, wwweventbrite.ca, fiddo.ca, intrac.ca, mbnna.ca, peetro-canada.ca and shpify.ca.

27. Further, the evidence in the Complaint and related exhibits shows that the Registrant has registered common misspellings of famous brands. The Complainant submits that the Registrant is a serial cyber-squatter who has engaged in a pattern of registering domain names that are comprised of, contain, or are confusing with third party marks to which they are not entitled and has prevented the

Complainant from registering the Disputed Domain Names. Furthermore, the Registrant registered the Disputed Domain Names in an attempt to attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with the Complainant as to source, sponsorship, affiliation, or endorsement. The Complainant also submits that the Registrant has no legitimate interest in the Domain Names.

28. Accordingly, the Complainant submits that the registration and use of the Disputed Domain Names falls squarely within the scope of the Policy, and under the circumstances the transfer of the Disputed Domain Names to the Complainant is warranted.

### *Position of Complainant*

29. The Registrant did not submit a Response within the stipulated time or at all. The effect of non-submission is that, in accordance with paragraph 5.8 of the Rules, this Proceeding must be decided on the basis of the Complaint.

## **8.0 Analysis and Findings**

30. The purpose of the Policy as stated in paragraph 1.1 is to provide a forum in which cases of bad faith registration of dot-ca domain names can be dealt with relatively inexpensively and quickly.

### *Relevant provisions of the Policy*

31. Paragraph 4.1 of the Policy provides:

**4.1 Onus.** To succeed in a Proceeding, Complainant must prove, on a balance of probabilities, that:

(a) the Registrant's dot-ca domain name is Confusingly Similar to a Mark in which 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;

and Complainant must provide some evidence that:

(c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.4.

Even if the Complainant proves (a) and (b) and provides some evidence of (c), the Registrant will succeed in the Proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name as described in paragraph 3.4.

32. Other relevant provisions of the Policy include paragraph 3.2 Mark, paragraph 3.3 Confusingly Similar, paragraph 3.4 Legitimate Interest, and paragraph 3.5 Registration in Bad Faith.

*a) Confusingly Similar to Complainant's Mark*

33. The evidence in the Complaint and related exhibits shows that the Complainant is the owner in Canada and elsewhere of the trademark SKYSCANNER, registered in Canada since 2011. The Complainant's rights in the SKYSCANNER Mark clearly precede the August 2019 registration dates for the Disputed Domain Names. Further, on the evidence in the Complaint and related Exhibits the Complainant's SKYSCANNER Mark remains in use and its associated Canadian trademark registration is in good standing. Accordingly, the Complainant has and continues to have enforceable prior trademark rights in the Mark in accordance with paragraph 3.2(c) of the Policy.

34. In accordance with paragraph 3.3 of the Policy, a domain name is "confusingly similar" to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely mistaken for the Mark. In assessing the domain name, the dot-ca suffix is ignored. The test to be applied when considering "confusingly similar" is one of first impression and imperfect recollection.

35. In *Great Pacific Industries v. Ghalib Dhala*, 00009 (CIRA Apr. 21, 2003), the Panel stated that the test of confusing similarity is whether the average Internet user, with an imperfect recollection of the Mark who wishes to access a website operated by Complainant, either by entering a domain name including the Mark into the address bar of an Internet browser or by entering the key terms of the domain name into an Internet search engine, would likely be confused as a matter of first impression.

36. 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

37. With respect to “wwwskyscanner.ca”, the Complainant says the Domain Name encompasses the entirety of the Mark. The Domain Name and the Mark merely differ by the addition of “www” before the SKYSCANNER Mark (wwwskyscanner vs. SKYSCANNER). The addition of “www” is not sufficient to differentiate the domain name from the complainant’s trademark; Glaxo Group Limited v WWWZban c/o David Glenmore cited in Bell Canada v. Archer Enterprises, BCICAC Case No. 00038 (2005). The Panel there held that the disputed domain name was “confusingly similar”. See also Skyscanner Limited v. Contact Privacy Inc. Customer 1244355693 / Mrs. K Ananthan, UDRP Case No. D20190988 in which the addition of the letters “ltd” to “skyscanner” was held to be “confusingly similar” to the SKYSCANNER mark.

38. As to the other Disputed Domain Names, the Complainant submits that they are confusingly similar to the SKYSCANNER Mark. Each of the names differs only by one letter such as the removal of a single letter and replacing one letter with a different letter that is located beside it on a standard keyboard.

