



कुमिलनाडु तमिलनाडु TAMILNADU

42164
01.10.15

Dr. Sudhir Raja Ravindran
Chennai

AZ 817300

S. AYATH BASHA
STAMP VENDOR
L.NO. 3 / 33 / 2000
No.43, SEETHAMMAL ROAD
TEYNAMPET, CHENNAI - 600017
Phone 9841640694

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: OCTOBER 01, 2015

Motorola Trademark Holdings, LLC

222 W. Merchandise Mart Plaza,

Suite 1800, Chicago,

IL 60654, United States of America

COMPLAINANT

VERSUS

Jeff

No. 1558 beijing road,

Qingdao, Shandong 266100,

People's Republic of China

RESPONDENT

DISPUTED DOMAIN NAME: "MOTO360.CO.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is Motorola Trademark Holdings, LLC, represented by Ms. Gunjan Paharia, Zeus IP Advocates, New Delhi.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Jeff.

2. The Dispute: The domain name in dispute is moto360.co.in. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Dynadot LLC.

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	14.08.2015
2.	Date on which consent was given to act as an Arbitrator	14.08.2015
3.	Date of appointment of Arbitrator	24.08.2015



4.	Date on which the Hard copy of the complaint was received	24.08.2015
5.	Date on which notice was issued to the Respondent	25.08.2015
6.	Date on which NIXI requested Arbitrator's instructions regarding Complaint not served due to incorrect address	03.09.2015
7.	Date on which Arbitrator instructed NIXI to comply with the procedure as set out in Rule 2 (a) (ii) of INDRP Rules of Procedure	03.09.2015
8.	Date on which the soft copy of the Complaint was sent to Respondent by NIXI	04.09.2015
9.	Date on which NIXI complied with the procedure as set out in Rule 2 (a) (ii) of INDRP Rules of Procedure and intimated to the Arbitrator	04.09.2015
10.	Date on which Complainant sends an email requesting Arbitrator to pass appropriate order	15.09.2015
11.	Date on which the Arbitrator responds to the Complainant's email.	16.09.2015

4. Procedural History

4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.



4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On August 25, 2015, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within 7 days, i.e. on or before September 1, 2015.

4.5. On September 3, 2015, NIXI requested the Arbitrator for advice and instructions on the issue that the Complaint was not served due to incorrect contact details of the Respondent.

4.6. On September 3, 2015, the Arbitrator advised NIXI to send the Complaint in electronic form by email to the email address shown in the domain name's registration data through the .IN Registry's WHOIS function at www.registry.in; and [postmaster@\[the contested domain name\]](mailto:postmaster@[the_contested_domain_name]) in accordance with Rule 2 (a)(ii) of INDRP Rules of Procedure.

4.7. On September 3, 2015, NIXI informed the Arbitrator of compliance with the Arbitrator's advice regarding service of Complaint through email.

4.8. On September 15, 2015, the Complainant, represented by its counsel, informed the Arbitrator that no counter statement by the Respondent to the complaint filed by the Complainant has been received by the Complainant and requested the Arbitrator to pass an appropriate order.



4.9. On September 16, 2015, the Arbitrator responded to the Complainant informing the Complainant that the Respondent has not filed the Counter Statement and appropriate orders will be passed in accordance to the INDRP Rules of Procedure.

5. Factual Background:

5.1. The Complainant is Motorola Trademarks Holdings, LLC. The Complainant, through its predecessors-in-interest, affiliated companies and licensees, has been is a prominent name acknowledged worldwide in the telecommunications industry since 1928 and is credited for creating the world's first commercial handheld cellular phone. The Complainant's business portfolio wireless technologies, solutions, products and services in the telecommunications industry. The Complainant has coined and adopted the tradename and trademark MOTOROLA since the late 1920s with respect to its goods and services and the Complainant owns a significant international trade mark portfolio for the mark MOTOROLA and MOTO and the variations thereof.

5.2. The Respondent registered the disputed name <MOTO360.CO.IN> on April 1, 2014.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1. The Complainant has registered its trademark MOTO and its variants which is distinctive and has an established reputation both in India and throughout the world.

