



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK- 1700985</b>
<b>Complainant:</b>	<b>Flight Centre Travel Group Limited</b>
<b>Respondent:</b>	<b>Kevin Reams</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;escapetravelgroup.com&gt;</b>

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**The Parties and Contested Domain Name**

1. The Complainant is Flight Centre Travel Group Limited of Lvl 2 545 Queen Street Brisbane, QLD 4000 Australia.
2. The Respondent is Kevin Reams of 20 N Orange Avenue, Orlando, Florida 32801, United States of America.
3. The domain name at issue is, <escapetravelgroup.com> (the “Domain Name”), registered by the Respondent with Paknic (Private) Limited of No.242, Iqbal Nagar Near S.S.CNG, Gojra Road, Jhang Sadar Punjab 35202, Pakistan (the “Registrar”).

**Procedural History**

4. The Complainant filed the Complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 2 June 2017. On 2 June 2017, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On 3 June 2017, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details.
5. On 7 June 2017, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 9 June 2017, the Complainant filed a rectified Complaint.
6. The ADNDRC did not receive any response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules for Domain Name Dispute Resolution Policy (the “Rules”). Accordingly, on 3 July 2017, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

7. On 7 July 2017, the ADNDRC appointed Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

**Factual background**

8. The Complainant was established in the early 1980s in Australia. It has grown exponentially to become a \$18 billion business with a portfolio of more than 40 brands and one of the world’s largest travel agency groups. It has company-owned operations in 14 countries including Australia, New Zealand, the US, Canada, the UK, South Africa, Hong Kong, India, China, Singapore and the United Arab Emirates, and a corporate travel management network that spans more than 90 countries. It employs more than 19,000 people globally and has a total of 2800 businesses.
9. The Complainant’s brands include Escape Travel, Liberty Travel, GOGO Vacations, StudentUniverse, Worldwide Traveler, Travel Associates, FlightCenter.com, Corporate Traveller, ciEvents, Campus Travel, Stage & Screen, Student Flights, Quickbeds.com, FCm Travel Solutions and Cruiseabout. The Complainant and a number of its brands won major leisure, corporate and wholesale travel awards at the 2012 AFTA National Travel Industry Awards. They were: Travel Agency Group (100 outlets or more), Best National Travel Management Company, Travel Agency Corporate – Multi Location and Best Wholesaler - International Product.
10. The Complainant’s started using the ESCAPE TRAVEL brand in 2004. ESCAPE TRAVEL is registered in a number of jurisdictions including the following:

<b>Trademark</b>	<b>Jurisdiction(s)</b>	<b>Reg. No.</b>	<b>Class</b>	<b>Registration Date</b>
ESCAPE TRAVEL	Australia	991697	39	04 Mar 2004
ESCAPE TRAVEL DISCOUNT HOLIDAY EXPERTS	Australia	991699	39	04 Mar 2004
ESCAPE TRAVEL	Australia	1073720	39	05 Sep 2005
ESCAPE TRAVEL	Australia	1374653	39 43	28 Jul 2010
ESCAPE TRAVEL	United Kingdom	UK00002565280	39 43	25 Feb 2011

(collectively and individually referred to as the “Trade Mark(s)”).

The Complainant’s main website in connection with ESCAPE TRAVEL is [www.escapetravel.com.au](http://www.escapetravel.com.au).

11. The Respondent registered the Domain Name on March 30, 2017. It was connected to a website (the “Website”) which had the words “ESCAPE TRAVEL Group” displayed on the webpages with “ESCAPE TRAVEL” featuring more prominently than the word “Group”. It appeared to be an online travel agency with links to book flights as well as job applications for career opportunities within the organization behind the website. The “About Us” section on the Website said “The ESCAPE TRAVEL began with a single storefront in Australia in 2010. Since then we’ve

become the INTERNATIONAL TRAVEL AGENCY with affiliated independent travel agents worldwide”. The content was taken down and it now resolves to a blank page.

## **The Parties Contentions**

### ***Complainant***

12. The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests with respect to the Domain Name and that the Domain Name was registered and being used in bad faith. The Complainant requests transfer of the Domain Name.

