



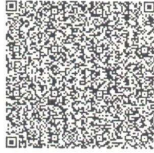
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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]
INDRP CASE NO: 1420
ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR
DR. SHEETAL VOHRA, LLB, LLM, PHD. (LAW)
ADVOCATE, DELHI HIGH COURT
COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION POLICY**

IN THE MATTER OF:

Skyscanner Limited,
Floor 11, Regent's Place,
338 Euston Road,
London, NW1 3BT,
United Kingdom.
Email: nick.bowie@lewissilkin.com

...Complainant

VERSUS

Mr. Artem Ponomarev,
Volzhskiy Bulvar 14,
130, Moscow,
Moscow Oblast
109125, Russia
Email: art.v.p.777@gmail.com

...Respondent

Sheetal Vohra

AWARD

1. THE PARTIES:

The Complainant in this proceeding is Skyscanner Limited and is represented herein by its authorised person Mr. Nick Bowie, Legal Director, Lewis Silkin LLP, 5 Chancery Lane, Clifford's Inn, London, EC4A1BL, United Kingdom. A copy of the Power of Attorney its authorised person Mr. Nick Bowie, Legal Director has been annexed as **Annex 1**.

The Respondent in this administrative proceeding is Mr. Artem Ponomarev, Volzhskiy Bulvar 14, 130, Moscow, Moscow Oblast 109125, Russia. The WHOIS details as provided by the Registrar has been annexed as **Annex 2**.

2. THE DOMAIN NAME AND REGISTRAR:

The disputed domain name: **WWW.SKYSCANER.CO.IN**

The domain name registered with .IN registry

3. PROCEDURAL HISTORY:

July 7, 2021:	Date of Complaint
August 6, 2021:	The .IN REGISTRY appointed Dr. Sheetal Vohra as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.
August 6, 2021	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to

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Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.

As the Respondent has failed to file his response within the stipulated 15 days time period intimated to all parties, the instant award is being passed.

4. FACTUAL AND LEGAL BACKGROUND:

I. It has been submitted that the Complainant is the owner of, *inter alia*, the following Rights:

- a) Indian Trade Mark Registration No. 1890840 for SKYSCANNER, which has registered on 21st 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;
- b) 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
- c) 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.

Copies of the above registration / renewal certificates have been annexed as **Annex 3.**

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II. It has been submitted that several WIPO UDRP Panels have held that the Claimant enjoys a reputation in its SkyScanner /SKYSCANNER trade mark, including but not limited to:

a) D2012-1983: Skyscanner Limited had presented “...*compelling evidence that its SKYSCANNER trade mark enjoys considerable reputation among potential customers*”.

b) 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 years... and (5) any use of that name anywhere in the world is likely to be actionable*”.

III. It has been submitted that at the time of the present Complaint, the Skyscanner website www.skyscanner.net attracts 100 million visits per month and, to date, its SKYSCANNER smart device app has been downloaded over 70 million times. The Claimant’s services are available in over thirty languages and in seventy currencies. Further, as of 12th November 2019 the Claimant’s website www.skyscanner.net was ranked 1,671st globally for internet traffic and engagement and 107th in the United Kingdom. It has been submitted that screenshots of (a) the Claimant’s core website, www.skyscanner.net, and (b) the internet traffic and engagement website Alexa.com confirm these facts which have been attached at **Annex 4**. It has been further submitted that moreover, the Claimant’s website dedicated to the Indian market, www.skyscanner.co.in, is ranked 1,576th in India for internet traffic and engagement and therefore, it supports their claim that the Claimant enjoyed a global reputation in its SKYSCANNER trade mark.

5. PARTIES CONTENTIONS:

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A. Complainant

- (a) The Domain Name is identical or confusingly similar to a Trademark of the Complainant
- (b) Respondent has no legitimate interest in the domain name
- (c) Respondent has registered the domain name in bad faith

The Complainant asserts that each of the aforementioned factors are established, as substantiated as substantiated below:

[A] The domain name is identical and/or confusingly similar to the Complainant's mark 'SKYSCANER'

It has been submitted that the Registrant's Domain Name is virtually identical to the Claimant's Rights; while the DomainName omits a letter 'n' it remains aurally identical to the Claimant's Rights.

[B] The Respondent has no rights or legitimate interests in respect of the domain name

It has been submitted that as far as the Claimant is aware, the Respondent does not own any registered rights in any trademark that comprise part or all of the disputed Domain Name.

