





Bond		Indian-Non Judicial Stamp Haryana Government		Date :14/01/2020
Certificate No. G0N2020A2587			Stamp Duty Paid : ₹ 101 (Rs. Only)	
GRN No. 61464254	Deponent		Penalty : ₹ 0 (Rs. Zero Only)	
Name: C A Brijesh				
H.No/Floor : Na	Sector/Ward : 27	Landmark : Millenium plaza		
City/Village : Gurugram	District : Gurugram	State : Haryana		
Phone : 0				
Purpose : AFFIDAVIT to be submitted at Others				

BEFORE THE SOLE ARITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INFORMATION EXCHANGE OF INDIA)

NEW DELHI, INDIA

Trivago N.V.
Kesselstraße, 5 – 7
40221 Düsseldorf
GERMANY

...Complainant

Versus

Shiv Singh
355D/74 G.S.T Road
Sasennai
Tamil Nadu, 600 027
INDIA

... Respondent

1. The Parties

The Complainant is Trivago N.V., a company duly incorporated and existing under the laws of Netherlands, having its principal office at Kesselstraße, 5 – 7, Düsseldorf, Germany – 40221, through its Authorized Representatives, Krishna & Saurastri Associates LLP, having office at New Excelsior Building, 7th Floor, A.K. Nayak Marg, Wallace Street, Fort, Mumbai – 400 001, India (hereinafter referred to as **Complainant**).



The Respondent is Shiv Singh of 355D/74 G.S.T Road, Sasennai, Tamil Nadu – 600 027, India (hereinafter referred to as **Respondent**).

2. The Domain Name and Registrar

The disputed domain name is <trivagoholiday.in>. The said domain is registered with 'GoDaddy.com, LLC'.

3. Procedural Timeline

November 15, 2019: The .INRegistry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.

November 15, 2019: Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

November 20, 2019: Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover i.e. November 19, 2019. NIXI also forwarded the soft copy of the Complaint to both the Arbitrator and the Respondent on this date, by means of the same email.

November 21, 2019: Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorized Representative and NIXI, directing the Respondent to file its response, if any, in ten days.

December 03, 2019: Absent a response from the Respondent, the pleadings in the Arbitration proceedings were closed and the Tribunal proceeded to pass an Award on the basis of the material available on record.

The language of the proceedings shall be English.



4. Factual Background

4.1. Complainant's Activities

The Complainant states, *inter alia*, that it is a company organized and existing under Dutch laws having its headquarters in Düsseldorf, Germany. The Complainant claims to offer a global hotel/alternative accommodation search platform aggregating over 3 million hotels/alternative accommodations in over 190 countries via 55 localized websites and applications in 33 languages. The Complainant further claims that its search platform has generated over 175 million hotel ratings and over 10 million written reviews thereby providing its users with valuable insights. The Complainant states that the mark 'trivago' was coined and adopted by it in the year 2004 and forms an essential and prominent part of its corporate name viz. 'Trivago N.V.'.

The Complainant further states that the name and mark 'trivago' has been used by it extensively since the year 2005 and today its services are extended in several countries worldwide, including but not limited to, Germany, Spain, France, Italy, India, United States of America, Russia, Singapore, Canada, Australia, New Zealand, Japan, Chile, Malaysia, Brazil and South Africa. The Complainant states that it has registered numerous domain names comprising the mark 'trivago' such as 'trivago.com', 'trivago.in', 'trivago.co.uk', 'trivago.com.mx', etc. and it operates 55 localized websites/applications as of the year 2019. Therefore, the Complainant claims that the goodwill and reputation associated with the name/mark 'trivago' rests with the Complainant and no one else.

