



தமிழ்நாடு தமில்நாடு TAMILNADU
26153
27/9/12

Rs. 100/-
Sridhar

AK 527192
V. SINGARAVEL
STAMP VENDOR
L.C. NO. 5/83/99
PERIAMBET, CHENNAI-3

BEFORE THE INTERNATIONAL EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR: S SRIDHARAN

DATED: 20TH SEPTEMBER 2012

Media Temple Inc - - - Complainant

- Vs -

Media Temple, new delhi - - - Respondent

Sridharan
Arbitrator

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 20th September 2012

Media Temple Inc, United States of America ... Complainant

Versus

Media Temple, New Delhi ... Respondent

1. The Parties

1.1 The complainant Media Temple Inc, is an entity organized and existing under the laws of the United States of America at 8520 National Blvd # A Culver City, CA 90232 United States of America represented by Jack Cornman, Attorney at Law of Cornman & Swartz, 19800 MacArthur Blvd, suite 800, Irvine, CA 92612.

1.2 Respondent is Media Temple at C-2/118, Ashok Vihar, New Delhi -110052.

The Domain Name and Registrar

1.3 The disputed domain name < mediatemple.in > is registered with Directi Internet Solutions Pvt. Ltd. (R5- AFIN).

2. Procedural History

2.1 On 16th July 2012, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 22nd July 2012, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.

2.2 On 29th July 2012, I received hardcopy of the Complaint.

2.3 On 31st July 2012, I sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me. Since no email address of the Respondent is found in the who-is data, I directed both the Complainant and NIXI to serve hard copy of the complaint to the Respondent and give him 15 days' time to file his response to the complaint. They were advised to file proof of service.

2.4 NIXI has immediately sent me a copy of the notice sent to the Respondent. There was no response from the Complainant about his compliance of my directions.

2.5 On 26th August 2012, I reminded the Complainant whether he complied with my directions.

2.6 On 29th August 2012, I have received soft copy of the Complaint.

2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

3.1 The Complainant is the owner of the United States federally registered trademark MEDIA TEMPLE and identified further as follows: United States Federal Service Mark Registration No. 2,478,206. A copy of such registration is attached at Exhibit A. Further, Complainant has been

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using the MEDIA TEMPLE mark and the domain name "Mediatemple.net" since 1999, to provide webhosting and related services. The Complainant provides and offers such services in India as well as throughout the world. Complainant also has a registration application for the mark Media Tempe pending in the European Union and Canada. They also have a registration for such mark issued to it in the following countries: Japan and the United States of America.

3.2 The United States federal government has granted the Complainant exclusive use of the MEDIA TEMPLE trademark in connection with "computer services, namely, creating and maintaining web sites for others." Furthermore, for a number of years commencing in 1999, Complainant has been continuously and actively using this trademark by promoting and selling its webhosting and related services using the MEDIA TEMPLE trademark in the United States and throughout the world, including, without limitation, the country of India, and thereby built up considerable goodwill in the mark. Complainant has also invested a substantial amount of money and resources to establish and enhance the value of the MEDIA TEMPLE trademark throughout the world. Complainant currently provides its web hosting services to well over one hundred thousand customers including thousands in countries outside of the United States.

3.3 As a result of the Complainant's exclusive use of the MEDIA TEMPLE mark, it has developed significant consumers throughout the world.

3.4 Complainant is the prior adopter of the mark MEDIA TEMPLE and the Complainant has both common law and statutory rights in respect of its trademark MEDIA TEMPLE.

3.5 Respondent has been using the disputed domain name < mediatemple.in > and the Respondent's website bearing such name promotes web hosting services as one of its "three core services areas". A snapshot copy of Respondent's webpage attached at Exhibit C which clearly states that its core services includes web hosting.

3.6 Such use of the disputed domain name < mediatemple.in > by Respondent infringes upon Complainant's registered mark. Further, such misuse of the MEDIATEMPLE mark and name by Respondent will cause confusion among customers and damage the considerable goodwill that Complainant has acquired in the MEDIA TEMPLE mark.

B Respondent

3.7 I am the registrant of domain name "mediatemple.in" I was running this domain "mediatemple.in" since 2007. In 2007 "website designing companies" were commonly known as "Interactive Media" So i chose the word "Media" from this phrase only. I am a Hindu by religion and "Temple" is a very important place in my life. It is a place where I worship. So I chose word "Temple" resulting in "mediatemple" & because of my location i.e. India (.in) It becomes "www.mediatemple.in"

3.8 Before this domain from 2004 to 2007, I own "www.swastikcreations.in" which was also chosen by me by the same criteria as above. As you can see swastik is also a religious symbol for Hindus in India and creation is a synonym of designing. But in 2007 I leave "swastikcreations.in" & taken "mediatemple.in" because it was available.

4. Parties Contentions

A Complainant

4.1 The disputed domain name < mediatemple.in > registered in the name of the Respondent, is identical or confusingly similar to the Complainant's service mark MEDIA TEMPLE because the two names are virtually identical and will cause confusion in the marketplace because both names are promoting the same service, namely webhosting services.

