



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

E 204819

33045 23/4/2008 50/-
S. No.....Dt.....Rs.....
Sold To.....Harani Narayana Swamy
to w/o D/o.....Narayana Swamy Rb Hys
to room.....

K. Rama Chandravathi
K. RAMA CHANDRAVATHI
STAMP VENDOR (L.No.07/99, RL.No.16/2006),
6-3-387, Gessie Bazaar Durbar Hotel, Panjagutta,
HYDERABAD - 500 082. Phone. No. 23351799

IN THE MATTER BETWEEN

ITC Limited

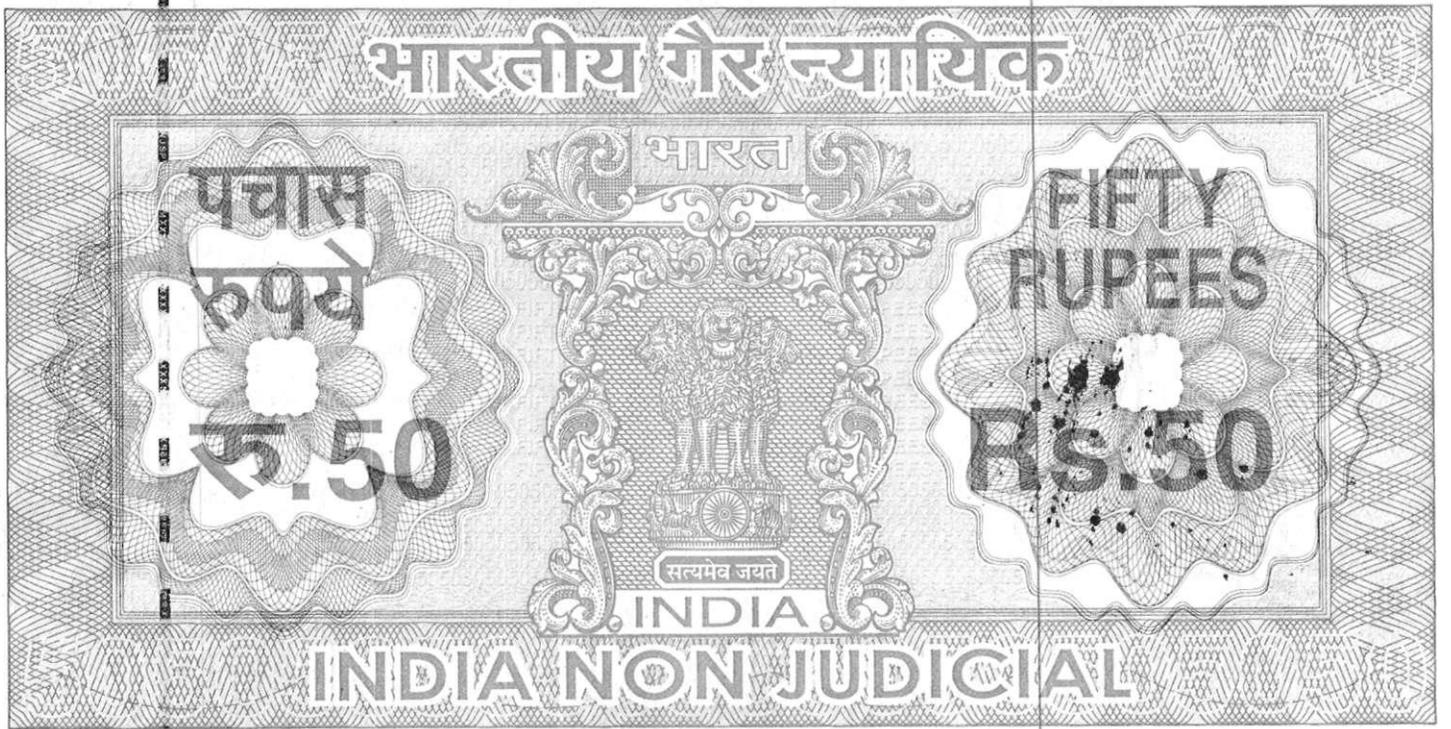
v

Travel India

Case No, L-2/5/R4 OF 2008 <bristol.in>

ARBITRATION AWARD

Harani Narayana Swamy



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

E 204820

3346 23/4/2008 50
No. Dt. Rs.
Sold To..... Hassan' Narayana Swamy
At W/O 10/10..... Narayana Swamy SRH
For SRH..... **ARBITRATION AWARD**

