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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI-110 019

Google Inc., U.S.A. v. Yashodhan Bhadsawale

AWARD

1. The Parties

The Complainant is Google Inc., 1600 Amphitheatre Parkway, Mountain view, California - 94043, U.S.A.

The Respondent/Registrant is Mr. Yashodhan Bhadsawale, Devrukhe Yuva, 1/5 Vazir Building, Dhobiwadi, Thakurdwar, Girgaon, Mumbai 400 004, India

2. The Domain Name and Registrar

The disputed domain name www.go000gle.co.in is registered with Directi Internet Solutions Pvt. Ltd., dba Public Domain Registry.com (R5 AFIN).

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3. Procedural History

- (a) The Complaint dated 14th October 2009 was filed by the Complainant with the National Internet Exchange of India along with the Registrar verification. The print out of the said Registrar verification (WHOIS Report) is attached with the Complaint as Annexure B. It is confirmed by the said WHOIS Report that the Respondent is listed as the registrant of the disputed domain name and the contact details for the administrative, billing and technical contact for the disputed domain name are that of the Respondent. At the time of registering the domain name, the Respondent has signed an agreement with the Registrar containing an arbitration clause for the resolution of domain name dispute through arbitration. The Exchange verified that the Complaint satisfied the formal requirements of the .IN Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) In accordance with the Rules, on 3rd November 2009 the Sole Arbitrator formally notified the Respondent of the Complaint. The Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by 25th November 2009 (taking 6 days in the transit of the communication). The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex-parte. Not only the Respondent did not submit any response, the postal authorities returned the notification letter as unserved.
- (c) The National Internet Exchange of India appointed Dr. V. K. Agarwal, Advocate and Solicitor, former Law Secretary to the Government of India, M - 104, Dharma Apartments, 2, I.P. Extension, Patparganj, Delhi 110 092 as the Sole Arbitrator to decide the domain name dispute. 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.

4. Factual Background

From the complaint and the various annexure to it, the Arbitrator has found the following facts:

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Complainant's activities

The Complainant's business under the name "GOOGLE" was established in 1997. Further that the complainant's website <www.google.com> was registered on September 15, 1997 and is recognized worldwide as the largest search engine in various countries of the world. It also provides easy to use free service that returns relevant results within seconds. On the Complainant's website the users can check information on various multiple subjects. The said website also provides opportunity to deliver measurable, cost effective online advertising. The complainant also provides a number of software applications including 'GOOGLE DESKTOP' search software, etc.

The Complainant, it is stated, not only provides services to business and customers in India, but has also set up Research and Development Centers in Hyderabad and Bangalore in India. It also has branches in National Capital Region (Gurgaon) and Mumbai that are designated to develop business opportunities, provide locally relevant products and services.

Respondent's activities

The Respondent did not file any reply 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 Article 4 of the Policy are applicable to this dispute.

In relation to element (i) that is, the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, the Complainant contends that it is known amongst its customers worldwide as GOOGLE. Further that, by offering similar services in an identical format it can be concluded that the Respondent's intention is to take advantage of the goodwill and reputation enjoyed by the Complainant's trademark/domain name GOOGLE. The mere addition of letters "oo" to google does not differentiate the two domain names. The words "google" and "goooogle" are phonetically similar and are pronounced similarly.

In relation to element (ii) that is, the Respondent has no rights and legitimate interests in respect of the domain name, the Complainant contends that the Respondent (as an individual, business or other organization) has not been commonly known by the name or mark GOOOOGLE or for that matter as GOOGLE. Further that, the Respondent is not making a legitimate or fair use of the said domain name for obtaining goods or services. The Respondent registered the said domain name for the sole purpose of creating confusion and misleading the general public and the customers/users of the Complainant's domain name.

Regarding the element at (iii), that is, the Respondent's domain name has been registered or is being used in bad faith, the Complainant contends that the main object of registering the domain name <www.qooooogle.co.in> by the Respondent is to earn profit and to mislead the general public and the customers/users of the Complainant's domain name. The Complainant has stated that the use of the domain name that appropriates the well known name or mark to promote competing or infringing products cannot be considered a "bona fide offering of goods and services".

B. Respondent

The Respondent did not file any reply to the Complainant. Hence, the Respondent's contentions are not known.

6. Discussion and Findings

The Rules instructs this Arbitrator as to the principles to be used in rendering its decision. It says that, "an arbitrator shall decide a complaint on the basis of the statements and documents submitted to it and in accordance with the provisions of the Arbitration and Conciliation Act 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable."

According to the .In Domain Name Dispute Resolution Policy, the Complainant must prove that:

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- (i) The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no right or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

A. Identical or confusingly similar

The Complainant has obtained trademark registration for its mark "GOOGLE" in many countries of the world. In India, the Complainant's mark "GOOGLE" was registered on March 12, 1999 under No. 845041 in respect of class 09 items, namely, "Computer hardware, computer software for searching, compiling, indexing and organizing information within individual workstations, Personal computer or computer networks; Computer software for electronic mail and facilitating workgroup communications over computer networks; computer software for creating indexes of information's, websites or other resources and all other goods included in class 9."

The Complainant's trademark "GOOGLE" is also registered/pending registration in many countries including Australia, African Intellectual property organization, Algeria, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Republic of Korea, Egypt, Fiji, France, Ghana, Hong Kong, Hungary, Indonesia, Iran, Israel, Japan, Malaysia, Netherlands, United kingdom, etc. A full list of such countries is given in Annexure F and Annexure G to the Complaint.

The present dispute pertains to the domain name <www.goooogle.co.in>. The Complainant has business interests in many countries and it uses the trade name GOOGLE in these countries. The Complainant's mark and domain name GOOGLE is a coined word and highly distinctive in nature. As such, consumers looking for GOOGLE may instead reach the Registrant's website. Therefore, I hold that the domain name <www.goooogle.co.in> is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

According to the Policy, the Registrant 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 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 Respondent has registered the disputed domain name on 20th May 2009. The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed name 'gooooole' anywhere in the world. GOOGLE is the name and mark of the Complainant. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name. Based on the default and 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 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:

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- (i) 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 documented out of pocket costs directly related to the domain name; or
- (ii) 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
- (iv) 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 its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites. Further, the Complainant has submitted that the registration of the domain name <www.gooooole.co.in> cannot be incidental. The intention of the Respondent is primarily to register the domain name so as to offer it to a third party for sale. Therefore, the registration of the disputed domain name is in bad faith.

The Complainant has also sent a Cease and Desist notice to the Respondent on the contact details provided in the WHOIS records. Thereupon, the Respondent telephonically informed the Complainant that he has closed the site. The Respondent thereafter also sent a letter to the Complainant confirming that he has closed down the website and assured that he will cooperate towards resolution of the matter. Thereafter, no response has been received

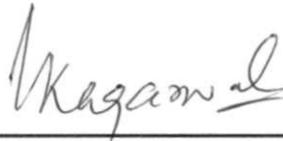
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from the Respondent. Thus, Respondent can at any time activate the domain or sell or transfer to a third party.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. As the Respondent has failed to rebut this presumption, I conclude that the domain name was registered and used in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the disputed domain name is confusingly similar to the domain name of the Complainant in which the Complainant has rights, 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 Policy and the Rules, the Arbitrator orders that the domain name <www.google.co.in> be transferred to the Complainant.



Vinod K. Agarwal

November 27, 2009