### ***Respondent***

13. The Respondent did not reply to the Complainant’s contentions.

## **Findings**

### ***General***

14. The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:
  - i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
  - ii. Respondent has no rights or legitimate interests in respect of the domain name; and
  - iii. Respondent’s domain name has been registered and is being used in bad faith.

### ***Identical / Confusingly Similar***

15. The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Mark.
16. The threshold test for confusing similarity involves the comparison between the trade mark and the domain name itself to determine whether the domain name is confusingly similar to the trade mark. The trade mark would generally be recognizable within the domain name. In this case the Domain Name contains the Complainant’s Trade Mark in its entirety and the addition of the descriptive term, “group”. The addition of this term does nothing to minimise the risk of confusion. There is a long line of authorities on the UDRP which make it clear that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.
17. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the Top Level Domain as it is viewed as a standard registration requirement.
18. The Panel finds that the Domain Name is identical to a trade mark in which the

Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### ***Rights and Legitimate Interests***

19. Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:
  - i. before any notice to it of the dispute, the respondent's 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. the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
  - iii. the respondent is making a legitimate non- commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.
  
20. Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that the overall burden of proof rests with the Complainant. The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110, *Banco Itau S.A. v. Laercio Teixeira*, WIPO Case No. D2007-0912, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. D2008-1393, and *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701.
  
21. The Respondent is not affiliated to the Complainant in any way nor has he been authorised by the Complainant to register and use the Domain Name or in any other way. He does not appear to be commonly known by the Domain Name and does not have any independent right to the Domain Name. The Respondent is based in the USA and yet purports to be a travel company that started as a single storefront in Australia. This mirrors the account of the Complainant's history on its own website which states that "After starting with one shop in the early 1980's....." It is implausible that when the Respondent registered the Domain Name in March 2017, he did not know of the existence of the Complainant's business under the Trade Mark, when he was intending to use the Domain Name to provide identical services to the Complainant. Given these circumstances, it would be highly unlikely for it to be possible for the Respondent to develop a legitimate activity in connection with the Domain Name without authorisation. The Respondent has also not shown that he is making legitimate non- commercial or fair use of the Domain Name.

22. The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.
23. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

### ***Bad Faith***

24. To succeed under the Policy, a Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.
25. The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Name. It is highly unlikely that he was unaware of the Complainant when he registered the Domain Name. The Respondent is in the same business as the Complainant and he claims to have also started it in Australia where the Complainant is headquartered. Given the global reach of the Internet and search engines and given that the Complainant is widely known in the travel sector, he cannot credibly claim that he was unaware of the Trade Mark. The Respondent either knew of should have known about the Domain Name. The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the domain name is also a significant factor to consider. (see *Asda Stores, Ltd., Wal-Mart Stores, Inc. v. HC a/k/a Henry Chimanzi*, WIPO Case No. D2014-2256 and *Volkswagen AG v. Jan-Iver Levsen*, WIPO Case No. D2015-0069)
26. The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.
27. The Domain Name is also used in bad faith. The Website purported to offer travel booking services under a trade mark which is identical or confusingly similar to the Complainant's well known and long established brand ESCAPE TRAVEL. The Complainant alleged that the Website was set up as a phishing site as travel booking information and job applications will by their very natures compel users and applicants to provide personal information as well as financial information which could then be used for fraudulent purposes. However, no evidence to substantiate this was filed. In any event whether the Domain Name was being used for fraudulent purposes or not in this case, the Panel is of the view that the use of the Trade Mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for the Complainant's services. The services offered on the Website are identical to the services provided by the Complainant. Whether there was actual provision of travel booking services by the Respondent or if it was being used as a phishing site, the use of the Domain Name shows a clear intention on the part of the Respondent to attract for commercial gain by confusing and misleading Internet users into believing that the Respondent's website is authorised or endorsed by the Complainant.
28. It is not clear from the evidence filed when the content described above was taken down at the behest of the Complainant. The fact that the Domain Name now directs to an inactive page does prevent a finding of bad faith in light of the way it was being

used and the Respondent's failure to file a response.

29. Considering the circumstances, the Panel considers that the Domain Name is also being used in bad faith. Accordingly, the Complaint has satisfied the third element of the UDRP.

### **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, <escapetravelgroup.com> be transferred to the Complainant.

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Karen Fong  
Panelist

Dated: 24 July 2017