

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)
INDRP ARBITRATION
INDRP Case No. 1883**

Disputed Domain Name: < INDUSTOWERSLIMIED.IN >

ARBITRATION AWARD

Dated 30.8.2024

IN THE MATTER OF:

**INDUS TOWERS LIMITED
Building No. 10, Tower-A,
4th Floor, DLF Cyber City
Gurugram 122 002 (Haryana)**

(Complainant)

VERSUS

**Silverydeena Keerthana at
BD Green Private Limited,
P30 Plaza Housing, Shibrampur, Astuli
West Bengal- 700141, India
Email: keerthanasilverydeena@gmail.com ;
industowerstelecomecompany@gmail.com
Tel: +91 9674880348; +91 7595936743;**

(Respondent)

Alok Kumar Jain

1. The Parties

The Complainant in this administrative proceedings is Indus towers Limited at the above address. The Complainant's authorized representative in this administrative proceeding is: Ashwathh Legal Address: C-504, Defence Colony Delhi – 110024. Telephone: +91-9818499323

E-mail:kripa@ashwathhlegal.comlitigation@ashwathhlegal.com

Respondent in these proceedings is **Silverydeena Keerthana**

Domain Name and Registrar:-

The disputed domain name <industowerslimited.in>, is registered with Godday India web services Ltd.

1 Procedure History

3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules") which were approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the said Policy and the Rules.

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

Alok Kumar Jain

3.2. The Complaint was filed by the Complainant with NIXI against the Respondent . On 7.8.2024. I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the Parties of my appointment as Arbitrator *via* email dated 7.8.2024 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.

3.3. I issued notice to the parties vide email dated 7.8.2023 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response within 10 days from the date of notice. No response was received from the Respondent within 10 days or thereafter till 24.8.2028. On 24.8.24 I intimated the parties that now the matter will be decided on its own merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent at the email provided by the Respondent with WHOIS vide email dated 7.8.24, while informing the parties about my appointment as

Arbitrator. Thereafter notice was sent vide same trailing email. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has not filed any response to the Complaint.

3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.

3.6. Clause 12 of INDRP Rules provides that in the event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law.

3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunity given and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings

submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

Discussions and findings:

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

4. Class of disputes:

Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and

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

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a),4(b) and 4(c) quoted above.

4. The Case of the Complainant:

The Complainant has averred in the Complaint that the Complainant is registered with the Department of Telecommunications as a Category-I Infrastructure Provider ("IP-I") for providing passive telecommunication infrastructure to licensees/ mobile telecom operators under Section 4 of the Indian Telegraph Act, 1882 such as BSNL, Airtel, Reliance Jio, Vodafone Idea etc. on a non-discriminatory sharing basis. Erstwhile Indus Towers Limited was incorporated in the year 2007. That the Hon'ble National Company Law Tribunal, Chandigarh ("NCLT") by its order dated 31.05.2019 read with 22.10.2020 approved the scheme of amalgamation and merger between erstwhile Indus Towers Limited having CIN No. U921 OOH2007PLC073822 and Bharti Infratel Limited having CIN No. L64201HR2006PLC073821, in accordance with the provisions of the Companies Act, 2013 on the ongoing basis. Following the sanction of the scheme of amalgamation and merger, and compliance of mandatory requirements, erstwhile Indus Towers Limited having CIN No. U921

OOHR2007PLC073822 ceased to exist as a separate entity and it merged with Bharti Infratel Limited. Subsequently, on 10.12.2020, name of Bharti Infratel Limited was changed to Indus Towers Limited having CIN No. L64201HR2006PLC073821 i.e., the Complainant herein. At present Complainant i.e Indus Towers Limited has over 219736 towers and 3,68,588 co-locations (as on 31st March 2024) and a nationwide presence covering all 22 telecom circles making the Complainant one of the largest telecom tower companies in the world with the market capitalization of Rs 88,971. Crore(s) approx. as on 19th June 2024.

The Complainant has also collaborated with New Delhi Municipal Council (NDMC), Vadodara Municipal Corporation (VMC), Dehradun Smart Cities (DSCL) and Bhopal Smart City (BSCDCL) to roll out its Smart Digital Infrastructure of Smart poles LED lights, CCTV cameras, Variable Digital Messaging Board, Environment Sensors, City Public Wi-Fi including the fiber backbone. Additionally, the Complainant has pioneered the Indus Tower Operations Center (TOC) which is state-of-art facility providing end-to-end tower management solution, incorporating the aspects of top-line maintenance, reliable tracking measures, and sustainable energy practices.

The INDUS TOWERS LIMITED website - The Complainant displays and promotes its various products under the

tradename/ trademark INDUS TOWERS on the internet through its domain name namely www.industowers.com (hereinafter referred to as the said Domain name). The said domain name of the Complainant contains extensive information about the goods and business provided by the Complainant under its said tradename/trademark INDUS TOWERS. The said domain name of the Complainant has thousands of visits from people looking for information about the Complainant's innumerable and wide spectrum of business and its goods/services. The Complainant registered its domain name on 11th October, 2007 (as per the information available on www.whois.com) and is the owner of the said domain name which continues to be valid and subsisting. A printout from the Complainant's website www.industowers.com, along with a copy of the www.whois.com details is attached herewith as Annexure with the complainat.