4.2. Complainant's Use of 'trivago'

The Complainant states that the mark 'trivago' was first adopted by the Complainant in the year 2004 and that the Complainant has since secured several registrations in various countries



for the mark 'trivago' and variants in alternate colour combination and lettering style i.e.

trivago, **trivago** and **TRIVAGO** dating back to the year 2004 across various countries and in India. In this regard, the Complainant has provided copies of trade mark registration certificates marked as **Annexure D** obtained for the said marks in India and copies of trade mark registration certificates obtained for the said marks in various countries marked as **Annexure C**. A perusal of the list and the corresponding registrations indicate that the mark/name 'trivago' is being used by the Complainant in India since 2013, with the earliest registration in Class 09 under No. 340076 dating back to November 01, 2016. The Complainant has also obtained a registration for the mark **trivago** in Class 09 under No. 3400077 dating back to November 01, 2016 and for the mark **trivago** in Classes 35, 38, 39, 42 and 43 under IRDI No. 2789539 dating back to November 18, 2013 and the same are valid and subsisting in India.

The Complainant also operates the website 'www.trivago.com' which provides for extensive information of the activities of the Complainant as well as provides hotel/accommodation booking and search services and can be accessed from anywhere in the world, including India. The Complainant also operates country specific domain names like 'www.trivago.in' for India, 'www.trivago.com.mx' for Mexico, 'trivago.co.uk' for the United Kingdom, etc. The domain name 'trivago.in' is registered in favour of the Complainant since November 26, 2007. These websites operated by the Complainant provide weblinks to the Complainant's website as well as offer information about the extensive hotel search provided through the same. Extracts from some of the websites have been marked as **Annexure B (Colly)** as part of the Complaint filed by the Complainant.

The Complainant states that the mark 'trivago' has been highly publicized and advertised by the Complainant, both in India and globally. Screenshots from video commercials which were

released in India to promote the Complainant's services under the name and mark 'trivago' have been marked as **Annexure E (Colly)**. The Complainant further submits that the Complainant has aggressively and extensively promoted and advertised its services under the name and mark 'trivago' through various media of publicity, with 13,432,525 followers on the Complainant's Facebook profile, 589K followers on the Complainant's Instagram profile, 116K followers on the Complainant's Twitter profile and 67.2K subscribers on the Complainant's YouTube profile, each as of October 2019. Print-outs from the Complainant's Facebook, Instagram, Twitter and YouTube profiles are marked as **Annexure F**, **Annexure G**, **Annexure H** and **Annexure I**, respectively, as part of the Complaint filed by the Complainant. The Complainant submits that a search conducted on Google's search engine for 'trivago' reflects around 37,300,000 results and all links displayed on page 1 of the search result are associated with the Complainant. A copy of the said Google search results is marked as **Annexure J** as part of the Complaint filed by the Complainant.

Based on the aforesaid, it is the Complainant's assertion that due to extensive and continuous use of the mark 'trivago' for several years in India and internationally, the mark 'trivago' has acquired substantial goodwill and reputation and has acquired inherent distinctive character and recognition such that it is exclusively associated with the business/products/services offered by the Complainant in the global market and any reference to the said name/mark is instantly associated with the Complainant to the exclusion of all others. Therefore, the Complainant states that it alone has the exclusive right to use the mark 'trivago' as a domain name, company name or in any other manner.

4.3. Respondent's activities and its use of 'trivagoholiday' which is deceptively similar to 'trivago'

The Respondent has registered the domain name <trivagoholiday.in> on September 30, 2019 and it is due to expire on September 30, 2020, as is clearly discernible from the WHOIS records



as evidenced through **Annexure A** forming part of the Complaint filed by the Complainant. The Complainant claims that the Respondent is using the domain name <trivagoholiday.in> for hosting a website offering similar services as that of the Complainant. However, the website 'www.trivagoholiday.in' is not operational as on date and no extracts of the same have been placed on record by the Complainant.

Given that the Respondent has not participated in the present proceedings, no further information is available on its business activities and/or its use of the domain comprising the mark/name 'trivago'.

