Decision for dispute CAC-UDRP-101650

Case number	CAC-UDRP-101650
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Domain names	ECONOMYBOOKING.COM, ECONOMY-BOOKINGS.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Name	Mr. Alen Baibekov
Organization	Booking Group SIA

Complainant representative

Name	Ms. Katrina Petersone

Respondent

Name	Mr. Daniel Chestnut

OTHER LEGAL PROCEEDINGS

The Panel is not aware of which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

Booking Group SIA is the owner of the following trademarks:

- ECONOMY BOOKINGS.COM (device), Latvian registration No. M 69 653, filed on August 13, 2015, and granted on April 4, 2016, for goods and services in classes 12, 35, 36 and 39, including "rental of vehicle and apparatus for locomotion by land";
- ECONOMY BOOKINGS.COM (device), international trademark registration No. 1282011, of August 21, 2015, designating France, Benelux, Germany, Italy, Sweden, UK, USA and Russia, for goods and services in classes 12, 35, 36 and 39, including "rental of vehicle and apparatus for locomotion by land".

Mr. Alen Baibekov is the owner of:

- the domain name <economybookings.com>, registered on 2 February 2008;
- the trade name ECONOMY BOOKINGS, used in commerce since at least 2008, in relation to on-line car rental services in various countries worldwide via its partner companies;
- the unregistered trademark ECONOMY BOOKINGS.COM, used in the course of trade at least from the end of 2008 in

connection with on-line car rental services.

Both the trade name ECONOMY BOOKINGS and the unregistered trademark ECONOMY BOOKINGS.COM have been licensed to the Complainant Booking Group SIA.

FACTUAL BACKGROUND

The Complainants are Mr. Alen Baibekov, from Latvia, and the limited liability company, Booking Group SIA. Mr. Alen Baibekov is the shareholder and Member of the Board of Directors of the company Booking Group SIA.

Booking Group SIA is a Latvian company established on 8 February, 2008, offering on-line car rental services via its partner companies worldwide. In 2015, the company's turnover amounted to Euro 8,213,857 and was all generated through the use of the domain name <economybookings.com>.

The disputed domain names are <economybooking.com> registered on 27 August 2009, and <economy-bookings.com>, registered on 6 January 2017. The domain name <economybooking.com> is used in relation to on-line car rental services, and the domain name <economy-bookings.com> redirects to the Respondent's website at www.economybooking.com.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

A. The Complainants' assertions are the following:

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights (§4(a)(i) of the Policy).

According to the Complainants, the disputed domain names <economybooking.com> and <economy-bookings.com> are identical or at least highly confusingly similar to the Complainants' domain name <economybookings.com>, trade name ECONOMY BOOKINGS, unregistered trademark ECONOMY BOOKINGS.COM, and registered trademark ECONOMY BOOKINGS.COM, since the differences with the Complainants' signs are minimal.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain names (§4(a)(ii) of the Policy).

The Respondent registered the disputed domain names later than the Complainants started using the trade name ECONOMY BOOKINGS and the unregistered trademark ECONOMY BOOKINGS.COM in relation to car rental services. Article 8 of the Paris Convention for the Protection of Industrial Property of March 20, 1883 (hereinafter the "Paris Convention"), provides that "[A] trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark". Since 177 countries are members of the Paris Convention, a trade name is protected in all the economically active countries regardless of whether the trade name is used in respect to services on-line or off-line.

The Complainants never authorised the Respondent to use the words ECONOMY BOOKING in relation to car rental services, including as part of the domain names <economybooking.com> and <economy-bookings.com>.

3. The disputed domain names have been registered and are being used in bad faith (§4(a)(iii) of the Policy).

The domain name <economybooking.com> was registered on 27 August 2009 with the intention to provide services similar or identical to those provided by the Complainants since 2008.

