



उत्तर प्रदेश UTTAR PRADESH

BF 502287



**Dr. Bodhisatva Acharya**  
ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

ARBITRATION AWARD

DISPUTED DOMAIN NAME :< [WWW.APPUGHAR.CO.IN](http://WWW.APPUGHAR.CO.IN) >

In the matter of:

International Amusement Limited  
Metro Walk, Sector 10,  
Rohini, Near Rithala Metro Station,  
New Delhi - 110085

Filed by its authorized representative attorney -

Alpha Partners  
Attn: Akshat Pande  
E-156, LGF, Sector 20, NOIDA -201301  
E-mail- [akshat@alpha-partners.org](mailto:akshat@alpha-partners.org)

ss .....Complainant.

***Vs.***

Priyanka Gothi  
B081, Carlton Estate 1, DLF Phase 5,  
Gurgaon, Haryana - 122002  
India

.....Respondent.

## **A W A R D**

### **1. The Parties:**

The complainant in this arbitration proceeding is International Amusement Limited Metro Walk, Sector 10, Rohini, Near Rithala Metro Station, New Delhi - 110085 filed by its **authorized representative attorney** Alpha Partners, Attn: Akshat Pande, E-156, LGF, Sector 20, NOIDA -201301

**Respondent** Priyanka Gothi, B081, Carlton Estate 1, DLF Phase 5, Gurgaon, Haryana - 122002, India

### **2. The Domain Name, Registrar & Registrant:**

The disputed domain name is WWW.APPUGHAR.CO.IN

### **3. Procedural History:**

The Complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name WWW.APPUGHAR.CO.IN following the clause 4 of the policy of .IN Registry and .IN Registry appointed Dr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on April 26<sup>th</sup>, 2013 after that the complaint was produced before the Arbitrator on May 9<sup>th</sup>, 2013 and the Arbitrator sent a notice to the Respondent through his email for the Arbitration Proceeding on May 10<sup>th</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the July 8<sup>th</sup>, 2013 as Ex-parte.

#### 4. Factual Background:

- (a) International Amusement Limited ("IAL") is a Company incorporated under the Companies Act, 1956 and having its registered office at Metro Walk, Sector 10, Rohini, Near Rithala Metro Station, New Delhi - 110085. The IAL was incorporated on 15<sup>th</sup> September, 1984 by Mr. Gian Vijeshwar, a Sweden based Non- Resident Indian with the primary object to conceptualize and set up India's first amusement park "Appu Ghar", which was inaugurated on 19<sup>th</sup> November, 1984. The Complainant is the proprietor of various well known trademarks under various classes in the field of amusement and entertainment industry. These marks have been widely and extensively used by the complainant since the year 1984. The marks used by the Complainant have established and registered imagery in the minds of Indian as well as international population, ranging from young to old demographic, and owing to the popularity is recognized by persons from various social and economic strata as the marks of the Complainant. The Complainant has multiple projects in India which consists of amusement parks, retail malls, commercial spaces and family entertainment centers etc. and has certain future projects in the pipeline all of which are actively being associated with the trademark Appu Ghar vide the use of the trademark in advertisements, sales brochures, invitations and various web promotions and websites, and the general public as well as institutional investors from India and across the globe counting on the huge trust and faith created by the trademark Appu Ghar are visiting these projects house a huge list of national as well as multinational brands which are proud to be associated with the trademark Appu Ghar.
- (b) The Complainant has pioneered the family entertainment and amusement industry and garnered immense trust and goodwill fro the trademark Appu Ghar. The Complainant provides world class retail shopping facility, amusement parks, hotels, eateries; entertainment centres etc. and houses many national and multinational brands at multiple destinations. All the offerings of the Complainant are regularly frequented by foreign tourist and remains in the most frequent addresses. Business and leisure travelers from all across the globe visit the Complainnats websites to know details about the various projects and facilities of the complainants and transact with the Complainant based on the information available on the website [www.appughar.com](http://www.appughar.com). The website is the identity of the Complainant which projects the reputation of the Complainant's various endeavours to the prospective visitors and prospective business associates which may make their decision based on the impression the website shall project.
- (c) The Complainant's trademark Appu Ghar has been widely appreciated by the business as well leisure travelers from numerous countries such as The



United States, United Kingdom, Canada, Aruba, Bahrain, Bermuda, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Holland, Korea, Kuwait, London, Mexico, Panama, Peru, Philippines, Taiwan, Thailand, United Arab Emirates, Venezuela, Hong Kong, Singapore and almost every country on the world map and the website continues to attract more travelers from across the globe. The geographical spread of the Complainant's repute can be gauged from the fact that football at various projects of the Complainant is about 4 crore customers each year and Complainant's website receives 44193 hits every Year. A large portion of which comprises of foreigners. It is submitted that travelers from India and abroad, who travel for tourism, business or study are invariably exposed to and are fully aware of the reputation and goodwill enjoyed by the Complainant under its trademark Appu Ghar. Furthermore, the Complainant's

- (d) Complainant is the authorized exclusive licensee of the top level domain name [www.appughar.com](http://www.appughar.com) which is owned and registered in the name of Mr. Gian Vijeshwar who is a promoter and shareholder of the Complainant. The domain name [www.appughar.com](http://www.appughar.com) is registered in the name of Mr. Gian Vijeshwar since 16<sup>th</sup> June 2001. The domain name [www.appughar.com](http://www.appughar.com) leads to an active website. The Complainant has a huge Internet presence through its website. The website also provides information about the world class retail shopping facility, amusement parks, hotels, eateries, entertainment centre etc. and various national and multinational brands at multiple destinations. The respondent in the present dispute has registered the domain name <[appughar.co.in](http://appughar.co.in)> on 7<sup>th</sup> October 2011 by misappropriating legally and without authority the trademark "Appu Ghar" which is the exclusive property of the Complainant.
- (e) Lastly the complainant filed this complaint for Arbitration proceeding and the Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on May 9<sup>th</sup>, 2013 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on May 10<sup>th</sup>, 2013, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the July 8<sup>th</sup>, 2013 as Ex-parte

## **5. Parties Contentions:**

- (a) Complainant contends that
  - (i) The Registrant's domain name is identical or confusingly similar to a 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; and

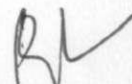
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response.

