



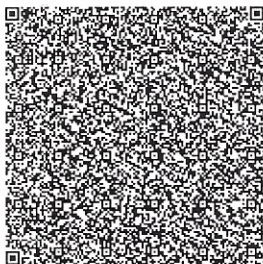
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL68051133714035N
Certificate Issued Date : 08-Oct-2015 12:08 PM
Account Reference : IMPACC (IV)/ dl878403/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL87840333826224455257N
Purchased by : V K AGARWAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V K AGARWAL
Second Party : Not Applicable
Stamp Duty Paid By : V K AGARWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

Bharti Airtel Limited v. Aparna Somasundaran

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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V K Agarwal

AWARD

1. The Parties

The Complainant is Bharti Airtel Limited, Bharti Crescent, 1, Nelson Mandela Road, Vasant Kunj, Phase II, New Delhi – 110 070.

The Respondent is Aparna Somasundarn, Malappuram, Kerala, 676505.
(Mobile No. 919004644429)

2. The Domain Name and Registrar


The disputed domain name is <www.airtelbank.co.in>. The said domain name is registered with IN Registrar GODADDY.COM LLC (R101 – AFIN)

The details of the disputed domain name contained in Annexure 1 of the Complaint are as follows:

- | | |
|----------------------|----------------------------------|
| (a) Domain ID | : D9035878 - AFIN |
| (b) Date of creation | : 22 nd December 2014 |
| (c) Expiry date | : 22 nd December 2015 |

3. Procedural History

- (a) A Complaint dated October 13, 2015 has been filed with the National Internet Exchange of India. 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 (INDRP) (the “Policy”) and the Rules framed thereunder.

- (b) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and Solicitor of the Supreme Court of England and Wales and former Law Secretary to the Government of India 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 National Internet Exchange of India.
- (c) In accordance with the Rules, the arbitrator sent a copy of the Complaint to the Respondent by registered post. On the letter mobile telephone number of the Respondent (as mentioned in the documents of registration of the disputed domain name) was also mentioned to enable the postal authorities to locate the Respondent. However, the said letter has been returned by the postal authorities as unserved due to incomplete address. Therefore, the case has to proceed ex-parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant known as “Bharti Airtel Limited” is a company existing under the corporate laws of India. The Complainant company was established in the year 1995. Previously the Complainant was known as Bharti Tele-Ventures Ltd. According to the Complaint, the Complainant is among the top three wireless telecommunication companies in the world and a recognized blue chip company.

W. K. Agarwal

The Complainant's products include 2G, 3G and 4G wireless services, mobile commerce, fixed line services, high speed DSL. Broadband, IPTV, DTH, enterprise services including national and international long distance services to carriers. The Complainant is operating in over twenty countries across Asia and Africa including India, Sri Lanka and Bangladesh. Complainant also has mobile operations in Jersey, Guernsey and Channel Islands.

Respondent's Identity and Activities

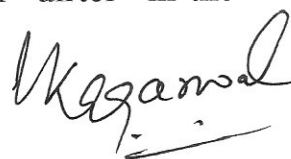
The Respondent could not be contacted. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant - The Complainant contends that each of the elements specified in the Indian Domain Name Dispute Resolution Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that "Airtel" is their registered trademark. The word "Airtel" is an invented word. It has no definite, fixed or ascertainable meaning. The Complainant's adoption, use and registration of the Mark pre-date the registration of the disputed domain. The disputed domain incorporates the trademark of the Complainant in its entirety. Therefore, there is a substantial likelihood of confusion between the disputed domain and the Complainant's trademark since the public would mistakenly assume that the Respondent's services originate from the same source as the services of the Complainant.

Further that, the addition of the words "co.in" is insignificant. Similarly, the addition of the word "bank" succeeding the trademark "airtel" in the



disputed domain name <airtelbank.co.in> is deceptive and generic to the nature of trade and does not avoid a finding of confusing similarity of the disputed domain name with the trademark.

The Complainant further contends that its trademark "AIRTEL" is registered/applied for registration in many countries of the world, such as, Congo, Ethiopia, Great Britain and Northern Ireland, Hong Kong, India, Kuwait, Kenya, Madagascar, Malaysia, Nigeria, Republic of Lebanon, Saudi Arabia, Singapore, South Africa, Sri Lanka, United Kingdom, United States of America, Zambia, etc. The Complainant's said trademark "AIRTEL" is registered in Classes 09, 16, 36, 38 and 41. In India, the said trademark was registered for the first time on 18th April 1995.

