



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH
S.No. 50 / Date 29-05-2012 50 /
Sold to Harini Narayana Swamp
S/o D/o. Vio B. Narayana Swamp
For Whom Self R/o Hyd

M. Saritha Devi S 786452
M. SARITHA DEVI
LICENCED STAMP VENDOR
LIC. No: 16-04-1/2005
REN. No: 16-04-32/2011
H. No: 8-3-9001F, Opp: Image Hospitals,
NAGARJUNANAGAR ROAD, AMEERPET
HYDERABAD (SOUTH) DISTRICT.
Phone No: 040-23759009, 929018899

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

In The Matter Between

Inter-Continental Hotels Cooperation

Complainant

Versus.

Abdul Hameed

Respondent

1. The Parties

Harini Narayana Swamp



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

S.No. 5/12 Date 29/12/2012 502
Sold to... Hasini Narayana Rao
S/o. D/o. W/o... B. Narayana Rao
For Whom... Self H. H. H. H.

M. Saritha Devi S786453
M. SARITHA DEVI
LICENCED STAMP VENDOR
LIC. No: 16-04-1/2005
REN. No: 16-04-32/2011
H. No: 8-3-903/F, Opp: Image Hospitals,
NAGARJUNANAGAR ROAD, AMEERPET
HYDERABAD (SOUTH) DISTRICT.
Phone No: 040-23759009, 9290118899

The Complainant is Inter-Continental Hotels Corporation, of Three Ravinia Drive,
Atlanta, Georgia 30346, USA represented in these proceedings by Archer and Angel of
Delhi, India.

The Respondent is Abdul Hameed of Room No 104 Sri Ganesh Shipping Agency
Mangalore, Karnataka 575006 India.

Hasini Narayana Rao

2. The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name <intercontinental.in>. The registrar for the disputed domain name is Go Daddy.com Inc.

The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on December 23, 2011 and on December 24, 2011 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply to the notification or file any response in these proceedings. Based on the material on record the Arbitrator now proceeds to determine the case on its merits.

Factual Background

The Complainant is part of the well-known hotel chain, the Inter Continental Hotel Group. The Complainant’s chain of hotels owns a portfolio of well recognized brands that include: Intercontinental Hotels and Resorts, Holiday Inn Hotels and Resorts,

Harini Narayanswamy

Holiday Inn Express, Crown Plaza Hotels and Resorts, Hotel Indigo, Stay-bridge Suites, Candlewood Suites and a loyalty program called Priority Club Rewards.

The Complainant has provided a list of its worldwide trademark registrations and copies of registration certificates for its Indian, US and Community Trade Mark (CTM) registrations. In particular the following documents are filed with the complaint: Indian trademark registration No 1238778 under class 42, Indian trademark registration 445186 under class 16, US trademark registration No. 3486561 under class 43, US trademark registration No. 3,944,652 under class 37, US trademark registration No. 3,845,611 under classes 35 and 36, US trademark registration No.1, 635,689 under classes 35, 39, 1 and 42, US trademark registration No. 890,271 under class 42, US Service mark registration No 327, 278 under class 42 and Community trademark (CTM) registration No.002787646.

The Respondent registered the disputed domain name<intercontinental.in> on May 6, 2009.

4. Parties contentions

A. Complainant's Submissions

The Complainant states its chain of hotels owns and manages about 4500 hotels and 650,000 guest rooms in about one hundred countries through its various subsidiaries and franchises. The Complainant has provided documents pertaining to its business and a copy of its Annual Report for the year 2010. The Complainant states it has prevailed in numerous UDRP proceedings and has obtained the transfer of as many as one thousand five hundred and nineteen domain names including at least twenty one domain names that contain its INTERCONTINENTAL trademark.

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The Complainant states that it is the original proprietor of the INTERCONTINENTAL mark and that the term "Intercontinental" is also part of its corporate and trading name. It has worldwide registrations under various classes for the INTERCONTINENTAL brand that was founded in 1948 and uses it in connection with 170 hotels worldwide. The Complainant states it has extensively marketed under the mark and it has acquired worldwide popularity and cross-border reputation due to its long-term usage. The Complainant states the disputed domain name contains the INTERCONTINENTAL mark in its entirety making the disputed domain name identical or confusingly similar to its mark.

The Complainant argues that the Respondent has no rights and legitimate interests in the domain name, as the Complainant has not assigned or licensed the use of its mark to the Respondent and there is no commercial relationship between the parties. The Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods or services, but uses it with a website that contains links to other hotels that compete with the Complainant's business. The Respondent is not known by the domain name, as the record shows the Respondent's name is Abdul Hameed. Further, as the Complainant has used its mark for more than sixty years it is unlikely that the Respondent is known by the mark. The Respondent is not making any legitimate non-commercial fair use of the disputed domain name but uses it to mislead users for commercial gain. The lack of well developed website and the use of the disputed domain name in connection with click through links also indicates Respondent's lack of rights.