39. The differences between the Disputed Domain Names and the SKYSCANNER Mark appear to be intentional misspellings. This is shown in a table from the Complaint, a reproduction of which is below:

DOMAIN NAME	MARK
<u>www</u> skyscanner.ca	<u>SKYSCANNER</u>
kyscanner.ca	<u>SKYSCANNER</u>
sk <u>u</u> scanner.ca	<u>SKYSCANNER</u>
skyscann <u>e</u> .ca	<u>SKYSCANNER</u>
skysc <u>s</u> nner.ca	<u>SKYSCANNER</u>
skysv <u>a</u> nnner.ca	<u>SKYSCANNER</u>

Misspellings have been held “confusingly similar” in typo-squatting cases such as A & F Trademark, Inc., Abercrombie & Fitch Stores, Inc. v. Party Night, /nc. UDRP Case No. D2003-.017 and Skyscanner Limited v Mike Morgan, DCA-2180-CIRA (2020)).

40. In all the circumstances, the Panel finds that the Disputed Domain Names are “confusingly similar” to Complainant’s Mark.

***Bad Faith Registration of the Disputed Domain Names***

41. Paragraph 3.5 of the Policy provides “any of the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence that a Registrant has registered a domain name in bad faith.”

42. The Complainant relies on three specific grounds, it described as follows:

(i) Pattern of Unauthorized Domain Names Registrations - Paragraph 3.5(b);

(ii) Intentional Attempt to Disrupt the Business of the Complainant - Paragraph 3.5(c); and

(iii) Intentional Attempt to Attract Internet Users for Commercial Gain - Paragraph 3.5(d)

Each of these are addressed below.

### *3.5(b) Argument*

43. The Complainant submits that the Registrant's dot-ca domain name portfolio reveals that the Registrant has registered many domain names that are minor typographical variations on well-known marks in a practice referred to as "typo-squatting". This Panel agrees that "typo-squatting" constitutes evidence of bad faith registration and that these registrations clearly demonstrate the Registrant's intention to deceive potential consumers in an attempt to reap a commercial benefit. Yet insofar as paragraph 3.5(b) is concerned, it requires a "pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names". The evidence establishes a pattern of registering domain names; however, Complainant did not establish that the Registrant did so "in order to prevent persons who have Rights in Marks from registering the Marks as domain names". Indeed, the Complainant registered its Mark SKYSCANNER as a domain name in "[www.skyscanner.ca](http://www.skyscanner.ca)" in 2007.

### *3.5(c) Argument*

44. With respect to paragraph 3.5(c), the Complainant says that five of the Disputed Domain Names ([kyscanner.ca](http://kyscanner.ca), [skuscanner.ca](http://skuscanner.ca), [skyscanner.ca](http://skyscanner.ca), [skyscsnner.ca](http://skyscsnner.ca) and [skysvanner.ca](http://skysvanner.ca)) resolve to websites featuring links to competitors of the Complainant, including other travel booking, flight and hotel websites.

45. The websites located at the [kyscanner.ca](http://kyscanner.ca), [skuscanner.ca](http://skuscanner.ca), [skyscsnner.ca](http://skyscsnner.ca) and [skysvanner.ca](http://skysvanner.ca) domain names contain links for "cheap flights" and "cheap hotels" which then direct users to links associated with the Complainant's competitors. The [skyscanner.ca](http://skyscanner.ca) domain name points to different website format featuring links to competitors of the Complainant and prominently featuring a mark that is confusingly similar to the SKYSCANNER Mark. Further, the [skyscanner.ca](http://skyscanner.ca) domain name contains a link titled "Skyscanner Flights" which directs users links



associated with the Complainant's competitors. These websites put the Registrant in a position to reap a financial benefit by way of referral fees or pay-per click advertisements.

46. Using a domain name to redirect Internet users to a competitor's website constitutes a disruption and thus evidence of bad faith within the scope of paragraph 3.5(c), even if the Registrant is not a direct competitor of the Complainant.

