



தமிழ்நாடு தமில்நாடு TAMILNADU

Dr. Sudhir Raja Ravindran

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8.7.15

AV 923494

A. Roufbasha
A. ROUFBASHA, B.A.,
STAMP VENDOR LIC No: 8/B3/97
NEW No: 17, OLD No: 9,
P.P.V. KOIL STREET, MYLAPORE,
CHENNAI-600 004. Ph: 24982427

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: AUGUST 03, 2015

Emirates

Emirates Group Headquarters

P.O. Box 686, Dubai

United Arab Emirates

COMPLAINANT

VERSUS

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Michael Cain

GigaFast Host

Post Box 6231, Salinas,

California 93912, USA

RESPONDENT

DISPUTED DOMAIN NAME: "EMIRATESINDIA.CO.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is Emirates, represented by Mr. Tarvinder Singh and Mr. Anshuman Sharma, KOCHHAR & CO., Gurgaon.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Michael Cain.

2. The Dispute: The domain name in dispute is emiratesindia.co.in. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Webiq Domains Solutions Pvt. Ltd.

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	08.06.2015
2.	Date on which consent was given to act as an Arbitrator	08.06.2015
3.	Date of appointment of Arbitrator	13.06.2015
4.	Date on which the Hard copy of the complaint was received	15.06.2015



5.	Date on which notice was issued to the Respondent	15.06.2015
6.	Date on which the Respondent confirmed that he has responded to the notice	25.06.2015
7.	Date on which reply was issued to the Respondent by the Arbitrator	27.06.2015
8.	Date on which communication received from the Respondent stating that he has not received the Complaint	27.06.2015
9.	Date on which NIXI requests the Arbitrator for instructions	29.06.2015
10.	Date on which Arbitrator responds to NIXI	29.06.2015
11.	Date on which NIXI responds to the Arbitrator regarding proof of Delivery of Complaint	29.06.2015
12.	Date on which Arbitrator instructs NIXI to comply with the procedure as set out in Rule 2 (a) (ii) of the INDRP Rules of Procedure	29.06.2015
13.	Date on which a copy of the Complaint is sent by NIXI to the Respondent	29.06.2015
14.	Date on which the Respondent acknowledges the receipt of the Complaint and asks for due date for filing a Counter Statement	29.06.2015
15.	Date on which Arbitrator responds to Respondent providing a	30.06.2015

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	final extension to file a reply	
16.	Due date for filing of Counter Statement by the Respondent	04.07.2015

4. Procedural History

4.1. 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 ("Rules") were approved by NIXI on June 28, 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.

4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On June 15, 2015, the arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within 7 days, i.e. on or before June 22, 2015.

4.5. On June 27, 2015, the Respondent stated in an email to the Arbitrator that a response has been sent to the Arbitrator.

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- 4.6. On June 27, 2015, the Arbitrator responded to the Respondent that no response was received from the Respondent and that the date for providing a response to the complaint filed by the Complainant has been extended by 5 days until July 2, 2015.
- 4.7. On June 27, 2015, the Respondent sent a response to the Arbitrator stating that he has not received the Complaint filed by the Complainant.
- 4.8. On June 29, 2015, NIXI requested the Arbitrator for advice and instructions on the issue that the Respondent has denied the receipt of the complaint filed by the Complainant.
- 4.9. On June 29, 2015, the Arbitrator advised NIXI that in accordance with Rule 2 (h) of INDRP Rules of Procedure the .in Registry is required to retain records of the fact and circumstances of the sending, and for reporting purposes to confirm the compliance of Rule 4 (a) and Rule 2 (e) to the Respondent with a copy to the Complainant and the Arbitrator.
- 4.10. On June 29, 2015, NIXI informed the Arbitrator that they have not received any intimation regarding the delivery or non-delivery of the Complaint by courier.
- 4.11. On June 29, 2015, the Arbitrator advised NIXI to send the Complaint in electronic form by email to the email address shown in the domain name's registration data through the .IN Registry's WHOIS function at www.registry.in; and `postmaster@[the contested domain name]` in accordance with Rule 2 (a)(ii) of INDRP Rules of Procedure.
- 4.12. On June 29, 2015 the Respondent acknowledged the receipt of the complaint asking for the due date for filing a response to the complaint filed by the Complainant.
- 4.13. On 30.6.2015, the Arbitrator responded providing an extension of 5 days i.e., on or before July 4, 2015 to the Respondent to submit a response to the complaint filed by the Complainant.

5. Factual Background:

- 5.1. The Complainant is Emirates, an acknowledged name worldwide in the travel and tourism industry. The Complainant started its business on October 25, 1985 and has since then

evolved into a globally influential travel and tourism conglomerate and a renowned international airline of the United Arab Emirates and the largest airline in the Middle East. The Complainant owns a fleet of over 224. The Complainant's business activities include freight services, aircraft engineering and maintenance, ground logistics and tourism. The Complainant has adopted the trademark EMIRATES in the year 1985 with respect to goods and services in commerce and the Complainant owns a significant international trade mark portfolio for the mark EMIRATES and the variations thereof.