The Respondent started imitating the Complainants' trademark at least as of 8 September 2013. At least as of 20 December 2015, the Respondent starts using the same dominant colour scheme – yellow and blue – as the Complainants'. At least as of 19 July 2017, the Respondent has created a similar logo with almost identical brand name, similar colours and shapes.

The Respondent has now created a look-alike website.

The Respondent is therefore evidently aware of the Complainants and of their prior rights, since so many similarities in the same narrow on-line car rental service market cannot be fortuitous. The look-alike website and the Respondent's domain name <economybooking.com>, create the impression that the Complainants' and the Respondent's websites are connected one another, and consumers are likely to be misled.

The domain name <economy-bookings.com> was registered on 6 January 2017, with the intention to direct the Complainants' customers to the Respondent's website. This domain name matches the identical domain name <economybookings.com> and does not lead to an autonomous website. The domain name <economy-bookings.com> is used to redirect Internet users to the Respondent's website at www.economybooking.com. Moreover, the Respondent is using the domain name <economy-bookings.com> to rent advertising space to third parties.

Thus, the Respondent had prior knowledge of the Complainants' website and of their earlier rights as there was no logical necessity to register the domain name <economy-bookings.com>, since the Respondent had already the almost identical domain name <economybooking.com>.

Lastly, the Complainants suggest that the Respondent is not a real existing natural person, and that he provided false data at the time of the registration of the disputed domain names. The Respondent does not exist and his commercial activity is not registered.

For all these reasons the Complainants request that the disputed domain names be transferred to the Complainant, Mr. Alen Baibekov.

B. The Respondent's contentions are the following:

1. The disputed domain names are not identical or confusingly similar to a trademark or service mark in which the Complainants have rights (§4(a)(i) of the Policy).

The domain name <economybooking.com> is not identical or confusingly similar to the Complainants' registered trademark, since the latter is a figurative trademark containing various different elements, and since the addition of the letter "s" at the end of the word "bookings", in the Complainants' trademark seems "less normal to native English speakers including nationals of the States".

The disputed domain names consist of the merely generic and descriptive words "economy" and "booking". The word "economy" means "economical or inexpensive to buy or use", while the word "booking" refers to "a reservation, as for accommodations at a hotel" (source www.ahdictionary.com).

The Complainants cannot claim exclusive rights to the use of these words. An Office Action issued by the USPTO in relation to the US designation of the Complainants' international trademark ECONOMY BOOKINGS.COM states that "[A]pplicant must disclaim the wording "ECONOMY", "BOOKING", and".COM" because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and/or services, and thus is an unregistrable component of the mark". The Complainants' trademark was registered in the US, only provided that "No claim is made to the exclusive right to use the following apart from the mark as shown: "ECONOMY", "BOOKINGS" and ".COM". Moreover, the trademark was registered much later than the date of registration of the disputed domain name <economybooking.com>

There are numerous businesses that use similar dictionary words to promote their activities on-line, such as <economycarrentals.com>, <economyrentacar.com>, <economycarhire.com>, <bookingcarhire.com>, <bookingcar.com>, <economytravel.com>.

2. Respondent owns rights or legitimate interests in respect of the disputed domain names (§4(a)(ii) of the Policy).

The Respondent contends that the Complainants failed to prove the Respondent's lack of rights or legitimate interests in the disputed domain names.

The Complainants did not provide sufficient evidence to establish common law rights over the wording “economy bookings”. The Complainants did not submit evidence to establish a strong secondary meaning from 2008 to 2015. There is no evidence that the mark had any distinctiveness in 2009, when the domain name <economybooking.com> was registered. The 2015 turnover does not show any proof of a secondary meaning in 2008-2009 and even if said proof existed, the trademark was not registered in 2009. It was therefore reasonable for the Respondent to assume that the Complainant was using the wording “economy bookings” in a descriptive sense rather than in a trademark sense.

