



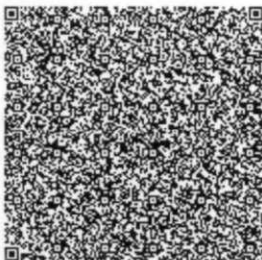
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Certificate No. : IN-DL93520239802877L
Certificate Issued Date : 21-Mar-2013 12:51 PM
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DL DL-SHCIL86615651793585L
Purchased by : A K SINGH ADVOCATE
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : A K SINGH ADVOCATE
Second Party : NA
Stamp Duty Paid By : A K SINGH ADVOCATE
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

Microsoft Corporation,
One Microsoft Way,
Redmond, Washington 98052- 6399

(Complainant)

v.

Sripaskaran Ratansothy
86 Hisey Cres, Toronto,
Ontario, Postal Code M3N1V1

(Respondent)

The Parties

The Complainant in this proceeding is Microsoft Corporation having its registered address at One Microsoft Way, Redmond, Washington 98052-6399. The Respondent in this proceeding is Sripaskaran Ratansothy having his registered address at 86, Hisey Cres, Toronto, Ontario, Postal Code M3N1V1.

The Domain Name & Registrant

The disputed domain name is www.gbing.in registered by Sripaskaran Ratansothy having his registered address at 86, Hisey Cres, Toronto, Ontario, Postal Code M3N1V1.

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.gbing.in.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 26.02.2013, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself the Complainant was directed to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 26.02.2013 with the instructions to file his say latest by 13.03.2013.

On 26.02.2013, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail copy of the complaint was duly sent to the email address as well as the postal address of the Respondent, proof of which was provided to the Tribunal.

On 03.03.2013, I received an email from the Respondent, stating that he is willing to transfer the disputed domain name to the Complainant provided the expenses spent by him to acquire and maintain the disputed domain name for 4 years is paid to him by the Complainant.



On 05.03.2013, the Counsels/Representative of the Complainant by an email stated that since the disputed domain name is acquired by the Respondent fraudulently then they are not liable to pay any expenses to the Respondent for the same.

That I have perused the record and annexures / document.

Factual Background

1. Complainant

The following information is derived from the complaint and the supporting documents filed by the complainant before the Arbitrator:-

The Complainant has contended that it was founded in 1975 and is a worldwide leader in software services and solutions that help people and businesses realize their full potential. The Complainant provides, among other things, consumers and businesses with online search, news, travel shopping and information services under the BING Mark ("BING Services").

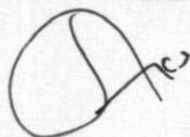
The complainant has registered the BING Mark internationally, including in India and through extensive advertising, distribution and sale of the products and services under the trademark BING, the Complainant has established a very well known reputation and goodwill in the BING trademark in India, since at least as early as 2008.

The Complainant has also contended that it officially introduced the BING Mark to the press and public on May 28, 2009. The BING services were fully deployed and available to the public worldwide by June, 2008 and the complainant continues to provide BING services worldwide.

The Complainant has further stated that it is the owner of the top level domain name BING.COM as well as several other country code top level domain names. The domain name www.bing.com leads to an active website.

2. Respondent

The Respondent in the present proceedings is Sripaskaran Ratansothy having his registered address at 86, Hisey Cres, Toronto, Ontario, Postal Code M3N1V1 who has registered the domain name www.gbing.in on 5th August, 2009.



Parties Contentions

a) Complainant

The complainant contends as follows:

1. The respondent's domain name is deceptively similar to the trademark of the complainant.
2. The respondent has no rights and legitimate interest in respect of the registered domain name.
3. The respondent has registered and is using his domain name in bad faith.

a) Respondent

The Respondent has failed to file any formal reply or make any submissions to defend his case despite having adequate knowledge of the institution of the proceedings.

The mere response received from the Respondent via an email dated 03.03.2013 states the following:

"To whom it may concern:

With respect to your e-mail regarding the Gbing.in trade mark. I would like transfer the domain name to complainer because this matter have been going on for past 6months: I am getting stress over this matter. I have spent money out of my pocket for gbing.in domain name for past 4 years. Please pay my expenses and get the domain name transferred.

Yours Sincerely

S.Ratansothy"

Discussions and Findings:

As mentioned above, the respondent has failed to file any reply to the complaint and has not rebutted any of the submissions or the evidence filed by the complainant.

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"*.



As highlighted above ample opportunities have been given to the respondent to file a reply but no response has been received till date. Therefore, the proceedings have been initiated ex-parte and conducted in the absence of the complainant.

