



दिल्ली DELHI

VISHESHWAR SHRIVASTAV

T 290879

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"skype.co.in"

between

SKYPE

...COMPLAINANT

AND

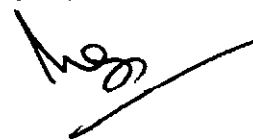
HOSTMASTER SKYPE NETWORK LIMITED ... RESPONDENT

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 19/05/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents and also there was no PoA in favour of Don C. Moody, Esq., the Ld. Counsels for the Complainants. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a hard copy of their complaint to the Respondents by Courier and also supply a copy of their authority authorizing Don C. Moody, Esq., to act on behalf of the complainants.

2. That compliance of the order was complied to by the Complainants vide their email dated 24/05/2012 in which they sent a copy of a courier receipt of M/s FedEx waybill No.798426099347 which on tracking revealed that the same has been received by the Respondent and signed for by J.Jessica. A copy of the POA of the Complainants was also sent. Hence, this Tribunal vide order dated 25/05/2012 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard



copy by Courier so as to reach this Tribunal latest by 4th June 2012.

3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried their level best to serve the Respondents on the address provided by him in WHO IS. The email id of the Respondent as provided in the WHOIS is not responding but nevertheless the hard copy of the complaint has been duly received by the Respondent. Be it that as it may this Tribunal notes that the copy(s) of the complaint is with the Respondent hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings or is incapacitated in any way from sending his response to the complaint.

4. In view of the above this Tribunal vide order dated 11/06/2012 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of

Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.


5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

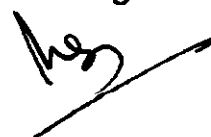
6. The claim as put forward by the complainant is briefly as under:
 - A. The mark at issue is the term "SKYPE" to which the Complainant claims that it has established strong rights as it has registered trademarks for the term "SKYPE" in a host of countries throughout the world including, without limitation Argentina, Australia (First registered August 2004), the Benelux Countries, Canada, Chile, China, Colombia, the Czech Republic, Egypt, Estonia, Finland (First registered

December 2004), Hong Kong (First registered February 2004), Hungary, Indonesia, Israel, Japan, the Republic of Korea, Liechtenstein (First registered June 2004), Malaysia (First registered January 2004), Mexico (First registered October 2004), Morocco, New Zealand, Norway, the Russian Federation, Singapore, South Africa, Switzerland (First registered May 2004), Taiwan, Thailand, Turkey, the United States of America and Vietnam. Reliance is placed on **Annex L**. It is also claimed that the complainant also currently has several applications for registration pending in India and this fact is sufficient to support a claim of trademark rights under the Policy for which reliance has been placed on a judgment reported as Zynga, Inc. v. Shawn Li, Case No. INDRP/275, regarding <zynga.co.in> (NIXI, 10 January 2012).

B. The Complainant further contends that it has Unregistered/"Common Law" Rights which as per the complainants can be acquired on account of priority in adoption, use and even on account of Trans Border



Reputation spilling over to India. The Complainant claim that they and its affiliated entities have used the "SKYPE" mark continually throughout the world since at least 2003, which allows users to make voice and data communications over the Internet and via mobile devices, a function commonly known as "Voice over Internet Protocol" ("VoIP"). To fortify their claim the complainant place reliance on a copy of initial press release announcing the launch of Complainant's product, along with "WHOIS" information showing the registration of the domain name <skype.com>, both from 2003, which is **Annex M**. It is stated that "SKYPE" mark has been used and advertised extensively in commerce, both in India and throughout the world via the Internet. Further, Complainant and/or its affiliated entities have invested substantial sums of money to develop consumer recognition in the "SKYPE" brand, along with its associated logos and marketing collateral. It is claimed that as of June 2010, the "SKYPE" software application had accumulated over five hundred and sixty (560) million registered users, with as many as twenty-eight (28) million people using it online as on



February 2011. Thus the Complainant has established strong "common law" trademark rights in the "SKYPE" brand in all countries which recognize such rights, including India.

