



12 SEP 2019  
TAMILNADU

**D. SARAVANAN**  
Advocate & Arbitrator  
Unit No.208, 2nd Floor, Beta Wing  
Reheja Towers, Near LIC  
No.113-134, Anna Salai, Chennai 600 002

BW 386351

**P.S. SHANMUGA SUNDARAM**  
STAMP VENDOR  
L.No. B4 / 109 / 85  
HIGH COURT CAMPUS  
CHENNAI - 600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: [www.skyscan.co.in](http://www.skyscan.co.in)

**INDRP Case No: 1139**

Skyscanner Limited  
Suite 7-001, 1 Fore Street,  
London, EC2Y 5EJ,  
United Kingdom.

**..Complainant**

**Vs.**

Data Protected Data Protected  
123 Data Protected, Toronto,  
M6K 3M1, Canada.

**..Respondent**

**..2**



भारतीय गैर न्यायिक

पचास  
रुपये  
रु. 50



FIFTY  
RUPEES  
Rs. 50

INDIA NON JUDICIAL

தமிழ்நாடு தமில்நாடு TAMILNADU

12 SEP 2019

D. SARAVANAN

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AW 946452

P.S. SHANMUGA SUNDARAM  
STAMP VENDOR  
L.No. B4/109/88  
HIGH COURT CAMPUS  
CHENNAI - 600 104. (TAMIL NADU)

-2-

1. The Parties:

The Complainant is Skyscanner Limited, having address at Suite 7-001, 1 Fore Street, London, EC2Y 5EJ, United Kingdom. The Complainant is represented by its Authorised Representative, Mr. David Yeomans, Senior Associate having office at, Keltie LLP, 1 London Bridge, London SE1 9BA, United Kingdom, E-mail: [david.yeomans@keltie.com](mailto:david.yeomans@keltie.com).

The Respondent is the current Registrant of the disputed domain name <skyscanner.co.in>. All the information known and available to the Complainant regarding the Respondent is as follows: Data Protected Data Protected, having address at 123 Data Protected, M6K 3M1, Toronto, Canada, Email: [noreply@data-protected.net](mailto:noreply@data-protected.net). Neither the Respondent represented himself nor represented by any one.

..3.



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

The disputed domain name is www.skyscan.co.in. The domain name has been registered with .IN REGISTRY through its Registrar, Tucows Inc.

**3. Procedural History:**

9 <sup>th</sup> August, 2019	:	The .IN REGISTRY appointed Mr.D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
9 <sup>th</sup> August, 2019	:	Consent of the Arbitrator along with declaration was sent to the .IN REGISTRY according to the INDRP Rules of Procedure.
26 <sup>th</sup> August, 2019	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of the arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through post.
3 <sup>rd</sup> September, 2019	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
3 <sup>rd</sup> September, 2019	:	The notice sent to Respondent by e-mail was bounced.
13 <sup>th</sup> September, 2019	:	Due date for filing response.
19 <sup>th</sup> September, 2019	:	The due date for submitting written response by the respondent as stated above was on 13.09.2019, however, the respondent did not submit any response. Hence, the Arbitral Tribunal was constrained to proceed further and decide the dispute on merits based on the available pleadings



	<p>and documents. To that effect, a notice of default was sent to the Respondent by e-mail marking a copy of the same to all the concerned, observing as follows:</p> <p><i>"This Tribunal had, on 03.09.2019, sent a notice to the Respondent by e-mail directing them to file response to the complaint within 10 days. However, the said e-mail was bounced on the very same day, i.e. on 03.09.2019. The National Internet Exchange of India (NIXI), by their email dated 04.09.2019, had also informed this tribunal to the effect that they had sent both the hard and soft copy of the complaint and annexure to the respondent however the email was bounced and the hard copy sent through courier could not be delivered. Section 3 (1) (b) of the Arbitration and Conciliation Act, 1996 contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it. This Tribunal therefore considers that the notice sent to the e-mail address of the Respondent is deemed to have been served and is sufficient service on the Respondent as per Section 3 (1) (b) of the Arbitration and Conciliation Act, 1996."</i></p>
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#### 4. Factual Background:

##### 4.1 The Complainant:

The Complainant is M/s. Skyscanner Limited, having address at Suite 7-001, 1 Fore Street, London, EC2Y 5EJ, United Kingdom. The Complainant is represented by its Authorised Representative, Mr. David Yeomans, Senior Associate, having office at, Keitie LLP, 1 London



Bridge, London SE1 9BA, United Kingdom, Telephone: +44 20 73298888, E-mail: [david.yeomans@keltie.com](mailto:david.yeomans@keltie.com).

#### **4.2 Complainant's Activities:**

The Complainant Skyscanner Limited, is a company based in the United Kingdom. The Complainant was founded in 2004 and specialises in travel search and booking services online. The Complainant has registered trade mark rights in the term SKYSCANNER for services in classes 35, 38, 39 and 42, in many jurisdictions around the world.

#### **4.3 Complainant's Trading Name:**

(i) The Complainant filed Indian Trademark Registration No.1890840 for SKYSCANNER LIMITED in the name Skyscanner Limited filed on 2nd December, 2009 and registered on 1<sup>st</sup> march, 2011 and covering:

Class 35: Advertising services provided via the Internet, opinion polling, data processing, provision of business information, data feeds, auctioneering; all relating to travel;

Class 38: Operating of a search engine relating to travel; and

Class 39: Travel information and arrangement services provided from an Internet website providing information via means of a global computer network; travel information provided online from a computer database; travel information accessible via a mobile phone utilizing wireless application protocol technology.

(ii) Indian Trade mark Registration No.2287020 for Skyscanner & Cloud Device filed on 22<sup>nd</sup> February 2012, registered on 7<sup>th</sup> November 2016 and covering:

Class 35: Advertising services provided via the Internet, opinion polling, data processing, provision of business information, data feeds, auctioneering; all relating to travel;

Class 39: Travel information and arrangement services provided from an Internet website providing information via means of a global computer network; travel information provided online from a computer database; travel information accessible via a mobile phone utilizing wireless application protocol technology; and

Class 42: Operating of a search engine relating to travel.



(iii) Evidence of the existence of the above rights is marked by the Complainant as **Annexure-2**. The Complainant's trademarks are used in relation to all services protected by its abovementioned rights.

#### **4.4 Respondent's Identity and activities:**

The Respondent is the current Registrant of the disputed domain name <skyscan.co.in>. The Respondent registered the disputed Domain name on 24<sup>th</sup> May, 2019. The Complainant has become aware of a domain name skyscan.co.in registered in the name of 'Tucows Inc' (hereinafter referred to as the "Registrant").

#### **5. Dispute**

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.

#### **6. Parties contentions:**

##### **A. Complainant:**

(i) The domain name www.skyscan.co.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

(a) The Complainant submits that it is the owner of the Indian Trademark Registration Nos.1890840 for SKYSCANNER and 2287020 for Skyscanner & Cloud Device ("the Complainant's Rights"). The Complainant's rights were registered on 1<sup>st</sup> March, 2011 and 7<sup>th</sup> November 2016 respectively. The registration dates of the Complainant's rights pre-date the registration date of the disputed domain name.

(b) The Complainant further submits that it enjoys a reputation in its SKYSCANNER trademark both in India and on a global scale. In that regard, UDRP Panels have held in several decisions (including *Case Nos.D2016-0176, D2012 1983* and *D2016-1481*) that the





Complainant has rights in the term SKYSCANNER. The Complainant makes specific reference to the following comments, provided by the Panel in *UDRP Case No.D2012-1983* :

"The Complainant has proved to the Panel's satisfaction that it enjoys exclusive rights to the trademark SKYSCANNER in connection with its business and 30 million visits per month to its "Skyscanner" websites constitutes in the Panel's opinion, compelling evidence that its SKYSCANNER trademark enjoys considerable reputation."

