



தமிழ்நாடு தமில்நாடு TAMILNADU

AC 077671

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8/12/2011

D. SARAVANAN
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P.S. SHANMUGA SUNDARAM,
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)

Disputed Domain Name: www.airtelworld.net.in

Bharti Airtel Limited
Bharti Cresnet
1, Nelson Mandela Road
Vasant Kunj Phase II
New Delhi 110 070
domains.admin@bharti.in
anubha.sharma@bharti.in

Complainant

Vs.

Rajeev Garg
Jsr.com, J-239, Sector 18
Noida
Uttar Pradesh 201 301
Satyamluv6185@gmail.com

Respondent

..2.





3. Procedural History:

November 17, 2011 :	Date of Complaint.
November 23, 2011 :	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
November 23, 2011 :	The Arbitrator has submitted Statement of Acceptance and Declaration of Impartiality And Independence, to the .IN REGISTRY.
December 01, 2011 :	The .IN REGISTRY has forwarded the hard copy of the complaint and annexures to Mr.D.Saravanan, Sole Arbitrator.
December 06, 2011:	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorised representative and .IN REGISTRY.
December 16, 2011 :	Due date for filing Response by Respondent.
December 22, 2011 :	Arbitrator sent an e-mail to Respondent notifying his default, a copy of which was marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
:	The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is M/s Bharti Airtel Limited, having their address at Bharti Cresnet, 1, Nelson Mandela Road, Vasant Kunj Phase II, New Delhi 110 070, rep. by its authorized representative Ms.Anubha Sharma, General Manager, Bharti Airtel Ltd.



4.2 Complainant's Activities:

The Complainant states inter-alia that the Complainant is a leading global telecommunications company with operations in 19 countries across Asia and Africa; the Complainant offers mobile voice & data services, fixed line, high speed broadband, IPTV, DTH, turnkey telecom solutions for enterprises and national & international long distance services to carriers; these services are rendered under a unified brand AIRTEL; the Complainant has been ranked among the six best performing technology companies in the world by business week; the Complainant served an aggregate of 23,70,00,000 customers as of September 30, 2011; the Complainant had revenues of Rs.380,158,000 in the Financial Year 2010-11 as per Profit and Loss Account for the year ended March 31, 2011; the Complainant is the 3rd largest in-country mobile operator in the world and 6th largest in-country integrated telecom operator in the world; the Complainant is one of the biggest telecom companies engaged in a variety of services including cellular phones, broadband and internet services, satellite, carrier, international services, calling card, e-business services, etc; the Complainant's flagship brand and mark is the AIRTEL mark which is now a globally well-known name and mark.

4.3 Complainant's Trading Name:

The Complainant states inter-alia that the Complainant is the registered owner, user and proprietor of the trade mark AIRTEL in India as well as in several countries abroad; the trademark 'AIRTEL' registrations in India include registration of the AIRTEL word mark vide registration number 648684 in class 9 as well as AIRTEL word mark in class 38 vide registration number 1256043 in class 38; the AIRTEL mark is also registered internationally in United States (USPTO), European Union (OAMI), Singapore Trademarks Office, Hong Kong Trademarks Office, Trade Marks Office Lusaka, Zambia, Kenya, Madagascar, Mozambique, Nigeria, Uganda, Ethiopian Intellectual Property Office and Intellectual Property Corporation of Malaysia; the trademark registration certificates evidencing registration for the mark AIRTEL in favour of Complainant are annexed as ANNEXURE P 5 (Collectively); the Complainant is the owner of various AIRTEL domain names including airtel.com, airtel.in, airtelworld.com, airtelworld.in, airtelindia.com, airtelindia.in, airtellive.com, airtel.co.in, etc. Copies of the WHOIS printouts of the said domain names are annexed as ANNEXURE P 6 (Collectively); the Complainant (Bharti Airtel Limited) is the



