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IN-DL56727474964254T

...Respondent (Registrant)

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1. The Parties

The **Complainant** in this arbitration proceeding is **Skyscanner Limited**, of the address:

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

The **Respondent/Registrant** in this arbitration proceeding is **Sugarcane Internet Nigeria Limited**

of the address: *4 Akanbi Danmola Street, off Ribadu Road, Ikoyi, Lagos 101233, Nigeria.*

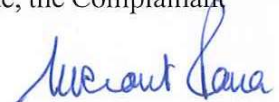
2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name **<SKYSCNNER.IN>** with the .IN Registry. The Registrant in the present matter is **Sugarcane Internet Nigeria Limited**, and the Registrar is **GoDaddy.com, LLC**.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated September 21, 2021, had sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of his availability and gave his consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on September 22, 2021. Thereafter the Arbitrator received soft copies of the Domain Complaint as filed by Complainant and the annexures thereto from NIXI on September 23, 2021 and confirmed receipt vide email on the same day. Further, vide the said email, the Arbitrator sought the Complainant's confirmation regarding service of the Domain Complaint as well as the annexures thereto upon the Respondent by post and/or email. Consequently, on September 27, 2021, the Arbitrator received an email from the Complainant's attorney, inter alia requesting if soft copy service upon Respondent would be considered sufficient as due to the circumstances surrounding COVID-19, they are all still working from home and arranging a hard copy despatch would be difficult for them. Accordingly, vide email dated September 28, Arbitrator waived the requirement of hard copy service and directed Complainant's attorney to serve a full set of the domain complaint as filed along with annexures upon the Respondent vide email and provide proof of service so that arbitration proceedings could be commenced. Thereafter, on September 30, 2021, Arbitrator was copied on an email from Complainant's attorney, inter alia serving a full set of the domain complaint as filed along with annexures upon the Respondent. The Arbitrator, vide email dated October 01, 2021, acknowledged receipt of the said email, however further directed Complainant's attorney to submit proof of service of the soft copy domain complaint as filed along with annexures (by way of delivery receipt/read receipt) upon the Respondent within the next 48 hours. Vide subsequent email of the same date, the Complainant



provided the Arbitrator with proof of delivery (delivery receipt) of the soft copy of the complaint and annexures as served on the Respondent vide email dated September 30, 2021. Vide email of October 04, 2021, the Arbitrator confirmed receipt of the proof of service of soft copy and waived the requirement of service by hard copy. The Respondent was deemed to have been sufficiently served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of the service email, i.e. till October 18, 2021, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter would be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from October 04, 2021.

On October 19, 2021, as the Respondent had not communicated any reply within the initial deadline of October 18, the Arbitrator granted a final and non-extendable period of **seven (7) days** i.e. till October 26, 2021, within which to submit a response (if any) in the matter.

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated November 01, 2021, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background/Complainant's Contentions and Arguments

Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights (INDRP, Clause 4(a))

The Complainant has submitted that it holds the following trademark registrations in India:

- Indian Trade Mark Registration No. **1890840 for SKYSCANNER**, 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;
- Indian Trade Mark Registration No. **2287020 for Skyscanner & Cloud Device**, 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
- Indian designation of International Registration No. **1481492 for SKYSCANNER**, covering "*booking of temporary accommodation; agency services for booking temporary accommodation*" in Class 43.

Complainant has submitted that their reputation in the name/mark **SKYSCANNER** has been recognized and upheld by several WIPO UDRP panels, including in the cases **D2012-1983** and **D2019-0888**.

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Complainant has further asserted that at the time of filing of the current complaint, Complainant's website attracts 100 million visits per month and, to date, its **SKYSCANNER** smart device app has been downloaded over 70 million times. Complainant's services are available in over thirty languages and in seventy currencies. Further, as of 12th November 2019 the Complainant's website www.skyscanner.net was ranked 1,671st globally for internet traffic and engagement and 107th in the United Kingdom. Moreover, Complainant's website is dedicated to the Indian market, i.e. www.skyscanner.co.in, is ranked 1,576th in India for internet traffic and engagement. Therefore, Complainant submits that it enjoys a global reputation in its **SKYSCANNER** trade mark. Complainant has annexed documents supporting their contentions as **Annex 4**. The Arbitrator notes that vide Annex 4, the Complainant has only provided website analytics data of its website skyscanner.net.

Complainant has submitted that the Respondent's domain name **SKYSCNNER.IN** is a near exact match of the Complainant's trademark, differing merely by one letter "a", which is an obvious and intentional misspelling of the Complainant's **SKYSCANNER** trademark. Complainant has additionally contended that the date of registration of the disputed domain name as reflected in its WHOIS records (i.e. August 28, 2021) is significantly several years subsequent to their having obtained statutory and common law trademark rights in India.