(c) The Complainant makes reference to the judgment of the Panel in UDRP Case No.D2019-0988 in which it was stated that:

- The Complainant has registered its Skyscanner and SKYSCANNER marks in many countries around the world;
- The Complainant transacts an enormous volume of business by reference to those marks;
- The Complainant has received considerable publicity by reference to its corporate name over the years.

(d) At the time of the current Complaint, the Complainant's core website now attracts 80 million visits per month and to date, its SKYSCANNER smart device app has been downloaded in excess of 70 million times. The Complainant's services are available in over thirty languages and in seventy currencies (including Indian Rupees).

(e) The Complainant's specialist website relating to the Indian market, [www.skyscanner.co.in](http://www.skyscanner.co.in), ranks as the 998<sup>th</sup> most popular Indian website in relation to the combination of visitors and page views in India. The Complainant's [www.skyscanner.co.in](http://www.skyscanner.co.in) website ranks 12,600<sup>th</sup> globally.

(f) The collection of screenshots comprising the Complainant's core website confirming global visits, number of currencies and languages offered by the Complainant and web traffic details, taken from the Web Analytic business Alexa is marked by the Complainant as **Annexure-3**.



(g) In light of the above, the Complainant submits that it enjoys a reputation in its SKYSCANNER trademark, both in India and on a global scale.

(h) The Complainant further submits that according to paragraph 3 of the INDRP it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor or brand owner and that the Respondent failed in his responsibility to carry out his abovementioned responsibilities.

(i) The Complainant submits that the impugned Domain name is virtually identical to or at the very least confusingly similar to the Complainant's service mark SKYSCANNER since it incorporates the dominant part of the Complainant's mark. As a matter of principle, the addition of ccTLDs can be disregarded when comparing a domain name and a trademark; the comparison is therefore between SKYSCANNER and SKYSCAN which are clearly very similar indeed.

(j) In support of the Complainant's argument that the Domain name is similar to the distinctive SKYSCANNER trademark in respect of which the Complainant enjoys rights (with a reputation), the Complainant makes specific reference to the following comments, provided by the Panel in UDRP Case No.D2018-2276, being a complaint by the Complainant relating to the disputed domain name <skyscan.flights> :

"The Panel notes that the Domain name <skyscan.flights> incorporates the dominant part of the Complainant's distinctive SKYSCANNER trademark. The Panel finds that the omission of the three letters "NER" in the Domain name is insufficient to avoid the confusing similarity with the Complainant's trademark...Furthermore, it is widely accepted that the generic Top-Level Domain ("gTLD") is generally irrelevant for the purpose of assessing identity or confusing similarity between a trademark and a domain name. The Panel therefore finds that the Domain Name is confusingly similar to the Complainant's trademark."

(ii) **The Respondent has no rights or legitimate interest in the domain name www.skyscan.co.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**





- (a) The Complainant submits that so far it is aware, the Respondent does not own any registered rights in any trademarks which comprise part (of all) of the disputed domain name.
- (b) The Term "Skyscanner" is not descriptive in any way, nor does it have any generic, dictionary meaning. The Complainant has not given its consent for the Respondent to imitate its registered trademarks in a domain name registration.
- (c) The Complainant submits that at the time of the filing of this Complaint, the Domain name does not point to an active website. The Complainant attached the screenshot of the website to which the Domain Name points as **Annexure 4**. Since the disputed Domain Name does not resolve to an active website, there is no evidence or preparations to use the Domain name for legitimate purposes or for a *bona fide* offering of goods and/or services. The Respondent is clearly not making a legitimate non-commercial or fair use of the Domain name, without intent for commercial gain to misleadingly divert consumers.
- (d) Given that (a) the Respondent has never had the Complainant's authorisation to use its trademark or apply to register Domain Names that are very similar to the Complainant's rights (b) the Complainant's rights are not generic in any way and (c) the Respondent does not own any legitimate enforceable rights, the Complainant submits that the Respondent cannot have a legitimate or non-commercial interest in the disputed Domain Name.
- (e) The Complainant submits that it has submitted a prima facie showing that the Respondent has no rights or legitimate interests in respect of the domain name. Whilst the burden of proof lies on the Complainant, that burden is a shifting one such that it now falls on the Respondent to rebut the Complainant's prima facie showing. In the absence of a response or assertion that any such right or interest exists, this must lead to a presumption that the Respondent is unable to show that such right or interest exists (*see Mondich and American Wine Biscuits v. Brown, Case No.2000-0004*)