owner, prior user and proprietor of the trademark AIRTEL; in the year 1994, the Complainant conceived, invented, coined and adopted the said, new and distinctive mark AIRTEL as its trademark for its goods as well as services; the word AIRTEL is not used in common language and does not find any place in any dictionary; it is a coined word and is therefore, entitled to a very high degree of protection; the Complainant widely publicizes and advertises its products/services in print as well as electronic media all over the country; the sales and marketing expenditure of the Complainant is Rupees Rs.31,802,000,000 as per the Complainant's Profit and Loss Account for the year ended March 31, 2011; sample copies of the media coverage/press clippings, publicity material for the mark AIRTEL in the print media along with the sample bills of advertisements for hoardings and in the press as well as electronic media are filed as ANNEXURE P 7 (Collectively); by virtue of extensive use and vast publicity under the trade mark AIRTEL, the Complainant enjoys exclusive proprietary rights therein, so that members of the trade and relevant purchasing public identify and associate the said trademark with their products and business alone; the Complainant's brand AIRTEL has received various awards and recognition; the mark is inherently distinctive and through extensive use and marketing by the Complainant, the said trade mark AIRTEL has become a house hold word; by reason of extensive use, marketing and advertising of the said trademark all over India as well as abroad and due to protection by Courts etc., the said mark has become a "WELL KNOWN TRADEMARK"; the complainant has been regularly protecting its valuable rights in the Trademark AIRTEL; in a recent action, the Complainant had filed a complaint in the Channel Island Registry for 24 domain names using the mark AIRTEL being case No. CIDRP-001; the said complaint was decided in favour of the Complainant and the domains were ordered to be transferred in favour of the Complainant; copy of the order is annexed as ANNEXURE P 8; the Complainant had also filed a WIPO complaint for the domain www.bhartiairtel.com being Case No.D2007-0734; the WIPO ordered the transfer of the Domain name in favour of the Complainant; copy of the order is annexed as ANNEXURE P 9; in another action, the Complainant had filed a suit in the Hon'ble Delhi High Court being CS (OS) 301/2008 for the domain www.airtelworld.in and vide order dated 4.9.2009, the said domain was ordered to be transferred to the Complainant; copy of the said order is annexed as ANNEXURE P 10; in another action, the Complainant's predecessor company filed a suit in Mumbai High Court against M/s. Jai Distilleries Pvt. Limited; the Hon'ble High Court of Bombay, on 21.03.2006 was pleased to confirm the ad-interim relief in favour of plaintiff therein



restraining the defendants from using the mark AIRTEL; the copy of order dated 21.03.2006 in matter Bharti Tele-Ventures Ltd. Vs. Jai Distilleries is marked as ANNEXURE P 11; the Complainant had also filed a civil suit being CS (OS) No.279/2006 against the Registrant Agri Lacus Caelum LLC and Name.Net.LLC before the High Court of Delhi for registration of domain name "BhartiAirtel.com"; the High Court had granted an ex-parte order in favour of the plaintiff therein and had also directed that the stated domain name be transferred to the Complainant; the order of the Hon'ble High Court dated 15.02.2006 is annexed as ANNEXURE P 12; the Complainant had also filed a civil suit being CS (OS) 272/2006 against Marco Signorini, I Kingsway, London WC2B6XD, GB and TU COWS INC., 96 Mowat avenue, Toronto, ON, Canada M6K 3MI before the High Court of Delhi against the registration of domain name "Bharti-Airtel.com"; the High Court had granted an ex-parte order in favour of the plaintiff therein and had directed that the domain name be transferred to the Complainant herein; the relevant order dated 20.04.2006 in stated suit proceedings is annexed as ANNEXURE P 13.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <airtelworld.net.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Rajeev Garg, Jsr.com, J-239, Sector 18, Noida, Uttar Pradesh 201 301.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

The Complainant states inter-alia that the domain name is identical/incorporates the registered and reputed trademark AIRTEL of the Complainant and is also deceptively similar to the trademark AIRTEL of the Complainant; the Respondent has no right in the said marks and domain name and has registered the same in bad faith; the disputed domain is a combination of AIRTEL mark with the addition of the suffix "world", which is a common word to denote the fact that the services of the Complainant are provided in various parts of the world; it is an established principle that the mere addition of generic



terms does not create a different trademark in which the respondent has rights and cannot be considered sufficient to avoid confusion between the domain name and the Complainant's trademark as held in various cases including Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd., (2004) 6 SCC 145; Times Internet Ltd. vs. Beliza Domain Whois Services Ltd. and others, 2011(45) PTC 96 (Del); Casio India Co. Limited Vs. Ashita Tele Systems Pvt. Limited, 106 (2003) DLT 554; GA Modefine SA v. Riccardo Bin Kara-Mat, WIPO Case No.D2002-0195; Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. Distribution Purchasing & Logistics Corp, WIPO Case No.D2000-0464.

(b) Respondent has no rights or legitimate interests in the domain name:

The Complainant states inter-alia that they being the prior adopter, lawful owner and registered proprietor of the mark AIRTEL including is the only legitimate claimants to the domain name www.airtelworld.net.in; the acts of the Respondent constitute infringement/passing off of trade mark and violate all the statutory and common law rights of the Complainant. The mark AIRTEL is a registered trade mark. The registration of the disputed domain name is in violation of the Complainant's statutory and common law rights; the Respondent has deliberately hyperlinked the impugned domain to the Complainant's website 'airtel.in' to confuse the public/potential job-seekers/ customers of the Complainant; the Respondent is in no way connected to the registered domain name and has no rights or legitimate interests, hence the Respondent's attempt to register it constitutes infringement and dilution of the Complainant's mark AIRTEL.