Registrant has no rights or legitimate interests in respect of the domain name (INDRP, Clause 4(b); Clause 6)

Complainant has claimed that, so far as they are aware, the Registrant does not own any registered rights in any trade marks that comprise part or all of the disputed Domain Name.

Complainant has also claimed that 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 Registrant to reproduce its registered trade mark in a domain name registration, nor had the Registrant disclaimed any association with the Complainant on its website (when the disputed domain name did resolve to a website), which, inter alia, includes a number of third-party links which redirects to related searches, including for airline tickets, travel planning and hotel deals, implying a connection with the Complainant's core business of air travel. Complainant has annexed a screenshot of the webpage available at the disputed domain name in support of their arguments in this regard.

Complainant has claimed that the Registrant's use of the disputed domain name to advertise identical services to those protected by the Complainant's Indian trade mark rights constitutes an infringement of those rights. Moreover, the Registrant's use of the disputed domain name to suggest a connection with the Complainant's business cannot constitute a legitimate interest in the disputed domain name, not least because such use aims to mislead consumers of the Complainant's services while generating a monetary return. Use of the disputed domain name to mislead consumers and redirect to competing services to those in which the Complainant enjoys a global reputation, cannot constitute a legitimate non-commercial interest in the disputed domain name.

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Complainant has submitted that they have accordingly established a prima facie case of showing that the Registrant has no rights or legitimate interests in respect of the disputed domain name, thereby fulfilling their obligation to show cause for the current action. Complainant has further submitted that the burden of proof has now accordingly shifted onto the Respondent to refute the Complainant's claims, and failure to do so should be construed as tantamount to admitting that the Respondent has no defence.

Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose

In support of this ground, Complainant has submitted that the Respondent has registered the disputed domain name on 28 August 2021, i.e. several years after the Complainant secured registered protection for its **SKYSCANNER** trade marks in India.

The Complainant has submitted that the Registrant was aware of the Complainant's rights at the time it registered the disputed domain name especially since the Complainant was the subject of global press attention when it was acquired by Ctrip, China's largest online travel business, for GBP £1.4 billion in November 2016. Complainant has annexed a representative collection of international press articles in this regard as **Annex 6**.

Complainant has submitted that the disputed domain name, www.skyscanner.in, is virtually identical to the Complainant's domain name dedicated to the Indian market, i.e. www.skyscanner.co.in, which, the Complainant suggests was a calculated decision as the disputed domain name points customers to identical services to those protected by the Complainant's Indian trade marks. This goes as far as including a link to "Skyscanner Flights" purporting to redirect customers to the Complainant's website, with the aim of deceiving consumers into believing they are accessing the Complainant's services.

The Complainant has submitted that the Registrant's use of the disputed domain name in this manner is designed to (a) disrupt the Complainant's business in the Indian market and (b) intentionally attract for commercial gain, Internet users to the Registrant's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

The Complainant has submitted that the Registrant is in breach of Sections 3(b) and (d) of the INDRP, insofar as the Registrant is claimed to have been aware of the Complainant's trademark rights when it chose to register the disputed domain name and had yet affirmed that their registration of the domain name would not infringe upon any third party's rights or constitute a violation of any applicable laws.

The Complainant has submitted that upon becoming aware of the details of the Registrant, the Complainant had run a search for the Registrant name as a Respondent in other domain name dispute decisions. The Complainant has noted that there are **14 WIPO decisions** against the Registrant, all resulting in a decision against the Registrant to cancel or transfer of the disputed domains to the respective complainants. The Complainant has submitted that these decisions are persuasive and evidence that the Registrant's registration of the disputed domain name

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forms part of a pattern of abusive and bad faith registrations, and has annexed a list of relevant decisions in this regard as **Annex 7**.

Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 4(b)(vii) of the INDRP Rules of Procedure)

The Complainant has requested that the domain name <SKYSCANNER.IN> be transferred to them.

5. Respondent's Contentions

As already mentioned in the Procedural History of the matter, despite having been duly served with a copy of the Domain Complaint as filed, and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

6. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

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

- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**
(Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)


The Complainant has established its rights in the mark **SKYSCANNER** in India (vide Registration Nos. 1890840 and 2287020 and IRDI No. 4265146 (corresponding International Registration No. 1481492) and based on the evidence placed on record, Complainant has demonstrated that it is the owner and registered proprietor of the trademarks **SKYSCANNER**

and **Skyscanner & Cloud Device**  which are registered in many jurisdictions throughout the world, including in India.

Complainant's rights in their registered trademarks can be seen to significantly pre-date the registration of the domain name <SKYSCANNER.IN> by the Respondent as of August 28, 2021.

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Complainant has further submitted evidence of the popularity and distinctiveness acquired by

their brand SKYSCANNER/  skyscanner by way of hits on their websites, both globally as well as in India.