K. Rama Chandravathi
K. RAMA CHANDRAVATHI
STAMP VENDOR (L. No. 27/99, RL.No. 16/2008),
6-3-387, Beside Banjara Durbar Hotel, Panjagutta,
HYDERABAD - 500 082. Phone. No. 23351799

THE PARTIES

The Complainant in these proceedings is ITC Limited, an Indian company with its principal place of business at Virginia House, 37, J. L. Nehru Road, Kolkata-700 071, India.

The Respondent in these proceedings is Travel India. The Respondent's known contact address is 113 Heena Arcade, 1st floor, Next to Deewan Center, Jogeshwari (W), Mumbai 400 102, India.

THE DOMAIN NAME

The **disputed** Domain Name is <bristol.in>. The Registrar of the domain name is Direct Information Pvt. Ltd. The domain name was registered in **February** 2005.

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LAW, POLICY AND RULES APPLICABLE

This Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996, the .IN Domain Name Dispute Resolutions Policy ('The Policy'), and the INDRP Rules of Procedure (the "Rules").

PROCEEDURAL HISTORY

The Complaint was filed with the .IN Registry on March 3, 2008 . The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

A notification of commencement of Arbitration proceedings was sent to the Respondent's known contact address under Paragraph 5 (c) of the INDRP Rules of Procedure on March 12, 2008. The Arbitration Proceedings accordingly commenced from this date. The Respondent was given fifteen days time to file a [Response. The Respondent did not file a response.

The notification sent to the Respondent was returned un-served on 29 March 2008 with a marking on the envelope stating "shifted". The email notification dated 13 March 2008 has also evoked no response from the Respondent. The Arbitrator proceeds under paragraph 11 of the Rules, to determine the case based on the submissions made by the Complainant and the documents on record,

FACTUAL BACKGROUND

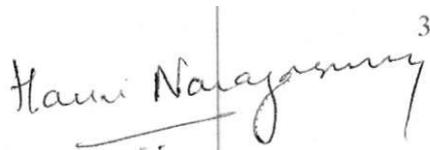
PARTIES CONTENTIONS

Complainant

Complainant's Factual Contentions

The Complainant, ITC Limited, is reputed cigarette manufacturing and marketing company. The Complainant claims it is one of the largest buyer, processor and exporter of cigarette tobacco and is India's largest integrated source of quality cigarettes. The Complainant states it has developed sophisticated Research and Development facilities for the cultivation, processing and packing of cigarette tobacco.

The Complainant has been a leading supplier to consumers through out the world for the past sixty years. It has provided a list of its well known cigarette brands which include India Kings, Gold Flake, Wills Classic, Bristol, Navy Cut, Scissors, Capstan

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and Berkley. The market response to these brands, according to the [Complainant, has been encouraging and is unmatched by competition.

The Complainant states that its trademark BRISTOL has been used for marketing its cigarettes and manufactured tobacco since the year 1932. It has well established rights in the BRISTOL mark, which the Complainant states has been used in conjunction with other words for its products so as to make a connection with its principal

The Complainant states that its trademark BRISTOL and its variants, has gained tremendous reputation and goodwill in respect of tobacco and other smoker's articles due to its long and continued use, extensive publicity, sales and also because of maintaining superior and international quality products. The trade and public associate the trademark BRISTOL solely with the Complainant's business, particularly for tobacco and smoker's articles.

The Complainant has provided the figures for its sales turnover under this mark, which is to the tune of several billions of rupees. The sales figures under this mark are furnished for the period 2002 to 2007. The Complainant states it has widely advertised its mark BRISTOL in various media in different languages throughout the country and in foreign jurisdictions. Due to the statutory ban imposed on cigarette advertisements over the past few years, the Complainant has provided figures for advertisement only for the period 2002- 2005. The Complainant has filed documents of evidence to support its contentions regarding the sales turnover and its advertisements' of the mark.

