



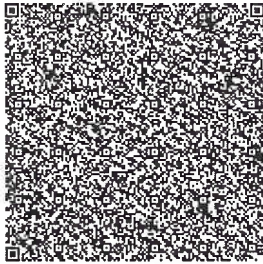
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e-Stamp

Certificate No.	: IN-DL42020754700483P
Certificate Issued Date	: 27-Jan-2017 11:44 AM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130384508518905876P
Purchased by	: SONAL KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SONAL KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: SONAL KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

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

...(Complainant)

v.

Ms. Sunita Bhardwaj
PNS
E-56 Sadbhawna,
New Delhi – 110 034, India

...(Respondent)

Statutory Alert:

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The Parties

The Complainant in this proceeding is Bharti Airtel Limited, having its registered office at Bharti Crescent, 1, Nelson Mandela Road, Vasant Kunj Phase – II, New Delhi 110 070.

Respondent in this proceeding is Ms. Sunita Bhardwaj, PNS, E-56 Sadbhawna, New Delhi – 110 034, India.

The Domain Name

The disputed domain name is **www.airtelservices.in**

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.airtelservices.in

On 29.11.2016, NIXI informed the tribunal that the failure messages have been received for the emails which were sent by NIXI to the respondent.

On 30.11.2016, I sent an email to the parties informing them about my appointment as an Arbitrator. The said e-mail was sent to the respondent on the address as mentioned in the WHOIS details.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 30.11.2016 through e-mail, with the instructions to file her reply within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 30.11.2016, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

On 06.12.2016, NIXI informed the Tribunal that the courier containing the Complaint and the annexures were delivered to the respondent at her address as mentioned in the WHOIS details. The proof of delivery was attached with the said e-mail.



On 29.12.2016, the Tribunal informed the parties that NIXI vide their email dated 06.12.2016 confirmed that the courier containing the complaint along with the annexures has been duly served on the respondent. However, no reply is received from the respondent. In the interest of justice, the tribunal granted the respondent another 7 days to file their reply after which the tribunal will proceed with the matter on the basis of the pleadings and the documents already on record and will pass its award.

On 11.01.2017, the tribunal informed the parties that the time granted to the respondent to file its reply has expired. In the light of the same, the Tribunal will proceed with the matter on the basis of the pleadings and the documents already on record and will pass its award.

Till the date of this award, the respondent has not filed its response to the complaint despite being given several opportunities. E-mail was sent to the e-mail address as mentioned in the WHOIS details and as per the courier receipt, the service was made by NIXI on the address available in the WHOIS details. Thus, the service is considered to be complete.

Apropos of the material on record before the Tribunal, this award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:

The submissions of the complainant are briefly summarized as under:

1. The Complainant submits that it is one of the biggest telecom companies engaged in a variety of services including cellular phones, broadband and internet services, satellite, carrier, international services, calling card, e-business services, etc. Its flagship brand and mark is the AIRTEL mark. The same is now a globally well-known name and mark. The Complainant was previously incorporated as Bharti Tele-Ventures Limited. That thereafter in the year 2006, the name of the company was changed to BhartiAirtel Limited i.e. the Complainant.



2. The Complainant submits that it is a leading global telecommunications company with operations in 20 countries across Asia and Africa. Headquartered in New Delhi, India, the company ranks amongst the top 3 mobile service providers globally in terms of subscribers. In India, the Complainant's product offerings include 2G, 3G and 4G wireless services, mobile commerce, fixed line services, high speed DSL broadband, IPTV, DTH, enterprise services including national & international long distance services to carriers. In the rest of the geographies, it offers 2G, 3G and 4G wireless services and mobile commerce. The Complainant had over 361 million customers across its operations at the end of May 2016.
3. The Complainant submits that the mark AIRTEL not only forms a prominent part of the Complainant's corporate name, the same is also its registered trademark, which has been continuously and uninterruptedly used across several countries, including in India.
4. The Complainant submits that in the year 1994 the Complainant conceived, invented, coined and adopted the said, new and distinctive mark AIRTEL as its trademark for its goods as well as services. The word AIRTEL is not used in common language and does not find any place in any dictionary. It is a coined word and is therefore, entitled to a very high degree of protection.
5. The Complainant submits that it is the registered owner, user and proprietor of the trade mark AIRTEL in India as well as in several jurisdictions worldwide.
6. The Complainant submits that by virtue of the registrations and by virtue of the provisions of the Trade Marks Act, 1999, the Complainant has the exclusive right to use the aforesaid trade marks *inter-alia* in respect of the goods and / or services for which the said trademarks are registered. Additionally, by virtue of the registrations and by virtue of the provisions of Section 31 of The Trade Marks Act, 1999, the above mentioned original registration(s) are *prima facie* evidence of their validity. Further, owing to the prior, continuous and uninterrupted use of the AIRTEL Marks, the Complainant claims Common Law Rights in the said trademarks as well. It also submits that the trade mark AIRTEL, apart from being the Complainant's trade mark, features prominently as the trade name / corporate name.
7. The Complainant submits that it also has, to its credit domain name registrations for various domain names that include the AIRTEL trade mark such as www.airtel.com, www.airteldigitaldish.com, www.airtelmoney.com, www.airtelmoney.net,

www.airtelmoney.org,

www.airtelmoney.in,

www.airtelworld.in,

www.airtelworld.com, www.airtelindia.com etc.