The merely descriptive term “economy booking” was designed for use in the travel industry. The Respondent’s website at www.economybooking.com offers travel related services, including car rental reservations, hotel bookings, airport transportation, and the like.
The Respondent has been using the domain name <economybooking.com> in connection with a bona fide offering of services since 2010, shortly after its registration date, and has continued using this domain name for these services ever since.

The Respondent never tried to divert the Complainants’ customers, or to tarnish the Complainants’ trademark. The disputed domain names were never offered for sale to the Complainants or to anyone else. The Respondent never made references to the Complainants’ website. The disputed domain names were never used for a parking site.

For all these reasons the Respondent maintains that he owns rights and legitimate interest in the disputed domain names.

3. The disputed domain names have not been registered and are not being used in bad faith (§4(a)(iii) of the Policy).

The domain name <economybooking.com> was registered in 2009 with the intention to offer travel related products and services, including car reservations services, hotel booking services, airport transfer bookings, and other travel related services. Apart from car rental reservations, the Respondent continues to offer hotel reservations. There was no intention to offer only “similar services, or the same services” of the Complainants, as indicated in the Complaint.

The registration of the domain name <economybooking.com> predates the Complainants’ trademark by many years. At the time of its registration, the Respondent did not search for the plural form of “booking”, since the word “bookings” is less normal to native English speakers including nationals of the States". Thus, at this time, the Respondent was not even aware of the Complainants and of their website, which is based in Latvia.
The Respondent denies to have copied the Complainants’ web design and logo. The 2013 logo was in different colors, fonts, and layer positions. The logo, created in 2017 is not an imitation of the Complainants’ logo due to its different colors, shapes and font. In addition, the Respondent never tried to imitate the stylized letter “B” preceding the Complainants’ mark.
The respective websites adopt different structures. Many travel websites have “similarities” just because they usually offer the same services.

The domain name <economy-bookings.com> was registered in early 2017 to set up a new travel project in the future. As the site development requires time, the domain name is not yet developed and simply links to the Respondent’s main domain name <economybooking.com>. This domain name was not registered to disrupt the Complainants’ business, nor was it registered to sell or transfer it to the Complainant or to anyone else.

The Complainant does not have any exclusive rights to the words “economy”, “booking”, “bookings” and “.com”. Common words and descriptive terms are legitimately subject to registration as domain names on a “first-come, first-served basis”.

The Complainants did not take any action against the Respondent until 2017. During almost 8 years, the Respondent invested substantial time and significant resources to establish, develop, and support its website.

In view of the foregoing, the Complainants failed to demonstrate the Respondent’s bad faith in the registration and use of

the disputed domain names.

RIGHTS

The Complainants have, to the satisfaction of the Panel, shown that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainants have, to the satisfaction of the Panel, shown that the Respondent has no rights or legitimate interests in the disputed domain name <economy-bookings.com> (within the meaning of paragraph §4(a)(ii) of the Policy), but has failed to do so in respect of the disputed domain name <economybooking.com>, for the reasons better explained below.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name <economy-bookings.com> has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy), but has failed to do so in respect of the disputed domain name <economybooking.com>, for the reasons better explained below.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that after the Panelist's appointment, and therefore once all terms granted to the parties to present their respective arguments had expired, the Complainants spontaneously filed, by way of a Non-Standard Communication, additional arguments in reply to the Response, and in support of their case.

Under paragraph 10 of the UDRP Rules the Panel has the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition.

Under paragraph 12 of the UDRP Rules it is for the Panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

Panels have repeatedly affirmed that the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its Complaint or Response. Unsolicited supplemental filings are usually only admitted in exceptional circumstance (See WIPO Jurisprudential Overview 3.0 and, among others, CAC Case No. 100765 VIRTUALEXPO.COM).

