



## AWARD

### 1. The Parties

The Complainant is Singhania University, Pacheri Bari, Jhunjhunu, Rajasthan – 333515, India.

The Respondent is Vikram Singh Parihar, Markerr Films, C/o Regional College, First Floor, Dhanraj Plaza, Main Road, Chandrapur, Maharashtra, India - 442402.

### 2. The Domain Name and Registrar

The disputed domain name is <singhaniauniversity.in>. The said domain name is registered with the Registrar – Endurance Digital Domain Technology LLP (IANA ID: 801217). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: DB9A2813282A943A6B01917960B65F67F-IN
- b. Date of creation: May 19, 2022.
- c. Expiry date: May 19, 2024.

### 3. Procedural History

- (a) A Complaint dated 22.11.2023 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that 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 the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 18.12.2023 by email. The Arbitrator served the Notice under Rule 5(C) of

INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 18.12.2023. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 18.12.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. According to the Complainant's emails dated 19.12.2023 / 20.12.2023, the Complaint with annexures was sent to the Respondent through email on 19.12.2023 and Speed Post on 20.12.2023. In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent has not responded to the Notice. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

#### 4. Factual Background

The Complainant in this arbitration proceedings is Singhania University, Pacheri Bari, Jhunjhunu, Rajasthan – 333515, India.

The Complainant is a statutory university established by an Act of the Rajasthan legislature, being the Singhania University, Pacheri Bari (Jhunjhunu) Act, 2008 (Act No. 6 of 2008) dated 29th March 2008 ("Singhania University Act"). Vide Section 1(3) of the Act, the Act was deemed to be enforced w.e.f. 21st October 2007, and as such, the name "Singhania University" has been continuously used by the Complainant since its establishment on 21st October 2007. Thus, the Complainant is the established user of the name and trademark "Singhania University".

The Complainant, 'Singhania University' is also recognized as a 'University' under Section 2(f) of the University Grants Commission Act, 1956 ("UGC Act"). Under Section 23 of the UGC Act, only an institution established by an act of the Central, Provincial or State Legislature may be called a 'University'. Since the Complainant was established under the Singhania University Act of the State of Rajasthan, the Complainant is allowed to use the word 'University' in its name. Hence, the word "Singhania University" refers only to the Complainant, and to no other entity. The Complainant is the bona fide proprietor of the name and trademark "Singhania University".

The Complainant submits that while the Complainant does not have any registered trademarks, the Complainant is the established prior user of

the name and trademark “Singhania University”, which is bonafidely adopted and has been in use since the deemed enforcement of the Singhania University Act on 21st October 2007. Further, the Complainant is the only entity in the world to possess the exclusive right to use the name “Singhania University”. Furthermore, the Complainant is also the owner and operator of the domain names <singhaniauniversity.co.in> and <singhaniauniversity.ac.in>, which have been registered since the year 2007 and 2015 respectively.

### **Respondent’s Identity and Activities**

The Complainant claims that the Registrant of the Impugned Domain Name “Singhania University” is one “Markerr Films” of Maharashtra, India. Thus, the present Respondent is “Markerr Films, Maharashtra, India”.

The Impugned Domain, <singhaniauniversity.in> directs to a landing page with links to other unrelated universities and study portals which is misleading the gullible public. Such links on the Respondent’s website change regularly meaning the Respondent is actively using the website with an intention to misrepresent and misdirect the genuine internet traffic of the Complainant for illegal gains.

The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

## **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 submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

According to the Complainant:

- a) The Complainant has been established by an Act of the Rajasthan State Legislature vide the Singhania University Act dated 29th March 2008, with its enforcement deemed to be w.e.f. 21st October 2007, and as such, the name “Singhania University” has been continuously used by the Complainant since its establishment on 21st October 2007. Thus, the Complainant is the established proprietor and prior user of the name and trademark “Singhania University”.