8. The Complainant submits that considering the extensive use and registrations of the AIRTEL trademarks and domain names throughout the world, including in India, the public at large associates the mark AIRTEL with the Complainant alone.
9. The Complainant submits that in order to market, advertise and promote the trade mark AIRTEL the Complainant has incurred large expenses running into crores of Rupees. The marketing, advertisements and promotion of the well-known and registered trade mark of the Complainant AIRTEL has ensured that the presence and knowledge of the trademark AIRTEL is spread throughout the world including in India. A direct result of the above mentioned marketing, advertisements and promotion is that the Complainant has garnered large sales for their goods and services under its trademark AIRTEL.
10. The complainant submits that by virtue of regular, continuous and extensive use of the trade mark AIRTEL by the Complainant, efforts taken by the Complainant in popularizing its brand/ mark and services, and by reason of superior quality and efficacy of the services provided by the Complainant, the trade mark AIRTEL enjoys an extremely high level of goodwill and reputation across the globe, including in India. Consequently the said trade mark has become distinctive of the Complainant and the services offered by them.
11. The complainant submits that the complainant also enjoys Common Law Rights in the trade mark AIRTEL. It also submits that the complainant's mark AIRTEL is a well-known mark and enjoys tremendous trans-border reputation and goodwill in India and is known to a substantial segment of society in India.
12. The complainant submits that the Complainant has zealously guarded its Intellectual Property Rights in the mark AIRTEL and has obtained protection from Courts, Tribunals and other authorities around the world, including in India.
13. The Complainant submits that the impugned domain name is registered in favour of the Respondent. It is further submitted that upon visiting the impugned domain name, it becomes amply clear that the Respondent is a hoarder of the domain name as the same, despite having been registered and created as far back as on March 17, 2012, the same is till date parked.



14. The Complainant submits that on perusal of the impugned website it is amply evident that the same has been registered by the Respondent with ulterior motives and being fully aware of the rights of the Complainant in its trade mark AIRTEL and further with intent to capitalize on the same.
15. The Complainant submits that not only has the Respondent adopted in *toto* the Complainant's trade mark AIRTEL, there is actual and eminent threat of the impugned domain name either used to promote illegal and unlawful activities or activities of the Complainant's competitors, both of which will harm the hard earned goodwill and reputation of the Complainant irretrievably.
16. The Complainant submits that the mala fide intent of the Respondent is writ large inasmuch as the said Respondent has no affiliation or connection with the Complainant herein and despite which the Respondent has registered the impugned domain name, which contains the registered trade mark of the Complainant in *toto*.
17. The Complainant submits that the respondent is, beyond a doubt, intentionally and methodically attempting to confuse and deceive consumers at the expense of the Complainant.
18. The complainant submits that that the adoption of the mark AIRTEL by the Respondent for the impugned domain name is dishonest and has been done with malafide intentions solely to unfairly enrich from the hard earned reputation and goodwill associated with the Complainant's marks.

RESPONDENT

1. Respondent in this proceeding is Ms. Sunita Bhardwaj, PNS, E-56 Sadbhawna, New Delhi – 110 034, India.
2. The respondent has failed to file her say /reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything to the Tribunal till the date of this award. It has already been observed that service was duly affected by NIXI on the last known address of the respondent.

Parties Contentions

i) Complainant

The Complainant contends as follows:



- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

Discussions and Findings:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the rules.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the statements and documents submitted before the Tribunal.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "www.airtelservices.in".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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 interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

- a) The Complainant submits that the domain name in issue www.airtelservices.in, wholly incorporates the Complainant's trade name / corporate name AIRTEL and is identical to the Complainant's registered trade mark AIRTEL. It also submits that the impugned domain name is identical to the trademark/trading style of the Complainant, thereby making confusion and deception inevitable. It further submits that the impugned domain name is identical to the various registered domain names registered in favour of the Complainant and as such the chances of confusion are enhanced.
- b) The Complainant submits that the impugned domain name, as registered by the respondent, is identical and confusingly similar to the trade mark AIRTEL of the Complainant. It also submits that an Internet user who wishes to visit the Complainant's site for information regarding the Complainant's services, but not being completely familiar with the exact web address of the Complainant's site, might be taken to the website of the Respondent instead, which does not contain any information about the Complainant herein, thereby gravely prejudicing the interests and reputation of the Complainant.
- c) The complainant submits that any Internet user who carries out a WHOIS search for www.airtelservices.in will find that the said domain name stands registered in the name of the Respondent and this would further result in considerable confusion in the mind of such user that the Respondent is in some way connected to or affiliated with the Complainant or that the Respondent is being endorsed/promoted by the Complainant, which clearly is not the case.
- d) The complainant submits that domain names and URLs form part and parcel of the 'online' identity of an entity and serve the function of its trade/service mark upon the Internet. It also submits that the act of the Respondent in registering the impugned domain name, which is identical to that of the Complainant's domain names and URLs, severely impinges upon the Statutory and Common Law Rights of the Complainant and is, thus, in contravention of the Intellectual Property Rights vesting in the Complainant in respect of its trade mark and trade name AIRTEL.