The INDUS TOWERS registered trade mark- The trade mark INDUS TOWERS came into being in the year 2007 with the establishment of the Complainant. The Complainant is the registered trademark owner for the brand/trademark INDUS TOWERS and/or the formative 'INDUS' trademark/s as well as the INDUS TOWERS (Device of Unicorn) Logo. The members of the trade, industry, the consumers and general public at large are well aware of the Complainant's trademark

INDUS TOWERS and the Complainant's goods and business thereunder. The Complainant's trademark INDUS TOWERS is a well-known trademark within the meaning of Section 2(1)(zg) of the Act. The INDUS TOWERS trademark/service mark, apart from being inherently distinctive, has acquired substantial goodwill and is as an extremely valuable commercial asset of the Complainant. It is well recognized that in the virtual world, of account of the reach of the medium of Internet, trademark/service mark rights are created much faster and more extensively. The Complainant, and the trademark INDUS TOWERS by virtue of priority in adoption, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade. Trade mark registrations- The trademark INDUS TOWERS as well as the INDUS TOWERS (Device of Unicorn) Logo is an extremely popular trademark and apart from common law rights the Complainant is also the registered proprietor of the said marks. The earliest date of use for the mark INDUS TOWERS dates back to December 4, 2007, and its date of registration issued by the Trade Mark Office, India is March 13, 2008. A list of most relevant trade mark registrations provided below along with the current status of the same from the official website of the TradeMarksOffice<https://tmsrsearch.ipindia.gov.in/eregister/eregister.aspx> are annexed and marked as Annexure 5 with the Complaint.

4.1

Condition 4(a):) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

I have gone through the complaint and perused all the documents annexed with the Complaint.

It is evident that the Complainant has been continuously and extensively using the registered trademark **INDUS TOWERS** in commerce since its adoption in 2007 – and thus its rights in the **INDUS TOWERS** Marks are well established. Moreover, since the Disputed Domain Name has only been registered in the year 2023, it is much later to the Complainant's statutory rights in the **INDUS TOWERS** Marks.

It is evident from above and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the **INDUS TOWERS** Trademarks.

It is averred by the Complainant that the inclusion of the word “limited” suffixing the mark **INDUS TOWERS** in the impugned domain name, in no way whatsoever dilutes, reduces or diminishes the likelihood of confusion and deception being caused to an internet user, but further exacerbates the confusion

since the impugned mark/ domain subsumes the Complainant's entire corporate/trading name '*Indus Towers Limited*'. In light of the glaring similarity between the impugned domain name and that of the Complainant, it is extremely likely than an Internet user who is not certain of, or familiar with the exact and complete web address of the Complainant, may be misled when coming across the Respondent's domain name *<https://industowerslimited.in>*.

A mere perusal of the disputed domain name '**INDUSTOWERSLIMITED.IN**' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark '**INDUS TOWERS**' in its entirety. The disputed domain name '**INDUSTOWERSLIMITED**' is identical to the '**INDUS TOWERS**' trade marks of the Complainant. It is well established that the addition of a TLD such as ".in" is not significant in determining whether the disputed domain name is identical or confusingly similar to the mark.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of

domain name. Therefore, it cannot be said to distinguish the Respondent's domain name <INDUSTOWERSLIMITED.IN> from the Complainant's trademark **INDUSTOWERS**. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's registered trademark and domain names for "**AMERICAN EAGLE**", having been created by the Complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the Respondent, it was held that,

"The disputed domain name is very much similar to the name and trademark of the Complainant. The Hon 'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the Complainant. "

The Complainant has acquired rights in the trade mark **INDUSTOWERS** by way of trademark registrations, and by virtue of use as part of their company since much prior to the date on which the Respondent created the impugned domain <**INDUSTOWERSLIMITED.IN**> incorporating the

Complainant's identical company name, trade mark and trade name **INDUSTOWERS** in toto.

The Respondent has not filed any response to the complaint as such all the averments of the complainant has remained un rebutted.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name <INDUSTOWERSLIMITED.IN> of the Registrant is identical and or confusingly similar to the trademark **INDUS TOWERS** of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest**

The Complainant stated in the Complaint that the Respondent is not having any rights or legitimate interests in respect of the disputed domain name as the Respondent is not commonly known by the disputed domain name. The Respondent cannot claim to have been legitimately known under the name **INDUS TOWERS**. Further the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. It is further stated that the Respondent has never been granted authorization, license or any right whatsoever to use the trademark of the Complainant. The

Respondent is not commercially linked to the Complainant. The adoption and extensive use by the Complainant of the trademarks INDUSTOWERS predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name. And the Respondent has failed to prove the circumstances referred to in Clause 6 .

The Complainant has established its rights in the trade mark **INDUS TOWERS** .The mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In Deutsche Telekom AG v. Phonotic Ltd. (WIPO Case No. D2005-1000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.

The inclusion of the well-known mark '**INDUS TOWERS**' in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516**

wherein it was held *“It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark”*.

The Respondent has not filed any response as such the facts stated in the complaint had remained unrebutted. Further the Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary it is evident that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark **INDUS TOWERS**.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3

Condition 4(C): the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), 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:

(a) 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

(b) 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

(c) 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.

The Complainant is vested with worldwide statutory rights in its **INDUS TOWERS** Marks earliest registration being in the year 2007. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of concern due to the grave likelihood of creating confusion in the minds of the public.

From perusal of documents annexed with the complaint and the averments made in the complaint it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

In this regard the decision of prior Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* can be referred wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration. "

The Respondent had no reason to adopt an identical name/ mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the

Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

36. In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint, I find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

Decision

In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'INDUS TOWERS' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi
Dated 30.8.2024

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator