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**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1419**

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE AND THE
ARBITRATION AND CONCILIATION ACT, 1996**

FINAL AWARD

Statutory Alert

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**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN
NAME DISPUTE RESOLUTION POLICY THE INDRP RULES OF
PROCEDURE AND THE ARBITRATION AND CONCILIATION ACT,
1996**

IN THE MATTER OF:

Skyscanner Limited
Floor 11, Regent's Place
338 Euston Road
London NW1 3BT
United Kingdom

...Claimant

Versus

Ehitisham Akhtar
Street No.1, Chaklala,
Rawalpindi
Punjab – 46000

...Respondent

**A DISPUTE RELATING TO THE DOMAIN NAME -
SKYSCANNER.NET.IN**

FINAL AWARD

Dated: 07 October 2021
Venue: New Delhi, India



**ROBIN RATNAKAR DAVID
SOLE ARBITRATOR**

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I. PARTIES TO THE ARBITRATION

a) The Complainant

The Complainant is Skyscanner Limited having its registered business address at Floor 11, Regent's Place, 338 Euston Road, London NW1 3BT, United Kingdom, represented by Lewis Silkin LLP, 5 Chancery Lane Clifford's Inn London EC4A 1BL, DX 182 Chancery Lane Phone +44(0)20-70748000 infor@lewissilkin.com nick.bowie@lewissilkin.com

b) The Respondent

The Respondent is Ehitisham Akhtar, Street No.1, Chaklala, Rawalpindi, Punjab 460000 Pakistan.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

- a) The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name www.skyscanner.net.in with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure



posted on 16 September 2020 (the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

- b) The Complainant filed a Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain Name www.skyscanner.net.in to the Complainant. On 6 August 2021, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in this matter. Accordingly, consent was given, and this Arbitral Tribunal was constituted on 6 August 2021 under Rule 5(b) of the Rules. On 9 August 2021 the Arbitral Tribunal issued the notice of arbitration as required under Rule 5(c) of the Rules. The Respondent was granted an opportunity to file its response by 20 August 2021. The Tribunal served the Notice of Arbitration on the Respondent by email. The Tribunal also directed the Complainant to serve the Respondent by email. The Complainant informed the Tribunal that it complied with the directions and effected service on the Respondent. However, no response was filed by the Respondent.
- c) Therefore, in the interest of justice, on 25 August 2021 the Respondent was granted another opportunity to file a response by 6 September 2021. The notice was sent to the Respondent by email. However, the Respondent has not filed a response till date.
- d) The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.



III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

The disputed domain name skyscanner.net.in is registered with GoDaddy.com, LLC; <http://www.godaddy.com> having registrar IANA ID :146

User Form	skyscanner.net.in
ROID	D89864011C70B435398E373501 E1B4124-IN
Registrar Name	GoDaddy.com, LLC
IANA ID	146
Create Date	2020-12-05T12:07:07Z
Expiry Date	2021-12-05T12:07:07Z
Last updated Date	2021-08-02T06:23:56Z
Domain State	Registered
Assigned Name servers	n2.hosterpk.com n1.hosterpk.com
Registrant Client ID	CR454139675
Registrant ROID	C80826773038B4CE3A8B09EF4 4642F025-IN
Registrant Create Date	2020-12-05T12:07:05Z
Email	ehtisham.akhtar@hotmail.com
Phone	(+92).3045663532
International Postal Name	Ehitisham akhtar
International Postal Street Line 1	Street no 1 chaklala
International Postal Street Line 2	
International Postal Street Line 3	
International Postal City	rawalpindi
International Postal State	punjab
International Postal Postcode/Zip Code	46000
International Postal Country	PK
Registrant Registrar Name	GoDaddy.com, LLC
Registrant Registrar IANA ID	146
Registry Admin ID:	CR454139675
Admin Name:	Ehitisham akhtar
Admin Street:	Street no 1 chaklala
Admin City:	rawalpindi



Admin State/Province:	punjab
Admin Postal Code:	46000
Admin Country:	PK
Admin Phone:	(+92).3045663532
Admin Email:	ehtisham.akhtar@hotmail.com
Registry Tech ID:	CR454139676
Tech Name:	Ehitisham akhtar
Tech Street:	Street no 1 chaklala
Tech City:	rawalpindi
Tech State/Province:	punjab
Tech Postal Code:	46000
Tech Country:	PK
Tech Phone:	(+92).3045663532
Tech Email:	ehtisham.akhtar@hotmail.com

IV. PROCEDURAL HISTORY

- a) On 9 August 2021, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent by email with the Complaint and Annexures. The Respondent was given an opportunity to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 20 August 2021. The Complainant was directed to serve a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complaint (including annexures) was sent to the email address of the Respondent shown in the WHOIS details, accordingly, the service on the Respondent was done in accordance with Rule 2 of the Rules.
- b) The Respondent was again given an opportunity by direction dated 25 August 2021 to file a response by 6 September 2021. The notice with Complainant and annexures was sent at the email address of the Respondent shown in the WHOIS details, accordingly, the service on the Respondent was done in accordance with Rule 2 of the Rules.