5.2. The Respondent registered the disputed name <EMIRATESINDIA.CO.IN> on April 25, 2015.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1. The Complainant has registered its trademark EMIRATES and its variants which is distinctive and has an established reputation both in India and throughout the world.

6.1.2. In India, the Complainant has obtained registration for EMIRATES & Device mark in Class 39 under trademark registration number 1291824; for EMIRATES HOLIDAYS and Device mark in class 39 under registration number 1288980; for EMIRATES SKY CARGO & LOGO mark in Class 39 and Class 42; and for EMIRATES and Device mark in Class 16 under registration number 632522.

6.1.3. The Complainant owns multiple domain names which incorporate the EMIRATES mark including <emirates.com>, <emirates.in>, <emiratesindia.in>, etc.

6.1.4. In April, 2015, the Complainant learnt that the disputed domain name had been registered by the Respondent. The Complainant claims that the disputed domain name offers pay-per-click links to various other websites and has displayed various sponsored links and advertisements.

6.1.5. The Complainant argues that the domain name used by the Respondent consists of the Complainant's registered trademark EMIRATES in combination with the descriptive

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term 'India', which is identical to the registered trade mark of the Complainant and is also identical to and a verbatim replication of the Complainant's domain name <emiratesindia.com>.

6.1.6. The Complainant claims that the Respondent has no rights and legitimate interests in the disputed domain name, as there has never been any relationship between the Complainant and the Respondent. The Respondent has no proprietary or contractual rights in any registered or common law trademark corresponding in whole or in part to the disputed domain name. The Respondent is not authorised or licensed by the Complainant to use its trademark/tradename.

6.1.7. The Complainant further claims that the disputed domain name was registered and used in bad faith as the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries advertisements and sponsored links and has been constructed in such a manner that the Respondent represents itself as if affiliated to or otherwise connected to the Complainant by using the Complainant's trademark "EMIRATES" along with photographs of the Complainant's aircraft as well as its cabin crew in full uniform.

6.1.8. The Complainant requests for the following relief: "that the disputed domain name <EMIRATESINDIA.CO.IN> be transferred to the Complainant and costs be awarded to the Complainant."

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

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

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "EMIRATES" in numerous jurisdictions including India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

7.3.3. The disputed domain name incorporates the trademark "EMIRATES" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bonafide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

7.4.3. The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.4. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bonafide use under the Policy.

7.4.5. The Arbitrator finds the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "EMIRATES", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries advertisements and sponsored links and has been constructed in such a manner that the Respondent represents itself as if affiliated to or otherwise connected to the Complainant by using the Complainant's trademark "EMIRATES" along with photographs of the Complainant's aircraft as well as its cabin crew in full uniform. The Complainant's prior adoption of the mark predates the Respondent's domain name registration by several years and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.3. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "EMIRATES". Further, the Complainant's trademark applications were clearly made much before the disputed domain name was registered. The evidence on record show the Complainant's trademark is well known and that the Respondent was aware of the Complainant's prior rights in the trademark when he registered the disputed domain name. The choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting

users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.4. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant.

7.5.5. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration and use of the disputed domain name by the Respondent.

7.5.6. The Complainant has submitted that the Respondent has on two occasions previously engaged in registering domain names that infringe the Complainant's EMIRATES mark. This indicates that the Respondent has engaged in a pattern of such conduct indicating that such registration of the disputed domain name is in bad faith.

7.6. In the case of Tata Sons Ltd. v. Ramadasoft, WIPO Case No. D2000-1713, the learned Arbitrator observed that the registration of ten domain names incorporating a combination of the Complainant's trademark by the Respondent indicates a pattern of cyber-squatting conduct and an attempt by him to foreclose the Complainant from using own Trademarks in cyber space. It follows that the Respondent has registered the Domain names in order to prevent the Complainant from reflecting the mark in corresponding Domain names and he is engaged in a pattern of cyber-squatting. Such a conduct amounts to an instance of bad faith.

7.7. In a decision in the case HSBC Holdings plc v. Hooman Esmail Zadeh, Case No. INDRP/32, the learned Arbitrator held that "by registering the domain name, the Respondent has prevented the owner of the trademark from using the mark in a corresponding domain name. These aspects indicate both bad faith registration and bad faith use of the domain name."

7.8. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.9. The abovementioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by him.

7.10. The actions of the Respondent should not be encouraged and should not be allowed to continue. The Respondent did not intend to put the disputed domain name into any fair or useful purpose. In spite of extensions being given, the Respondent did not file any response. The conduct of the Respondent has necessitated the Arbitrator to award costs of the complaint to and in favour of the Complainant.

8. Decision


8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <EMIRATESINDIA.CO.IN> to the Complainant.

8.3. The Respondent is directed to pay the Complainant Rs. 1,00,000/- (Rupees One Lakh Only) towards costs of the proceedings.

8.4. The Award is accordingly passed on this day of August 03, 2015.

Place: Chennai


Dr. Sudhir Raja Ravindran
Sole Arbitrator