



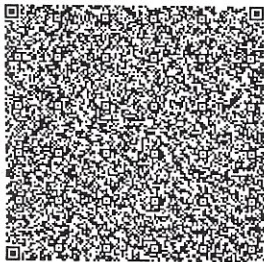
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL170027368113770
Certificate Issued Date	: 04-Nov-2016 09:56 AM
Account Reference	: IMPACC (IV)/ dl889403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL889403341326786138500
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)



COPY COPY COPY

NATIONAL INTERNET EXCHANGE OF INDIA

Please write or type below this line.
Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

ESPN Inc. v. Domain Admin

V K Agarwal

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.
3. In case of any discrepancy please inform the Competent Authority.

AWARD

1. The Parties

The Complainant is ESPN Inc., ESPN Plaza, Bristol, Connecticut 06010, United States of America

The Respondent is Domain Admin, 2967, Sourwood Apt Lane, Restone, Florida 20191, United States of America.

2. The Domain Name and Registrar

The disputed domain name is <www.espn.co.in>. The said domain name is registered with GoDaddy.com

The registration details of the disputed domain name as contained in whois available at Annexure 2 to the Complainant are as follows:

- a. Domain ID : CR248491350-AFIN
- b. Domain Name : espn.co.in
- c. Sponsoring Registrar : GoDaddy.com, LLC (R101-AFIN)
- d. Date of creation : December 03, 2010
- e. Expiry date : December 03, 2017

3. Procedural History

- (a) A Complaint dated August 18, 2016 has been filed along with a covering letter dated September 15, 2016 with the National Internet Exchange of



India. The Complainant has made registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 2. 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 Exchange appointed Dr. Vinod K. Agarwal, Advocate 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 Exchange.
- (c) In whois data, the Respondent has given his postal address as mentioned above. In accordance with the Indian Domain Name Dispute Resolution Rules, on 29th September 2016 the Sole Arbitrator sent a copy of the Complaint through courier to the Respondent on the aforesaid postal address. However, no response has been received. Therefore, the case has to proceed ex-parte.

4. Factual Background

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

Complainant's activities

V. K. Agarwal

The Complainant is a company existing under the corporate laws of the United States of America with registered office at ESPN Plaza, Bristol, Connecticut 06010, U.S.A.

According to the Complaint, the Complainant provides sports entertainment services, production and distribution of sports related services and sports news, coverage of sports world over by television, the internet and other media. The Complainant also provides general information pertaining to sports through computers and other channels including telecommunications and communication services, namely, broadcasting of entertainment, sports and news programs by television and internet.

Respondent's Identity and Activities

The Respondent has not submitted any response to the Complaint. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the trademarks ESPN have been used by the Complainant in India since 1994 as trade name, trademark, corporate name, business name, trading style, etc. in relation to its business continuously, extensively and without interruption. The Complainant

Kegamalan

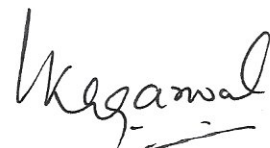
further contends that the trademark registration in respect of ESPN trademark is valid and subsisting as on date. The trademark "ESPN" has acquired tremendous fame, recognition and goodwill worldwide and is associated solely and exclusively with the Complainant's business.

The Complainant is the sole and absolute owner of copyright vesting in all the artistic works forming part of the ESPN trademark. Photocopies of the trademark registration certificates issued by the Trade Mark Registry in India have been filed with the Complaint and marked as Annexure 3.

The Complainant is the owner of some other domain names incorporating the word "ESPN". Some such domain names are <www.espn.com>; <www.espn.net>; <www.espn.in>; <www.espntv.com>; <www.espn.go.com>; <www.espncriinfo.com>. (Annexure 5 to the Complaint). Therefore, the Complainant is well known to its customers as well as in business circles as ESPN all around the world.

It is further contended that in recent times, the domain name has become a business identifier. A domain name helps identify the subject of trade or services that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for ESPN products in India or elsewhere would mistake the disputed domain name as that of the Complainant.

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

A handwritten signature in black ink, appearing to read "K. Gamaal", with a horizontal line underneath.