In this case, the Complainants' filed extensive additional arguments and supplied additional evidence, which were already available at the time of the filing of the Complaint. It does not seem to the Panel that this unsolicited supplemental filing is due to exceptional circumstances. It seems more likely that the Complainants omitted to include said additional arguments and evidence in the original Complaint, because they deemed they were unnecessary. After reading the Response, the Complainants felt the need to file additional arguments and information in support of their pleadings. This seems also to be confirmed by the name that the Complainants gave to this supplemental filing, i.e., "ADDITIONAL SUPPLEMENTS OF THE COMPLAINT AND ARGUMENTS TO THE RESPONDENT`S RESPONSE", which seems self-explanatory.

The UDRP was meant to be an expeditious proceeding and one of its main advantages is to get a decision within a very short deadline. For this reason, neither the Policy nor the Rules contemplate the possibility to make unsolicited supplemental filings. It is only the Panel who has the authority to request further statements or documents for the parties, if these are necessary to decide the case. In the instant case, as no exceptional reasons occurred, accepting the Complainants' additional filing seems to be against the spirit of the Policy and Rules and would be against the Panel's obligation to ensure an equal treatment between the parties.

Therefore, the Panel decides not to admit the Complainants' unsolicited supplemental filing.

On 2 October 2017, the Panel issued a Non-Standard Communication asking to clarify whether the UDRP proceedings were intended to be brought by two Complainants or only by Mr. Alen Baibekov, since the point was not entirely clear to the Panel, and postponed the deadline for the decision until 9 October 2017. On 3 October 2017, the Complainants' representative confirmed that the Complaint was meant to be brought by both Mr. Alen Baibekov and by the company Booking Group SIA.

Article 3(a) of the CAC's UDRP Supplemental Rules provides that: "it is possible to file a Class Complaint provided the following conditions are met:
the Class Complaint is based on legal arguments applicable equally, or substantially in the same manner, to all the disputed domain names;
the person representing several different Complainants joined in the Class Complaint must provide evidence that it is authorized to act on behalf of each of the Complainants".

From the contents of the Complaint it appears clear to the Panelist that the two conditions set forth above are satisfied and therefore the Panel has no objections in accepting this Class Complaint.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights (§4(a)(i) of the Policy).

The Complainants have, to the satisfaction of the Panel, shown that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights (within the meaning of paragraph 4(a)(i) of the Policy).

Booking Group SIA has shown that it enjoys registered rights in the figurative trademark ECONOMY BOOKINGS.COM.

In the Panel's view, this trademark is to be considered confusingly similar to both the disputed domain names <economybooking.com> and <economy-bookings.com>.

The mere deletion of the last letter "s" in the disputed domain name <economybooking.com> and the mere addition of a hyphen in the disputed domain name <economy-bookings.com> are elements insufficient to avoid confusing similarity with the Complainants' trademark ECONOMY BOOKING.COM.

The Respondent denies similarity with the Complainant's trademark because of the design elements of this trademark.
In the Panel's view, the fact that the trademark ECONOMY BOOKING.COM is a figurative trademark is of no relevance in order to assess the first requirement under paragraph 4(a)(i) of the Policy. Figurative elements are incapable of representation in domain names and therefore should be disregarded for the purpose of assessing identity or confusing similarity under the first element of the Policy. Moreover, the design elements of the trademark ECONOMY BOOKING.COM do not comprise the dominant portion of the relevant mark, so that they effectively overtake the textual elements in prominence. Hence, in the instant case, the figurative elements of the trademark ECONOMY BOOKING.COM have no bearing on the evaluation of identity or confusing similarity of the disputed domain names <economybooking.com> and <economy-bookings.com> (see also §§1.7. and 1.10 of the "WIPO Jurisprudential Overview 3.0").

The Respondent also points out that in the US designation of the international registration No.1282011 all verbal elements of the trademark are disclaimed. Under §1.10 of the WIPO Jurisprudential Overview 3.0, "where the trademark registration entirely disclaims the textual elements (i.e., the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant's trademark registration is insufficient by itself to support standing under the UDRP. To the extent the complainant could nevertheless establish UDRP standing on the basis of a mark with design elements, the existence of such elements (or a disclaimer) would be relevant to the panel's assessment of the second and third elements, e.g., in considering possible legitimate trademark co-existence or scenarios where the textual elements correspond to a dictionary term".

