



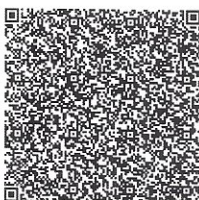
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BEFORE SHRI SANJAY KUMAR SINGH, ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRA)
IN RE:

SKYSCANNER LIMITED --- COMPLAINANT

VS

QINGDA YAN --- RESPONDENT

Sanjay Kumar Singh
20/05/2020

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Skyscanner Limited

Suite 7-001, 1 Fore Street

London, EC2Y 5EJ

United Kingdom

Email: david.yeomans@keltie.com

Through Authorised Representative

David Yeomans, Senior Associate

Keltie LLP, 1 London Bridge

London, SE 1 9BA

United Kingdom

COMPLAINANT

Versus

Qingda Yan

Shapingba

Shazhengjie

Chongqing

400044

CN

E-mail: domain.yqd@gmail.com

RESPONDENT

1. THE PARTIES:

COMPLAINANT:

Skyscanner Limited, Suite 7-001, 1 Fore Street, London, EC2Y 5EJ, United Kingdom; email: david.yeomans@keltie.com through Authorised Representative David Yeomans, Senior Associate, Keltie LLP, 1 London Bridge, London, SE 1 9BA, United Kingdom.

RESPONDENT:

Qingda Yan, Shapingba, Shazhengjie, Chongqing, 400044, CN
 E-mail: domain.yqd@gmail.com

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

The disputed Domain name of the respondent is: **"skyscanners.co.in"**.

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The trademark of the complainant is "**SKYSCANNER**". The registry is National Internet Exchange of India (NIXI).

3. **BRIEF BACKGROUND:**

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed thereunder.

The complainant submitted his complaint in the registry of NIXI. Shri Sanjay Kumar Singh was appointed as Sole Arbitrator in the matter by NIXI.

It is submitted by the complainant that it is the registered owner of the trademark "**SKYSCANNER**" having Trade Mark Registration NO. 1890840 filed on 2 December 2009, registered on March 1 2011 covering class 35, 38 and 39. The complainant has submitted that the Trade Mark SKYSCANNER is filed vide Indian Trade Mark Registration NO. 2287020 for Skyscanner & Cloud Device, filed on 22 February 2012, registered on 07 November 2016 covering classes 35, 39 and 42 in respect of goods and services.

The complainant has submitted that the disputed domain name is identical and deceptively similar to the domain name and trademarks of the complainant. The complainant has also submitted that respondent lacks or has no rights or legitimate interests in respect of the disputed domain name that is the subject of the complainant. The complainant has further submitted that the disputed domain name was registered in bad faith. The complainant has prayed that domain name "skyscanners.co.in" be transferred to the complainant and an award of cost be made in favour of the Respondent.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail.

Upon receipt of the complaint, the Arbitrator sent a notice dated 07-03-2020 to the respondent to send his defence / counter to the complaint along with supportive documents / evidence at his e-mail address within 7 days from receipt. But the respondent did not come forward and send his defence / counter to the complaint.

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However, the respondent did not send the defence / counter to the complainant. The Arbitrator again sent a notice dated 20-03-2020 by giving another opportunity to the respondent to send his defence / counter to the complaint within 7 days making it clear that in default or non-filing of the defence / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the complaint.

However, the respondent did not send the defence / counter to the complainant. The Arbitrator again sent a notice dated 09-04-2020 by giving last and final opportunity to the respondent to send his defence / counter to the complaint with further notice that in default or non-filing of the defence / counter to the complaint, the matter would be proceeded ex-parte and award would be passed ex-parte on merits of the case. It was also stated in the notice that it was last and final opportunity to the respondent and no further opportunity will be given. In spite of repeated notices, the respondent has again not come forward and has not sent any reply to the Arbitrator. Therefore, this matter is being decided on the merits of the complaint as per law of the land.

4. PARTIES' CONTENTIONS:

- (i) The complainant has alleged that domain name of the respondent is identical and confusingly similar to his trademark in which it has rights.
- (ii) The complainant has alleged that respondent does not have rights or legitimate interest in respect of domain name. The complainant has submitted that the term "Skyscanner" is not descriptive in any way, nor does it have any generic, dictionary meaning. Further, the complainant has not given its consent for the respondent to initiate its registered trademarks in a domain name registration. The complainant has submitted that there is no evidence of preparations to use the domain name for legitimate purposes or for a bonafide offering of goods and/or services. The respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to

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misleadingly divert consumers. The complainant has submitted a prima facie showing that respondent has no rights or legitimate interests in respect of the domain name.

- (iii) The complainant has submitted that it can be no coincidence that the respondent has chosen to register a domain name that is virtually identical to the complainant's distinctive "SKYSCANNER" trademark. The respondent has further submitted 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 such trading cannot constitute a bonafide offering of goods or services. As per the complainant the website the Domain Name is pointed contains a number of pay-per-click advertisements for services that compete directly with those offered by the Complainant. The complainant has contended that it is clear evidence that the respondent registered the domain name intending to trade on the goodwill of the Complainant's SKYSCANNER mark.

Finally, the complainant has submitted that there can be a finding of registration and use in bad faith where there is passive use of a widely known trade mark in a domain name where there is no response and no explanation as to why the use could be good faith. The complainant has relied on WIPO Case No. D2000-0003.

The respondent's intention is not to act in good faith but has got registered the disputed Domain name in bad faith.

The complainant has sought the relief of transfer of domain name "skyscanners.co.in" to him.

5. OPINION/FINDING:

The para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES:

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

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- “i) the Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant’s domain name has been registered or is being used in bad faith.”

The para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

6. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant’s documented out of pocket costs directly related to the domain name; or
- ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s

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website or location or of a product or service on the Registrant's website or location."

The para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

7. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii) the Registrant 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 trademark or service mark at issue."

The other fact, which is to be dealt with before going into merit is, that, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

8. OPINION AND FINDINGS ON MERITS

- A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.**

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It has been held in Indian decision **M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in aforesaid case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many above Indian cases and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287**. The complainant has made submission that it enjoys a reputation in its SKYSCANNER trademark, both in India and on a global scale. It is submitted by the complainant that it is the registered owner of the trademark "**SKYSCANNER**" having Trade Mark Registration NO. 1890840 filed on 2 December 2009, registered on March 1 2011 covering class 35, 38 and 39. The complainant has submitted that the Trade Mark SKYSCANNER is filed vide Indian Trade Mark Registration NO. 2287020 for Skyscanner & Cloud Device, filed on 22 February 2012, registered on 07 November 2016 covering classes 35, 39 and 42 in respect of goods and services.

Thus the conclusion is that the domain name '**skyscanners.co.in**' is identical and confusingly similar to the trademark of complainant

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'SKYSCANNER' and the complainant has established that he has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct congest and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not come forward inspite of repeated notices to submit any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither put forth nor has provided such evidence. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

C Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant.

Keeping in view above facts and circumstances it is thus clear that the respondent has registered the disputed domain name and in spite

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of repeated notices, he has not come forward and has neither provided any substantial evidence in its support.

Thus the conclusion is that the respondent has got registered his domain name "**skyscanners.co.in**" in bad faith.


9. CONCLUSION:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "**skyscanners.co.in**" to him, as he has established his bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.

No order as to costs.

Delhi

Date: 20-05-2020.


(Sanjay Kumar Singh)

Arbitrator