

தமிழ்நாடு தமில்நாடு TAMILNADU

17 MAR 2020

**D. SARAVANAN**

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing

Reheja Towers, Near LIC

No.113-134, Anna Salai, Chennai 600 002

**AX 614235**

P.S. SHANKRGA SHINDARAM

STAMP VENDOR

L.No. B4 / 109 / 88

HIGH COURT CAMPUS

CHENNAI - 600 104. (TAMIL NADU)

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

**INDRP Case No. 1218**

Disputed Domain Name: <skyscanner.co.in>

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

.. Complainant

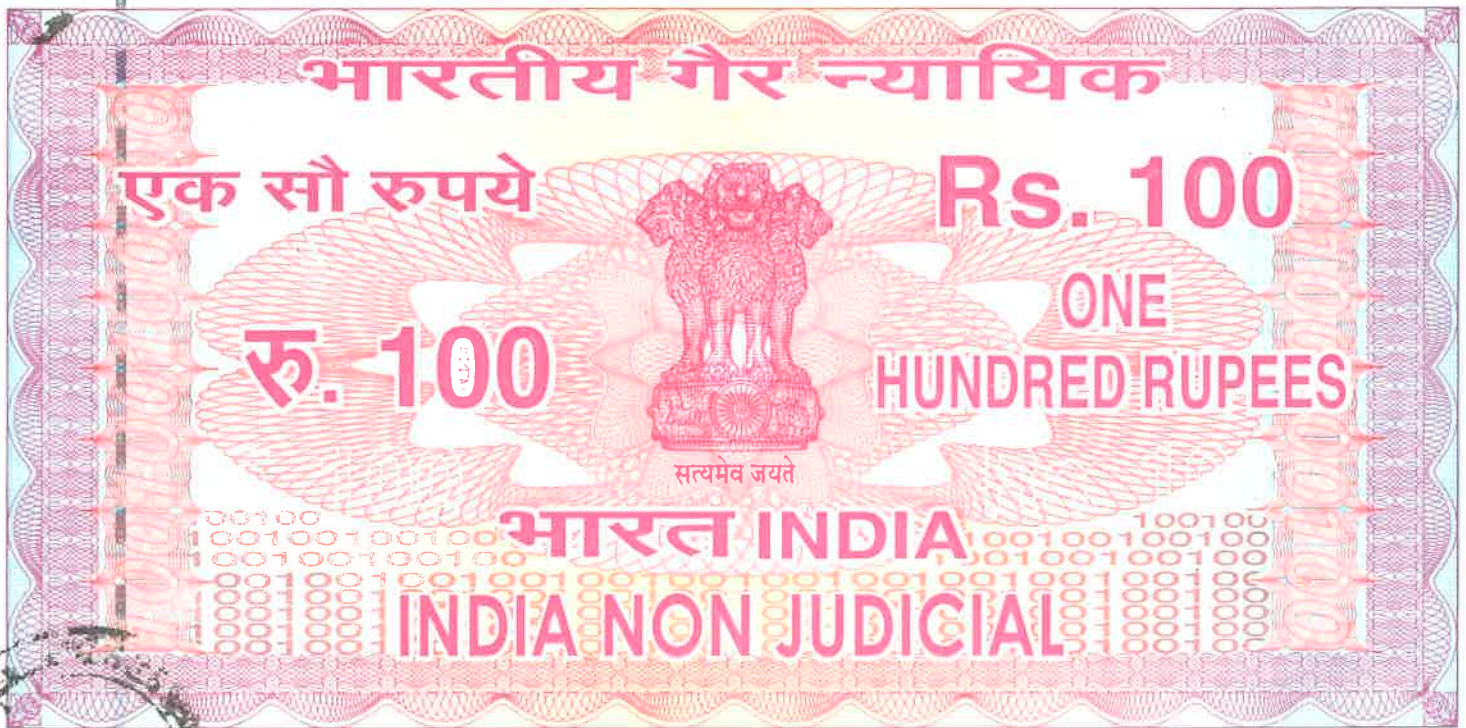
Vs.