- b) While the mark "Singhania University" is an unregistered trade mark, the Complainant, on account of being established by an Act of the State Legislature of Rajasthan, is the only entity allowed to use the trade mark "Singhania University".
- c) Since both the Complainant and the Respondent are entities based in India and are governed by Indian laws, both the Complainant and the Respondent are bound by the Trade Marks Act, 1999 of India. It is imperative to note that Section 27(2) of the Trade Marks Act, 1999 allows for remedies against the tort of passing-off of unregistered trademarks. It is therefore submitted that the unauthorized registration of the impugned domain name <singhaniauniversity.in> is a deliberate and mala fide act of passing off of the Complainant's unregistered trademark.
- d) Singhania University has been established with a commitment to impart quality education of world class standards, reflecting the latest advances in the field of education and research with state-of-the-art academic and administrative infrastructure. For this purpose, Singhania University offers world-class infrastructure, highly qualified and dedicated faculties, and excellent environment for academic and intellectual growth.
- e) Singhania University has been providing quality education of world class standards since its foundation and as a result thereof, has acquired enviable goodwill and reputation in the relevant field throughout India and worldwide.
- f) The Complainant is the bona fide user and owner of the <singhaniauniversity.co.in> and <singhaniauniversity.ac.in> domains, and the impugned domain <singhaniauniversity.in> is confusingly and deceptively similar to the other domains owned and operated by the Complainant in a bonafide manner.
- g) It is further submitted that as per Section 23 of the University Grants Commission Act, 1956 (Act No. 3 of 1956) of the India, the word "University" may only be used by an institution established by a Central, Provincial or State Act. The same has been extracted below for ease of reference:
- "23. No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever: Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word "University" associated with its name."

- h) The Complainant, therefore, argues that the Respondent, an entity based in India, while not being a university established under the Act of a Legislature, cannot be entitled to register the domain name comprising the word “University”, and hence, the Respondent’s registration of the domain name is motivated and malafide.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <singhaniauniversity.in>.

The Complainant submits:

- a) The Respondent, not being a “University” established under the University Grants Commission Act, 1956, is not entitled to register any domain name containing the word University.
- b) The Complainant is the only entity / institution operating under the trade mark “Singhania University”, and has been established under the Act of the Rajasthan State Legislature, being the Singhania University, Pacheri Bari (Jhunjhunu) Act, 2008 (Act No. 6 of 2008) dated 29th March 2008.
- c) The Respondent has no rights under Indian law, nor does it have any legitimate interest in respect of the domain name <singhaniauniversity.in>, and the Respondent has squatted over the impugned domain name for motivated and mala fide purposes.
- d) The impugned domain name <singhaniauniversity.in> provides links to other universities and entities providing educational services, showing that the Respondent does not intend to offer any goods or services, and have merely registered the domain name for the mala fide purpose of squatting and for other mala fide purposes on the Complainant’s name, with an intent to extort money and for illegal gains.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- a) The Respondent, while not being a “University” under the University Grants Commission Act, 1956, has squatted on the impugned domain name <singhaniauniversity.in> bearing the Complainant’s unregistered trade mark “Singhania University”.

- b) The Respondent has registered the impugned domain in a mala fide manner, and is hosting website in the said domain providing links external websites which may or may not be genuine and which could be used for spamming and phishing purposes. This indicates the bad faith registration and use of the impugned domain.
- c) Both the Complainant and Respondent are entities based in India and are bound by Indian laws.
- d) The acts of the Respondent in registering the impugned domain name <singhaniauniversity.in> is an act of passing off under Section 27(2) of the Trade Marks Act, 1999.
- e) The impugned domain name was registered primarily for the purpose of disrupting the business of the Complainant. By using the domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site 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 web site or location or of a product or service on the Respondent's web site or location.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

## **B. Respondent**

The Respondent has neither responded to the Notice nor submitted his reply.

## **6. Discussion and Findings**

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties 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 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 that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being

used in bad faith.

#### **A. Identical or Confusingly Similar**

The disputed domain name <singhaniauniversity.in> was registered by the Respondent on May 19, 2022.

The Complainant is an owner of the registered trademark Singhanian University for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. 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. In the present case the disputed domain name is <singhaniauniversity.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, [2004Supp. (2) SCR 465] held that the domain name has acquired the characteristic of being 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 Singhanian University products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <singhaniauniversity.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### **B. Rights or Legitimate Interests**

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 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; or
- (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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not Singhanian University as per WHOIS details. 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.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark Singhanian University or to apply for or use the domain name incorporating said trademark / service mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <singhanianuniversity.in> under INDRP Policy, Para-4(ii).

#### **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 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

- (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 the 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 contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe* - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute 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 trademark 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 domain name was registered in bad faith

and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <singhaniauniversity.in> be transferred to the Complainant.

No order to the costs.



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**Prabodha K. Agrawal**

**Sole Arbitrator**

Dated: 3<sup>rd</sup> Jan, 2024