The Complainant states the disputed domain name was registered and used in bad faith as the Respondent seeks to exploit its famous mark to attract Internet users to the Respondent's website or other online location by creating a likelihood of confusion with the Complainant's mark. The Complainant asserts that as it has used its mark for sixty years and has worldwide goodwill it has a *prima facie* case and balance of rights in its favor. The Complainant contends the Respondent knew of the mark due to its international recognition and the registration of name that is obviously connected with the

Hassini Narayana

Complainant shows the Respondent's opportunistic bad faith. The Complainant therefore requests for the transfer of the disputed domain name for the above stated reasons.

Respondent's Submissions

The Respondent did not respond in these proceedings

Discussion and Findings

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

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

Identical or Confusingly Similar



The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

It is well established, that trademark registration is recognized as *prima facie* evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has demonstrated that it has rights in the trademark INTERCONTINENTAL in numerous jurisdictions including India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant also undoubtedly show its rights in the mark. See *Starbucks Corporation v. Mohan Raj* INDRP Case 118 <starbucks.co.in>, November 26, 2009. (Use of a mark for several years by a complainant establishes its rights in the mark.).

The disputed domain name incorporates the INTERCONTINENTAL mark in its entirety; this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. See *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP case 148 Sept 27, 2010 <gingerhotels.co.in>. (A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.) The country code top-level domain (cc TLD) suffix does not lessen the confusing similarity of the domain name with the trademark. See *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010.

For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

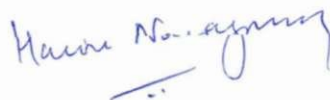
The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

Havini Narayana

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent has not been given any authorization to use the Complainant's mark. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. See *Starbucks Corporation v. Mohan Raj* INDRP case 118, (<starbucks.co.in> November 26, 2009). Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate noncommercial fair use purposes.

The lack of a well developed website, as argued by the Complainant, also indicates the Respondent's lack of rights. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* offering of goods and services under the Policy, particularly if the Respondent uses the disputed domain name with links to other sites that compete with the Complainant's business. Such use is termed as "bait and switch", where Internet users are baited by a well-known mark and are then directed to other sites, by a respondent who typically lacks rights and legitimate interests to use the name or the mark.



The Arbitrator finds the Complainant has made a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons: First, that the Complainant has well-established rights in the trademark INTERCONTINENTAL. Second, the Respondent has intentionally attempted to attract users by creating a likelihood of confusion with the Complainant's mark as to source of endorsement and affiliation; Third, the Complainant's prior adoption of the mark predates the Respondent's domain name registration by at least six decades and it has acquired considerable worldwide goodwill. Four, the registration of a name that is obviously connected with the Complainant indicates the Respondent's opportunistic bad faith, and the Complainant states it has a *prima facie* case as the balance of rights are in its favor.

The Arbitrator finds the Complainant has filed documents that establish its prior adoption and use of the INTERCONTINENTAL mark. Further, the Complainant's trademark applications were made much before the disputed domain name was registered. The evidence on record clearly shows the Complainant's trademark is undoubtedly well known and it is unlikely that the Respondent was unaware of the Complainant's prior rights in the mark when he registered the disputed domain name. The choice of the domain name does not appear to be a mere coincidence, but seems to be a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's site. Registration of a domain name, based on awareness of a complainant's trademark rights is indicative of bad faith registration under the Policy. See *Lego Juris v. Robert Martin*, INDRP / 125, February 14, 2010.

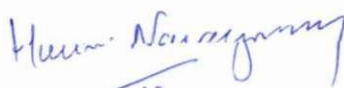


The Registration of a domain name that is confusingly similar or identical to a famous mark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. See *The Ritz-Carlton Hotel Company LLC v. Netlon*, INDRP Case 250, Dec 30 2011, <ritzcarlton.in>. (Where the domain name is so obviously connected to the complainant, the registration and use by the respondent suggests opportunistic bad faith, citing *Pavillion Agency v. Greenhouse Agency Ltd.* WIPO Case 2000-1221).

Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. See *Bharati Airtel Limited v. Rajeev Garg* INDRP 285 <airtelworld.net.in> January 12, 2012, (where respondent's bad faith was found from intentionally attempting to attract for gain Internet users to the respondent's website or other online location by creating a likelihood of confusion with the complainant's mark).

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanations for the registration and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely attract Internet traffic to the Respondent's website and to mislead customers, which is considered bad faith registration and use of the disputed domain name.

The registration of a domain name by an entity that has no relationship with the mark is evidence of bad faith registration and use. See *Eli Lilly and Company v Mr. Andrew Yan*, INDRP 195 <elililly.in> February 16, 2011 and See *Karnataka Bank v. ELI/ Shoval* , INDRP case 210 April 15 2011 <karnatakabank.in> (The registration and use of a domain name that exploits the goodwill of another's trademark is in bad faith). The Respondent in the present case is found to have registered the disputed domain name to



get undue advantage of the goodwill associated with the Complainant's trademark, and as such is found to have registered and used of the disputed domain name in bad faith, as understood under the INDRP Policy.

For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

Decision

The Complainant has established the disputed domain name is identical or confusingly similar to a mark in which it has rights, 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. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

For the reasons discussed, it is ordered that the disputed domain name:
<intercontinental.in> be transferred to the Complainant.



Harini Narayanswamy (Arbitrator)

Date: February 10, 2012