Artem Ponomarev  
Volzhskiy bulvar 14, 130  
Moscow  
Moskovskaya oblast  
109125  
RU.  
art.v.p.777@gmail.com

.. Respondent







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17 MAR 2020

**D. SARAVANAN**

Advocate & Arbitrator

Unit No.208, 2nd Floor, Beta Wing

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P.S. SHANMUGA SUNDARAM

STAMP VENDOR

L.No. 84 / 109 / 88

HIGH COURT CAMPUS

CHENNAI - 600 104. (TAMIL NADU)

-2-

### AWARD

#### 1 The Parties:

The Complainant Skyscanner Limited, is a company owning the Indian Trademark Registration No. 1890840 for SKYSCANNER and Indian Trademark Registration No. 2287020 for Skyscanner & Cloud Device, with its office at Suit 7-001, 1 Fore Street, London, EC2Y 5EJ, United Kingdom. The Complainant is represented through its Attorneys, David Yeomans, Senior Associate, Keltie LLP, 1 London Bridge, London, SE1 9BA, United Kingdom.



The Respondent Artem Ponomarev having his address at Volzhskiy bulvar 14, 130, Moscow, Moskovskaya oblast, 109125, RU, is the current Registrant of the disputed domain name <skyscaner.co.in>. The Respondent neither represented himself nor was represented by anyone.

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

The disputed domain name is <skyscaner.co.in> The domain name has been registered with .IN REGISTRY through its Registrar, Endurance Domains Technology LLP.

## **3. Procedural History:**

2 <sup>nd</sup> March, 2020	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
2 <sup>nd</sup> March, 2020	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
5 <sup>th</sup> March, 2020		.IN REGISTRY sent an email to all the concerned intimating the appointment of 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 courier.



9 <sup>th</sup> March, 2020	:	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.
19 <sup>th</sup> March, 2020	:	Due date for filing response.
20 <sup>st</sup> March, 2020	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.
14 <sup>th</sup> May, 2020	:	The award should have been published within 60 days i.e., on or before 08.05.2020. However, this Arbitral Tribunal was unable to do it due to intervention of lockdown on account of COVID – 19 between 22 <sup>nd</sup> March, 2020 and hence the award was published on this day.

#### **4. Factual Background:**

##### **4.1 The Complainant:**

The Complainant Skyscanner Limited, having its office at Suite 7-001, 1 Fore Street, London, EC2Y 5EJ, United Kingdom. The Complainant is represented through its Attorneys, M/s. David Yeomans, Senior Associate, Keltie LLP, 1 London Bridge, London, SE1 9BA, United Kingdom.



## 4.2 Complainant's Rights

(i) The Complainant submits that the Complainant is the owner of the Indian Trademark Registration No.1890840 for SKYSCANNER in the name of Skyscanner Limited, filed on 2 December 2009, registered on 1 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) The Complainant submits that the Complainant is the owner of the Indian Trade Mark Registration No.2287020 for Skyscanner & Cloud Device, filed on 22 February 2012, registered on 7 November 2016 and covering:

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

Class 39: Travel information and arrangement services provided from an internet website; providing information via means of 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.

Evidence of the existence of these rights is provided at **Annex 2** of the Complaint.

The Complainant's Trade Marks are used in relation to all services protected by its abovementioned Rights.

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

The Complainant in its Complaint has provided the following details of the Respondent:

Registrant Name	Artem Ponomarev
Registrant Organization	-
Registrant Street	Volzhskiy bulvar 14, 130
Registrant City	Moscow
Registrant State/Province	Moskovskaya oblas
Registrant Postal Code	109125
Registrant Country	RU
Registrant Phone	(+7). 4990000000
Registrant Email	art.v.p.777@gmail.com





## 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 <skyscanner.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 the Complainant is the owner of Indian Trade Mark Registration Nos. 1890840 for SKYSCANNER and 2287020 for Skyscanner & Cloud Device ("the Complainant's Rights"). The Complainant's Rights were registered on 1 March 2011 and 7 November 2016 respectively. The registration dates of the Complainant's Rights pre-date the registration date of the disputed Domain Name by a good many years.
- b) The Complainant submits that it enjoys a reputation in its SKYSCANNER trade mark both in India and on a global scale. In



this regard, UDRP Panels have held in several Decisions (including Case Nos. D2016-07176, 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 trade mark 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 trade mark enjoys considerable reputation."

c) The Complainant also 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;
- Any use of the SKYSCANNER name anywhere in the world is likely to be actionable





- d) Furthermore, the Complaint also relies on the recent INDRP case no.1139 concerning a complaint by the Complainant in relation to the Domain Name <skyscan.co.in>, the Arbitrator stated that by 2009 "the Complainant's SKYSCANNER mark, through extensive and continuous use, has acquired immense goodwill and reputation amongst the public and trade".
- e) That, 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 service are available in over thirty languages and in seventy currencies (Including Indian Rupees).
- f) The Complainant submits that, its specialist website relating to the Indian market, [www.skyscanner.co.in](http://www.skyscanner.co.in), ranks as the 617<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 8,355<sup>th</sup> globally.
- g) The Complainant at **Annex 3** has marked 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.
- h) In the light of the above, the Complainant submits that it enjoys a reputation in its SKYSCANNER trademark, both in India and on a global scale.



