

இந்திய அநீது நியாயம் TAMILNADU

41864

S. Sridharan

Chennai

828 100/-

AD 010347  
R. RAGUPATHI

STAMP VENDOR, L/No. C3/4839/83  
No. 37, VILLAGE ROAD, NOW KNOWN AS  
No. 79/91, VALLUVARKOTTAM HIGH ROAD  
NUNGAMBAKKAM, CHENNAI-600 034  
PHONE: 28274419

BEFORE THE INTERNATIONAL EXCHANGE OF INDIA  
ARBITRATION AWARD

ARBITRATOR: S SRIDHARAN

Dated 18<sup>th</sup> December 2011

Carroll Corporation, USA --- Complainant

-Vs-

Prakash K R, Karnataka --- Respondent

Sridharan  
Arbitrator

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 18<sup>th</sup> December 2011

Carrier Corporation, USA	...	Complainant
Versus		
Prakash K R, Karnataka	...	Respondent

1. The Parties

- 1.1 The complainant is Carrier Corporation, a Delaware Corporation and having its principal place of business at One Carrier Place, Farmington Connecticut 06034, United States of America represented by Ms Madhu Rewari of Anand and Anand Advocates, at First Channel, Plot No.17A, Sector 16A, Film City, Noida.
- 1.2 Respondent is Prakash K R at 507/3, 2nd Floor, Vyslikaval, Bangalore, Karnataka 560003.

The Domain Name and Registrar

- 1.3 The disputed domain name <carrier.net.in> is registered with Net4India. (R6-AFIN).

2. Procedural History

- 2.1 On 4<sup>th</sup> August 2011, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 5<sup>th</sup> August 2011 I informed my



availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.

- 2.2 On 22<sup>nd</sup> August 2011, I received hardcopy of the Complaint along with Annexures.
- 2.3 On 22<sup>nd</sup> August 2011, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 13<sup>th</sup> September 2011, I received a short reply from the Respondent stating that he would soon launch a magazine titled CARRIER MANAGEMENT and the disputed domain name was chosen as it was very close to the name of the magazine. I asked him to send a detailed reply and granted him a further time of 10 days. No further response was received from the Respondent.
- 2.5 On 14<sup>th</sup> September 2011, I received a soft copy of the complaint from the Complainant.
- 2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. **Factual Background**

A **Complainant**

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- 3.1 The Complainant is a wholly owned subsidiary of *United Technologies Corporation*, USA which is one of the largest industrial corporations in the world, having a presence in major growth industries which includes, aerospace, power, electronics, building systems and air conditioning, through its ownership of companies, such as, Pratt & Whitney, Sikorsky Aircraft Corporation, Otis Elevator Company, Hamilton Sundstrand Corporation and Carrier Corporation.
- 3.2 The Complainant under its trademark and trading style **CARRIER** is a world leader in air conditioning and climate control and commands a significant share of the world market. The Complainant has more than 30 modern plants throughout the world, which manufacture innumerable high technology products that find applications in diverse areas, such as medicine, electronics, space exploration programs and other sophisticated industrial processes.
- 3.3 The Complainant is the proprietor of the trademark **CARRIER**. The word **CARRIER**, has no meaning or significance in India and is not a common name or surname and thus has no understandable meaning to consumers from India and to this extent has all the trappings of an invented word. Consequently, the mark is inherently distinctive of the Complainant and is thus capable of being protected across classes. In the Asia Pacific region itself, the trademark **CARRIER** has been in use since 1939 and the date of first use of the mark CARRIER in the United States was 1916. The complainant has filed copies of trade mark registration for the mark

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CARRIER in the US and another country at **Annexure A**. An Affidavit of IT expert is at **Annexure-A1**.

3.4 The mark **CARRIER** is also the trading style of the Complainant and forms the main feature of the corporate name. The mark **CARRIER** being a corporate name also further enhances the distinctive character of the said mark along with emphasizing the importance of the **CARRIER** mark.

3.5 The trademark **CARRIER** is used by the Complainant in relation to its innumerable products, which include, air handling units, compressors, condensers, unitary packaged transportation air conditioners and refrigerators, packaged terminal air conditioners, central station air conditioners, hermetic absorption and centrifugal water chillers, open drive centrifugal chillers, reciprocating air and water cooled chillers, dehumidifiers, single packaged and split systems, heat pumps, air cleaners etc. in more than 170 countries on six continents through a worldwide network of numerous distributors and licensees who sell, install and service products under the trademark **CARRIER**.