V. PARTIES CONTENTIONS

a) THE CLAIMANT

1. The Complainant contends that the Respondent has no rights in any trademarks that comprise part or all of the disputed Domain Name and the same is identical to the Complainant's rights.
2. The Complainant has asserted that it is the owner of the following rights:
 - i) Indian Trade Mark Registration No. 1890840 for SKYSCANNER, registered on 21 March 2011 and covering "advertising services provided via the Internet; all relating to travel" in Class 35" and "travel information and arrangement services provided from an Internet website providing information via means of a global computer network" in Class 39;
 - ii) Indian Trade Mark Registration No. 2287020 for Skyscanner & Cloud Device, registered on 7 November 2016 and covering "advertising services provided via the Internet; all relating to travel" in Class 35" and "travel information and arrangement services provided from an Internet website providing information via means of a global computer network" in Class 39; and
 - iii) Indian designation of International Registration No. 1481492 for SKYSCANNER, registered on 6 June 2019 and covering



“booking of temporary accommodation; agency services for booking temporary accommodation” in Class 43.

3. Complainant relies on WIPO UDRP Panels rulings which have held that the Claimant enjoys a reputation in its SkyScanner / SKYSCANNER trademark:

i) D2012-1983: Skyscanner Limited had presented “...compelling evidence that its SKYSCANNER trademark enjoys considerable reputation among potential customers”.

ii) D2019-0888: Skyscanner Limited: “(1):... has registered its SkyScanner and SKYSCANNER marks in many countries around the world; (2), transacts an enormous volume of business by reference to those marks; (3) has received considerable publicity by reference to its corporate name over the year and (5) any use of that name anywhere in the world is likely to be actionable”.

4. It is asserted that the Respondent does not own any registered rights in any trademarks that comprise part or all of the disputed Domain Name. The term ‘SKYSCANNER’ is not descriptive in any way, nor does it have any generic, dictionary meaning. The Claimant has not authorised the Respondent to reproduce its registered trademark in a domain name registration, nor had the Registrant disclaimed any association with the Claimant on its website when the Domain Name did resolve to a website.

5. Claimant states that the Domain Name previously pointed to a website copying the Claimant’s core website, www.skyscanner.net.in, which sought to pose as the Claimant’s business and sell flights and



temporary accommodation to consumers. On 23 June 2021 the Claimant's representative filed a take-down notice at the Registrant's hosting service provider and on 25 June 2021, the hosting provider confirmed suspension of the website to which the Domain Name pointed.

6. Claimant states that the abovementioned use of the Domain Name to supply identical services to those protected by the Claimant's Indian trademark rights constitutes an infringement of those rights. Further, the Respondent's use the Domain Name to pose as the Claimant's business cannot constitute a legitimate interest in the Domain Name. The said use is fraudulent and intended to deceive consumers of the Claimant's services for illicit gain. The Domain Name was registered In December 2020 several years after the Claimant secured registered protection for its SKYSCANNER trade marks in India.
7. The Claimant submits that the Respondent was aware of the Claimant's Rights at the time it registered the Domain Name; the disputed Domain Name, www.skyscanner.net.in is virtually identical to the Claimant's core Domain Name, www.skyscanner.net, which the Claimant suggests was a calculated decision.
8. The Complainant submits that the Respondent's use of the Domain Name in this manner is designed to (a) act as a blocking registration, (b) disrupt the Claimant's business in the Indian market and (c) intentionally attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.



9. The Claimant submits that the Registrant is in breach of Sections 3(b) and (d) of the INDRP. Regarding S. 3(b), the Claimant submits that the Registrant was aware of the Claimant's Rights when it chose to register the disputed Domain Name.
10. Further, the Claimant submits that the Registrant is in breach of S. 3(d) of the INDRP, as it assumed the corporate identity of the Claimant, with a view to deceiving consumers and generating revenue from that deception.

b) THE RESPONDENT

1. The Respondent has not filed any response to the Notice of Arbitration dated 9 August 2021 and notice dated 25 August 2021. The Respondent has not replied to the contentions of the Complainant even though the Respondent has been served under the Rules. The emails of service sent to the Respondent were not returned undelivered. However, the Respondent's default would not automatically result in a decision in favour of the Complainant. The Supreme Court in *Sudha Agrawal v X Additional District Judge and others* (1996) 6 SCC 332 held that even in an uncontested matter the petitioner's case must stand on its own legs and it cannot derive any advantage by the absence of the defendants. Therefore, the Complainant must still establish each of the three elements required by paragraph 4 of the Policy.



