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e-Stamp

Certificate No.

: IN-DL35909356360023T

Certificate Issued Date

: 12-Oct-2021 12:31 PM

Account Reference

: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH

Unique Doc. Reference

: SUBIN-DLDLSHIMP1767313573128897T

Purchased by

: DEEPALI GUPTA

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0
(Zero)

First Party

: DEEPALI GUPTA

Second Party

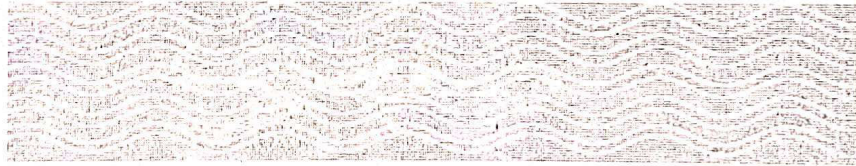
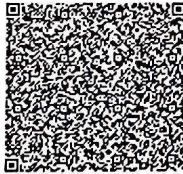
: Not Applicable

Stamp Duty Paid By

: DEEPALI GUPTA

Stamp Duty Amount(Rs.)

: 100
(One Hundred only)



Please write or type below this line

DEEPALI GUPTA
SOLE ARBITRATOR

.IN Registry - National Internet Exchange of India
INDRP Case No: 1426

In the matter of Arbitration Between:

Skyscanner Limited

.....Complainant

Versus

Narendra Shukla

.....Respondent

Disputed Domain Name : <GOSKYSCANNER.IN>

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DEEPALI GUPTA
SOLE ARBITRATOR

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1426

In the matter of:

Skyscanner Limited,
Floor 11, Regent's Place,
338 Euston Road,
London, NW 1 3BT
United Kingdom
Email: nick.bowie@lewissilkin.com
Telephone: +44 (0) 20 7074 8133

.....Complainant

Versus

Narendra Shukla,
114 Zone II
M P Nagar, Bopal,
Bopal
Madhya Pradesh, 462021
India.
(+91).9584449035
narendershukla01@gmail.com
(Registrant)

.....Respondent

Disputed Domain Name : <GOSKYSCANNER.IN>

ARBITRATION AWARD

DATED OCTOBER 19, 2021.

1) The Parties:

The Complainant in the present arbitration proceedings is Skyscanner Limited, Floor 11, Regent's Place, 338 Euston Road, London, NW 1 3BT, United Kingdom. The Complainant is represented by its Authorised Representative Nick Bowie, Legal Director, Lewis Silkin LLP, 5 Chancery Lane, Clifford's Inn, London, EC4A1BL, United Kingdom.



The Respondent in the present case is Mr. Narendra Shukla, 114 Zone II, M P Nagar, Bhopal, Bhopal Madhya Pradesh, 462021, India, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <GOSKYSCANNER.IN>

The Registrar is GoDaddy.com, LLC.

The Registrant is Mr. Narendra Shukla, 114 Zone II, M P Nagar, Bhopal, Bhopal Madhya Pradesh, 462021, India.

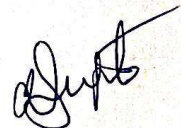
3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 25th August, 2021.

- That as the Complaint filed by the Complainant was incomplete in as far as it did not provide the complete details of the Respondent and



besides annexures were missing. Hence Notice dated 26th August 2021 was issued to the Complainant to provide the complete details and annexure's in consonance with the handing over mail of NIXI within period of five days i.e. on or before 31st August 2021. That the Complaint with the complete details was received on 27th August 2021 from the Complainant through email.

- The notice was issued to the Respondent on 27th August 2021, at his e.mail address 'narendershukla01@gmail.com'; and 'postmaster@goskyscanner.in' communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <GOSKYSCANNER.IN> in its favour. The Respondent was called upon to submit their response within ten (10) days of the receipt of the Arbitrators email i.e. on or before 6th of September 2021.

- Since no response was received from the Respondent, on 8th September, 2021, the Arbitrator sent another reminder to the Respondent at the email addresses 'narendershukla01@gmail.com'; and 'postmaster@goskyscanner.in' in providing the last and final opportunity until 13th September, 2021 to provide their response. The Respondent was also informed that if no response is received by the said date, the Respondent will be proceeded ex-parte.