3.6 The Complainant has, since adoption, spent enormous money and has put in tremendous effort in publicizing and promoting their **CARRIER** trademark worldwide. As a result of the Complainant's painstaking efforts to publicize and promote its **CARRIER** trademark and trade name worldwide, and due to the superior quality of the Complainant's **CARRIER** products, the goods under the said trademark and trade name have met with astounding and

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most enviable sales since their introduction. By the end of 2010 the revenues of the Complainant were US \$ 11.4 billion.

3.7 The Complainant has also had a long and deep rooted association with India, which extends back nearly six decades when imports were not restricted and the Complainant has placed its equipment with customers in India. Subsequently, with the import restrictions, the Complainant's products could not be directly sold in India, although they continued to make their way in the country, through the channels of embassies and consulates. The Complainant also continued its presence in India through the avenue of limited transfer of technology to indigenous units. In the year 1987-88, the Complainant had set up an Indian enterprise in the form of a company called Carrier Aircon Limited, which merged with Carrier Air-conditioning and Refrigeration Limited, the surviving company, in 2006. The Complainant holds a majority stake in this Indian entity.

3.8 It is submitted that the trademark **CARRIER** of the Complainant, falls under the category of "*well known*" or "*famous*" trademarks, the reputation of which is not confined to any specific goods, but which spills over to practically any good to which the said mark is applied or is likely to be applied. Being a famous trademark, the use of the said mark in relation to any goods whatsoever would automatically induce the purchasing public & members of trade to believe that such goods to which the mark is applied, also originate from the Complainant or have some nexus, affiliation or connection with them.

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3.9 The Complainant has been extremely vigilant in safeguarding and protecting its rights in the **CARRIER** trademark worldwide. Time and again, the Complainant has successfully initiated various proceedings against third parties who have sought to misuse or register the **CARRIER** mark. The Complainant reserves the right to file copies of the relevant orders at the stage of evidence in the present proceeding.

3.10 The Complainant is the owner of the top level domain name <www.carrier.com> (which resolves to <www.corp.carrier.com> ) as well as numerous variations thereof in the .com and other gTLDs. The domain name www.corp.carrier.com leads to an active website. A printout of the Complainant's website is at **Annexure B**.



3.11 The Complainant is also the owner of numerous other country code top level domain name registrations that incorporate its reputed mark CARRIER. Printouts of the websites are at **Annexure C**.

3.12 The widespread promotion and advertisement by the Complainant has resulted in an increased awareness and exclusive association of the CARRIER trademark with the Complainant. This has provided significant value and strategic advantage to the Complainant. The brand CARRIER holds an enviable position in the market, offering a wide selection of food storage, preparation and serving items. Printouts from the internet showing use of the mark CARRIER are at **Annexure D**.

3.13 The Complainant is also the registered proprietor in India of the trademark CARRIER (Word and device) having secured registrations of the same in its

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favour as per the following details. These registrations confer upon the Complainant the exclusive right to use the said marks to the exclusion of all others. Copies of registrations are at **Annexure E**.

Trademark	Regn. No.	Dated	TMJ No.	Goods
Carrier 	118478	25th January, 1946	75	Air condition and ventilation installation and equipment included in Class 11
	598605	5 <sup>th</sup> June, 1993 The registration is valid upto June 03, 2017	1230	Air conditioning, refrigerating, heating, cooling and ventilation, systems and components in class 11
	1257893	21 <sup>st</sup> May 2007	1340	Installation, maintenance and repair of heating, ventilating and air conditioning systems included in class 37

3.14 In addition to the above registrations in India, the Complainant has several registrations for the trademark CARRIER (in plain block letters or in a device form) in various countries and jurisdictions around the world. Complainant's trademark portfolio of CARRIER and CARRIER formative marks includes over four hundred registrations and/or pending applications worldwide. Documents evidencing the same are at **Annexure F**.