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states inter-alia that the Respondent has registered the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant, who is the owner of AIRTEL trademark, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the domain name and to defraud prospective job seekers of the Complainant; the Respondent is running a phishing scheme, inter-alia, by sending e-mails including job offers to prospective job seekers with the Complainant, from the impugned domain and illegally collecting money and commercial gain from such job seekers by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the



website; the modus operandi of the Respondent includes (i) creation of the website under the registered AIRTEL mark with generic/descriptive suffix (airtelworld.net.in) (ii) attracting potential job seekers with the Complainant through other websites (such as backdoorjobs.wordpress.com, jobfair@backdoorjobs.in etc., (iii) once the potential job seeker with the Complainant applies for the job, it asks him/her to deposit Rs.1000 in a given account for a confirmation letter/telephonic interview, (iv) sends a confirmatory e-mail from recruitment@airtelworld.net.in i.e. the impugned domain and further demands for Rs.15,000/- for the offer letter on behalf of the Complainant, (v) to confuse the potential job seeker further, the website airtelworld.net.in has been redirected/hyperlinked to airtel.in, the Complainant's official website, (vi) the potential job seeker believing that the confirmation has been provided by the Complainant deposits the money in the account and loses the money. A copy of the complaint received by the Complainant from one such job seeker as well as the e-mail sent through the impugned domain and related correspondence are annexed as Annexure P-14 ; the Complainant have been making efforts to mitigate the damage by i) reporting the incident to CertIn as per the incident reporting form, a copy of Incident Report is annexed as Annexure P-15, ii) reported abuse in respect of website to the Registrar of the impugned domain through the Registrar's website, a copy of abuse report is annexed as Annexure P-16, iii) raising a complaint to the website manager of backdoorjobs.in in response to which the Complainant's name was deleted from the list of clients, a copy of e-mail sent to jobfair2backdoorjobs.in and screenshot of list with the Complainant's name deleted are annexed as Annexure P-17; Phishing in this current instance would also amount to bad faith as affecting or tarnishing the image of the organization whose name, website design and layout has wrongly been used, which has been held in *National Association of Software and Service Companies v. Ajay Sood* (2005) F.S.R. 38, quoted under *Banca Intesa S.p.A, v. Moshe Tal*, WIPO Case No.D2006-0228; the Respondent has no right to use the mark AIRTEL, however the Respondent is using the said mark illegally and fraudulently; the registration of the domain name airtelworld.net.in is completely dishonest, illegal and malafide with a view to make monetary gain out of the Complainant's brand AIRTEL; the brand AIRTEL is the most well recognized brands in India and also in other countries; the Complainant enjoys enormous goodwill and reputation in the brand; the registration of the domain name by Respondent is nothing but an attempt to gain monetarily by capitalizing on the strength of the Complainant's brand AIRTEL; the use of the world AIRTEL by the Respondent in the disputed domain name and

on the website under the disputed domain name without any remote connection with the Complainant establishes the malafide intentions and bad faith use by the Respondents; it is submitted that using the said word AIRTEL in its domain name including use of the domain to send unauthorized and illegal e-mails to potential job seekers and/or customers of the Complainant is only to defraud internet users to make them believe that the Respondent is connected with the Complainant which will cause enormous harm to the goodwill and reputation of the Complainant in their mark AIRTEL.

B. Respondent:

The Respondent did not submit any response.

6. 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 Respondent has 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 December 22, 2011.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (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 registered trademark AIRTEL in various countries including in India. The Respondent's domain name, <airtelworld.net.in>, consists of entirely Complainant's trademark, except the addition of the suffix "world" and internet domain suffix "net" and ccTLD. It is well established that the mere addition of generic terms does not create a different trademark. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <airtelworld.net.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal 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 can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) 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 apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) 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) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered AIRTEL mark with generic/descriptive suffix, attracting potential job seekers with the complainant through other websites, and once the potential job seeker with the Complainant applies for the job, the respondent used to ask them to deposit an initial amount in a given account for confirmation letter/ telephonic interview and further demands for a huge sum for the offer letter on behalf of the Complainant; and the potential job seeker believing that the confirmation has been provided by the Complainant, deposits the money in the account and loses money. As a proof of the misdeeds committed by the respondent, the Complainant has provided various documentary evidences which are marked as Annexure P14, P15, P16 and P17 which annexures were not disputed by the Respondent.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or



identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide 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.

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.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <airtelworld.net.in> be transferred to the Complainant.

Dated at Chennai (India) on this 2nd Januray, 2012.


(D.SARAVANAN)
Sole Arbitrator