4.2 The Disputed Domain Name is identical to Complaint's trademark MEDIA TEMPLE and therefore, a domain name that is identical to and wholly incorporating a registered mark should be sufficient to establish identity or confusing similarity for purposes of the Policy.

4.3 Respondent should be considered as having no rights or legitimate interests in respect of the Disputed Domain Name because Complainant has had rights in its MEDIATEMPLE

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trademark since 1999 and because Respondent has copied the name and knowingly acknowledges such similarity and confusion by stating as such in its website as follows: "Please Note: We have not related in any means to Media Temple, USA (www.mediatemple.net) & Its trademark "MT". We are India based company." A copy of such webpage from Respondent's webpage is attached at Exhibit D.

4.4 Because of the Complainant's established use of the Media Temple trademark for more than 13 years, it is exceeding unlikely that the Respondent is commonly known by this trademark.

4.5 Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the MEDIA TEMPLE Trademark. Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark.

4.6 Respondent is using the Disputed Domain Name < mediatemple.in > in connection with a website that provides the same webhosting services that are provided by Complainant and which services by Respondent compete with those webhosting services offered by Complainant under its MEDIA TEMPLE Trademark. Such use is clearly not bona fide under the Rules and, therefore, does not confer upon Respondent any rights or legitimate interests in the Disputed Domain Name < mediatemple.in >.

4.7 Respondent has never acquired any trademark or service mark rights in the Disputed Domain Name < mediatemple.in > and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name < mediatemple.in >.

4.8 Respondent has made an illegitimate, commercial, unfair use of the Disputed Domain Name < mediatemple.in >, with intent for commercial gain misleadingly to divert consumers or tarnish Complainant's MEDIA TEMPLE Trademark. Respondent acknowledges that the use of the disputed domain name < mediatemple.in > will confuse customers because Respondent states on its website that it is not the same company as Complainant. Nevertheless, Respondent using the Disputed Domain Name < mediatemple.in > is offering web-hosting services that compete with the web hosting services offered by Complainant under its MEDIA TEMPLE Trademark. Such use is clearly for commercial gain and obviously misleads consumers into believing that Respondent's website using the Disputed Domain Name is somehow associated with Complainant and Respondent is clearly intending to divert business from Complainant.

4.9 Therefore Respondent should have no rights or legitimate interests in respect of the Disputed Domain Name < mediatemple.in >.

4.10 Because Respondent knew that its domain name was confusingly similar or the same as Complainant, as indicted in part by their admission of such similarity on their website such domain name registration under the INDRP and use of such Disputed Domain Name by Respondent should be considered as actions taken in bad faith.

4.11 Respondent has further acted in bad faith under the INDRP because the Respondent has intentionally attempted to attract Internet users to the Respondent's website 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.

4.12 There is no doubt that Respondent knew of Complainant's MEDIA TEMPLE Trademark when it registered the Disputed Domain Name, leading to evidence of bad faith. MEDIA TEMPLE Trademark is a well-known internationally recognized mark registered in numerous countries and regions worldwide.

4.13 A further indication of bad faith under the Rules is the fact that Complainant's rights in the MEDIA TEMPLE Trademark pre dates Respondent's registration of the Disputed Domain Name by approximately 8 years.

4.14 Because of Complainant's established rights in the MEDIA TEMPLE Trademark in numerous countries and regions worldwide, the fact that Disputed Domain Name is identical to

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the MEDIA TEMPLE mark and the fact that Respondent knew the Disputed Domain Name was the same name for identical web hosting services, Respondent's actions suggest bad faith in violation of the Rules. Therefore the Disputed Domain Name should be considered as being registered and bad faith.

B. Respondent

4.15 Before February 2012, I was totally unaware of mediatemple.net's presence. From 2007 to February 2012, no one ever objected me. In the month of March 2012, the Complainant raised objections and from my side within 2 months the objected pages are removed. I am unable to understand when the pages were removed then what the issue that remains open now is.

4.16 I don't want to sell the domain & very much interested in running a business of "TRAVEL" but because mediatemple.net are starting there hosting business in India & seeking this domain so I offer them 3000 USD. As I am maintaining this domain from last 5 years. If they have any issues with this domain "mediatemple.in" they should have objected to this domain name in 2007 itself. Why they are objecting now?

4.17 Also the Complainant already offered 1000 USD to me for buying this disputed domain name < mediatemple.in > I have mail received from them. I am attaching the mail conversation with Complainant.

5. Discussion and Findings

5.1 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

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

5.2 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.3 Complainant is the proprietor of the mark Media Temple. Complainant has been using Mediate Temple mark in respect of webhosting and related services since 1999. The Complainant's services are available in India. The Complainant has registration for its mark Media Temple under Registration No. 2,478,206 dated 14th August 2001 and its trade mark applications are pending for registration in the European Union and Canada. Complainant registered its domain name www.mediatemple.net on 20th July 1999. The disputed domain name < mediatemple.in > was registered on 25th August 2007. Obviously, the Complainant is the prior adopter and registrant of Media Temple mark. The above facts have established that the Complainant has both common law and statutory rights in respect of its Media Temple mark.