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 there under or any law that the arbitrator deems to be applicable"*.

In these circumstances, the decision of the arbitrator is based upon the complainant's assertions, and evidence and inference is drawn from the respondent's failure to file a reply.

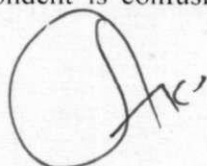
Having perused the submissions and documentary evidence placed on record, the complainant has proved that it has statutory and common law rights in the trademark "BING".

Further, the arbitrator is of the view that the complainant has satisfied all the three conditions outlined in the paragraph four (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 www.gbing.in is identical to, or is deceptively similar to the name, trademark or service mark in which the complainant has rights.**

The Complainant has alleged that the Respondent's domain name incorporates in its entirety the reputed mark BING of the Complainant in which the Complainant has statutory rights as well as rights under common law. It also stated that the Complainant has several country code top level domain name registrations that incorporate its reputed mark BING and thus the consumers and the members of the trade would get confused that the impugned domain name also belongs to the Complainant.

The complainant has stated in its complaint that the domain name www.gbing.in registered in the name of the respondent is confusingly similar and identical to their name/trademark



BING. Therefore, registration of the impugned domain name is violative of the statutory rights vested in Complainant's registered trademarks and is tantamount to infringement. Such unauthorized use of Complainant's domain name by the Respondent amounts to fraud that is done to the faithful customers of the Complainant.

It is also contended that the addition of the alphabet "G" in the Complainants' trademark BING and the country code ".in" (INDIA) makes the resulting domain name GBING.IN confusingly similar to the Complainant's trademark and its domain name www.bing.com, thereby diluting the trademark of the Complainant and causing harm to its reputation.

The Complainant has relied upon the award of SAS Institute Inc. v. Farzad Bahreini, FA0207000115038 (Nat. Arb. Forum, August 26, 2001) (domain name <sasinstitute.us> held confusingly similar to mark SAS INSTITUTE; panel held that the addition of a top level country-code such as ".us" does not create a distinct mark capable of overcoming a claim of identical or confusing similarity).


It is further stated that the complainant is the registered proprietor of the "BING" trademark in numerous countries of the world including India and has gained significant reputation thus its mark can be termed as a well known trademark/brand.

The above submission of the Complainant has not been rebutted by Respondent, as such it is deemed to have been admitted by them.

Even otherwise the above facts and attached annexure(s) establish that the disputed domain name registered in the name of the respondent is identical and confusingly similar to the trademark of the complainant.

ii) The respondent(s) have no right or legitimate interest in the domain name www.gbing.in.

According to the paragraph seven (7) of the .IN Dispute Resolution Policy, the following circumstances show the registrants rights or legitimate interest in the domain name for the purpose of paragraph four (4) sub clause (ii)



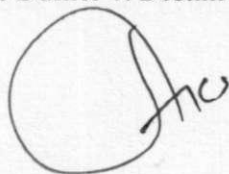
- i) *before any notice to the registrant of the dispute, the registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other 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.*

The Complainant alleges that the disputed domain name comprises the reputed trademark BING in which the Complainant has sole and exclusive interests, it is evident that the Respondent cannot have any rights or legitimate interest in the domain name.

Complainant's further submissions are that the Respondent is not making a legitimate non-commercial use of the domain name as the Respondent is enjoying the benefits of 'pay-per-click' revenues, generated through sponsored links on its website, by misusing the Complainant's well known trade/service mark BING.

Therefore, the Complainant states that the Respondent is not making a legitimate non-commercial or fair use of the impugned domain name. The Complainant has relied upon some notable decisions stating that use of a domain name to post parking and landing pages or 'pay-per-click' links would not of itself confer rights or legitimate interests arising from a "bona fide offering of goods or services" or from "legitimate non-commercial or fair use" of the domain name, especially where resulting in connection to goods or services competitive with those of the rights holder, which are as follows:

1. Lardi Ltd v. Belize Domain WHOIS Service Lt, WIPO Case No. D2010-1437,
2. Compart AG v. compart.com/ Vertical Axis, Inc., WIPO Case No. D2009-0462,
3. MBTI Trust, Inc. v. Glenn Gasner, WIPO Case No. D2009-1428, Express Scripts,
4. Inc. v. Windgather Investments Ltd./ Mr. Cartwright, WIPO Case No. D2007-0267,
5. Sigikid H. Scharrer & Koch GmbH & Co. KG, MyBear Marketing-und Vertriebs
- a. GmbH, Mr. Thomas Dufner v. Bestinfo, WIPO Case No. D2004-0990.