- C. It is further claimed that the term "SKYPE" is a "coined," invented word and carries a high degree of inherent distinctiveness.
- D. The complainants have given a list of domain names held by them along with their associates and these include:

- <skype.in> (India)
- <skype.ac> (Ascension Island)
- <skype.ag> (Antigua Barbuda)
- <skype.ai> (Anguilla)
- <skype.com.ar> (Argentina)
- <skype.as> (American Samoa)
- <skype.asia> (Asia)
- <skype.at> and <skype.co.at> (Austria)
- <skype.be> (Belgium)
- <skype.bo> (Bolivia)
- <skype.bs> (Bahamas)
- <skype.by> (Belarus)
- <skype.ca> (Canada)
- <skype.cd> (Congo)
- <skype.ch> (Switzerland)
- <skype.cn> and <skype.com.cn> (China)
- <skype.cr> and <skype.co.cr> (Costa Rica)

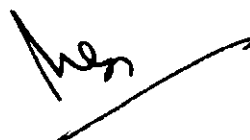


- <skype.com.co> (Colombia)
- <skype.cz> (Czech Republic)
- <skype.de> (Germany)
- <skype.dj> (Djibouti)
- <skype.dk> (Denmark)
- <skype.do> and <skype.com.do> (Dominican Republic)
- <skype.ec> and <skype.com.ec> (Ecuador)
- <skype.ee> and <skype.co.ee> (Estonia)
- <skype.es> (Spain)
- <skype.eu> (European Union)
- <skype.fm> (French Micronesia)
- <skype.fr> (France)
- <skype.fi> (Finland)
- <skype.com.gt> (Guatemala)
- <skype.gy> (Guyana)
- <skype.hk> (Hong Kong)
- <skype.co.hu> (Hungary)
- <skype.co.id> (Indonesia)
- <skype.ie> (Ireland)
- <skype.co.il> (Israel)
- <skype.it> (Italy)
- <skype.jp> and <skype.co.jp> (Japan)
- <skype.co.ke> (Kenya)
- <skype.kr> and <skype.co.kr> (Korea)
- <skype.lt> (Lithuania)
- <skype.lu> (Luxembourg)
- <skype.me> (Montenegro)
- <skype.ms> (Montserrat)
- <skype.mu> (Mauritius)
- <skype.mx> and <skype.com.mx> (Mexico)
- <skype.com.mt> (Malta)
- <skype.com.my> (Malaysia)
- <skype.com.ni> (Nicaragua)
- <skype.no> (Norway)
- <skype.co.nz> (New Zealand)



- <skype.nl> and <skype.co.nl> (Netherlands)
- <skype.com.pa> (Panama)
- <skype.pe> and <skype.com.pe> (Peru)
- <skype.ph> and <skype.com.ph> (Philippines)
- <skype.pt> and <skype.com.pt> (Portugal)
- <skype.com.pr> (Puerto Rico)
- <skype.se> (Sweden)
- <skype.sg> and <skype.com.sg> (Singapore)
- <skype.sh> (St. Helena)
- <skype.st> (Sao Tome)
- <skype.com.sv> (El Salvador)
- <skype.tc> (Turks Caicos Isl.)
- <skype.tl> (East Timor)
- <skype.com.tr> (Turkey)
- <skype.tw> and <skype.com.tw> (Taiwan)
- <skype.co.ug> (Uganda)
- <skype.co.uk> (United Kingdom)
- <skype.co.ve> (Venezuela)
- <skype.co.vi> (Virgin Islands, US)
- <skype.co.za> (South Africa)

E. It is thus claimed that "SKYPE" software application has gained an unprecedented level of popularity, with a user-base spanning hundreds of millions of people with strong trademark rights and this widespread notoriety makes "SKYPE" a "famous" or "well-known" mark, with a "Trans Border reputation" that spills over into India, and is therefore



entitled to an even broader array of legal protections, both in India and throughout the world.