47. The recent decision in *Skyscanner Limited v Mike Morgan*, DCA-2180-CIRA (2020), another "typo-squatting case", is instructive. "Typo-squatting" 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.. v. Party Night*, /nc.UDRP Case No. D2003-.017. In *Skyscanner Limited v Mike Morgan*, DCA-2180-CIRA (2020) ), a registrant's websites at "svscanner.ca", "skscanner.ca", "skysanner.ca", "skvscannr.ca" and "svkscanner.ca" domain names contained links that directed users to the Complainant's competitors. As in the present case, this supported a finding of bad faith registration within the scope of paragraph 3.5(c).

### *3.5(d) Argument*

48. With respect to paragraph 3.5(d), the Complainant says that the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website, by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

49. The Complainant relies on the well-established principle that it is not necessary for a disputed domain name to be associated with an active website for a finding of bad faith to be made under Paragraph 3.5(d). Bad faith will exist in cases where a domain name, if ever put to use, is likely to cause confusion among Internet users as to affiliation or sponsorship

50. With respect to paragraph 3.5(d), the Disputed Domain Name [www.skyscanner.ca](http://www.skyscanner.ca) resolves to domain name parking page which solicits offers to purchase the domain name. As the Complainant submits, this indicates that the Registrant had no intention of the using the domain name and merely registered it to sell the Domain Name for commercial gain.

51. Again, such misspellings may be characterized as "typo-squatting" and constitute *prima facie* evidence of bad faith registration.

*Summary on Bad Faith Registration*

52. Based on all the circumstances demonstrated in the Complaint and related exhibits, the Panel finds that Complainant has established bad faith registration of the Disputed Domain Names as required by paragraph 4.1(b) of the Policy.

*Legitimate Interest of the Registrant*

53. Paragraph 4.1 of the Policy places the onus on Complainant to provide “some evidence” that the Registrant did not have a legitimate interest in a disputed domain name. Although “some evidence” is not defined, it imposes a lower threshold than “a balance of probabilities.” The onus on Complainant is to provide “some evidence” of a negative. Paragraph 3.4 of the Policy sets out a non-exhaustive list of criteria upon which the Panel may find, based on all the evidence, that the Registrant has a legitimate interest in the Disputed Domain Name.

54. At the outset, the Complainant says that there is not, and has never been, any relationship between the Complainant and the Registrant, and the Registrant has never been licensed or otherwise authorized to register or use the Mark in any manner, including as part of a domain name.

55. With respect to paragraph 4.1 of the Policy, Complainant submits that each of the ways in which a registrant may have a legitimate interest as described in paragraph 3.4 of the Policy is refuted. The Panel agrees.

56. With respect to paragraph 3.4(a), the Disputed Domain Names cannot be found to have been acquired in good faith or for bona fide purposes. It appears that the Registrant acquired the Domain Names with a view to using them to intentionally to create confusion among internet users or to sell it to the Complainant or its competitors.

57. With respect to paragraph 3.4(b), there is no evidence that the Registrant has used the Disputed Domain Names in association with any goods, services or business offered in Canada and the registered domain names are not clearly descriptive in the manner set out in paragraph 3.4(b).

58. With respect to paragraph 3.4(c), there is no evidence that the Disputed Domain Names are generic of any goods, services or business in Canada.

59. With respect to paragraph 3.4(d), there is no evidence that the Registrant’s use of the Disputed Domain Names was for any legitimate non-commercial activity such as criticism, review, or news reporting.

60. With respect to paragraph 3.4(e), the Disputed Domain Names were not a legal name, surname, or other reference, by which the Registrant was commonly identified. Indeed, the Registrant has been identified as an individual with a different name and the Disputed Domain Names reflect misspellings of the Complainant's Mark, all unrelated to the Registrant's identification.

61. With respect to paragraph 3.5(f), the Disputed Domain Names were not the geographical name of the location of any non-commercial activity or place of business.

62. The Complainant has provided evidence that none of the conditions contained in paragraph 3.4 of the Policy is present in this dispute, and therefore the Panel accepts that the Complainant has met the onus to provide "some evidence" that the Registrant has no legitimate interest in the Disputed Domain Names as required by paragraph 4.1(c) of the Policy.

### *Summary of Findings*

63. This Panel finds that the Complainant has met the onus to satisfy the requirements of paragraph 4.1 of the Policy necessary to succeed in this proceeding.

### **Decision**

64. For the reasons set out above, this Panel decides in favour of Complainant and orders the transfer forthwith of the Disputed Domain Names to the Complainant.

Dated March 3, 2020



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Thomas Manson, Q.C., Single Member Panelist