The complainant has also alleged in the complaint that it has not licensed or otherwise permitted the Respondent to use its trade/service mark BING or to apply for any domain name incorporating the said trade/ service mark.

The Complainant has contended that it had its presence in India as early as 2008, BING is not the Respondent's personal name, neither is the Respondent commonly known by the domain name and Respondent is not known to the public under the name BING.

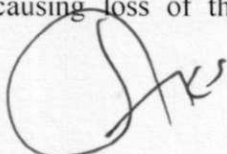
The email of the Respondent dated 03.03.2013 has shown the intentions of the Respondent that the Respondent is willing to transfer the disputed domain name to the complainant only on receipt of money that he has incurred in maintaining the domain name for past 4 years, inference can be drawn that the Respondent has no interest or is nor willing to make any legitimate use of the disputed domain name as he has not done so from the date of registration of the disputed domain name.

The above submission of the complainant has not been rebutted by the respondent, and as such they are deemed to have been admitted by him. The above facts and annexure(s) further establish that the respondent has no legal right or legitimate interest in the disputed domain name under INDRP paragraph four (4) sub clause (ii).

iii) The registered domain name www.gbing.in., is being used in bad faith by the respondent(s).

The Complainant contends that the Respondent's domain name incorporates in its entirety the reputed mark BING of the Complainant in which the Complainant has statutory rights as well as rights under common law. Such unauthorised use of Complainant's domain name by the Respondent amounts to fraud that is done to the faithful customers of the Complainant. Further, the Complainant submits that the addition of the alphabet "G" in the Complainant's trademark BING and the country code ".in" (INDIA) makes the resulting domain name GBING.IN confusingly similar to the Complainant's trademark and its domain name www.bing .com, thereby diluting the trademark of the Complainant and causing harm to its reputation.

The Complainant further submits that the impugned domain name attempts to associate itself to the Complainant's business under the mark BING by incorporating the name of the business in full, thereby causing loss of the Complainant's prime domain name. The



Complainant further submits that it has spent several years building up “search engine trust” in a domain and the malicious intention of the Respondent is evident from the blatant misappropriation of the Complainant’s trade mark BING. The Complainant further submits that in the present instance, any Indian user searching for the Complainant’s business online as BING would come across the Respondent’s domain name, which enhances the possibility of confusion and/or deception particularly since the user would associate the .in domain extension to belong to the Complainant as the proprietor of the domain www.bing.in.

The Claimant submits that the Respondent’s website is not bona fide since the Respondent is trading on the fame and recognition of the Complainant’s reputed trademark in order to cause initial interest confusion and bait internet users to accessing its website and force the Complainant to buy the domain name from the Respondent in order to avoid said confusion as is typically the strategy of such cyber-squatters. The Complainant further submits that the Respondent has not been engaged in any activity to show that it has legitimate rights or interest in the impugned domain name and given that the disputed domain name was registered on 9th August, 2009, it is inconceivable that the Respondent was unaware of the existence of the Complainant at the time of registration.

The Complainant further submits that its BING mark is reputed and the Respondent is presumed to have had knowledge of the Complainant’s mark at the time it registered the confusingly similar domain name. The Complainant submits that this knowledge indicates the Respondent’s bad faith use and registration. Therefore, the Respondent is bound to have had prior knowledge of the fame and reputation of the Complainant’s reputed trademark BING.

It can also be seen from the email of the Respondent dated 03.03.2013 wherein it is clearly stated that the Respondent is willing to transfer the disputed domain name to the complainant only on receipt of money he has incurred in maintaining the domain name for past 4 years, which indicates the intentions of the Respondent that he has no interest or is nor willing to make any legitimate use of the disputed domain name as he without any hassles and much delay agreed for transferring the domain name for monetary gain.

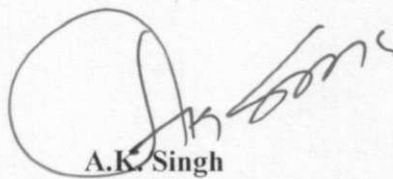
The above submission of the Complainant has not been rebutted by Respondent, as such it is deemed to have been admitted by them. Even otherwise, the above facts and annexure(s) establish that the respondent has registered the disputed domain name in bad faith.



DECISION

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

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. "www.gbing.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 18th April, 2013.

A handwritten signature in black ink, appearing to read 'A.K. Singh', is written over a circular stamp.

A.K. Singh

Sole Arbitrator

Date: 18th April, 2013