5. Contentions of Parties as summarized in the pleadings

5.1. Complainant

a) The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights

- i. The Complainant submits that the Respondent has registered the disputed domain name on September 30, 2019 as is evidenced by WHOIS records marked as **Annexure A** and the disputed domain name 'trivagoholiday.in' wholly incorporates the well-known trade mark/name 'trivago' as its essential feature and the generic term 'holiday' along with it does not add any distinctiveness to the same.
- ii. Complainant relies on the case of *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 and the case of *Dell Inc. v. George Dell and Dell Net Solutions*, WIPO Case No. D2004-0512 to substantiate that addition of a generic term to a trade mark does not eliminate likelihood of confusion and that generic terms can be ignored for the purpose of determining similarity between a disputed domain name and a Complainant's trade mark. The Complainant further states that in the present case, the generic term 'holiday' has an

obvious connection/reference to the Complainant's business model and services and therefore, addition of the term 'holiday' by the Respondent further aggravates the probability of confusion and deception among internet users. The Complainant further relies on the case of *Yatra Online Pvt. Ltd. v. Paras/Yatra Holidays*, WIPO Case No. DC02015-0025 to substantiate that the disputed domain name <trivagoholiday.in> capitalizes on the trade mark 'trivago' of the Complainant as the main component and the generic term 'holiday' used with the trade mark is one that is connected to the Complainant's business and therefore, the said combination is likely to confuse and mislead the internet users to a greater degree into believing that the disputed domain name belongs to the Complainant.

- iii. The Complainant relies on the cases of *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. D2011-1627; *Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. D2010-1059; and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. D2000-0113 to state that incorporation of a well-known trade mark in its entirety may be sufficient to establish that the domain name is identical or confusingly similar to Complainant's registered trade mark. The Complainant submits that it is entitled to prevent the Respondent from using the name/mark 'trivago' without its permission/license since valuable common law and statutory trade mark rights vest in favour of the Complainant in respect of the trade mark 'trivago', which is evidenced by several annexures filed with this Complaint. The Complainant further submits that the disputed domain name wholly incorporates the registered trade mark/ name 'trivago' of the Complainant which amounts to infringement of the Complainant's registered trade mark and passing off thereof.



b) The Respondent has no rights or legitimate interest in respect of the domain name

- i. It is the contention of the Complainant that the mark 'trivago' is a fanciful word, having no dictionary meaning and has been coined by the Complainant. The Complainant further states that the Complainant is the first and honest adopter/user of the name/mark 'trivago' which has attained widespread goodwill and reputation around the world and in India. It is the contention of the Complainant that owing to the well-known nature of the Complainant's mark 'trivago', the Respondent has no right to adopt, use or register the disputed name comprising the Complainant's mark 'trivago' as its essential and prominent feature without the express permission/license of the Complainant.
- ii. The Complainant submits that the Respondent has registered the disputed domain name subsequent to Complainant's trade mark registrations for the mark 'trivago' and much after the mark 'trivago' became well-known so as to come to be associated with the Complainant. The Complainant states that in view of the same, there can be no possible justification for the adoption of the disputed domain name and that the Respondent cannot demonstrate any legitimate or *bona fide* interest in the disputed domain name.
- iii. The Complainant further asserts that the Respondent is using the disputed domain name for hosting a website offering the same/similar services as that of the Complainant with a view to confuse and deceive internet users into believing that the said website and services being offered therein are those of the Complainant or are authorized/affiliated with the Complainant in some manner, which is not the case.
- iv. The Complainant states that the Respondent has registered the disputed domain name with the intent to deceive unsuspecting individuals, commit fraud and make illicit commercial gains by usurping the reputation and goodwill acquired by the Complainant in the mark/name 'trivago' and further submits that the Respondent has been unable to demonstrate any legitimate interest in or fair use of the disputed domain name.