Complainants' Trademarks

The Complainant states it is the owner of several registered trademarks for BRISTOL and its variants. A list of these registered marks along with the registration numbers and class is provided:

TRADEMARKS	REGISTRATION NO.	CLASS
Bristol Standard	726244	34
Bristol (WD & HO WILLS) (L)	785431	34
Bristol (WD & HO WILLS) (L)	785432	34
Bristol (WD & HO WILLS) (L)	726245	34
White Bristol Menthol (Colour Label)	801404	34
Bristol (L)	635449	34
Bristol (L)	7672	34 1
Bristol Menthol (WD & HO WILLS) (L)	726246	34

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Bristol (Matches)	508010	34
Bristol Handymate (L)	690936 B	8
Bristol (Word)	626866	32

The Complainant has also filed copies of the trademark registration and renewal certificates as evidence.

Complainants' Legal Submissions

The following legal grounds are given by the Complainant for filing the present Complaint:

A. The DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADE-MARK IN WHICH THE COMPLAINANT HAS RIGHTS.

The Complainant has filed the present Complaint regarding the registration of the domain name <bristol.in> by the Respondent. The domain name, according to the Complainant is identical to its well known trademark **BRISTOL** which enjoys reputation, goodwill and has recognition of a high order.

The Complainant contends that its trademark **BRISTOL** is distinctive and it establishes an identity and connection with the Complainant. The Complainant argues that as the trade and the public are acquainted with the Complainant's well known trademark there is likely to be a presumption, that the Respondent's domain name is associated with the Complainant.

The trademark has been used in commerce by the Complainant for about six decades which establishes its prior rights. The Complainant states that an unwary web browser while searching for details of the Complainant's business in the .IN domain is likely to be directed to the webpage's linked to the domain name in issue. Such browsers may presume a connection between the business and products of the Complainant and Respondent. The public may believe that the Respondent is in some way associated with the Complainant. Therefore the Respondent's domain name creates an impression of association with the Complainant's well reputed mark.

Given the immense goodwill enjoyed by the Complainant's trademark **BRISTOL** its use by any other person in respect of any goods what-so-ever is bound to create confusion among the trade and public as to origin of the domain name.

B. The RESPONDENT HAS NO RIGHT OR LEGITIMATE INTERESTS

The Complainant alleges that the Respondent has no rights or legitimate interests in the domain name **BRISTOL.IN** for the following reasons:

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Firstly, as the Respondent is not running any website linked to the domain name, there has been no use or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services by the Respondent.

Secondly, the Complainant states that the Respondent does not use the disputed domain name for any legitimate non-commercial or fair use without Intent for commercial gain.

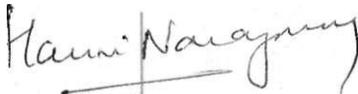
Thirdly, the Respondent is not authorized or licensed by the Complainant to use its trademark or to use the domain name.

The Complainant states that the Respondent has illegally and wrongfully adopted the word BRISTOL, which is a famous trademark of the Complainant. Given the Complainant's established prior reputation and rights, the Complainant asserts that no one else can have legitimate rights or interests to adopt the name BRISTOL.

C. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH AND IS BEING USED IN BAD FAITH.

The Complainant states that the domain name was registered by the Respondent in bad faith in February 2005. for the following reasons:

- (i) The Complainant states that the Respondent ought to have) been aware of the Complainant's mark BRISTOL, which is well known. The domain name was adopted by the Respondent despite being aware of the Complainant's well known mark and the goodwill attached to it. Such conduct of the Respondent clearly reflects the dishonesty and shows the *mala fide* intention of the Respondent.
- (ii) The Respondent has not made any use of the domain name in relation to its business or services. The disuse of the domain name according to the Complainant shows that the domain name was registered primarily for the purpose of selling or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration. A copy of the blank webpage is filed as evidence.
- (iii) The Complainant fears that the domain name could be used to mislead and divert Internet users or to tarnish the trademark of the Complainant. The Respondent could transfer or sell the domain name to a competitor of the Complainant who could damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant. This could lead to tarnishment of the Complainant's image if the domain name falls into the hands of the competitors of the Complainant
- (iv) The Complainant states that the Respondent is subject to the policies of the .IN Registry which included the provisions in the .IN dispute Resolution Policy (INDRP) for domain name registration, maintenance and renewal. The Policy requires the parties registering domain names to satisfy the following aspects:


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- a. The statements made by the Registrant in the application form are complete and accurate.
 - b. To the registrant's knowledge, the registration of this domain name will not infringe upon or violate the rights of any third party.
 - c. The Registrant is not registering the domain name for an unlawful purpose, and
 - d. The Registrant will not knowingly use the domain name in violation of applicable laws or regulations.
- (v) The Complainant states that the Policy clearly places the burden on the registrants to determine whether the registrant's domain name registration infringes or violates third party rights. The Complainant further states that the Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favor of the Complainant. Breach of this provision of the Policy therefore infringes the legal rights of the Complainant.
- (vi) The Complainant further states that bad faith is apparent from the facts and circumstances of the case and therefore the Respondent is disentitled to maintain and/or renew the impugned domain name.
- (vii) The Respondent has no justification in adopting the name <bristol.in> as its domain name, other than for wrongful and illegal gains.
- (viii) The conduct of the Respondent, according to the Complainant, leaves no room for doubt as to his unscrupulous motives and illegal intentions. The Complainant is apprehensive that the Respondent is in active search of an assignee of the domain name and would sell the same for illegal profit.

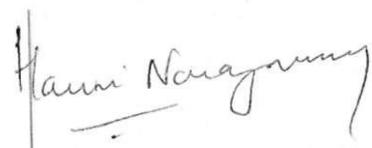
The Complainant states it owns all rights in the term BRISTOL and is therefore entitled to protection under the Policy. Use of the name by the Respondent as a domain name or in any other form constitutes violation of its rights. The Complainant requests for the transfer of the domain name in accordance with the Policy and for costs of the present proceedings, in the interim the Complainant requests for the de-activation of the domain name to prevent its transfer by the Respondent.

Respondent

The Respondent did not file any response.

DISCUSSION AND FINDINGS

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DISCUSSION AND FINDINGS

Under the .IN Policy the Registrant of the domain name is required to submit to a mandatory Arbitration proceeding in the event that a Complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

The .IN Policy, Paragraph 4 requires the Complainant, to establish three elements, which are:

- (i) The 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
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

The following are the findings of the Arbitrator based on all the material on record.

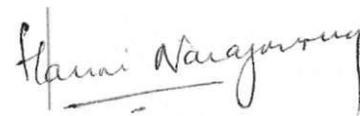
Identical or Confusing Similarity

The first element under paragraph 4 the Policy requires the Complainant to establish that the domain name is identical or confusingly similar to a trademark in which it has rights. The Complainant has established its longstanding rights in the BRISTOL mark. Evidence has been provided by the Complainant showing its sales turnover, its advertising and promotional expenses and numerous subsisting trademark registrations, which establishes the Complainant's ownership of the trademark its prior reputation and its use for a significant length of time.

The Respondent did not file a response and has not provided any reasons for adopting the name Bristol. As such, the name Bristol is not a common Indian name. Given the strong distinctiveness of the Complainant's mark and its extensive use in commerce, it is likely that the Respondent may have targeted the Complainant's mark in choosing the disputed domain name. Further, if a well known trademark is incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. See *Boehringer Ingelheim Pharma GmbH & Co. KG v. Philana Dhimkana*, WIPO Case No. 2006 - 1594 and *AT & T Corp. v William Gromally*, WIPO Case No. D2005-0758.

It has been consistently held in domain name disputes that the top level domain name designator, such as ".COM" or ".IN" domain designator can be disregarded for the purpose of determining confusing similarity to the trademark. See for instance, *Sanofi-Aventis v. US Online Pharmacies* WIPO Case No 2006-0582

By registering the domain name in this manner, the Respondent has therefore created a likelihood of confusion with the Complainant's mark. It is likely that the public and Internet users in particular, may be misled or confused to thinking that the disputed domain name, which is identical to the Complainant's mark. Is in some way associated with the Complainant.



The Complainant has successfully established that the disputed domain name is identical to the trademark in which Complainant has rights. The Complainant has proved the first element under paragraph 4(i) of the .IN Policy.

