



हरियाणा HARYANA

L 531375

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Arbitron Inc.
9705 Patuxent Woods,
Drive Columbia,
Maryland 21046
USA

Arbitron Technology Services India Pvt. Ltd.
5th Floor, Tejomaya,
L&T Tech Park,
Infopark, Kakkanad,
Kochi – 682 030
Kerala
India

..... Complainant

Arbitron Infotech
H-24 A, Ground Floor,
Kalkaji,
New Delhi – 110019
Paramjit Singh,
H-24 A, Ground Floor,
Kalkaji,
New Delhi – 110019

Mr. Atul Tandon
H-24 A, Ground Floor,
Kalkaji,
New Delhi – 110019

Also at:

115, Deepali Building,
Nehru Place,
Delhi – 19

..... Respondent

Disputed Domain Name: www.arbitroninfotech.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is M/s. Arbitron Inc., of 9705 Patuxent Woods, Drive Columbia, Maryland 21046, USA. The Complainant no. 2 is M/s. Arbitron Technology Services India Pvt. Ltd. of 5th floor, Tejomaya, L&T Tech Park, Infopark, Kakkanad, Kochi – 682 030, Kerala. The Complainant is represented by its authorized representatives Ms. Prathiba M. Singh, Singh & Singh Law Firm LLP, F-11, Jangpura Extension, New Delhi – 110 014, who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Arbitron Infotech, Mr. Paramjit Singh, Mr. Atul Tandon, of H-24 A, Ground Floor, Kalkaji, New Delhi – 110019 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.arbitroninfotech.in. The Registrar is Net4India (R7 – AFIN).



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 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 July 08, 2013 and the notice was issued to the Respondent nos. 1-3 on July 10, 2013 at their email address with a deadline of 10 days to submit their reply. A response was received from Respondent no. 2, Mr. Paramjit Singh stating the following:

This ID was booked by Mr. Atul Tandon owner of a prop. firm Arbitron Infotech.

*Mr. Atul Tandon
Arbitron Infotech
H-24 A, Ground Floor,
Kalkaji
New Delhi – 110019.
Phone 9811602024*

I have nothing to do with it. All the credentials are with him. I was his employee for sometime. Will ask him to remove my name and phone no. from it.

However, no response was received from Respondent nos. 1 & 3. On July 22, 2013 the Arbitrator granted further final opportunity to the Respondent nos. 1 & 3 to submit their response on or before August 02, 2013. However, no submission was made by the Respondents within the stipulated time or thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

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;



- 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

- a) The Complainant No. 1, Arbitron Inc. company was initially known as American Research Bureau (ARB). The mark Arbitron was used for the first time in 1957 and for one of the services of the Complainant no. 1. In 1973, Mr. Theodore (Ted) Shaker, the President of the Complainant No. 1 company at that time changed the name from American Research Bureau (ARB) to "ARBITRON". The said name was initially attached and used for the company's meter service back in the year 1957.
- b) The Complainant's No. 1 "ARBITRON" mark not only enjoys unparalleled reputation and goodwill in India, but also globally. Complainant No. 1's services of research and data collection form useful information and the PPM technology (the Portable People Meter) of Complainant No. 1 is exclusively associated with Complainant No. 1's company "ARTBITRON". The Complainant No. 1 has applied for the registration of the trademark "ARBITRON" under various classes.
- c) Complainant No. 1 is also the registered proprietors of the mark "ARBITRON" under various countries to include but not limited to USA, UK, European Union, Japan, Mexico, Australia, Singapore, Brazil, Canada, Argentina, Chile, Columbia, Russia, New Zealand, Taiwan, Hong Kong, Israel, Kazakhstan and Kenya under various classes including 9, 16 and 35.
- d) Complainant No. 1 has also applied for registration for its mark ARBITRON MOBILE under different classes in various countries to include, but not limited to Argentina, Australia, Baharain, Brazil, Chile, China, Egypt, EU, Hong Kong, Indonesia, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mexico, Norway, Oman, Pakistan etc.
- e) The Complainant No. 1 has also registered the domain names i.e www.arbitron.com; www.arbitron.eu; www.arbitron-training.com; www.arbiron.biz; www.arbitron.info; www.arbitron.net; www.arbitron.us etc.
- f) The Complainant's trademark ARBITRON has achieved huge amounts of goodwill and reputation all over the world including India due to its long and continuous usage. The trademark/name ARBITRON the ARBITRON logo is used almost in all the advertisements and the publicity materials, corporate brochures etc. of the Complainants and hence the mark/ name ARBITRON is associated with the complainant's and Complainant No. 1's subsidiary/ licensees exclusively.