- e) The complainant submits that its domain name, located at the URL www.airtel.in functions as a trademark in the Internet world, as the Complainant provides exhaustive information, advertisements of its services through the said website. It also submits that no entity other than the Complainant, therefore, has any right or justification to use the mark AIRTEL or a deceptively similar mark, either on the internet or in a regular book and mortar store.

The above submissions of the Complainant have not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the complaint establish that the disputed domain name is similar and identical to the well known trademark of the Complainant and as such this issue is decided in favour of the complainant.

ii. The Registrant has no rights or legitimate interests in respect of the domain name.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose 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 in connection with a bona fide offering of goods or services;*
 - ii. *the Registrant (as an individual, business, or other organization) 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.*
- a) The Complainant submits that the respondent cannot demonstrate any legitimate interest or rights in the impugned domain name. The Respondent registered the impugned domain name after the Complainant has acquired and established rights in the trademarks/trade name AIRTEL through prior use and registrations.



- b) The Complainant submits that there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the impugned domain name, which is identical to Complainant's AIRTEL mark.
- c) The Complainant submits that the Respondent has no legitimate justification for having registered the impugned domain name incorporating the trade mark / trade name AIRTEL.

The Respondent has neither responded nor has put forth or provided any evidence to show that the circumstances as required under paragraph 7 of the .IN Dispute Resolution Policy exists in her favour. The Respondent is also not engaged in or demonstrably prepared to engage in offering any bonafide goods and services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.

Even otherwise also the above facts and the documents annexed with the complaint establish that the Respondent has no right or legitimate interest in the domain name www.airtelservices.in as the Respondent is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii). Therefore, this issue is also decided in favour of the complainant.

iii. The Registrant domain name has been registered or is being used in bad faith

- a) The Complainant submits that the activities of Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's trademarks in violation of applicable trademarks and unfair competition laws.
- b) The Complainant submits that the activities demonstrate bad faith registration and use of the impugned domain name in violation of the Policy under Paragraph 6 which promulgates that bad faith can be found where there is evidence of circumstances indicating that the Respondent has registered or the Respondent has 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 to a competitor of the Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name; or Respondent has registered the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or by using (if any, though denied) the domain name, by creating

a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Registrant's website or location.

- c) The Complainant submits that bad faith registration and malafide intention is evident from the fact that the Respondent could have no justification for seeking registration of a domain name of which the mark AIRTEL is a part in toto. The complainant also submits that the domain name www.airtelservices.in, registered in the name of the Respondent is an instrument of fraud and deception, which is causing considerable damage to the Complainant's business interests, apart from prejudicing substantial public interest.
- d) The Complainant submits that the unlawful registration of the impugned domain name by the Respondent is resulting in the dilution of the Complainant's trademark/trading style/trade name AIRTEL. The illegal registration of the said domain name is causing irreparable damage and injury to the Complainant's reputation and goodwill, which is unascertainable due to the intangible nature of the goodwill.
- e) The Complainant further submits that the Respondent has registered / acquired the impugned domain name primarily for the purpose of selling / hoarding / misusing / trafficking in the impugned domain name to the Complaint, who is the registered proprietor and owner of the trade mark / trade name AIRTEL Marks as well as the prior user of the same.
- f) The Complainant submits that by registering the impugned domain name, the Respondent is intentionally attempting to attract the internet users to the impugned domain name and is creating confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement in relation to the impugned domain name.

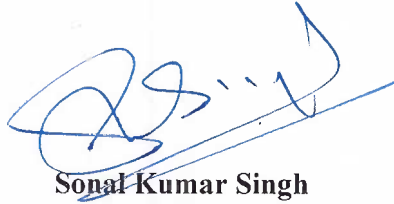
All above submissions made by the Complainant have not been rebutted by Respondent even after giving sufficient opportunity to respond to the same. The respondent has registered the disputed domain name using the mark of the complainant in toto which creates confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement in relation to the impugned domain name. Even otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name in bad faith. This issue is decided accordingly.



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. - www.airtelservices.in to the Complainant. In the facts and circumstances of the case, no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this day of 03.02.2017.



Sonal Kumar Singh

Sole Arbitrator

Date: 03.02.2017