Rights or Legitimate Interests

The Complainant has asserted that Respondent has no rights or legitimate interests to the disputed domain name for the reason that the mark BRISTOL is well known and widely used by the Complainant. Use of another's trademark in the domain name does not confer rights or legitimate interests in favor of the owner of the domain name. See e.g. *America Online Inc., v. Xianfeng Fu* WIPO Case No.D2000-13;74.

The Complainant's rights in the BRISTOL mark predate the Respondent's registration of the domain name by a considerable length of time. This coupled with the fact that the Complainant's mark is very well known and is widely recognized, renders it doubtful that the Respondent could put forth any arguments that may establish any rights or legitimate interest in the Respondent's favor, See *General Electric Company v. LaPorte Holdings Inc.*, WIPO Case No. D2005-0076.

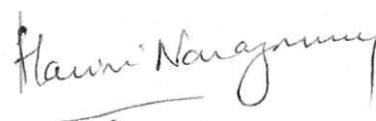
The Respondent does not appear to be known by the domain name neither has the Respondent been licensed or permitted to use the mark by the Complainant. The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interest in the domain name. The Respondent having failed to respond, has therefore not invoke any of the provisions under the Policy that may demonstrate it could have some legitimate rights or interest in the domain name. As the assertions made by the Complainant are not rebutted, it is found from all evidence on the record, that the Respondent has no rights or legitimate interests in the domain name.

The second element under paragraph 4(i) of the .IN Policy, namely that the Respondent has no rights or legitimate interest in the domain name has been established by the Complainant.

Bad Faith.

The Complainant has to establish that the domain name was registered and used in bad faith. The .IN Policy, under paragraph 5 (iii), lists a non exhaustive set of circumstances, if found, would indicate bad faith registration and use:

It is reasonable to infer that the Respondent has registered the domain name knowing about the Complainant's rights and that it represents a well know trademark. Only a person who is familiar with the Complainant's mark could have registered a domain name that is confusingly similar. See *Deutsche Telekom AG v. Britt Cordon*, WIPO Case No. 2004- 0487. The Respondent is probably aware of the commercial value of the name, and has registered the domain name for possibly deriving revenue from it. It is found, that these circumstances strongly indicate that the domain name is registered in bad faith.



The evidence furnished by the Complainant also shows that there has been no active use of the domain name. Non use and passive holding of domain names has been held as evidence of bad faith use. See *Bayer Aktiengesellschaft v. Henrik Monssen*, Wipo Case No.D2003-0275. Also see *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D 2000-0003. There are conceivable abusive uses of such domain name registrations which could have detrimental effects on the Complainant and its business. Hoarding domain names which incorporate well known marks, with the intention of selling it for financial gain is a recognized bad faith use of domain names, See: *Gerber Products Company v. LaPorte Holdings* WIPO Case No. D2005-1277, *Arla Foods Amba v. Juccho Holdings* WIPO Case No. D2006- 0409 and *Bits & Pieces Inc. v. LaPorte Holdings*, WIPO Case No. D2006-0244.

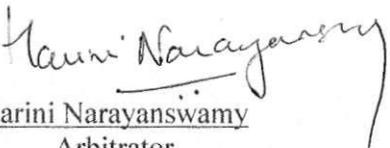
The Policy under Paragraph 5(iii) (i), states that if there are circumstances which indicate that the Registrant has registered or acquired the domain name for the purpose of selling renting or otherwise transferring the domain name to the Complainant or to a competitor, such registration can be considered as bad faith registration and use of the domain name. Given the fame of the BRISTOL mark and the lack of Respondent's legitimate rights or interests in the mark it is reasonable to infer that the domain name was registered for such bad faith purposes .

Further, under Paragraph 5(iii) (iii) by using the domain name, if the Registrant or Respondent 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 Arbitrator finds that under the given circumstances, although there is presently no active website linked to the domain name, the mere fact of that the domain name is a replica of the well known trademark of the Complainant would give rise to likelihood of confusion in the minds of Internet users and the public. Hence bad faith registration and use of the domain name are found under the circumstances in the present case.

The Complainant has successfully established the third element under paragraph 4(i) of the .IN Policy, that the domain name was registered and used in bad faith.

DECISION

It is ordered that the domain name <bristol.in> be transferred to the Complainant, No costs are awarded as there are insufficient grounds to award costs in the present domain name dispute.


Harini Narayanswamy
Arbitrator

April 15, 2008