In the instant case, however, the Complainant Booking Group SIA, is also the owner of the trademark ECONOMY BOOKING.COM, registered in Latvia under No. M 69 653 and of other designations of the same international trademark registration No. 1282011, which were granted without disclaimers.

For all the foregoing reasons, the Panel finds that the Complainants have met the first requirement under paragraph 4(a)(i) of the Policy.

2. The Respondent's rights or legitimate interests in the disputed domain names (§4(a)(ii) of the Policy).

To satisfy the second requirement under para. 4(a)(ii) of the Policy, the Complainants should at least make a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names. Once the Complainants have made this prima facie case, the burden of proof shifts to the Respondent.

The Panel deems appropriate to make separate considerations for each of the disputed domain names.

The domain name <economybooking.com> was registered on 27 August 2009, i.e., approximately 6 years before the filing date of the Complainants' trademark.

To establish earlier rights, the Complainants rely on the domain name <economybookings.com>, registered on February 2, 2008, on the trade name ECONOMY BOOKINGS, and on the unregistered trademark ECONOMY BOOKINGS.COM, both dating back to 2008, and used since then in connection with on-line car rental services.

It is a well-established principle that the term “trademark or service mark” as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered marks (see § 1.1.1. of the “WIPO Jurisprudential Overview 3.0”). Trade names cannot qualify as enforceable rights in UDRP disputes, unless they are also protected as unregistered trademarks. In this respect, see Chapter 7 of the WIPO Report of the Second WIPO Internet Domain Name Process of September 3, 2001 (the "WIPO Second Report"), stating that "[I]t is not recommended that the UDRP be modified to permit complaints to be made on the basis of abusive registrations and use of trade names per se". Nonetheless, §318 of the WIPO Second Report states that "[W]here a trade name is used in widespread market, it is often also the subject of trademark protection, or satisfies the conditions for protection as an unregistered trademark so as to qualify, in appropriate circumstances, for protection against bad faith, deliberate misuse under the UDRP".
In the Panel's view, the above-mentioned principles should also apply, mutatis mutandis, to domain names, which equally fall outside the scope of the Policy, unless they can benefit from the protection afforded to unregistered trademarks.

The words “economy” and “booking” are descriptive of the Complainants' activity, i.e., that of offering discounted booking services. Therefore, they are deprived of distinctive character and as such cannot benefit from the protection afforded to unregistered trademarks unless the Complainants can prove that they have acquired secondary meaning through a substantial and spread-out use over the years. This is confirmed by many prior UDRP provisions where Panels have found that complainants have a higher burden when claiming to have unregistered trademark rights in a mark comprised of generic, descriptive, or geographic terms.

Also in the instant case, where the Complainants’ alleged unregistered trademark rights on words comprised of generic or descriptive elements such as the words “economy” and “booking”, the Panel finds that there is a much greater onus on the Complainants to present compelling evidence of secondary meaning or distinctiveness (See, among others: Wasatch Shutter Design v. Duane Howell / The Blindman - NAF Claim Number: FA1705001731056 and WorldClaim Global Claims Management v. Bishop, Atticus / Bishop - NAF Claim Number: FA1609001694577).

However, the Complainants provided very limited evidence to support their alleged unregistered trademark rights. The report of the Companies Register simply provides information about the Complainant SIA Booking Group, and its turnover in 2015. It does not make reference to the use of the unregistered trademarks ECONOMY BOOKINGS or ECONOMY BOOKINGS.COM prior to 27 August 2009, which is the date of registration of the disputed domain name <economybooking.com>. The

Complainants also provide a screenshot of the website at www.economybookings.com, from the WebArchive WaybackMachine, dating back to 2008, showing use of the website in connection with car hire services. However, this screenshot may serve at most to prove that, in 2008, the domain name <economybookings.com> was used in connection with car rental services, but this circumstance does not automatically entail that the Complainants own unregistered trademark rights on the word ECONOMY BOOKING.COM since earlier than the date of registration of the disputed domain name <economybookings.com>.