(iii) The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP:

(a) The Complainant submits that the disputed Domain Name <skyscan.co.in> was registered by the Respondent on 24<sup>th</sup> May, 2019 and the same is evident from WHOIS details for <skyscan.co.in> which is marked by the Complainant as **Annexure 1**.

(b) The Complainant further submits that given that the Complainant's rights dates back to 2009 and that the Respondent must be aware of the reputation of the Complainant's business under its SKYSCANNER trademark at the time the respondent registered the disputed Domain Name, at which stage the Complainant already enjoyed global success. The Complainant submits that successive UDRP Panels have found bad faith registration when the Complainant's trade mark was famous at the time of registration; *see WIPO Case D2000-0310 [choyongpil.net]*.

(c) The Complainant submits that it can be no coincidence that the Respondent has chosen to register a Domain Name that is so similar to the Complainant's distinctive SKYSCANNER trademark. Indeed, the overwhelming likelihood is that the Respondent registered the Domain name intending to trade on the goodwill of the mark in which the Complainant enjoys rights and as such trading cannot constitute a bona fide offering of goods or services; *see Aon PLC and Ors. v. Guanrul, INDRP/633; Wells Fargo & Co. and Anr. v. SreeDas Kumar, INDRP/666; QRG Enterprises Limited & Anr. v. Zhang Mi, INDRP/852; Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa Fe Packers, Packers Movers WIPO Case No. D2017-0754*.

(d) The Respondent's continued ownership of the Domain Name threatens damage to consumers visiting the Domain Name. Inevitably, this will also cause damage to the reputation that the Complainant enjoys in its Skyscanner trademark.

(e) The Complainant submits that that can be a finding of registration and use in bad faith where there is passive use of a widely known trademark in a domain name where there is no



response and no explanation as to why the use could be good faith (see: *TELSTRA CORPORATION LIMITED v. NUCLEAR MARSHMELLOWS*, WIPO Case No. D2000-0003).

Therefore, on the balance of probability, the Respondent has registered and used the Domain Name in bad faith.

## **7. Discussion and Findings:**

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant under Section 3(1)(b) of the Arbitration and Conciliation Act, 1996. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on 19<sup>th</sup> September, 2019.

Under paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and ;
- (iii) The Respondent's domain name has been registered or are being used in bad faith.

### **(a) Identical or confusing similarity:**

- (i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "Skyscanner" in India. The same is evident from **Annexure**



2 marked by the Complainant. From **Annexure-2**, this Tribunal perceives that the earliest registration of the Complainant's mark dates back to 2009. Whereas, from **Annexure-1**, the Whois record of the Respondent, it is seen that the impugned domain name is registered on 29<sup>th</sup> May, 2019 which is a decade later to the registration of the Complainant's mark. This Tribunal is therefore convinced from the documents marked by the Complainant that it possess the mark "SKYSCANNER" since 2009.

(ii) Further, the disputed domain name, www.skyscan.co.in, in toto, incorporates the complainant's mark, namely 'Skyscan'. In *Kenneth Cole Productions V. Viswas Infomedia INDRP/093*, it has been held that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trademark. In the light of the same this Tribunal finds that the disputed domain name www.skyscan.co.in is confusingly similar to the Complainant's mark and also wholly incorporates the Complainant's mark, "Skyscanner".