It has been submitted that the term 'SKYSCANNER' is not descriptive in any way, nor does it have any generic, dictionary meaning. It has been submitted that the Claimant has not given its consent for the Respondent to reproduce a variation of its registered trade mark in a domain name registration, nor has the Registrant disclaimed any association with the Claimant on its website. It has been submitted that at **Annex 5** the screenshot of the website to which the Domain Name points was annexed in support of Complainant's claim. It has been submitted that in summary, the Domain Name resolves to a website that offers travel arrangement and information services to consumers, in direct conflict with the Claimant's core services. It has been submitted that such use, which is designed to generate revenue

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by misleading consumers into believing there is a connection between the Domain Name and the Claimant's Rights, cannot constitute a legitimate, non-commercial interest of bona fide use of the Domain Name. Finally, it has been submitted that the Claimant has made a prima facie case showing that the Registrant has no rights or legitimate interests in respect of the Domain Name. It was submitted that whilst the burden of proof lies on the Claimant, that burden is a shifting one such that it now falls on the Registrant to rebut the Claimant's prima facie showing. It has been submitted that in the absence of a response or assertion that any such right exists, this must lead to a presumption that the Registrant is unable to show that such right or interest exists.

[C] The Respondent registered and/or is using the domain name in bad faith

It has been submitted that as can be seen from Annex 1, the Domain Name was registered on 21 October 2019, several years after the Claimant first secured registered protection for its SKYSCANNER trade marks in India.

It was further submitted that the Registrant was aware of the Claimant's Rights at the time it registered the Domain Name, by which point the Claimant had enjoyed many years of commercial success under its SKYSCANNER trade mark (a fact confirmed by several UDRP Panels, including those identified above). Moreover, the Domain Name was registered three years after the Claimant was the subject of global press exposure, after it was acquired for GBP £1.4 billion by Ctrip, China's largest online travel agency. A representative collection of press articles was introduced at Annex 6.

It has been submitted that the disputed Domain Name, www.skyscanner.co.in was virtually identical to the Claimant's Domain Name dedicated to the Indian market, www.skyscanner.co.in, which the Claimant suggests was a calculated decision. This allegation is supported by the fact that the Registrant points the Domain Name to a website that supplies identical services to those protected by the Claimant's Indian trademarks.

Shuetar Vohra

It has been submitted that the Registrant'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 website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

6. REMEDIES SOUGHT

In accordance with the Dispute Resolution Policy the Complainant respectfully sought that the DomainName is transferred to the Complainant.

7. STATEMENTS MADE BY THE COMPLAINANT

The Complainant, has stated that by submitting, the Complainant agrees to the settlement of the dispute, regarding the domain name which is the object of the Complaint by final and binding arbitration in India conducted in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any by-laws, rules or guidelines framed there under, as amended from time to time.

The Complainant has agreed that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against the .IN REGISTRY, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute.

The Complainant has stated that by submitting this Complaint agrees that the decision of the Arbitrator to be appointed in this matter may be made public and may be

Uthairaj

published on the website including without limitation other forms of publication of the .IN REGISTRY.

Complainant has certified that the information contained in this Complaint is to the best of Complainant's knowledge and is complete and accurate, also that this Complaint is not being presented for any improper purpose, such as to harass the Respondent etc.

8. DISCUSSION AND FINDINGS:

The INDRP, which is the substantive law governing this proceeding, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant have 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.

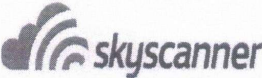
I hold that in the present case all three requirements for transfer have been met.

I have given considerable thought to the totality of the circumstances in this case and considered all relevant factors which include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the domain name may be put. I thereafter have no hesitation to hold that in the present case, all factors are satisfied.

The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

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I find that the Complainant is the registered proprietor in India of trademark nos. 1890840 for SKYSCANNER (word mark) in classes 35, 38 and 39 which dates back

to 02/12/2009, 2287020 for the mark  in classes 35, 39 and 42 and International Registration No. 1481492 and IRDI No. 4265146 for SKYSCANNER (word mark) in class 43. I further note that Skyscanner is also dominant and prominent part of company name of the Complainant. The Respondent has in the disputed domain name, www.skyscaner.co.in merely deleted single letter "N" and otherwise copied entire trademark and domain name of the Complainant. I find that the Complainant owns the SKYSCANNER word mark and device mark and has used its registered SKYSCANNER mark in its own domain name www.skyscanner.co.in which is very relevant to the current proceeding. I find that the disputed domain name is undeniably confusingly and deceptively similar to the Complainant's SKYSCANNER mark. I find that the disputed domain name deceptively incorporates the Complainant's mark SKYSCANNER. I find that the word SKYSCANNER is also dominant part of company name / trading style of the Complainant. I find that the a person with average intelligence and imperfect recollection would obviously not realize the minor addition and be misled into thinking that the said domain belongs to the Complainant only. I conclude that the Respondent has registered the disputed domain name which contains the registered trademark owned by the Complainant in India and prior used mark, so that he can ride on the goodwill and reputation attached to Complainant's trademark, company name and domain name. The disputed domain will lead to the inevitable conclusion and deception as it is confusingly similar to the SKYSCANNER mark, as well as the Complainant's domain name www.skyscanner.co.in the only difference being in deletion of single letter "N".

