



हरियाणा HARYANA

BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

R 968752

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

NEW DELHI, INDIA

The Sunrider Corporation
d.b.a. Sunrider International
1625, Abalone Avenue,
Torrance, CA 90501,
U.S.A

.... Complainant

Versus

Mr. Hari Kiran
No. 2, Devaraj Nagar, 2nd Street, Madhavaram,
Chennai- 600060
Ph: +919677286389
E-mail: hariikiran007@gmail.com

.... Respondent

1. The Parties

The Complainant is The Sunrider Corporation d.b.a. Sunrider International, duly incorporated, organized and existing under the laws of the State of Utah, USA having its

principal office at 1625, Abalone Avenue, Torrance, CA 90501, U.S.A., through its Authorised Representative, Mr. Vikrant Rana, S.S. Rana & Co., Advocates, having office at 317, Lawyers Chambers, High Court of Delhi, New Delhi- 110 003, India.

The Respondent is Mr. Hari Kiran of No. 2, Devaraj Nagar, 2nd Street, Madhavaram, Chennai- 600 060. The Respondent is represented by himself.

2. The Domain Name and Registrar

The disputed domain name is <sunriders.in>. The said domain name is registered with 'Webiq Domain Solutions Pvt. Ltd' (R131-AFIN).

3. Procedural Timeline

- March 21, 2016 :** The .INRegistry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- March 22, 2016 :** Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.
- March 31, 2016 :** Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover.
- April 1, 2016 :** The Tribunal addressed a notice to the parties through e-mail, with a copy marked to NIXI, directing the Complainant's Authorised Representative to forward a soft copy of the Complaint alongwith the annexures to the Respondent within two days.
- April 2, 2016 :** Complainant's Authorised Representatives forwarded a soft copy of the Complaint alongwith the annexures to the Respondent.



- April 3, 2016 :** An email was received from the Respondent that an appropriate amount of time is required on the matter and that a response to the Complaint will be provided by the Respondent in due course.
- April 4, 2016 :** Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, directing the Respondent to file its response, if any, in ten days.
- April 18, 2016** Absent response from Respondent, an email was addressed by this Tribunal to the Respondent, with a copy marked to the Complainant's Authorised Representative and NIXI, providing an additional two days time to the Respondent to file its Reply.
- April 22, 2016** Absent a response from the Respondent, the pleadings in the arbitration proceedings were closed and the Tribunal proceeded to pass an Award on the basis of the material available on record.

The language of the proceedings shall be English.

4. Factual Background

4.1 Complainant's Activities

The Complainant states, *inter alia*, that it carries an established business as manufacturer, distributor and merchant of herbal goods and food stuffs, herbal beverages, cosmetics, articles for personal and beauty care, health care products, beverages and mineral and aerated waters and other non-alcoholic drinks since the year 1982. In addition, the Complainant claims to have more than 33 years of successful growth and is engaged in business as 'SUNRIDER INTERNATIONAL' in nearly 50 countries and regions such as Australia, Brazil, Canada, India, Israel, Japan, Malaysia,



Vietnam, United States etc. with millions of distributors and consumers worldwide. Further, the Complainant states that it has offices in more than 22 countries with SUNRIDER as its corporate name and trading style. It is the Complainant's claim that it has also sponsored the 2008 Israeli Olympic team as well as the gold medal winning China Olympic Diving Team at the 2000 Sydney Olympic Games. The Complainant has also claimed to have received numerous awards and accolades in its favour. Further, on November 27, 1998, the Complainant states to have set up a wholly owned subsidiary viz Sunrider India Private Limited to manufacture and market herbal based nutritional, personal care products etc. Complainant, under the name SUNRIDER states to have received numerous awards and accolades. A perusal of the documents marked as Annexures C-2 to C-4 and C-8, C-11 to C-14 substantiates Complainant's abovementioned assertions and claims.

