

महाराष्ट्र MAHARASHTRA

● 2020 ●

WV 270424

प्रधान मुद्रांक कार्यालय, मुंबई
प.म.वि.क्र. ८०००००९
11 MAR 2020
सक्षम अधिकारी

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY

(C/o NATIONAL INTERNET EXCHANGE OF INDIA) श्री. राजाराम म. परब

Indeed Inc.

...Complainant

v/s

Shiv Soni

...Respondent

In the matter of Disputed Domain Name <RECRUITER4INDEED.IN>

1 The Parties

The Complainant is Indeed Inc., 6433 Champion Grandview Way, Building 1, Austin, Texas 78750, USA, represented by Archer & Angel, India.

The Respondent is Shiv Soni, A-100, Sundar Nagar, New Delhi -110006, India.

Archer & Angel

2 Procedural History

- 2.1 A Complaint dated February 12, 2020 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On February 21, 2020, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before March 6, 2020. On March 7, 2020, the Arbitrator had sent the final reminder to the Respondent with direction to file reply on or before March 13, 2020. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed *ex parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Complainant provides the World's largest job site in 28 languages, with over 250 million unique visitors every month from over 60 different countries. The Complainant owns and has used its corporate website www.indeed.com as an employment related search engine since at least year 2004.
- 3.2 The Complainant is also the owner of the India specific domain <indeed.co.in>. Additionally, the Complainant also has country specific domain names and website in major markets such as Canada <indeed.ca>, Columbia <indeed.com.co>, France <indeed.fr>, Hong Kong <indeed.chk>, Japan <indeed.jp>, New Zealand <indeed.co.nz>, Peru <indeed.com.pe>, Quebec <indeed.quebec>, South Africa <indeed.co.za>, Taiwan <indeed.tw>, Turkey <indeed.com.tr>, Ukraine <indeed.com.ua> and United Kingdom <indeed.co.uk> through which it lists specific opportunities in these markets. The Complainant is also the owner of the several other domain names containing its registered trademark INDEED viz. <indeed.net>, <indeed.online>, <indeed.org>, <indeed.career> and <indeed.jobs>.



- 3.3 With specific reference in India, the Complainant has ensued significant presence of its brand and trademark INDEED in the market through various promotional and advertising activities. In 2017, the Complainant had sponsored the "Talent Acquisition Summit" in Mumbai during which talks were organized by top industry leaders on next generation digital skills. More recently, the Complainant entered into an agreement with Yash Raj Films, a leading Indian film production company, to integrate its brand and trademark INDEED in a film "Hichki" (released in India in March 2018) wherein the Complainant's brand was central to the premise.
- 3.4 The Complainant is the owner of the trademark "Indeed" and using it since 2004. The Complainant has registered the trademark "Indeed" in the USA and India.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical or confusingly similar to its trademark "Indeed"; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

- 5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

- 5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant's trademark "Indeed" is a registered trademark in the USA and India. The Complainant has provided evidence of its registered trademarks in the USA and India and its usage, based on which, it is found that the Complainant has established its rights in the trademark "Indeed". It is well accepted, that submitting proof of trademark registration is

considered *prima facie* evidence of enforceable rights in a mark.¹ The Disputed Domain Name <RECRUITER4INDEED.IN> incorporates the Complainant's trademark "Indeed" in its entirety, and mere addition of the generic word "recruiter" and numeral "4" (to represent "for") and the generic top-level domain ".in". It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Similarly, the addition of the generic word "recruiter" and numeral "4" (to represent "for") would be insufficient to avoid a finding of confusing similarity². Therefore, the Arbitrator finds that the Disputed Domain Name <RECRUITER4INDEED.IN> is confusingly similar to the Complainant's trademark "Indeed".

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that the Complainant has not authorized or licensed the Respondent to use the trademark "Indeed". The use of a domain name that is identical or confusingly similar to a trademark that is being used for services identical to that of the Complainant by a Respondent is not a bona fide use if the domain name serves as a "bait" to attract customer to Respondent's website, rather than merely as descriptor of the Respondent's products or services.³ The Disputed Domain Name is primarily descriptive of Complainant's services as it incorporates the Complainant's trademark "Indeed". The Respondent's use of the Disputed Domain Name is merely intended to divert customers to Respondent's website, which dishonestly projects the Respondent has some association or commercial nexus exists between the Complainant and the Respondent and cash-in on such deception. Hence, it cannot be considered a bona fide offering of goods and services. The Complainant has made out a *prima facie* case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent⁴. The Respondent chosen not to challenge the Complainant's allegations.⁵ There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <RECRUITER4INDEED.IN>.

- 1 In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.
- 2 See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0). Also see Indeed v. George Indeed and Indeed Net Solutions, Case no. D2004-0512
- 3 See Adobe Systems Incorporated v. Domain OZ WIP case no. D2000-057 <adobeacrobat.com> and <acrobatreader.com>
- 4 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762
- 5 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.




5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's trademark "Indeed" was registered in the USA and India and being used internationally. The Respondent, being in an identical industry and dealing with same or similar services, is bound to have knowledge of the Complainant. The Disputed Domain Name was registered in October, 2019, i. e., post 9 years of filing of trademark application by the Complainant in India for registration of its INDEED marks and 15 years of the Complainant actually using the same in commerce⁶. The Respondent appears to be using the Disputed Domain Name for the purpose of misleading and extracting illegal benefits from innocent job seekers by posting the fake job vacancies, who will be led to believe the Respondent to be the Complainant or at least affiliated with it. The Respondent has in fact knowingly incorporated the Complainant's trademark to attract Internet users to the Disputed Domain Name by creating a likelihood of confusion with the Complainant's trademark with the intent of commercial gain.⁷ These facts supports the inference that the Respondent deliberately registered and using the Disputed Domain Name in bad faith. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <RECRUITER4INDEED.IN> be transferred to the Complainant.


Dipak G. Parmar
Sole Arbitrator

Date: March 16, 2020

⁶ Amazon.com Inc., Amazon Technologies, Inc. V. Giovanni Laorta/ Yogo. Email (WIPO Case No. D2015-0009), while directing the transfer of the domain name <amazonsupport.email> to the Complainant, the Administrative Panel held that: "A further indication of Respondent's bad faith under the Polciy is the fact that the AMAZON Mark predates Repsondent's registrationof the Disputed Domain Name by twenty (20) years."

⁷ See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.