## **B Respondent**

3.15 The Respondent sent a short reply. In his reply, Respondent stated that he would soon launch a print magazine titled **CARRIER MANAGEMENT**

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dedicated to the logistics industry an essential reading for all the stakeholders in the areas of manufacturing, exporting and importing firms, FMCG, maritime, transportation and aviation. He also received approval of title from Registrar of News. Since the domain name reflecting the exact name of the proposed magazine, i.e. [www.carriermanagement.com](http://www.carriermanagement.com) was too long and difficult to recall, he chose the disputed domain name **<carrier.net.in>**. He was asked to give a detailed reply setting out and was granted another period of 10 days' time for this purpose. But he did not file any further response.

#### **4. Parties Contentions**

##### **A Complainant**

- 4.1 The Respondent has registered the disputed domain name **<carrier.net.in>** on February 28, 2011 which incorporates in its entirety the Complainant's reputed mark CARRIER. An extract of the WHOIS record of the disputed domain is annexed at **Annexure-F**.
- 4.2 The disputed domain name **<carrier.net.in>** is identical to the trading style and trademark in which the Complainant has prior rights. The Complainant already has a domain name in India as [www.carrierindia.com](http://www.carrierindia.com) and thus the consumers and the members of the trade would get confused that the disputed domain name **<carrier.net.in>** also belongs to the Complainant. Prints out from website [www.carrierindia.com](http://www.carrierindia.com) are at **Annexure-G**.

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- 4.3 The disputed domain name <carrier.net.in> incorporates in its entirety the reputed mark CARRIER of the Complainant in which the Complainant has statutory rights as well as rights under common law.
- 4.4 Further the disputed domain name <carrier.net.in> attempts to associate itself to the Complainant's business under the mark CARRIER by incorporating the name of the business in full, thereby causing loss of the Complaint's prime domain name. It is most respectfully submitted that the Complainant has spent several years building up "search engine trust" in a domain. The malicious intention of the Respondent is evident from the blatant misappropriation of the Complainant's trade mark CARRIER. It is submitted that in the present instance, any Indian user searching for the Complainant's business online as CARRIER will be taken to the disputed domain name <carrier.net.in>, which enhances the possibility of confusion and/or deception.
- 4.5 The addition of the country code ".in" (INDIA) to the Complainant's trademark CARRIER makes the resulting domain name confusingly similar to the Complainant's trademark and its domain name www.carrierindia.com thereby diluting the trademark of the Complainant and causing harm to its reputation. Further, the Complainant wishes to place reliance on SAS Institute Inc. v. Farzad Bahreini, FA0207000115038 (Nat. Arb. Forum, August 26, 2001) (domain name <sasinstitute.us> held confusingly similar to mark SAS INSTITUTE; panel held that the addition of a top level country-code such as ".us" does not create a distinct mark capable of overcoming a

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claim of identical or confusing similarity). The incorporating of a trademark in its entirety (and with no additional words) in a domain name is sufficient in establishing confusing similarity as stated by numerous INDRP decisions such as Taco Bell Co. vs. West Masters Casino. Copies of the above-mentioned decisions are at **Annexure H**.

- 4.6 The Internet user or the general public who do not know that the Complainant and the Respondent have no affiliation with each other or that the Complainant has not licensed or authorized or endorsed the use of its reputed and protected mark CARRIER will thus confuse the Respondent's activities as those authorized or endorsed or affiliated with the Complainant which would lead to the dilution of the Complainant trademarks.
- 4.7 Since the disputed domain name <carrier.net.in> comprises the reputed trademark CARRIER in which the Complainant has sole and exclusive interests, it is evident that the Respondent cannot have any rights or legitimate interest in the domain name.
- 4.8 Further, the Respondent's choice of the Complainant's reputed trademark CARRIER as part of its domain name is totally unnecessary and the sole purpose of carrying on business through the use of the disputed domain name <carrier.net.in> incorporating the Complainant's reputed trademark is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.
- 4.9 The Respondent is not making a legitimate non-commercial use of the domain name. The website to which the disputed domain name

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<carrier.net.in> resolves incorporates links to the websites of competing companies. Prints out from the disputed domain name <carrier.net.in> are at **Annexure I**.

4.10 Upon information and belief, CARRIER is not the Respondent's personal name, neither is the Respondent commonly known by the domain name and Respondent is not known to the public under the name CARRIER.