I place reliance on *M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd.* JT. (2004 (5) SC 541), wherein the Hon'ble Supreme Court of India held that, "Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain name also. In modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol."

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I place reliance on *Google, Inc. vs. Mr. Gulshan Khatri* INDRP/189 (2011), wherein it was held: "The act of registering a domain name similar to or identical to a famous trademark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the Complainant's trademark to either increase traffic to the disputed domain, or to seize a potential asset of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name."

Thus, as elucidated above, I hold that the disputed domain name is deceptively similar to the SKYSCANNER mark as per INDRP, para 4 (i); Rules 4 (b)(vi)(1).

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

I find that the disputed domain name is confusingly identical to the SKYSCANNER trademark in which the Complainant has legitimate rights. I find that the Respondent, on the other hand, has no right or legitimate interest in the disputed domain name. I find that the very fact that the impugned / disputed domain redirects to www.jetradar.com providing identical services very clearly portrays that the said domain has been registered in bad faith by the Respondent with no legitimate interest but to deceive the public.

I find that the Complainant has in Indi registered its SKYSCANNER marks and trademark no. 1890840 for SKYSCANNER (word mark) in classes 35, 38 and 39 which dates back to 02/12/2009 and the fact that the Complainant's website dedicated to the Indian market, www.skyscanner.co.in is ranked 1,576th in India for internet traffic and engagement shows that it enjoys a global reputation in its SKYSCANNER trade mark.

I find that the disputed domain name is deceptively similar to the SKYSCANNER mark in which the Complainant enjoys substantial reputation and goodwill. Thus, the Respondent can have no legitimate interest in the impugned domain name www.skyscaner.co.in other than with malafide intentions to ride on goodwill and

Gulshan Khatri

reputation attached to Complainant's trademark SKYSCANNER which is also dominant part of its company name.

I find that the fact that the disputed domain name has not been put to legitimate non-commercial fair use or commercial/business use, in the first place, clearly showcases that the Respondent has no rights or legitimate interests in respect of the disputed domain name, more so owing to the fact that the mark SKYSCANNER per se is known and associated with the Complainant alone. The Respondent thus, holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy ¶ 4(c).

Accordingly, and for all the reasons above, I hold that the Respondent has no rights or legitimate interest in the disputed domain name.

I hold that the disputed domain name has been registered or is being used in bad faith

I find that the very fact that the impugned / disputed domain redirects to www.jetradar.com providing identical services very clearly portrays that the said domain has been registered in bad faith by the Respondent with no legitimate interest but to deceive the public.

I find that the Complainant's SKYSCANNER mark is well-recognized and the Complainant has gained immense reputation and goodwill. I find that the by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the disputed domain's website by creating a likelihood of confusion with the Complainant's SKYSCANNER mark, as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. I find that the Respondent only aims at luring unwary customers and consumers and ride upon the reputation and popularity of the Complainant, and this clearly showcases the bad faith of the Respondent.

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I find that the fact that the SKYSCANNERmark was adopted and applied to unique and popular services by the Complainant prior to the registration of the disputed domain name makes it extremely unlikely that the Respondent created the said domain independently without any knowledge of the Complainant's popular SKYSCANNER mark or website.

I place reliance on *Google Inc. Sunil K. Support Solution Aditi Sawant, Support Solution Rohit Sharma/ Vineet Sharma Deep Sunil K*, FA1501001599162 (National Arbitration Forum, February 19, 2015) wherein the Panel held that, "Respondent's use of the contested domain name is an attempt to capitalize on the likelihood that Internet users will be confused as to the possibility of Complainant's association with the contested domain name and its website. Under Policy 4 (b) (iv), this stands as evidence of Respondent's bad faith in the registration and use of the domain name."

I place reliance on *Google Inc. vs. Chen Zhaoyang*, INDRP/23 (2007) wherein the Panel held that, "The Respondent has taken deliberate steps to ensure to take benefit of identity and reputation of the Complainant. The Respondent also provided web services which were similar to those of the Complainant. All these factors indicated that the disputed domain name was registered and used by the Respondent in bad faith in respect of the general commercial activities."