The Complainants could have proved an extensive use of their unregistered trademarks ECONOMY BOOKINGS, and/or ECONOMY BOOKINGS.COM, by supplying information on their market share, the number of customers and of executed car rental agreements, the number of countries were the services were provided, the amount of investment expenditures, the recognition of the trademark through market surveys, and in general by providing any other information or document necessary to prove the reputation of the trademark, and its acquired distinctiveness. Nothing to that effect has been provided.

Under paragraph 15(a) of the UDRP Rules, a Panel shall decide a complaint on the basis of the statements and documents submitted. Since the Complainants failed to prove sufficient earlier enforceable rights on the unregistered trademark ECONOMY BOOKING / ECONOMY BOOKINGS.COM, the Complainants have also failed to prove that the Respondent lacks rights or legitimate interests in the disputed domain name <economybooking.com>.

With respect to the disputed domain name <economy-bookings.com>, the factual situation is different. This domain name was registered on 6 January 2017, i.e., after the registration of the Complainants' trademark ECONOMY BOOKINGS.COM.

The Complainants affirm that there is no reason why the Respondent should have suddenly registered a domain name with a final letter "S", identical to the Complainants' domain name, to redirect Internet users to the Respondent's website at www.economybooking.com, if not to disrupt the business of the Complainants and divert the Complainants' consumers to this website.

The Respondent provides many arguments in support of its rights and legitimate interests in the disputed domain names, such as the lack of distinctive character of the words "economy booking", the fact that at the time of the registration of the domain name <economybooking.com> the Complainants' trademarks were not filed, the fact that the Complainants delayed until 2017 to file their UDRP Complaint, and the fact that the Respondent never used the disputed domain names to give access to a parking page, nor offered them for sale to the Complainants or to any third party, nor made any references to the Complainants in his website.

In the Panel's view, all these arguments very well support the Respondent's rights or legitimate interests in the domain name <economybooking.com>, but should not be considered as clear-cut evidence in relation to the domain name <economy-bookings.com>. The Respondent himself is vague on the reasons why he decided to register the domain name <economy-bookings.com>. The Respondent simply states that the domain name was registered "to set up a new travel project in the future" and "not to disrupt the Complainant's business".

The Panel is not entirely convinced about the Respondent's rights or legitimate interests in the domain name <economy-bookings.com>. This domain name is practically identical to the Complainants' registered trademark. At the time of its registration, the Respondent was already the owner of a very similar domain name that he had been using for a long time in connection with his activity. Why all of a sudden did the Respondent decide to register another domain name, identical to the Complainants' trademark and for the same services, especially when one of the main arguments of the Respondent is that the word "bookings" "seems less normal" to English native people, including those from the United States, and that "people search for "economy booking" (normal use) and not for "economy bookings" (primitive use)"? The latter statement, which served as argument to the Respondent to explain why he selected the first disputed domain name <economybooking.com> and omitted at that time to search the term "bookings", seems in contradiction with the fact that in 2017 the Respondent registered another domain name, very similar to the one he already owned (and practically identical to the Complainants' trademark), but including the word "bookings" in lieu of "booking".
Moreover, the Panel recognizes that there are similarities between the Respondent's and the Complainants' websites, in

particular from the point of view of the stylization of the respective wordings ECONOMYBOOKING.COM and ECONOMYBOOKINGS.COM/ECONOMY BOOKINGS. The Panel also recognizes that the fact that the Respondent's change of the graphic presentation or layout of his websites always follows a corresponding modification in the Complainants' website is an indication of the Respondent's intention to target the Complainants' businesses and trademark.