- i) 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. The Complainant submits that the Respondent has failed in his responsibility to carry out his abovementioned responsibilities.
- j) The Complainant submits that the Domain Name is virtually identical to the Complainant's service mark SKYSCANNER. The Complainant submits that as a matter of principle, the addition of ccTLDs can be disregarded when comparing a domain name and a trade mark; the comparison is therefore between SKYSCANNER and SKYSCANER which are clearly very similar indeed (the Domain Name is a deliberate misspelling of the Complainant's mark).

**(ii) The Respondent has no rights or legitimate interest in the domain name <skyscanner.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 as the Complainant is aware, the Respondent does not own any registered rights in any trade marks which comprise part (or all) of the disputed domain name.
- b) That, the term "Skyscanner" is not descriptive in any way, nor does it have any generic, dictionary meaning. The Complainant submits that, it has not given its consent for the Respondent to imitate its registered trademarks in a domain name registration.



- c) That, at the time of filing of this Complaint, the Domain name automatically redirects to <jetradar.com>. The Complainant has attached at **Annex 4** a screenshot of the website to which the Domain Name points. Since the disputed Domain Name does not resolve to an active website operated by the Respondent, there is no evidence of preparation to use the Domain Name for legitimate purpose 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. In fact, the Respondent is clearly intending to mislead and divert customers to the jet Radar website.
- d) Given that, (a) the Respondent has never had the Complainant's authorization to use its trade mark or apply to register Domain Name 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 has submitted 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. D2000-0004).



**(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) As can be seen from **Annex 1**, annexed by the Complainant in the Complaint, the disputed Domain Name <skyscanner.co.in> was registered by Respondent on 21 October, 2019.
- b) Given that the Complainant's Rights date back to 2009, the Complainant submits that the Respondent must have been aware of the Respondent of the Complainant's business under its SKYCANNER trade mark 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 in circumstances 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 virtually identical to the Complainant's distinctive SKYSCANNER trade mark. 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 the rights and such trading cannot constitute a bona fide offering of goods or services; see *Aon PLC and Ors. V Guanrui*, 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 website to which the Domain Name points provides services that compete directly with those offered by the Complainant. This is clear evidence that the Respondent registered the Domain Name intending to trade on the goodwill of the Complainant's SKYSCANNER mark.
- e) It is submitted that the only reason why the disputed Domain Name has been directed to such a website is to capitalise on the reputation and goodwill established by the Complainant in order to redirect internet traffic intended for the Complainant away from the Complainant to the website to which the disputed Domain Name resolves in order to create income. Such behaviour cannot constitute a bona fide or legitimate use of the disputed domain name.
- f) That, it is clear from the above that the Respondent is seeking financial gain by misdirecting consumers to the services of the Complainant's competitors to the clear and obvious detriment of the Complainant. The Complainant submits that this is one such case where the Respondent cannot possibly provide a reasonable or meaningful reason to justify its acquisition of the Domain Name in a manner that would not take advantage of the Complainant's Rights, since there can be no circumstances in which it would be legitimate for the Respondent to hold the Domain Name in question.



- g) There is also a real risk that the Domain Name could be used by the Respondent for illegitimate purposes; the Respondent could set up email addresses associated with the Domain Name and use those to mislead consumers. The Complainant has been targeted in this way frequently in the past.
- h) Furthermore, the Complainant submits that the Respondent is engaged in a pattern of registering domain names that include a famous trade mark (or a deliberate misspelling thereof) in bad faith. A Reverse Whois Lookup conducted on 15 February 2020 (a copy of which can be found at **Annex 5**) revealed that the Registrant's email address is matched against a number of domain names which contain famous trade marks or deliberate misspellings thereof. Examples include
- <eventbride.com>
  - <audibule.com>
  - <jetbleue.com>
  - <ooutlook.com>
  - <sakefifthtavenue.com>
- i) Finally, the Complainant submits 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 (see TELSTRA CORPORATION LIMITED V. NUCLEAR MARSHMELLOWS, WIPO case No. D2000-0003).