- The Arbitrator received no response from the respondent within the said timeline. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

Skyscanner was founded in 2003 and is part of the Ctrip group having over 1000 staff with offices at Barcelona, Beijing, Budapest, Edinburgh, Glasgow, London, Miami, Palo Alto, Shenzhen, Singapore and Sofia.



Skyscanner, a global leader in travel, is a leading global travel search site, a place where people are inspired to plan and book direct from millions of travel options at the best prices. The best options are provided for comprehensive range of flight, hotel and car hire to book the perfect trip. That the unique proprietary technology connects people directly to everything the travel industry has to offer. The site also powers travel search for over 1200 partners through the marketplace.

The Complainant's is a high-growth business with the aim to inspire travelers around the world and make travel search as easy as possible through world class technology.

The highly rated free mobile app of the Complainant has been downloaded over 70 million times. The Complainant has a Global presence and its products are available in over thirty languages and seventy currencies.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- a) The Complainant states that they own the Trade Mark 'SKYSCANNER'. It is submitted by the Complainant that the Trade Mark 'SKYSCANNER' was registered on 21 March 2011 vide Indian Trade Mark Registration No. 1890840. in Class 39, Indian Trade Mark Registration No. 2287020 for Skyscanner & Cloud Device, registered on 7 November 2016 in Class 35 and in Class 39 and Indian designation of International Registration No. 1481492 for SKYSCANNER, registered on 6 June 2019 in Class 43.



- b) Complainant states that the said Trade Mark was and is being used for covering advertising services provided via the Internet all relating to travel and for travel information and arrangement services provided from an Internet website providing information via means of a global computer network and for booking of temporary accommodation and agency services for booking temporary accommodation. Copies of the statement of grant for International Registration No. is attached at Annexure 3.
- c) The Complainant submits that Several WIPO UDRP Panels have held that the Claimant enjoys a reputation in its SkyScanner / SKYSCANNER trade mark, including but not limited to:
- 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"*.
- d) The Complainant has submitted that presently 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.
- e) It is submitted by the Claimant that the Claimant's services are available in over thirty languages and in seventy currencies. That 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. The Claimant has relied upon the Screenshots of (a) the Claimant's core website, www.skyscanner.net, and (b) the



internet traffic and engagement website Alexa.com annexed as Annexure 4.

- f) The Claimant submits that Claimant's website dedicated to the Indian market, www.skyscanner.co.in, is ranked 1,576th in India for internet traffic and engagement. The Claimant thus submits that it enjoys a global reputation in its SKYSCANNER trade mark.
- g) The Claimant submits that the Registrant's Domain Name incorporates the Claimant's SKYSCANNER trade mark, alongside the non-distinctive term 'GO', which is merely a promotional message. According to the 'WHOIS' details provided at Annexure 2, the Domain Name was registered on 8th July 2021, several years after the Claimant secured registered trade mark protection for SKYSCANNER (and variations thereof) in India.
- h) Thus Claimant submits that the Registrants Domain Name is identical to the Complainants Rights.
- i) The Claimant submits that the Registrant does not own any registered rights in any trade marks that comprise any part or all of the disputed Domain Name. That the term 'SKYSCANNER' is not descriptive in any way, nor does it have any generic, dictionary meaning. The Claimant has not given its consent for the Respondent to reproduce its registered trade mark in a domain name registration, nor had the Registrant disclaimed any association with the Claimant on its website when the Domain Name did resolve to a website. In this regard, the Domain Name points to a website that offers travel arrangement and information services, in direct competition with the Claimant's services provided under its well-known SKYSCANNER trade mark. The Claimant has annexed Annexure-5, a screenshot of the website to which the Respondent's Domain Name points.
- j) The Claimant submits that the Registrant's use of the Domain Name to supply identical services as those of the Claimants which are protected by the Claimant's Indian trade mark rights constitutes an infringement of those rights. It is submitted that use of the Domain Name to provide competing services to those in which the Claimant enjoys a global reputation, cannot constitute a legitimate non-commercial interest in the



Domain Name. The Claimant states that prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name.