In support of its contentions, the Complainant has relied on the decision in the cases of *Nevada State Bank v. Modern Ltd., - Cayman Web Dev*, (FA 204063, Nat. Arb. Forum, December 6, 2003); *Target Brands Inc. v. domain.com, rodricks.net.and Rickson Rodricks*, (FA0509000560157, Nat. Arb. Forum); *MySpace Inc. v. Myspace. Bot.*, (FA 672161, Nat. Arb. Forum, May 19, 2005) wherein it has been held that the domain name wholly incorporating a Complainant's trademark may be sufficient to establish identity or confusing similarity.

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 "ESPN". Further the Respondent has not applied for the registration of the mark "ESPN" anywhere in the world.

The Respondent has not indicated his name while registering the disputed domain name. The Respondent/Registrant has been indicated as "Domain Admin." These words do not indicate the correct and true status or identity of the Respondent. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services as a search for the disputed domain name redirects user to an advertiser. The Respondent registered the domain name for the sole purpose of creating confusion, false impression and misleading the customers of the Complainant and the general public using internet facilities.

Regarding the element at (iii), the Complainant contends that the main object

Kagani

of registering the domain name <www.espn.co.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Respondent has obtained registration of this domain name only for the purpose of selling, renting or transferring this domain name for consideration which is in excess of the cost actually paid by the Respondent. The Respondent has neither hosted any data on the disputed domain name nor has it shown any demonstrable preparation to use of the same.

Further that, on June 03, 2016 the Complainant, through its attorney, sent a cease and desist notice to the Respondent by speed post and acknowledgment due and through courier on the address reflecting on the whois registry records. However, the said notice has been received unserved by the Complainant with the remarks "Not known". The said cease and desist notice was also sent on e mail address <www.espn@megaprivacy.com but no response has been received.

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 support of its contentions, the Complainant has relied on the decisions in the cases of *IDBI Fortis Life Insurance Company Limited v. Indian Wizards* [Case No. D2007-1673]; *Yahoo! Inc. v. Feiji Goa* [Case No. D2013-0521]; *Intesa Sanpaolo S.p.A. v. Fortune JSC, Inc.*, [Case No. D2013-0397]; *ING Belgie NV v. Personal use / Andrius Daugela* [Case No. D2013-1272] wherein it has been held that passive holding of a domain name constitutes bad faith. .



B. Respondent

The Respondent has not submitted any response. 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 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.espn.co.in> on December 03, 2010. The Complainant has filed the present Complaint questioning the registration of the disputed domain name by the Respondent only in September 2016. The explanation for the aforesaid delay of about six years in submitting the Complaint is that "The Complainant

Wagawal

has recently become aware that the disputed domain name is registered in the name of the Respondent.” According to the Complaint, the said information has been obtained from a search conducted on June 3, 2016 and August 12, 2016 on the whois.net database. Since no response has been received from the Respondent, no views can be stated on this delay.

The present dispute pertains to the domain name <www.espn.co.in>. The Complainant possesses a number of other domain names with the word “espn” as indicated above. The Complainant is also the owner of the trademark “espn”. 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 Respondent/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.espn.co.in> is confusingly similar or identical to the Complainant’s marks.

B. Rights or Legitimate Interests

According to the Policy and the Rules, 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.

In this case, the response of the Respondent is not available. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. ESPN Inc., is the name of the Complainant. The Respondent is known by the name of Domain Admin. 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 or authorized the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

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.

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 intentionally attempted to attract, for commercial gain, internet users to the disputed website by creating a likelihood of confusion with the Complainant's mark.

The Respondent was aware of the Complainant's registration of the trademark "ESPN". Attempts were made to notify the Respondent about the Complaint

A handwritten signature in black ink, appearing to read "W. Kagan", with a horizontal line underneath.

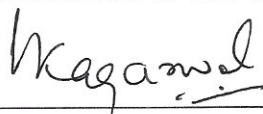
which remained unsuccessful. Further, the Respondent was put on the email and cease and desist notice dated June 03, 2016. However, the Respondent continued to use the disputed domain name and hence the use of the Complainant's trademark "espn" in the disputed domain name by the Respondent is in bad faith.

The complete address of the Registrant/Respondent could not be found and the email address mentioned in the WHOIS record is also not correct. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

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 mark 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.espn.co.in> be transferred to the Complainant.



Vinod K. Agarwal

Sole Arbitrator

Dated November 04, 2016