4.2 Complainant's use of 'SUNRIDER'

The Complainant states that the marks such as 'SUNRIDER, SUNRIDER DESIGN, and family of trade marks having SUN prefix are extensively used, applied for and registered in respect of diverse class of goods in various jurisdictions around the globe. In this regard, Complainant has provided a list of worldwide trade mark registrations obtained for the mark SUNRIDER and SUNRIDER DESIGN alongwith the some registration certificates marked as Annexures C-5 and C-6 obtained for the said marks in various countries. A perusal of the list suggests that the mark/name SUNRIDER is being used extensively by the Complainant since October 1982 onwards. Further, the Complainant states that the sale figures in respect of various products sold under the trade marks SUNRIDER/SUNRIDER DESIGN and family of trade marks having SUN prefix, run into hundreds of millions of US Dollars. Further,



the Complainant states that with the boon and advancement of information technology, Complainant's said marks have acquired trans-border reputation and are immensely well-known amongst the members of trade and public alike. In India, Complainant has first secured registration for the mark/name SUNRIDER/SUNRIDER DESIGN in the year 1988 under Registration No. 502697; with the Certificate of Registration obtained in the year 1995. Thereafter, the Complainant obtained various registrations in India under different classes viz. 3, 5, 11, 16, 18, 25, 29, 30, 31, 32 and the same are renewed, valid and subsisting.

In connection with Complainant's business/products/services, it states to have registered the domain 'sunrider.com' on March 19, 1997, comprising the registered trade mark 'SUNRIDER'. Also, Complainant registered the domain names 'sunrider.co.in' on February 28, 2004 as well as 'sunrider.in' on February 10, 2005 and operating the websites www.sunrider.co.in and www.sunrider.in pertaining to the said domains. A list of registrations secured for various domain names comprising the trade mark SUNRIDER alongwith some WHOIS details pertaining to the said domains marked as Annexure C-9 to C-10 are on record and a perusal of the said documents supports the Complainant's claim.

Based on the aforesaid, it is the Complainant's assertion that due to extensive and continuous use of the name SUNRIDER by the Complainant in India since 1988, the name SUNRIDER has come to embody substantial reputation, goodwill and distinctiveness and is exclusively associated with the business/services/products offered by the Complainant in the global market.

4.3 Respondent's activities and its use of SUNRIDER



As per the WHOIS records, the Respondent has registered the domain name <sunriders.in> on June 26, 2015. Further, there is no corresponding website except for the fact that the same resolves to a landing page which says "*Coming soon. We are still working on it*". A perusal of the documents marked as Annexure C-16 clearly affirms the aforesaid.

Given that the Respondent did not file his reply despite opportunities granted to him, no further information is available on its business activities and/or its use of the domain comprising the mark/name SUNRIDER.

5. Contentions of Parties as summarised in the pleadings

5.1 Complainant

a) The domain name is identical or confusingly similar to a trade mark of the Complainant in which Complainant has the statutory and/or common law rights.

- i. Complainant submits that the disputed domain wholly incorporates its registered mark/name SUNRIDER and its registered domains viz. 'sunrider.com', 'sunrider.co.in', 'sunrider.in' amongst others, which is identical/confusingly similar to Complainant's said mark.
- ii. Further, it is Complainant's assertion that by virtue of long standing and continuous use of the mark SUNRIDER, the same has acquired wide reputation, goodwill and distinctiveness and the name SUNRIDER has come to be exclusively associated with the services/business provided by the Complainant. Consequently, by registering the impugned domain, the Respondent has established its intent to create a likelihood of confusion amongst the general public looking to access information about Complainant and leading them to think that the domain name <sunrider.in> belongs to the Complainant or its



Indian subsidiary and is associated with the business/services offered by the Complainant. Reliance is placed on *Ford Motor Company v. VistaPrint Technologies Limited/Domain Administrator*, WIPO Case No. D2015-1921; *Wikimedia Foundation Inc. v. Host Master, Aboce.com Domain Privacy*, WIPO Case No. D215-0132.

b). The Respondent has no legitimate interest in respect of the domain name

- i. It is the contention of the Complainant that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent is not commonly known by the name SUNRIDER or it can claim to have conceived the name SUNRIDER. In addition, the Complainant contends that the Respondent cannot assert that it has made or is currently making a legitimate non-commercial or fair use of the domain, without an intent for commercial gain or mislead/divert consumers or to tarnish the trade mark/name SUNRIDER. Such conduct endorses the fact that neither the Respondent has any legitimate interest nor any proprietary rights in the mark SUNRIDER.
- ii. Further, the Complainant's asserts that it is not possible to conceive of any plausible present or contemplated use of the domain 'sunriders.in' by the Respondent that would not be illegitimate, as it would inevitably create a false association or affiliation with the Complainant and its well-known trade mark SUNRIDER.

c). The domain name was registered and is being used in bad faith

- i. Complainant asserts that its company incorporation, trademark registrations as well as domain name registrations are much prior to the Respondent's registration of the domain name <sunriders.in>. Further, the Respondent is intentionally preventing the



Complainant from registering the domain name 'sunriders.in', knowing that it is likely that the internet users will assume the said domain to be another domain of the Complainants such as 'sunrider.com', 'sunrider.co.in' and 'sunrider.in'. Based on the said presumption, the Complainant states that such a registration of the domain is prima facie evidence of Respondent's bad faith.