(iii) The Complainant also placed reliance on, *Skyscanner limited V. Leena Padhra, Case No.D2018-2276*, wherein the WIPO Panel observed as follows:

*"The Panel notes that the Domain name <skyscan.flights> incorporates the dominant part of the Complainant's distinctive SKYSCANNER trademark. The panel finds that the omission of the three letters "NER" in the Domain name is insufficient to avoid the confusing similarity with the Complainant's trademark...Furthermore, it is widely accepted that the generic Top-Level Domain ("gTLD") is generally irrelevant for the purpose of assessing identity or confusing similarity between a trademark and a domain name. The Panel therefore finds that the Domain Name is confusingly similar to the Complainant's trademark."*

(iv) In the present case, the Respondent has incorporated the dominant part of the Complainant's mark namely, "skyscanner" followed by Second Level Domain (SLD) and country code Top Level Domain (ccTLD) i.e. ".co.in". Hence, this Tribunal holds that the disputed domain name www.skyscan.co.in is identical or confusingly similar to the Complainant's mark.



(v) Hence, this Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

**(b) Respondent's Rights or Legitimate Interests:**

(i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. The Complainant has placed **Annexure-4** which is a screenshot of the disputed Domain name and it is seen that the disputed Domain name does not resolve to an active website.

(ii) Further, the Complainant placed reliance on the decision in *Mondich and American Wine Biscuits Vs. Brown, Case No.2000-0004*, wherein the WIPO Panel observed as follows:

*"Whilst the burden of proof lies on the Complainant, that burden is a shifting one such that it now falls on the Respondent to rebut the Complainant's prima facie showing. In the absence of a response or assertion that any such right or interest exists, this must lead to a presumption that the Respondent is unable to show that such right or interest exists."*

(iii) This Tribunal observes from **Annexure-4** marked by the Complainant that the Respondent has not chosen to operate an active website and hence there is no legitimate or fair use of the domain name and hence it leads to a presumption that the Respondent is unable to show legitimate right or interest in the impugned domain name, as laid down by the WIPO Panel in *Mondich and American Wine Biscuits Vs. Brown, Case No.2000-0004*.

(iv) In addition, this Tribunal observes from the Whois Record of the Respondent in Annexure-1 that the Respondent herein is not associated or connected with the mark SKYSCANNER in the slightest manner.

(v) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona



fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply.

(vi) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

(i) It is seen from **Annexure-1**, the Whois record of the Respondent, the Respondent had registered the disputed domain name on 24<sup>th</sup> May, 2019 and whereas the Complainant's mark is registered as early as in 2009. By that time, the Complainant's SKYSCAN Mark, through extensive and continuous use, had acquired immense goodwill and reputation amongst the public and trade. The rights of the Complainant in the mark is also well established by various precedents submitted by the Complainant viz. *Skyscanner Limited Vs. Ali Karatas, fast line (UK) Ltd, D2016-0176, Skyscanner Limited V.Basit Ali, D2012-1983*.

(ii) Further the Complainant marked a collection of screenshots comprising the Complainant's core website confirming global visits, number of currencies and languages offered by the Complainant and web traffic details, taken from the Web analytic business Alexa as **Annexure-3**.

(iii) The Complainant placed reliance on the WIPO Case *Cho Yong Pil Vs. Sinwoo Yoon, D2000-0310*, wherein the Panel found bad faith registration when the Complainant's trade mark was famous at the time of registration. This Tribunal inclines to the same and holds that the Respondent's use of the impugned Domain name amounts to bad faith registration.





(iv) Hence, this Arbitral Tribunal is satisfied that the Respondent used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.

(v) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

**8. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "Skyscan" and also the disputed domain name www.skyscan.co.in be transferred to the Complainant.

  
\_\_\_\_\_  
**D.SARAVANAN**  
**Sole Arbitrator**  
28<sup>th</sup> September, 2019  
Chennai, INDIA