- k) It is further submitted by the Claimant that it 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. A representative collection of international press articles is introduced and relied upon as Annexure 6.
- l) The Claimant submits that the Registrant was aware of the Claimant's Rights at the time it registered the Domain Name. It is submitted that the Domain Name is used to offer competing services to the Claimant's hence it is implausible that the Registrant did not have the Claimant in mind when registering the Domain Name.
- m) The Complainant submits that the Registrant's use of the Domain Name in this manner is designed to (a) disrupt the Claimant's business in the Indian market and (b) intentionally attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.
- n) The Claimant submits that the Registrant is in breach of Sections 3(b) and (d) of the INDRP.

6) RESPONDENT:

The Respondent did not respond in these proceedings although notices have been sent to the Respondent under the INDRP Rules.

7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and



- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The disputed domain name contains the prefix 'GO' to the term "SKYSCANNER". The Complainant has submitted that respondent's domain name incorporates the Claimants 'SKYSCANNER' trademark along with the non-distinctive term 'GO' which is merely a promotional message. It is well established that addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark.

The Complainant has submitted evidence of its trademark registrations for the SKYSCANNER mark in India and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use.

It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark.

The disputed domain name is accordingly found to be confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to



'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that as far as Claimant is aware the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name. In this regard, it is submitted that the Domain Name points to a website that offers travel arrangement and information services, in direct competition with the Claimant's services provided under its well-known SKYSCANNER trade mark. The Claimant has annexed Annexure-5, a screenshot of the website to which the Respondent's Domain Name points.

The Claimant submits that the Registrant's use of the Domain Name to supply identical services as those of the Claimants which are protected by the Claimant's Indian trade mark rights constitutes an infringement of those rights. It is submitted that use of the Domain Name to provide competing services to those in which the Claimant enjoys a global reputation, cannot constitute a legitimate non-commercial interest in the Domain Name. The Claimant states that prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name.

The Complainant has argued that due to extensive use of the SKYSCANNER mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the SKYSCANNER mark through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the Skyscanner mark which is distinctive of the Complainant and its products, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has further argued that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its



rights in the SKYSCANNER mark. It is found that the Complainant has provided evidence of its prior adoption of the SKYSCANNER mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainants submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of the said trademark Skyscanner by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. Refer to, *Google LLC V Gurdeep Singh*, INDRP Case No.1184 (<googlepays.in>) where use of GOOGLE mark in the domain name <googlepays.in> by the respondent in that case was found to lack rights or legitimate interests because the mark was used to attract customers by a respondent who was found to have no connection with the well known mark. The use of the Complainants Skyscanner mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The Respondent has not participated in these proceedings and has not shown that any such agreement exists between the parties or provided any other reasons for claiming any other rights to use the Skyscanner mark in the disputed domain name. The Complainant has categorically submitted that it has not consented, authorized or permitted the Respondent in the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.



Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the SKYSCANNER mark. The disputed domain name has been registered on 8th July 2021 whereas the earliest trademark registration of Skyscanner mark was obtained by the Claimant in India from the year 2011 onwards. These facts establish that the Complainants prior adoption of the SKYSCANNER mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value.

In addition to the other evidence filed by the Complainant, prior UDRP cases qua Skyscanner trademark are also referred to by the Complainant that clearly establish the international recognition and reputation associated with the Skyscanner mark.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the SKYSCANNER Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Refer to *Patagonia Inc v Doublefist Ltd. INDRP Case No. 1185* <Patagonia.co.in>, where it was found that the use of complainants mark in the domain name is likely to mislead the public and it was found to be registration and use of the domain name in bad faith under the Policy. Or refer to *Colgate Palmolive Company and Colgate Palmolive (India) Ltd v Zhaxia, INDRP Case No. 887*, where bad faith was found when the respondent had registered the disputed domain name to cause confusion with the complainants mark. Similarly in the present case it is found that the use of the Skyscanner mark by the Respondent is likely to attract customers based on the



Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <goskyscanner.in > be transferred to the Complainant.



Deepali Gupta

Sole Arbitrator

Date: 19th October 2021