The Respondent's arguments that the trademark ECONOMY BOOKINGS.COM consists of descriptive or generic words, and that the USPTO required the Complainant Alen Baibekov to disclaim all word elements of the US designation of the Complainants' international registration No. 1282011, does not change the Panel's view, since Alen Baibekov is at the same time the owner of a Latvian registration for the trademark ECONOMY BOOKINGS.COM, and of other designations of international registration No. 1282011, which were registered without disclaimers. These trademarks should be considered valid and enforceable at least until a competent authority states the contrary.

Thus, the Panel concludes that the Complainants were able to make at least a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name <economy-bookings.com>, and that the Respondent was unable to successfully rebut the Complainants' arguments on this point.

3. The bad faith in the registration and use of the disputed domain names (§4(a)(iii) of the Policy).

Since the Complainants have failed to prove the Respondent's lack of rights or legitimate interests in the disputed domain name <economybooking.com>, the Panel will not examine whether this domain name has been registered and is being used in bad faith. As a matter of fact, in order to succeed in a UDRP proceeding, a complainant must prove that all three requirements under the Policy are met. Failure to prove the existence of even one of these requirements entails the rejection of the Complaint.

With respect to the disputed domain name <economy-bookings.com>, the Panel notes the following.

This domain name was registered well after the Complainants' trademarks. The disputed domain name is practically identical to the Complainants' trademarks and is used to redirect Internet users to the Respondent's website at www.economybooking.com.
As the Complainants point out, it appears peculiar that the Respondent registered, after almost 8 years from the registration (and use) of the disputed domain name <economybooking.com>, a second domain name very close to the Complainants' trademarks, simply to redirect, through specific and attractive links, Internet users to the Respondent's website. It is even more peculiar considering that the Respondent himself indicates in his Response that the use of the plural form of the term "booking" is unusual in the United States (and therefore "less attractive").

The Complainants maintain that the Respondent is imitating the Complainants' website at www.economybookings.com. The Panelist has noticed that the respective websites display the terms ECONOMYBOOKING.COM vs. ECONOMY BOOKINGS with similar graphic representations. In 2010 the Complainants used the word "economybookings.com" on their website, preceded by a letter "e" in small characters inside a circle. In 2013 the Respondent adopted a similar stylization for the word "economybooking.com". In 2015 the Complainants adopted the blue and yellow colors for their website, and so did the Respondent. In 2017 the Complainants changed the device on the left side of the wording "economybookings.com" and a few months later the Respondent adopted a similar new logo.

The Panel disagrees with the Respondent regarding the fact that the blue and yellow combination is commonplace for websites offering on-line booking services. This is true for the well-known website www.booking.com, but for other renown operators, such as Expedia or E-dreams, it is not so. The Respondent mentions several websites offering on-line car rental services, such as <economycarrentals.com>, <economyrentacar.com>, <economycarhire.com>, etc. None of them use the same colors, or the same color combination.

These circumstances altogether suggest that the Respondent targeted the Complainants' trademark at the time of the registration of the disputed domain name <economy-bookings.com> and that the Respondent registered and used the disputed domain name <economy-bookings.com> to intentionally attempt to attract Internet users to his own website, by

creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The fact that the terms "economy" and "bookings" may be held descriptive of the Respondent's and the Complainants' activity does not affect the Panel's conclusion: as mentioned above, the Complainants own conflicting earlier marks, which have been registered without disclaimers in several countries. These trademark registrations should be considered valid until a competent authority declares the contrary.

In view of the forgoing, the Panel concludes that the Complainants provided sufficient evidence and arguments to prove that the disputed domain name <economy-bookings.com> was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ECONOMYBOOKING.COM**: Remaining with the Respondent
2. **ECONOMY-BOOKINGS.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2017-10-06

Publish the Decision