c) The domain name was registered and is being used in bad faith

- i. The Complainant contends that the bad faith of the Respondent can be established based on the fact that the Respondent knew or should have known of the Complainant's trade mark rights by virtue of the well-known status of its mark 'trivago' and nevertheless registered a domain name comprising the said mark in which it had no rights or legitimate interest. The Complainant states that since the Complainant's mark 'trivago' has no dictionary meaning and given that the mark is well-known worldwide including in India, it is unlikely that the Respondent was unaware of the Complainant and its trade mark rights vesting in the mark 'trivago' when registering the disputed domain name.
- ii. The Complainant submits that the disputed domain name has been contrived for the express purpose of exploiting the goodwill and reputation garnered by the Complainant and to thereby mislead internet users. The Complainant states that since the disputed domain name is phonetically, visually and conceptually similar to the Complainant's registered trade mark, name and numerous domain names, it has the potential to misrepresent that the website resolving from the disputed domain name is that of the Complainant and offers services for and on behalf of the Complainant.
- iii. It is the contention of the Complainant that the Respondent has deliberately, with a *mala fide* intent, registered the disputed domain name which would cause even the most prudent internet users to believe that it is in some way connected with or sponsored by or affiliated to or operated by the Complainant and that the said act of the Respondent in registering the disputed domain name reflects a blatant attempt to profit illegally and wrongfully from the goodwill and reputation garnered by the Complainant.
- iv. The Complainant relies on the cases of *LEGO Juris A/S v. store24hour*, WIPO Case No. D2013-0091; *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*, WIPO Case No. D2008-0226; and *Caixa D'Estalvis I Pensions de Barcelona ("La Caixa") v. Eric Adam*,

WIPO Case No. D2006-0464 to substantiate that bad faith can be found where a domain name is so obviously connected with a well-known trade mark that its very use by someone with no connection to the trade mark suggests opportunistic bad faith. The Complainant further relies on the cases of *Groupe Auchan v. Gan Yu*, WIPO Case No. D2013-0188 and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. D2010-0138 to state that in the absence of any license or permission from the Complainant to use its well-known trade mark, no actual or contemplated *bona fide* or legitimate use of the domain name could be reasonably claimed by the Respondent and that therefore, use of the disputed domain name by the Respondent is a clear case of the Respondent trying to take undue advantage of the goodwill and reputation vesting in the Complainant's trade mark 'trivago' with an attempt to divert web-traffic and business and thereby make illegal gains.

- v. The Complainant submits that the disputed domain name is a blatant imitation of the Complainant's name as well as prior registered trade marks which is likely to mislead internet users and is detrimental to the distinctive character and repute of the Complainant's prior registered and well-known trade mark 'trivago'. Therefore, the Complainant states that such nefarious use of the disputed domain name by the Respondent makes it amply evident that the disputed domain name has been registered and is being used in bad faith and for illegal purposes.

5.2. Respondent

As per the INDRP Rules of Procedure, the Complainant forwarded a copy of the Complaint alongwith all annexures to the Respondent on November 20, 2019 under the directions of this Arbitral Tribunal. This Tribunal issued a notice on November 21, 2019 to the Respondent directing it to file a response within ten days. Absent a response from the Respondent thereto, the matter has proceeded *ex parte*.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1. Identical or confusingly similar trade/service mark

As per the WHOIS records, the Respondent registered the disputed domain name 'trivagoholiday.in' on September 30, 2019.

The Complainant is the proprietor of the registered trade mark 'trivago' and its variants in several classes viz. 9, 35, 38, 39, 42, 43 and has obtained registrations in respect of the same with the earliest registration dating back to the year 2004. In order to substantiate the aforesaid, the Complainant has relied on registration certificates for the trade mark 'trivago' and its variants. It claims to have been substantially and continuously using the mark/name 'trivago' in relation to its business/products/services.

The disputed domain name incorporates the mark 'trivago' in its entirety, with the only variant from the Complainant's mark being the addition of the generic word 'holiday'. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian*

Hotels Company Limited vs. Mr. Sanjay Jha (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in the case of *Farouk Systems Inc. vs. Yishi*, WIPO Case No. D2010-006, it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

Further, it has been held in the case of *Dell Inc. v. George Dell and Dell Net*, WIPO Case No. D2004-0512 that addition of a generic term to a trade mark does not eliminate a likelihood of confusion. In fact, several decisions have held a domain name to be confusingly similar to a registered trade mark when it comprises the registered trade mark *plus* one or more generic terms. In fact, in the present case, addition of the descriptive/generic term 'holiday' along with the name/mark 'trivago' further aggravates the probability of confusion since the word 'holiday' has an obvious connection to the business/services being offered by the Complainant.

As seen from above, the Complainant has registered trademarks in India since the year 2004 and is doing/operating business/website thereunder. The Respondent on the other hand registered the domain 'trivagoholiday.in' much subsequent to the Complainant i.e. on September 30, 2019.