- g) The Complainant submits that the name, title, mark and brand "ARBITRON" exclusively belongs to the Complainant No. 1 by adopting the domain name www.arbitroninfotech.in, the Respondents have not only violated the intellectual property rights as vested with the Complainant No. 1. The Complainant submits that the domain name www.arbitroninfotech.in has been registered and is being used in bad faith.
- h) The Complainant submits that the Respondent nos. 1-3 in addition to have illegally adopted the said mark/ name "ARBITRON" as part of their corporate name / trading style have also registered the domain name www.arbitroninfotech.in illegally without any authorization by the Complainants.
- i) In 2012, the Complainant's representatives came across the website of the Respondent nos. 1-3 who had registered the domain name with the words "ARBITRON" viz http://arbitroninfotech.in". The said website further stated that the Respondent No. 1, namely ARBITRON INFOTECH is an IT Consultancy entity providing solutions and support services to help boost business of its clients.
- j) The objective of Respondent No. 1 on its website is stated to be ".....Whatever plans you have for your growing business, Arbitron a leading IT consultancy, can make sure IT works harder to support you...." "..... to design, implement and support your information Technology requirements.....".
- k) The Respondent no. 1 has illegally and mala fide adopted the mark ARBITRON as part of its corporate name / trading style and is portraying to the world at large that it is in some way or the other associated with "ARBITRON" of the Complainants'. The Respondent No. 1 in addition to using the mark/ name ARBITRON as part of its corporate name/ trading style is the registrant organization of the domain name www.arbitroninfotech.in registered by Respondent No. 2 Mr. Paramjit Singh.
- l) The adoption of the mark/name "ARBITRON" itself being completely mala fide and illegal, using the same as part of its corporate name/ trading style or as a domain name to attract customers/ clients clearly amounts to passing off the mark/ name ARBITRON of Complainant No. 1.
- m) The Complainant submits that the website of the Respondent Nos. 1-3 www.arbitroninfotech.in does not appear to be a bona fide website as the same does not clearly provide the exact details or constitution of the Respondents No. 1-3 or as to the nature of activities of the said organization. This clearly amounts to misrepresentation to the general public that the said organization of Respondent Nos. 1-3 is in some way or other associated with the Complainants.
- n) The use of the mark ARBITRON by the Respondent nos. 1-3 is also likely to result in blurring & tarnishment of the Complainant's well known mark



"ARBITRON" in as much as the services provided by the Respondent nos. 1-3 are in similar fields as that of the Complainant.

- o) It is further submitted that the use of the words ARBITRON either by itself or in combination with any other words is likely to cause confusion among the internet users especially in light of the fact that the Respondent also claim to be providing similar services as that of the Complainants. The domain name of the Complainants as well as the Respondents being identical may cause confusion and the internet users may think that the Respondents are associated with the Complainants.

5) Respondent

The Respondent no. 2 Mr. Paramjit Singh did file a response clarifying that he was the employee of Arbitron Infotech and he has nothing to do with it now. Neither the Respondent no. 1 nor Respondent no. 3 had 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 Complainant in support of use and registration of the mark 'ARBITRON' leads to the conclusion that the Complainant has superior and prior rights in the mark "ARBITRON". Thus it can be said a) the web users associate the word 'ARBITRON' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.arbitroninfotech.in and c) they may believe it is a website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing a wrong address of Respondent no. 2 Mr. Paramjit Singh at the time of registration, which is evidence from non-delivery of courier containing the Complaint (as per the report provided by NIXI dated 10th July, 2013 from Blue Dart Express), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

The clause 3 (a) is reproduced below

The Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:



(a) *the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;*

(1) *the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;*

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'ARBITRON'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'ARBITRON' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

(2) *the Respondents have no rights or legitimate interests in respect of the domain name;*

The Complainant has not authorised the Respondents to register or use the www.arbitroninfotech.in domain name. Further, the Respondents have never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain.

The Respondents have not rebutted the contentions of the Complainant and not produced any documents or submissions to show interest in protecting their own rights and interest in the domain name. Further, the Respondents have 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 Respondents have no right or legitimate interest in respect of the disputed domain name www.arbitroninfotech.in.

(3) *the domain name has been registered in bad faith.*


It may be mentioned that since the Respondents did not file any response and rebut the contentions of the Complainant, they are deemed to have admitted the contentions contained in the Complaint. As, the Respondents have not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

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



7. Decision:

In view of the foregoing, I am convinced that the Respondents' registration and use of the domain name www.arbitroninfotech.in is in bad faith. The Respondents have no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.arbitroninfotech.in be transferred to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

August 16, 2013