VI. DISCUSSIONS AND FINDINGS

1. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy¹ namely:
 - a) The Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.
 - b) The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c) The Respondent's domain name has been registered or is being used in bad faith.
2. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:
 - a) **The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**
 - (i) The Complainant has contended that it owns Indian Trademark registrations as well as international

¹ 4. Class of Disputes

4. Class of Disputes: Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been registered or is being used in bad faith.



trademark registrations of the SKYSCANNER trademarks and names. The Complainant is the holder of trademark registered with the USTPO on 15 May 2007 and October 22, 2013 as also the Canadian Intellectual Property Office dated 10 January 2011. The Complainant also placed reliance on WIPO Case No. D2012-1983 and WIPO Case No. D2019-0888 to show that the Claimant enjoys a reputation in its Skyscanner trademark and trade name. The Complainant also contends that it owns the websites www.skyscanner.net and www.skyscanner.co.in and its SKYSCANNER smart device app has been downloaded over 70 million times. A careful consideration of the Trademark registrations and WIPO decisions abovementioned relied on by the Complainant establish the Complainant owns and holds intellectual property rights in the name, trademark and brand SKYSCANNER in India and other jurisdictions.

(ii) A visual comparison of the disputed domain name skyscanner.net.in of the Respondent with the Complainant's name, trademark, brand SKYSCANNER demonstrate that "SKYSCANNER" is entirely contained in the disputed domain name of the Respondent.

(iii) In *Yahoo! Inc. v Akash Arora & Anr.* (1999 PTC (19)210 Delhi), the Hon'ble Delhi High Court enjoined the use of domain name 'yahooindia.com' in a suit filed by Yahoo! Inc., the owner of the trademark "Yahoo" and the domain name <yahoo.com> by holding that defendant's domain name incorporated the plaintiff's name in its entirety and



was deceptively similar and could be perceived as being that of the Plaintiff's. In *eBay, Inc v. Progressive Life Awareness Network*, WIPO Case No. D2001-0068, the UDRP returned a finding that the domain name <gayebay.com> incorporated the Complainant's mark "ebay" in its entirety which is confusingly similar to Complainant's mark.

- (iv) The registered trademark(s) and brand name "SKYSCANNER" are distinctive and the Respondent's domain name "SKYSCANNER.NET.IN" bears the Complainant's registered trademark "SKYSCANNER" in its entirety. Considering the similarity between the Complainant's trademark and domain name "SKYSCANNER" and the disputed domain name "skyscanner.net.in" of the Respondent, the Arbitral Tribunal finds that an average consumer would be led to believe that the Complainant and the Respondent and/or the disputed domain name are related. After taking into consideration the facts of the present case and the settled law on the issue, the Arbitral Tribunal finds that the disputed domain name skyscanner.net.in is identical and confusingly similar to the Complainant's registered trademarks and service mark "SKYSCANNER". Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy paragraph 4(a) is satisfied.



b) The Registrant has no rights or legitimate interests in respect of the domain name

- (i) To pass muster under paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights to and legitimate interests in the disputed domain name under paragraph 6 of the Policy.
- (ii) According to paragraph 3² of the Policy, it is the obligation of the Respondent (registrant) to provide complete and accurate particulars and find out before registration that the domain name intended for registration does not violate the rights of any third party. The Complainant has been able to establish that the Complainant and its trademark, service mark and brand name have been in use since long and is commonly known by the name "SKYSCANNER" and that it owns and holds intellectual property rights in the name, trademark and brand name in India and other jurisdictions. However, the disputed domain name

² Paragraph 3 of the INDRP:

3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of domain name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.



www.skyscanner.net.in was created in December 2020. The Claimant has palced on record emails dated 23 June 2021 and 25 June 2021 which show that the Respondent was using the disputed domain name to pose as the claimant's business.

(iii) Accordingly, the Arbitral Tribunal finds that the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name www.skyscanner.net.in and has satisfied the second element under paragraph 4 (b) of the Policy.

c) The Registrant's domain name has been registered or is being used in bad faith

(i) It is evident that the Respondent knew of and targeted Complainant's trademark and Respondent has registered and used the Disputed Domain Name in bad faith. In *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, D2014-1754 (WIPO Jan 12, 2014) has been considered by *Valvoline Licencing and Intellectual Property LLC v. jau Khan* WIPO Case No. D2018-1486 based on the balance of facts set forth above and the latitude of the trademark, it is more likely than not that the Respondent knew of and targeted that Complainant's trademark and Respondent should be found to have registered and used the disputed domain name in bad faith.



Further the use of the term 'SKYSCANNER' in its entirety in the disputed domain name www.skyscanner.net.in is a deliberate attempt to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark to infringe and violate the rights of the Complainant.

- (ii) Considering the findings above, Arbitral Tribunal holds that the Respondent's domain name www.skyscanner.net.in has been registered and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

Considering the findings above, Arbitral Tribunal holds that the Respondent's domain name www.skyscanner.net.in has been registered with an opportunistic intention and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

VII. DISPOSITIONS

The Arbitral Tribunal holds that the Respondent's domain name www.skyscanner.net.in is identical and confusingly similar to the name, trademark and brand name "SKYSCANNER" owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name www.skyscanner.net.in and the same have been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant.

The Arbitral Tribunal directs that the disputed domain name www.skyscanner.net.in be and is transferred to the Complainant, Skyscanner Limited,



Floor 11, Regent's Place, 338 Euston Road, London NW1 3BT, United Kingdom.

Place of Arbitration: New Delhi, India

Date: 07 October 2021



Robin Ratnakar David

Sole Arbitrator

The Arbitral Tribunal