4.11 The Respondent's website under the disputed domain name <carrier.net.in> is not bona fide since the Respondent is trading on the fame and recognition of the Complainant's reputed trademark in order to cause initial interest confusion and bait internet users to accessing its website and force the Complainant to buy the domain name from the Respondent in order to avoid said confusion as is typically the strategy of such cyber squatters. The Complainant submits that the Respondent has not been engaged in any such activity to show that it has legitimate rights or interest in the disputed domain name <carrier.net.in>. Given that the disputed domain name <carrier.net.in> was only registered on February 28, 2011, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of registration.

4.12 Hence the Respondent has no rights or legitimate interest in the disputed domain name <carrier.net.in>. Further it is apparent that the sole purpose of registering the domain name is to misappropriate the reputation associated with the Complainant's trademarks and extort money from the Complainant.

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4.13 As the disputed domain name <carrier.net.in> incorporates the Complainant's reputed mark CARRIER it is evident that the Respondent can have no rights or legitimate interest in the disputed domain name. Rather the sole purpose of the adoption of the Complainant's trademark in its entirety by the Respondent is to misappropriate the Complainant's reputed trademark CARRIER. The Respondent is trading on the fame and recognition of the Complainant's reputed trademark in order to cause initial interest confusion and bait internet users to accessing its website which is identical to the trademark CARRIER. The Respondent's bad faith is evidenced by hosting links to the websites of companies in direct competition with the Complainant and otherwise host links to competing goods and services as referenced above. Moreover, the Respondent is assumed to be gaining "click-through" revenues through the hosting of such links.

4.14 The Respondent's bad faith activities force the Complainant to buy the disputed domain name <carrier.net.in> from the Respondent in order to avoid said confusion as is typically the strategy of such cyber squatters.

4.15 Because the Complainant's CARRIER mark is reputed, the Respondent is presumed to have had knowledge of the Complainant's mark at the time it registered the confusingly similar domain name. This knowledge indicates the Respondent's bad faith use and registration. Therefore, the Respondent is bound to have had prior knowledge of the fame and reputation of the Complainant's reputed trademark CARRIER.

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4.16 There is a great likelihood that an actual or potential visitor to the Respondent's present web page or any future web page that the disputed domain name <carrier.net.in> resolves to, will be induced to: (a) believe that the Complainant has licensed the trademark CARRIER to the Respondent or has authorized the Respondent to register the disputed domain name <carrier.net.in>; (b) believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant; (c) believe that the Complainant authorizes an association with competitor's companies through Respondent's hosting of links to websites belonging to competitors and otherwise to competing goods and services.

4.17 The disputed domain name <carrier.net.in> has been registered and is being used in bad faith. If this kind of situation is not remedied at the earliest, it may lead to various hardships to the Complainant such as loss of profits, dilution of mark, future litigation, loss of reputation, etc.

## 5. Discussion and Findings

5.1 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

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- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.2 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

***Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.***

5.3 The Complainant is the proprietor of the mark CARRIER. Complainant has been using the CARRIER mark in commerce continuously since 1916 in the US and since 1939 in the Asia Pacific region. The Complainant has registrations for the mark CARRIER all over the world including India. Complainant's first registration in India dates back to 1946. In 1995, the Complainant registered the domain [www.carrier.com](http://www.carrier.com) and the domain name [www.carrierindia.com](http://www.carrierindia.com) in 1998. The disputed domain name **<carrier.net.in>** was registered on 28<sup>th</sup> February 2011. Obviously, the Complainant is the prior adopter and registrant of the mark CARRIER. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark CARRIER.

5.4 The Complainant's CARRIER marks are famous and well known throughout the world including India. It is clearly seen that the disputed domain name **<carrier.net.in>** wholly incorporates CARRIER, the prior registered trade

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mark of the Complainant. The disputed domain name <carrier.net.in> is similar to the Complainant's domain names www.carrier.com and www.carrierindia.com. CARRIER is the distinguishing feature in the disputed domain name <carrier.net.in> and the domain names of the Complainant www.carrier.com and www.carrierindia.com.