5.2 Respondent

As per the INDRP Rules of Procedure, the Complainant has forwarded a copy of the Complaint alongwith all annexures to the Respondent on April 2, 2016 under the directions of this Arbitral Tribunal. On April 3, 2016, this Tribunal received an email from Respondent that a response to the Complaint would be submitted and sought time in this regard. This Tribunal issued a notice on April 4, 2016 to the Respondent directing it to file a response within ten days. Absent response from the Respondent thereto, an additional two days were provided to the Respondent on April 18, 2016. Absent response thereto, the matter has been proceeded *ex-parte*.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .INRegistry on the following premises:

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



Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusingly similar trade/service mark

As per the WHOIS records, the Respondent has registered the disputed domain name 'sunriders.in' on June 26, 2015.

The Complainant is the proprietor of the registered trade mark SUNRIDERS in diverse classes since the year 1982. To substantiate the same, the Complainant has placed on record copies of worldwide registrations obtained for the trade mark SUNRIDER. Further, the Complainant also owns the domain 'sunrider.com' since the year 1997 and subsequently registered domain names <sunrider.co.in> and <sunrider.in> since the year 2005 and has been continuously using the mark/name SUNRIDER in relation to its business/products/services.

The disputed domain name incorporates the mark SUNRIDER in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha* (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in case of *Farouk Systems Inc. vs. Yishi*, WIPO Case No. D2010-006, it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

As can be seen from above, the Complainant has registered the domain name 'sunrider.com' on March 19, 1997; 'sunrider.co.in' on February 28, 2004 and



'sunrider.in' on February 10, 2005; trademark since the year 1988 and is doing/operating business/website thereunder. The Respondent on the other hand registered the domain 'sunriders.in' much subsequent to the Complainant i.e. on June 26, 2015 and is not doing/operating business/website thereunder.

In the view of the foregoing discussions, the Complainant has satisfied this Tribunal that:

- i. The domain name in question "sunriders.in" is identical/deceptively similar to the Complainant's prior registered trade mark SUNRIDER; and
- ii. It has both prior statutory and proprietary rights in respect of the mark SUNRIDER.

6.2 Rights and legitimate interests

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

"Registrant's Rights to and Legitimate Interest in the Domain Name- Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interest in the domain name for the purposes of Paragraph 4 (ii):

- i. Before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name with a bona fide offering of goods or services;



- ii. The Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii. The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. "

The Respondent has not filed any response in this case. There is nothing on record to suggest that the Respondent has used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with bonafide offering of goods/services; or is commonly known by the disputed domain name; or has made fair use of the domain name.

Further, as observed by the panel, in the case of *International Hotels V. Abdul Hameed* (INDRP/278), it is well established, that trade mark registration is recognised as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the owner of the registered trademark SUNRIDER in various jurisdictions in the world including India and has sufficiently demonstrated its rights in the trade mark SUNRIDER.

In view of the foregoing, it is evident that Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

"Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found



by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- ii. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- iii. by using the domain name, the Registrant has intentionally attempted to attract internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

There is nothing on record to suggest that the Respondent is commonly known by the Disputed Domain Name or has conducted any legitimate business under such name. Further, at the time of filing of the Complaint, the domain name <sunriders.in> did not resolve to any website. Given the prior statutory and proprietary rights vesting in the trade mark SUNRIDER of the Complainant and its prior domain name registrations comprising SUNRIDER, it is crystal clear that the Respondent has registered the dispute domain name in bad faith to tarnish the trade mark; attract internet users; cause confusion in the minds of the public; as well as to prevent the Complainant from reflecting its mark on the corresponding domain name.



In view of the foregoing, this panel is of the view that Respondent has registered the domain name 'sunriders.in' in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the mark SUNRIDER which is proprietary to the Complainant; (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name <sunriders.in> to the Complainant.

The parties shall bear their own cost.

Dated: JUNE 03, 2016



C.A. Brijesh
Sole Arbitrator