5.4 Considering the prior adoption of the trade mark Media Temple and the worldwide large scale usage by the Complainant, the Respondent's argument that he has taken media from interactive media and temple from Hindu religion has no force. He has not actually come out with any acceptable reason for combining the terms from "interactive media" and "Hindu mythology".

5.5 The Complainant's Media Temple is famous throughout the world including India. It is clearly seen that the disputed domain name < mediatemple.in > wholly incorporates the prior registered Media Temple mark of the Complainant. The disputed domain name < mediatemple.in > is similar to the Complainant's domain name www.mediatemple.net.

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5.6 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its Media Temple mark.
- (b) The disputed domain name < mediatemple.in > is:
 - (i) Identical to the Complainant's prior trademark Media Temple and
 - (ii) Similar to the Complainant's domain name www.mediatemple.net

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark Media Temple. The Complainant's Media Temple mark is well known in many countries across the globe including India.
- (b) The Complainant's Media Temple mark was adopted in the year 1999. It was registered in the United States of America in 2001. The disputed domain name < mediatemple.in > was registered by the Respondent only on 25th August 2007.

5.8 It is unlikely that the Respondent was unaware of Complainant's existence of trademark rights before registering the disputed domain name < mediatemple.in >.

5.9 Today I have visited the web site of the Respondent under the disputed domain name < mediatemple.in >. In the web pages attached to the complaint, the Respondent had categorically made the statement: "Please Note: We have not related in any means to Media Temple, USA (www.mediatemple.net) & Its trademark "MT". The Respondent has now removed that statement along with other contents and instead has put the insertion: *for any queries, please contact mediatempleindia@gmail.com*. It is obvious that the Respondent never intended to use the disputed domain name < mediatemple.in > in connection with a bona fide offering of goods or services.

5.10 The above conduct of the Respondent has clearly established that he has no rights or legitimate interests in the disputed domain name < mediatemple.in >. The argument of the Respondent that he was unaware of the Complainant's business until 2012 has no force and is not acceptable. The Complainant had earlier complained and the Respondent had removed some web pages also.

5.11 Because of the Complainant's established use of the Media Temple trademark for more than 13 years, it is exceeding unlikely that the Respondent is commonly known by this trademark. Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the MEDIA TEMPLE Trademark. Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark.

5.12 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name < mediatemple.in >.

Respondent's domain name has been registered or is being used in bad faith.

5.13 The Complainant is the prior adopter and user of the mark Media Temple. The Complainant's Media Temple mark is well known in many countries across the globe

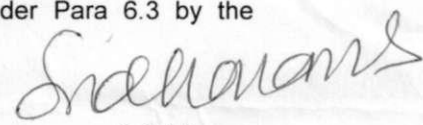
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including India. The Complainant's Media Temple mark was adopted in the year 1999. It was registered in the United States of America in 2001. The disputed domain name <mediatemple.in> was registered by the Respondent only on 25th August 2007.

- 5.14 There is no doubt that Respondent knew of Complainant's MEDIA TEMPLE Trademark when it registered the Disputed Domain Name <mediatemple.in>, leading to evidence of bad faith. MEDIA TEMPLE Trademark is a well-known internationally recognized mark registered in numerous countries and regions worldwide.
- 5.15 Respondent has intentionally attempted to attract Internet users to the Respondent's website 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. It constitutes bad faith registration.
- 5.16 Respondent had previously registered "www.swastikcreations.in" on the same criteria as above. Respondent has not answered why he sold that domain name all of the sudden and had picked up the disputed domain name. It defies any commercial sense. But this strongly indicates that the Respondent is actively involved in buying and selling of domain names for huge profits.
- 5.17 As stated above, the Respondent has removed all web pages from his site with an insertion: *for any queries, please contact mediatempleindia@gmail.com*. This has amply showed that he has no interest in continuing with his business using the disputed domain name <mediatemple.in> any further.
- 5.18 Thus it is clearly established that Respondent registered the disputed the disputed domain name <mediatemple.in> in bad faith.
- 5.19 The parties have voluntarily entered into dialogue after the filing of the Complaint without any intimation to me. A few days back, the Respondent informed me about this and sent me an email of the Complainant to the Respondent. During the post complaint negotiation, the Complainant has agreed to pay the Respondent USD 1000 for transferring the disputed domain name <mediatemple.in> to the Complainant. Respondent has incurred some amount towards registration and renewals for five years. Considering the expenses incurred by the Respondent in registering and keeping alive the disputed domain name <mediatemple.in>, I order the Complainant to pay Rs.50,000/- to the Respondent towards cost of the Complaint.

6. Decision

- 6.1 For all the foregoing reasons, the Complaint is allowed as below.
- 6.2 It is hereby ordered that the disputed domain name <mediatemple.in> be transferred to the Complainant.
- 6.3 Complainant is ordered to pay the Respondent a sum of Rs.50,000/-(Rupees fifty thousand only) towards costs of the proceedings.
- 6.4 The transfer of the disputed domain name <mediatemple.in> to the Complainant under Para 6.2 shall take effect only after the payment of costs under Para 6.3 by the Complainant to the Respondent.



S.Sridharan
Arbitrator