

**Indian-Non Judicial Stamp
Haryana Government**

Date : 12/01/2018

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Stamp Duty Paid : ₹ 101

(Rs. Only)

Penalty : ₹ 0

(Rs. Zero Only)

Deponent

Name: Ranjan Narula

H No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



Purpose : ALL PURPOSE to be submitted at Other

RANJAN NARULA

ARBITRATOR

Appointed by the .IN Registry - National Internet Exchange of India

In the matter of:

Google LLC

1600 Amphitheatre Parkway

Mountain View, CA 94043

United States of America

....Complainant

Google India

No. 3, Swamy Vivekananda Rd

Bengaluru

Phone: +9886240217

Email: ajaykrishna.googleindia@outlook.com

.....Respondent

Disputed Domain Name: <www.googleindia.org.in>

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Google LLC, of the address 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America. The Complainant is represented by its authorized representative, Fidus Law Chambers, Noida.

The Respondent in this arbitration proceeding is Google India, of the address No. 3, Swamy Vivekananda Rd, Bengaluru as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is <www.googleIndia.org.in>.

The Registrar is GoDaddy.com, LLC.

The Registrant is Google India, of the address No. 3, Swamy Vivekananda Rd, Bengaluru

3) Procedural History:

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 (the Rules) were approved by NIXI on 28th June, 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.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Mr. Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The



Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on August 5, 2019 and the hard copy of the Complaint sent by NIXI was received in the Arbitrator's office on August 8, 2019.
- The notice was issued to the Respondent on August 12, 2019 at his email address ajaykrishna.googleindia@outlook.com outlining that the Complainant had prayed for transfer of the disputed domain name "www.googleindia.org.in" in its favour and grant of cost of present proceedings as well. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until August 22, 2019.
- As no response was received, the Arbitrator issued another notice to the Respondent on August 23, 2019 via email granting another opportunity to the Respondent to submit its reply on or before August 30, 2019.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties. The Arbitrator thus informed the parties on September 4, 2019 that the Respondent has not filed its response and has been proceeded ex-parte.
- In view of the above, the complaint is therefore being decided based on the submissions made by the complainant and documents placed on record.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights; and is providing the nature of services identical with or confusingly similar to the services provided by the Complainant;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.



4) **Summary of the Complainant's contentions:**

The Complainant in support of its case has made the following submissions:

1. Google is a company duly registered under laws of Delaware in the United States of America, formed in the year 1998 and has been carrying on business in internet related services and products, including advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The Complainant is the operator of one of the most highly recognized, and widely used internet search engines in the world under the trade mark **GOOGLE** and is well-known for a wide range of goods and services, including online advertising, web browser software, email services, mobile phones, laptops and its accessories.
2. The trade mark **GOOGLE** is also a part of the Complainant's company name i.e. Google LLC as well as various other trade marks of the Complainant.
3. The Complainant's highly reputed search engine service has been operating under the trade mark **GOOGLE** since its launch in 1998. The search engine service under the trade mark **GOOGLE** is available in more than 150 interface languages. The trade mark **GOOGLE** is a unique mark for the services for which the same is used and it has no meaning or resemblance whatsoever to services of any kind or nature.
4. It has a significant global presence with commercial operations in more than 60 countries a strong presence around the globe with more than 150 offices, included in India in Gurgaon, Bangalore, Hyderabad and Mumbai. The products and services of the Complainant reach more than 150 countries worldwide including India.
5. It owns and operates over 190 **GOOGLE** based domains where search can be accessed. It has consistently used the trade mark **GOOGLE** as a part of its products, services and business since the year 1998. The search engine service under the trade mark **GOOGLE** is available in 150 languages.



6. The Complainant has continuously used the trade mark **GOOGLE** globally since its launch. The trade mark is inherently distinctive and is a strong identifier of source for the Complainant and its services. It has no dictionary meaning and does not otherwise exist in the English language. The primary platform under the trade mark **GOOGLE** is located at www.google.com. The Complainant's search engine platform is integrated with various other products and services of it.
7. The Complainant owns numerous registrations for the trade mark **GOOGLE** with the earliest registration dating back to September 16, 1998 in the United States of America and commercial use in India since March 1999. It owns over 650 registrations for the trade mark **GOOGLE** in various classes in 163 countries.
8. The Complainant has registered its trade mark "**GOOGLE**" and various forms of the trade mark in India in Classes 9, 16, 20, 25, 38, and 42.
9. The trade mark **GOOGLE** has been declared a 'well known' trade mark by the Delhi High Court in 2011 and the said trade mark **GOOGLE** has been included in the well-known trade mark list maintained by the Indian Trade mark Registry as well.
10. The search engine service under the trade mark **GOOGLE** located at www.google.com is accessible around the world including in India and the Complainant has owned and operated the same since September 15, 1997.
11. The Complainant has successfully pursued domain name complaints before the WIPO and National Arbitration Forum and obtained favorable decisions in respect of numerous infringing domain names such as '*googleplace.in, google-0.com, chotagoogle.com, google-montenegro.com, google-sina.com, google-vietnam.com*' etc. All these decisions acknowledge the Complainant's proprietorship over the trade mark **GOOGLE**.