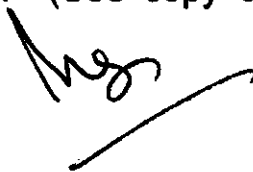
F. The complainants allege that the Domain Name <skype.co.in> is confusingly similar to Complainant's well-known, highly distinctive "SKYPE" trademark as it consists of nothing more than the term "SKYPE," in its entirety, with the addition of the <.co.in> country code top level extension.

G. The Complainant (and/or its predecessor in interest, Skype Technologies, S.A.) claim to have actively protected this mark against unauthorized uses both in India and throughout the world. The complainants rely upon **Annex N** to cite an order from the Hon'ble Delhi High Court.

In addition, Complainant claim to have filed (and won) numerous disputes involving "SKYPE"-related domain names in other countries and jurisdictions, and this list includes:

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- Skype Limited v. Mobitronix, LLC, supra, regarding <skype.ae> (see Annex E);
- Skype Limited v. And-arts.com, Case No. FA 415592, regarding <skype.ws> (Natl. Arb. Forum, 15 December 2011) (See: <http://domains.adrforum.com/domains/decisions/1415592.htm>);
- Skype Limited v. HMC, Case No. DMX-2011-0010, regarding <skype.mx> and <skype.com.mx> (WIPO, 04 May 2011) (See: <http://www.wipo.int/amc/en/domains/search/text.jsp?case=DMX2011-0010>);
- Skype Limited v. Hanna Jeong, Case No. DPH2011-0001, regarding <skype.ph> (WIPO, 19 May 2011)(See: <http://wipo.int/amc/en/domains/search/text.jsp?case=DPH2011-0001>);
- Skype Limited v. Mikael Arhelger, Case No. DHK-07000021, regarding <skype.hk> (HKIAC, 02 February 2008)(See copy of Hong Kong decision included as Annex O);
- Skype Technologies SA v. Gal Vallerius, Case No. 628556, regarding <skype.co.il> (See copy of Israeli decision at:



<http://isoc.org.il/docs/2007-01-07-skype.co.il.pdf>);

- Skype Technologies SA v. Jan Eppendorfer, Case No. 106, regarding <skype.se> (See copy of Swedish decision available at: https://www.iis.se/docs/beslut_skype.pdf);
- Skype Technologies SA v. NetSpider Group, Case No. 44080, regarding <skype.be> (DNS.be, 07 April 2006)(See copy of Belgian decision included as Annex P);
- Skype Technologies SA v. Bellamy Price Mansfield Ltd., Case No. DRS150 (Domain Name Comm. of New Zealand, 18 March 2007)(See copy of New Zealand decision included as Annex Q);
- Skype Technologies SA v. Vault Technology Ltd, Case No. DRS02685, regarding <skype.co.uk> (Nominet, 15 September 2005)(See copy of U.K. decision available at: http://www.nominet.org.uk/digitalAssets/3548_skype.pdf).

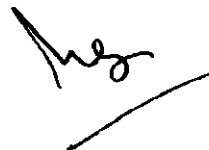
H. It is further claimed by the complainants that in light of the foregoing, there can be no reasonable dispute that the Complainant possesses strong trademark rights in the well-

known, highly distinctive mark "SKYPE," and that the Domain Name <skype.co.in> is confusingly similar to that mark.

- I. It is further alleged that the Respondent has no right or legitimate interest in the domain name and they have not given any permission or license to the Respondent to use their mark. It is further pointed out that the Respondent has never been commonly known or associated with the mark "SKYPE" and has registered the name to mislead / confuse / divert consumers for commercial gain and to tarnish the trademark at issue and it has been registered in bad faith.

ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any reply and hence the allegations of the complainants remain un rebutted.

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8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <skype.co.in> hence this Tribunal directs the Registry to transfer the domain name <skype.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 16th day of June 2012.

NEW DELHI
16/06/2012



V. SHRIVASTAV
ARBITRATOR