5.5 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its trade mark CARRIER.
- (b) The disputed domain name <carrier.net.in> is:
  - (i) Identical to the Complainant's prior registered trade mark CARRIER, and
  - (ii) Similar to the Complainant's domain name www.carrier.com and www.carrierindia.com

***Respondent has no rights or legitimate interests in respect of the disputed domain name***

5.6 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark CARRIER. The Complainant's mark CARRIER is well known in many countries across the globe including India.
- (b) The Complainant's trade mark was adopted in the US in 1916 and in the Asia Pacific region in 1939. It was first registered in India in

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1946. The disputed domain name <carrier.net.in> was registered by the Respondent only on 28<sup>th</sup> February 2011.

5.7 Respondent did not register the disputed domain name <carrier.net.in> until 2011. As such, chances are slim to none that Respondent was unaware of the famous CARRIER mark and Complainant's rights thereto prior to registering the disputed domain name in <carrier.net.in> 2011.

5.8 The reason for the adoption of the disputed domain name <carrier.net.in> according to the Respondent in his reply, is that this comes very close to the title of the magazine proposed to be launched by him, namely **CARRIER MANAGEMENT**. The obvious inference is that the Respondent wanted to utilize the enormous popularity already gained by the expression / mark CARRIER of the Complainant in the promotion and the sale of his magazine "Carrier Management". The reason cited by the Respondent for the adoption of the disputed domain name <carrier.net.in> is therefore not acceptable. It is a clear case of passing off, i.e. utilizing the name / mark of another to promote or sell one's goods or services. I also visited the web site of the Respondent under the disputed domain name <carrier.net.in>. The disputed domain name <carrier.net.in> is simply parked and there is no slightest indication that the Respondent would use it in the near future in connection with his magazine **CARRIER MANAGEMENT**. It also provided links to web sites of the Complainant's competitors. It is obvious that the Respondent never

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intended to use the disputed domain name <carrier.net.in> in connection with a bona fide offering of goods or services.

- 5.9 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <carrier.net.in>.

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

- 5.10 The Complainant is the proprietor of the mark CARRIER. The Complainant is the proprietor of the mark CARRIER. Complainant has been using the CARRIER mark in commerce continuously since 1916 in the US and since 1939 in the Asia Pacific region. The Complainant has registrations for the mark CARRIER all over the world including India. Complainant's first registration in India dates back to 1946. The Complainant has registrations for the mark METLIFE all over the world including India. Complainant's first registration in India dates back to 1994. In 1995, the Complainant registered the domain www.carrier.com and the domain name www.carrierindia.com in 1998. The disputed domain name <carrier.net.in> was registered on 28<sup>th</sup> February 2011. Obviously, Complainant's rights in the CARRIER trademark pre-dates Respondent's registration of the disputed domain name <carrier.net.in>. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark CARRIER of the Complainant at the time he acquired the disputed domain name <carrier.net.in>.

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5.11 As seen above, the Respondent wanted to utilize the enormous popularity already gained by the expression / mark CARRIER of the Complainant in the promotion and the sale of his magazine "Carrier Management". It is a clear case of passing off, i.e. utilizing the name / mark of another to promote or sell one's goods or services. Further, the disputed domain name <carrier.net.in> is simply parked and there is no slightest indication that the Respondent would use it in the near future in connection with his magazine **CARRIER MANAGEMENT**. It also provided links to web sites of the Complainant's competitors. It is obvious that the Respondent never intended to use the disputed domain name <carrier.net.in> in connection with a bona fide offering of goods or services. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <carrier.net.in> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered trade mark **CARRIER**.

5.12 There is a great likelihood that an actual or potential visitor to the Respondent's present web page or any future web page that the disputed domain name <carrier.net.in> resolves to, will be induced to: (a) believe that the Complainant has licensed the trademark CARRIER to the Respondent or has authorized the Respondent to register the disputed domain name <carrier.net.in>; (b) believe that the Respondent has some connection with the Complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant; (c)

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believe that the Complainant authorizes an association with competitor's companies through Respondent's hosting of links to websites belonging to competitors and otherwise to competing goods and services.

5.13 Thus it is clearly established that Respondent registered the disputed the disputed domain name <carrier.net.in> in bad faith.

5.14 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <carrier.net.in> into any fair/useful purpose. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

## 6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <carrier.net.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.5,00,000/- (Rupees five lakhs only) towards costs of the proceedings.



S.Sridharan  
Arbitrator