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

## **B. Respondent:**

The Respondent, in spite of notice dated 9<sup>th</sup> March, 2020 and default notice dated 19<sup>st</sup> March, 2020 did not submit any response.

## **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 that Respondent have been notified of the complaint of the Complainant. 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 20<sup>th</sup> March, 2020.

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 the registered trademarks "SKYSCANNER, Skyscanner & Cloud Device" in India. The same is evident from **Annexure 2** marked by the Complainant. The Complainant is globally recognized name and its specialist website relating to the Indian market, [www.skyscanner.co.in](http://www.skyscanner.co.in), is said to be in the 617<sup>th</sup> rank in most popular Indian website. The Complainant's website also ranks in 8,355<sup>th</sup> position globally and the same is evident from **Annexure 3** marked by the Complainant. The disputed Domain Name <skyscanner.co.in> comprises "skyscanner" ".co" and ".in". As noted above, the Complainant's trademark is "SKYSCANNER". The disputed Domain Name omits one "n" from the Complainant's registered trademark "SKYSCANNER". ".co" is the acronym for the company and the domain extension ".in" is the country code Top Level Domain (ccTLD), both are suffixes to the complainant's registered trade mark. The omission of one "n" from the Complainant's registered trademark is non-distinctive and incapable from differentiating the disputed Domain Name from the Complainant's registered trademark having phonetic similarity. The Complainant's Indian trademark registration was first done in the year 2011, whereas, from **Annexure 1** marked by the Complainant it can be found that the Respondent has registered the disputed Domain Name only on 21 October 2019 and thus it is the rightful proprietor of the trademark "SKYSCANNER" by virtue of priority in adoption and registration, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade.





- (ii) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.
- (iii) The Arbitral Tribunal therefore 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. Paragraph 7 of the .IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal however does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "SKYSCANNER". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.



- (ii) Further as observed above, the Complainant's registration of mark dates back to 2009 whereas, the disputed domain name is registered only in the year 2019. Moreover, the Complainant's burden of proof 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. The Same is held in the decision of *Mondich and American Wine Biscuits V. Brown, Case No. D2000-0004*).
- (iii) The WHOIS lookup in **Annexure 1**, reflects that the disputed domain name, <skyscanner.co.in> belongs to the Respondent herein namely, "Artem Ponomarev, having his address at Volzhskiy bulvar 14, 130, Moscow, Moskovskaya oblast, 109125, RU", who is not even in the slightest manner connected with the Complainant or Complainant's marks, namely "SKYSCANNER".
- (iv) The above establishes that the Respondent do not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits.
- (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 applies. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark. The Respondent is therefore found to have acted in a way that tarnishes the Complainant's well-known mark "SKYSCANNER", by using the mark without any proper authorization.

(vi) In light of the above, this Tribunal finds that the Respondent does not have any rights or legitimate interest in the domain name.

(vii) 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 Respondent has registered the disputed domain name on 21<sup>st</sup> October, 2019 which is very much after the date of registration of the Complainant's trademark. By that time, the Complainant's mark, "SKYSCANNER" through extensive and continuous use, had acquired immense goodwill and global success. The UDRP panel's decision in WIPO Case D2000-0310, has found bad faith registration in circumstances when the Complainant's trade mark was famous at the time of registration of the disputed domain name.

(ii) The Complainant had cited various INDRP decision to establish 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 trade mark. The Respondent having registered a similar Domain Name intending to trade on the goodwill of the mark in which the complainant enjoys the rights and such trading cannot constitute a bona fide offering of goods or services. The decisions supporting the same are, *Aon PLC and Ors. V Guanrui, 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.*

- (iii) The Complainant in **Annexure 5** has further established that the Respondent's mail address is matched against a number of domain names containing various famous trademarks or deliberate misspellings. The 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 is held in the decision of TELSTRA CORPORATION LIMITED V. NUCLEAR MARSHMELLOWS, WIPO case No. D2000-0003.
- (iv) From the discussions above, it is drawn that the Respondent is involved in cyber-squatting by registering domain names containing well known trademarks and thereby making illegal benefits.
- (v) The Respondent has no legitimate rights or interests in the disputed





domain name and there was a *mala fide* intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

- (vi) The Arbitral Tribunal is satisfied that the Respondent's registration and use of the Complainant's domain name is in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.
- (vii) 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 "SKYSCANNER" and also the disputed domain name <skyscanner.co.in> be transferred to the Complainant.



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**D.SARAVANAN**  
**Sole Arbitrator**  
14<sup>th</sup> May, 2020  
Chennai, INDIA