5) **Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) **Discussion and Findings:**

The submissions and documents provided by the Complainant shows that it has been operating the search engine service under the trade mark 'GOOGLE' since its launch in 1998 as shown in **Annexure F**.

The Arbitrator notes that the Complainant owns and operates the domain name www.google.com since September 15, 1997 as shown in **Annexure M**. Further, **Annexure G** shows that it operates over 190 GOOGLE based domains where search can be accessed.

The Arbitrator also notes that the Complainant owns more than 650 registrations for the trade mark GOOGLE in various Classes in 163 countries as shown in **Annexure J**. Further, the Complainant's trade mark GOOGLE and its various forms is registered in India in Classes 9, 16, 20, 25, 38 and 42 as evident from **Annexure K**.

The Arbitrator further notes that the Complainant's trade mark GOOGLE is a well-known mark as shown in **Annexure-L**.

Copy of the email as filed as **Annexure O** shows that a person named Mr. Ajay Krishna is misrepresenting himself as an employee of Google India and is in talks with another person regarding employment opportunities with Google India in Bangalore. It is alleged that the Complainant is not involved in offering services as highlighted in Respondent's email. Moreover, contents of the Respondent's email are derogatory to a woman and appear a safety threat.

Annexure P is a WHOIS extract obtained from the .In Registry website showing the particulars of the Respondent.



Annexure Q shows that the disputed domain has merely been parked and no website is hosted on it.

Based on the submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

- (i) **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;**

Based on submission and evidence filed by the Complainant, it is clear that the Complainant has prior and subsisting rights in the mark GOOGLE with its earliest adoption in the year 1998 and several trade mark registrations worldwide including India. In India, the Complainant has secured trade mark registration for the GOOGLE trade mark in classes 9, 16, 20, 25, 38 and 42. Therefore, it is established that the Complainant has statutory rights in the mark GOOGLE worldwide including in India. Further, the Complainant has pleaded that it has been continuously using the GOOGLE trade mark since 1998. Therefore, the Complainant also has established prior use in the GOOGLE trade mark. It is a trite principle *"While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing"*.

It is to be noted from **Annexure J** and **Annexure K** that the Complainant is the registered proprietor of the trade mark GOOGLE and the said trade mark is entirely contained in the disputed domain name of the Respondent. It is evident in the present case that the disputed domain name <www.googleindia.org.in> is identical and confusingly similar to the Complainant's registered trade mark GOOGLE and domain name www.google.com. In my opinion, owing to the worldwide presence of the Complainant's business, the disputed domain name could make Internet users to believe that such domain name and the contents originating therefrom belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(i) is satisfied.



(II) The Registrant has no rights or legitimate interests in respect of the domain name;

The disputed domain has merely been parked, since its registration and no actual website has been hosted on this domain name since this date. The Respondent has neither used nor made any demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services.

The Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the impugned domain incorporating the Complainant's trademark shows that Respondent has no rights or legitimate interest in the disputed domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.googleindia.org.in '

(III) The Registrant's domain name has been registered or is being used in bad faith.

The Registrant Mr. Ajay Krishna is not associated with the Complainant however is using Google India as a trading name to misrepresent himself as having connection with the complainant or authorized by the complainant or part of its business. It can be concluded the Respondent has registered the domain name with a view to mislead consumers into believing that he is associated with the Complainant and with a view to capitalize on the reputation and goodwill of the Complainant's trade mark and business or to squat on the said domain name. The Respondent's domain www.googleindia.org.in wholly incorporates the Complainant's trade mark GOOGLE. Further, the Respondent is misusing the same as an email server to scam the general public by offering employment opportunities with the




Complainant. The registrant has used the address of the Complainant's India office in Bangalore as his address, in order to misrepresent himself to be a member of the Complainant organization.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, It is deemed to have admitted the contentions contained in the Complaint and Annexure to the complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name and its use to defraud general trade and public has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark GOOGLE is identified with the Complainant's name, mark and goods/services, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

Decision

In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.GOOGLEINDIA.ORG.IN> be transferred to the Complainant. Further, in view of the clear case of bad faith being established by the complainant they are entitled to cost of Rs 100,000 from the Respondent.


RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

October 3, 2019