I find that the Respondent is attempting to use the disputed domain name in such a manner so as to lure unwary consumers. I find that a legitimate domain name owner would certainly create an active working website and keep it live if the same was adopted in an honest manner. When this is perceived in conjunction with the fact that the said domain name is deceptively similar to the Complainant's domain and prior trademark domain name www.skyscanner.co.in and trademark SKYSCANNER respectively, it is conclusively proved that the said domain has been registered only to misrepresent and mislead consumers all over the world under the guise of the Complainant. This irrefutably establishes that the said domain has been registered in bad faith by the Respondent.

Chetana Vohra

I place reliance on *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd* [AIR 2004 SC 3540], wherein it has held that the Respondent had registered domain names www.siffynet.com and www.siffynet.net which were similar to the Plaintiff's domain name www.sifynet.com. The Plaintiff was reputed and Sify was a coined mark comprising of Satyam and Infoway. The Hon'ble Supreme Court of India held that "domain names are business identifiers, serving to identify and distinguish the business itself or its goods and services and to specify its corresponding online location." The decision was in favour of the Plaintiff.

I place reliance on *Aqua Minerals Limited v. Mr Pramod Borse & Anr* [AIR 2001 Delhi 467], wherein the Hon'ble Delhi High Court observed that "Unless and until a person has a credible explanation as to why did he choose a particular name for registration as a domain name or for that purpose as a trade name which was already in long and prior existence and had established its goodwill and reputation there is no other inference to be drawn than that the said person wanted to trade in the name of the trade name he had picked up for registration or as a domain name because of its being an established name with widespread reputation and goodwill achieved at huge cost and expenses involved in the advertisement."

I place reliance on *Microsoft Corporation v. Montrose Corporation*, (WIPO Case No. D2000-1568), wherein it was held: "The incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith." I am of the view that the nature of Respondent's fraudulent activity in registering a domain name incorporating the SKYSCANNER mark with deletion of letter "N" not only showcases the full extent of knowledge that the Respondent has, of the Complainant, but also the extreme bad faith and *malafide* intent of the Respondent, while simultaneously causing damages and prejudice to the business of the Complainant, by unlawfully using the prior and registered SKYSCANNER mark of the latter.

I find that the Respondent has failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the

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impugned domain name registration does not infringe or violate someone else's rights. (*AB Electrolux vs. Liheng* INDRP/700) (August 03, 2015).

I hold that the facts and evidence overwhelmingly support the conclusion that the Respondent has registered the disputed domain name in bad faith.

For the foregoing reasons, I hold that the registration of the disputed domain name www.skyscanner.co.in is deceptively similar to the earlier SKYSCANNER mark of the Complainant, and that the Respondent has no rights or legitimate interest in and to the disputed domain name, and that the Respondent has registered and used the disputed domain name in bad faith.

I find that this illegal registration, in fact brings to light, the lack of interest of the Respondent to honestly use the domain name. Thus, it is but apparent that the Respondent has registered the domain name only to take unfair advantage of the Complainant's reputation and goodwill. Such use does not constitute a bonafide offering of goods or services under ICANN Policy 4(c) (i) or a legitimate non-commercial fair use under ICANN Policy 4(c) (iii).

The Complainant has placed reliance on D2012-1983: Skyscanner Limited had presented "*...compelling evidence that its SKYSCANNER trade mark enjoys considerable reputation among potential customers*".

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 years... and (5) any use of that name anywhere in the world is likely to be actionable*" which are applicable in the present case.

That I did not receive any Response/ Reply to the Complaint dated 6th August 2021 on behalf of the Respondent and hence rely only on the documents and pleadings submitted on record by the Complainant.

In view of all the above facts and well-known legal propositions and legal precedents I find and hold as under:

- that that the Respondent's domain name is misleading to the trademark in which the Complainant has rights.
- that the disputed domain name www.skyscanner.co.in is registered by the Respondent incorporates the Complainant's well-known trademarks.
- that due to the fame of the distinctive and reputation of the trademark of the Complainant, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- that Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name www.skyscanner.co.in.
- that the Complainant has prior rights in the trademark / acronym which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- that the disputed domain name has been registered in bad faith
- that the disputed domain name is identical to the Complainant's registered trademark in their entirety, in which the Respondent cannot have any rights or legitimate interest.

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9. **DECISION**

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "www.skyscanner.co.in" to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 28th Day September, 2021.



Dr. Sheetal Vohra

(PHD Law)

Sole Arbitrator

Date: 28/09/2021