The Complainant is also the owner of a number of domain names incorporating the word "AIRTEL". Some such domain names are <www.airtel.com>; <www.airtel.in>; <www.bhartiairtel.com>; <www.bharti-airtel.com>; <www.airtelmall.com>; <www.airtelbiz.com>; <www.airteleurope.com>; <www.airtelafrica.net>; <www.airteluk.com>; <www.Airtelmbanking.com>; <www.airtelworld.com>; <www.airtel.sg>; <www.airtel.org>; etc.

According to the Complaint, the Complainant offers its products for sale through its websites and its websites play an important role towards the same. Further that, the Complainant is well known to its customers as well as in business circles as AIRTEL in many countries of the world. Consumers around the world, particularly in Asia and Africa, associate the Mark "AIRTEL" with the Complainant for telecom and related services.

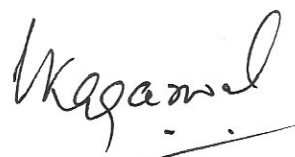
Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.



In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "Airtel". The name of the Registrant/Respondent is Aparna Somasundaran. Therefore, the Respondent does not have any prior or legitimate interest in the disputed domain. Further that, the Respondent is passively holding the disputed domain and is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

The Complainant has further contended that the Respondent has also registered other domains such as, <www.airtelbank.co>, <www.airtelbank.net>, <www.airtelbank.in> which comprises the Complainant's trademark in its entirety. The Complainant has initiated appropriate legal proceedings in respect of these domain names. However, these facts indicate that the Respondent's registration of the present disputed domain name is not inadvertent or innocent but is a part of a willful scheme to encash upon the Complainant's substantial reputation and goodwill in the Mark.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.airtelbank.co.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known mark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".



In the cases of *Bayer Aktiengesellschaft v. Henril Monsse*, WIPO Case No. D2003-0275; *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, and *HSBC Holdings plc v. Hooman Esmail Zadeh*, Case No. 2/5/R2 (March 24, 2007) it has been held that the Respondent's passive holding of the disputed domain name does not create any rights or legitimate interests and it is an evidence of bad faith registration and use of the domain name.

In support of its contentions, the Complainant has relied on a number of other decisions of various organizations also. Though sufficient attention has been paid on them but it has not been possible to refer all of them in the award.

B. Respondent

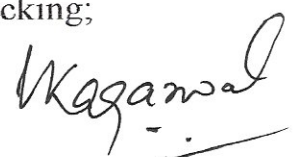
The Respondent could not be contacted. Hence, the Respondent's contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Domain Name Dispute Resolution Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;



A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <www.airtelbank.co.in> on December 22, 2014. It is due to expire on December 22, 2015. In other words, by the time of delivery of this Award and initiation of appropriate action thereon, the registration of the disputed domain name has already expired.

According to the information submitted by the Complainant, the Complainant is the owner of trademark AIRTEL. The trademark AIRTEL is registered in the countries mentioned above.

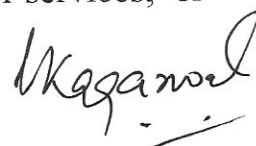
The present dispute pertains to the domain name <www.airtelbank.co.in>. The Complainant possesses a large number of other domain names with the word "airtel" as indicated above. The Complainant is also the owner of trademark "airtel". Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant. The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <www.airtel.co.in> is confusingly similar or identical to the Complainant's marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or



- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent 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's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

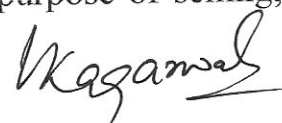
The name of the Complainant is Bharti Airtel Limited. The Respondent is known by the name of Aparna Somasundarn. The Respondent is not operating any active website under the disputed domain "airtelbank.co.in". It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling,



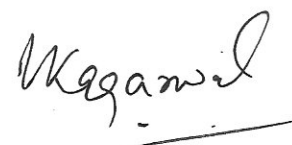
renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has registered the disputed domain name with the sole purpose of monetizing the same. Further that, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark.

The Complainant has contended that on September 4, 2015 the Complainant has addressed a legal notice to the Respondent to transfer the disputed domain to the Complainant. The Complainant sent a reminder mail on September 7, 2015. However, there has been no response from the Respondent.

As has been stated above, the Respondent has given incomplete address. Hence, the copy of the complaint sent by post could not be served on the



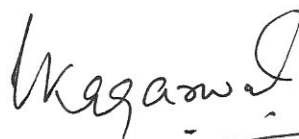
Respondent and was returned by the postal authorities. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

It may be added that an e mail has been received from the Respondent that the Respondent is ready or willing to transfer the disputed domain name to the Complainant. However, the said e mail does not indicate whether the proposed transfer will be free of cost or it will cost some money to the Complainant. In view thereof, it has become necessary that the present award may be delivered so as to avoid any future controversy or dispute between the parties.

Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.airtelbank.co.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 16th November 2015