In view of the foregoing discussions, the Complainant has satisfied this Tribunal that:

- i. The domain name in question 'trivagoholiday.in' is confusingly similar to the Complainant's prior registered trade mark 'trivago'; and
- ii. It has both prior statutory and proprietary rights in respect of the mark 'trivago'.

6.2 Rights and legitimate interests



The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, that shall demonstrate its rights to or legitimate interests in the disputed domain name. The said paragraph is reproduced hereinbelow:

“7. Registrant's Rights to and Legitimate Interests in the Domain Name – Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

- i. Before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name with a bona fide offering of goods or services;*
- ii. The Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”*

The Respondent has not filed any response in this case. In the absence of a response thereof, there is nothing on record to suggest that the Respondent has used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with *bona fide* offering of goods/services; or is commonly known by the disputed



domain name; or has made fair use of the domain name. In fact, no website is functional as on date corresponding to the domain name 'trivagoholiday.in'.

Further, as observed by the panel in the case of *Inter-Continental Hotels v. Abdul Hameed* (INDRP/278), it is well established that trade mark registration is recognized as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the owner of the registered trademark 'trivago' in various jurisdictions in the world including India and has sufficiently demonstrated its rights in the trade mark 'trivago'.

It is a settled position that if the Respondent does not have trade mark rights in the word corresponding to the disputed domain name and in the absence of evidence that the Respondent was commonly known by the disputed domain name, the Respondent can have no rights or legitimate interest. [See *Shulton Inc. v. Mr. Bhaskar*, (INDRP/483)]

In the absence of any *bona fide* use on behalf of the Respondent, it appears that the domain name registration was obtained for potential commercial gain and to commercially exploit the deceptive similarity with the Complainant's registered trade mark 'trivago' and to free ride on the goodwill and reputation of the Complainant by being mistaken to be associated with the Complainant.

In view of the foregoing, it is evident that the Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

"6. Evidence of Registration and use of Domain Name in Bad Faith – For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by

the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise 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*
- ii. 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*
- iii. by using the domain name, the Registrant 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.”*

It appears that by registering the impugned domain name, the Respondent has attempted to attract internet users by creating likelihood of confusion with the Complainant's mark/source of origin. [See *Colgate – Palmolive Company and Colgate Palmolive (India) Ltd. v. Zhaxia*, (INDRP/887)]. Thus, it can be inferred that the Respondent has registered the disputed domain name in bad faith to tarnish the trade mark and cause confusion in the minds of the public.

It has also been held in the cases of *LinkedIn Corporation v. David Naranjo*, *All Play Media*, WIPO Case No. D2019-2784 and *V&V Vin&Sprit AB v. Wallin*, WIPO Case No. D2003-0437 that bad faith can be established where a domain name is so obviously connected with a well-

known trade mark that its very use by someone with no connection to the trade mark suggests opportunistic bad faith. It is also evident that the objective of registering the disputed domain name was aimed at preventing the legitimate owner of the trade mark from reflecting the same in a corresponding domain name since to date no website is functional at the website corresponding to the disputed domain name.

Substantial number of precedents establish that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use. [See *Pepperdine University v. BDC Partners, Inc.*, WIPO Case No. D2006-1003; *Veuve Clicquot Ponsardin, Maison Fondee en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163, *Mastercard International Incorporated v. Total Card Inc.*, WIPO Case No. 2000 – 1411].

Considering that the current status of the webpage corresponding to the domain name ‘trivagoholiday.in’ is non-operational/inaccessible and the WHOIS records do not indicate the domain being available for sale, this would constitute passive/parked holding of the domain name/website, which further contributes to bad faith. [See: *HSBC Holdings plc v. Hooman Esmail Zadeh* (INDRP/032), *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003].

In view of the foregoing, the Tribunal is of the view that the Respondent has registered the domain name ‘trivagoholiday.in’ in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the mark ‘trivago’ which is proprietary to the Complainant, (2) the



Respondent has no rights or legitimate interests in respect of the disputed domain name, and
(3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name 'trivagoholiday.in' to the Complainant.

The parties shall bear their own cost.

Dated: 17/01/2020



C.A. Brijesh
Sole Arbitrator