## 6. Discussion & Findings:

- (i) The disputed domain name <appughar.co.in> includes the word Appu Ghar, which is identical and confusingly similar as a whole to the well known and registered trademark Appu Ghar in which the Complainant has statutory rights as well as rights in common law, by virtue of a long and continuous user and being its registered proprietor thereof. Further more due to the above mentioned factors, the trademark Appu ghar has acquired distinctiveness and is exclusively identified with the Complainant's products and offerings. As such the use of the Word Appu Ghar in the domain name would be understood as a reference to the Complainant thus perpetuating confusion among consumers who wish to access the Complainant's web page. The Complainant placed citation on KFC Corporation v. Webmaster Casinos Ltd.(INDRP/006), wherein the domain namekfc.co.in was transferred to the complainant as it incorporated the KFC Trademark in whole.
- (ii) The domain name www.appughar.co.in revolves around the Complainant's web site www.appughar.com therefore, it is obvious that not only does the Respondent have knowledge of the Complainant's world famous trademark Appu Ghar but the only purpose behind registering the impugned domain name can only be to cash on the goodwill attached to the Complainant's trademark/name by selling the domain name for profit or in the alternative, preventing the Complainant from registering a domain name in which it has full legal rights. Further the Respondent is not commonly known by the domain name nor has he made any demonstrable preparation to use the disputed domain name <appughar.co.in> in connection with a commercial purpose. The Respondent is not a licensee of the Complainant and neither has the Complainant granted any permission or consent to the Respondent to use the trademark Appu ghar in any manner or to incorporate the same in a domain name. The Respondent's website is not bonafide as the respondent in order to cause initial interest confusion and bait internet users to accessing its website, has registered the impugned domain name. No website has been uploaded on the said domain name and it revolves around the Complainant's web page. The complainant placed reference of the case of Google Inc. v. R. Jain (INDRP/077) wherein the disputed domain name orkut. in was transferred to the complainant as the Respondents didn't have any legitimate interest in respect of the domain name. Under Para 5, p.8, of the above cited case the arbitrators found that, "the Respondent ought to have been aware of the complainant's rights in ORKUT trademark" and it further



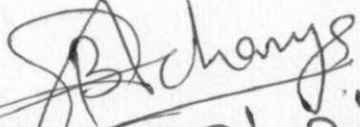
held that, "the Respondents has no rights or legitimate interests in the domain name".

- (iii) Due to all the above mentioned factors, the Complainant's Appu Ghar mark is a well known mark and the Respondent is presumed to have had knowledge of Complainant's mark at the time it registered the confusingly similar domain name. Secondly, the domain name of the Respondent revolves around the Complainant's global web page. This indicates that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademark/name. Thus this is prima facie evidence as the Respondent's bad faith use and registration. The Complainant produced Rediff.com India Limited v. Mr. Abhishek Verma & others. (INDRP?), wherein the disputed domain name rediff.in was ordered to be transferred to the Complainants. The panel held, "the disputed domain name was registered for the sole purposes selling, renting or transferring the same for monetary gains over and above the documented registration expenses". In the present dispute similar to the above case the Respondents are not using the disputed Domain name for a commercial purpose. Therefore, it is submitted that the domain name has only been registered in bad faith for monetary gains.
- (iv) The Complainant has communicated with the Respondent vide an email dated 28<sup>th</sup> February, 2013 sent by Mr. Vaibhav Mittal who is the Corporate Branding Consultant of the Complainant and authorized to carry out such enquires. The Respondent replied vide email dated 28<sup>th</sup> of March, 2013. In her reply, the Respondent states she is holder of another domain name www.appughar.in which is subject matter of another complaint filed by the Complainant before this Hon'ble forum and the present owner and respondent in that complaint is Mr. Manish Kumar. The response of the Respondent and other infringer with respect to the same mark, who is holding the domain name <appughar.in>. The Respondent has accepted that she holds the domain name, appughar.in> and stated that the validity for the same is for 2 years. This reply of the Respondent shows that both the infringers are well aware of their illicit actions and are squatting on the Complainant's marks with a long term registration thereby denying the Complainant his bonafide rights over his own mark Appu Ghar. Therefore, the Complainant submits that the fact that the Respondent has made no such efforts to desist from the use of the impugned Domain name is prima facie proof of the Respondent's mala fide intentions. It is therefore submitted that the disputed domain name has been registered and is being used in bad faith.
- (v) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

## 7. Decision:

Hence the Arbitrator decides, the Disputed Domain Name www.appughar.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.appughar.co.in shall be transferred to the Complainant with immediate effect.

  
(Dr. BODHISATVA ACHARYA)  
SOLE ARBITRATOR  
NIXI

DATED: July 8<sup>th</sup>, 2013,  
PLACE: NEW DELHI,  
INDIA