It is observed that the disputed domain name <SKYSCNNER.IN> comprises of the word "SKYSCNNER" which appears to be an intentional misspelling of the Complainant's trademark SKYSCANNER. As submitted by the Complainant, the mere elimination of the alphabet "A" from the Complainant's trademark does nothing to take away from the obvious deceptive identity of the domain name <SKYSCNNER.IN> with the Complainant's trademark.

Further, the Complainant has referred to the favourable WIPO decisions in UDRP Case Nos. D2012-1983 and D2019-0888, wherein previous UDRP panels have recognized and upheld the Complainant's trademark rights and acquired reputation in their trademarks SKYSCANNER/

 skyscanner.


In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain <SKYSCNNER.IN> is identical/ confusingly similar to the

Complainant's trade mark(s) SKYSCANNER/  skyscanner.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has submitted that, to the best of their knowledge, the Respondent has no right or legitimate interest in respect of the domain <SKYSCNNER.IN>.

In the present dispute, Complainant has established that it has rights over the trademarks

SKYSCANNER/  skyscanner and that the domain <SKYSCNNER.IN> is identical/ confusingly similar to the Complainant's trademark.

The element under Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in *Huolala Global Investment Limited v Li Chenggong (INDRP /1027)* that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the

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Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a *prima facie* case, then the Complainant prevails.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests, even though extended time period and ample opportunities were granted to the Respondent in this regard. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 6 of the INDRP.

Further, it has been contended by the Complainant that they have not licensed or authorized the Respondent to use their trademark in respect of the said domain name, nor did the Respondent disclaim association with the Complainant and their service offerings on the website. Neither is there any evidence on record to suggest that the Respondent is commonly known by the said trademark/domain name. Further, as submitted by the Complainant, the impugned domain is being used in connection with providing services for airline bookings, travel planning and hotel deals, which are part and parcel of the Complainant's core areas of business. In the absence of any defence tendered by the Respondent, the Arbitrator is constrained to give merit to the Complainant's allegations *inter alia* stating that the Respondent is misleading consumers of the Complainant's services while generating a monetary return by purporting to offer identical services.

Accordingly, the Complainant's claim that such use by the Respondent is neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the domain name holds merit. In view of the above, it can be stated that *prima facie* the Respondent cannot be said to be making legitimate or fair use of the domain name.

The Complainant has established a *prima facie* case of its rights in the trademarks

SKYSCANNER/skyscanner, and in view of the Respondent's non-response, despite ample opportunities having been provided to them, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bona fide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(b) of the .IN Domain Name Dispute Resolution Policy.

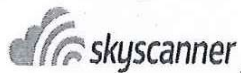
iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)

Paragraph 7 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise

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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 (b) 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 (c) 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 website or location or of a product or service on the Registrant's website or location.

The Complainant has established its rights in the trademarks **SKYSCANNER/**



, along with submitting evidence of its trademark registrations pre-dating the Respondent's registration of the impugned domain. Further, Complainant has submitted that given the prior use and public visibility of the trademarks **SKYSCANNER/**



, the Respondent had prior knowledge of the Complainant's mark. Complainant has further substantiated this claim by indicating that the Respondent has even included a link for "*Skyscanner Flights*", inter alia incorporating the Complainant's trademark **SKYSCANNER** in toto, and further purporting to redirect customers to the Complainant's website, with the aim of deceiving consumers into believing they are accessing the Complainant's services while generating pay-per-click monetary returns.

The Complainant has claimed that the Registrant's use of the Domain Name in this manner is designed to (a) disrupt the Complainant's business in the Indian market; and (b) intentionally attract for commercial gain, Internet users to the Registrant's web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

Based on the above, it appears that by registering and using the domain **<SKYSCNNER.IN>**, the Respondent has engaged in conduct as enumerated in paragraph 7 (c) of the INDRP, namely that *it has intentionally attempted to attract Internet users to the Registrant's website or other on-line 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 website or location or of a product or service on the Registrant's website or location.*

By virtue of such knowledge attributable to the Respondent, they have also been shown as having intentionally violated the provisions under Clauses 3(b) and (d) of the INDRP, which, inter alia, require a Registrant to affirm that they are not knowingly infringing any third party's rights or in contravention of any applicable law or regulation.

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The Complainant has also annexed evidence establishing the current Respondent to be a serial infringer, having to date 14 WIPO decisions against them for intentional cybersquatting and wrongful holding of third party domain names.


Finally, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use and/ or adoption of the disputed domain name.

In light of the above and in the absence of any defense by the Respondent, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.

7. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has established rights over the

trademarks **SKYSCANNER**  **skyscanner**. In light of the non-response by the Respondent, the Complainant has been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain **<SKYSCNNER.IN>** to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.


Vikrant Rana, Sole Arbitrator

Date: November 30, 2021.

Place: New Delhi, India.