6.1.2. In India, the Complainant has obtained registration from the Indian Trademark Registry for a vast number of its trademarks including MOTOROLA in Class 9 under trademark registration number 225581 on November 26, 1964; for MOTO in Class 9 under registration number 1077967; and for MOTO mark in Class 38 under registration number 1331957.



- 6.1.3. The Complainant has adopted the trademark MOTO 360 and has obtained a registration for the mark MOTO 360 under the Madrid system for the International Registration of Marks under Application number IRDI – 2750958 and International Registration Number 1204187 in Classes 9 and 14.
- 6.1.4. The Complainant has also won various awards, recognitions and milestones for its products bearing the MOTO 360 mark.
- 6.1.5. The Complainant owns multiple domain names which incorporate the MOTO 360 mark including <moto360.com>, <moto360.us>, <moto360.net>, etc.
- 6.1.6. On January 8, 2015, the Complainant learnt that the disputed domain name had been registered by the Respondent through an email received by the Complainant offering the disputed domain name for sale to the Complainant. The Complainant claims that the disputed domain name offers the domain name for sale and has displayed various sponsored links to the Complainant's competitors and their product.
- 6.1.7. The Complainant argues that the domain name used by the Respondent consists of the words MOTO360 with the "co.in" extension, which is identical to the registered trade mark MOTO 360 of the Complainant and is also identical to and a verbatim replication of the Complainant's domain name <moto360.com>.
- 6.1.8. The Complainant claims that the Respondent has no rights and legitimate interests in the disputed domain name and has not registered it as a trademark, service mark or name anywhere in the world. The Respondent is not authorised or licensed by the Complainant to use its trademark/tradename.
- 6.1.9. The Complainant further claims that the disputed domain name was registered and used in bad faith as the Respondent seeks to make unlawful gains out of the disputed domain name by hosting pay-per-click links on the domain name. The disputed domain name carries sponsored links which is likely to result in deception and confusion to the



internet users. The Complainant claims that the Respondent has registered the disputed domain name with the sole purpose of selling the same and preventing the Complainant from reflecting the mark in its own domain name.

6.1.10. The Complainant requests for the following relief: "that the disputed domain name <MOTO360.CO.IN> be transferred to the Complainant"

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. 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.

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

7.2.1. The domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

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

7.3. Identical or Confusingly Similar

7.3.1. 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.



7.3.2. 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 established that it has rights in the trademark "MOTO" and "MOTO 360" 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 undoubtedly shows its rights in the mark.

7.3.3. The disputed domain name incorporates the trademark "MOTO 360" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. 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.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

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

7.4.2. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. 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 bonafide 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.



7.4.3. 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. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.4. 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 bonafide use under the Policy.

7.4.5. 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.

7.5. Bad Faith

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

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "MOTO 360", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries pay-per-click views and sponsored links to the products and services of the Complainant and the Complainant's competitors. The Complainant's

prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.3. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "MOTO 360". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows the Complainant's trademark is well known and that the Respondent was aware of the Complainant's prior rights in the trademark when he registered the disputed domain name. The choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.4. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant.

7.5.5. 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 explanation for the registration and use of the disputed domain name by the Respondent.

7.5.6. The Respondent's intention to sell the disputed domain name is apparent from the advertisement for sale of the disputed domain name as well as. This indicates that the Respondent has engaged in registration of the disputed domain name in bad faith.



7.5.7. In a previous decision in the case of Vodafone Group PIC v. Rohit Bansal, Case No.

INDRP/052, wherein the Respondent through various e-mails indicated that he would transfer the disputed domain name to the Complainant in exchange for certain costs, the learned Arbitrator held the disputed domain name to be identical and confusingly similar to the registered trademark of Complainant in which the Complainant has rights and the Respondent has no right or legitimate interests in respect of the domain name and the Respondent's domain name has been registered or is being used in bad faith.

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

7.6. The abovementioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by him.

8. Decision

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <MOTO360.CO.IN> to the Complainant.

8.3. The Award is accordingly passed on this day of October 01, 2015.

Place: Chennai



Dr. Sudhir Raja Ravindran
Sole Arbitrator