



महाराष्ट्र MAHARASHTRA

26 SEP 2011

ES 693703

अनुक्रमांक ६५९९ दिनांक..... रुपये 100/-

मुद्रांक कोणत्या कारणासाठी वापरावयाचा आहे.....

मुंबई मुद्रांक अधिनियम १९५८ चे अनुच्छेद क्र.....

मुद्रांक वापरणाराचे संपूर्ण नाव.....

संपूर्ण पत्ता.....

हस्त व्यक्तीचे संपूर्ण नाव.....

पत्ता.....



नरेशभास्कर

मुद्रांक धारकाची/

हस्त व्यक्तीची सही

स्वाक्षरी

(सौ. सुचेता सु. देशपांडे)

मुद्रांक विक्रेता

परवाना क्र. हवेली २/८/१९९५

परवान्याची मुदत ३१/३/२०१२

१८३ अ/२, कसबा पेठ, पुणे-११.

**AWARD
IN ARBITRATION**

Maruti Suzuki India Ltd.
Plot No.1, Nelson Mandela Road
Vasant Kunj, New Delhi. 110070.

THE COMPLAINANT

AND

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR

DELIVERED ON THIS 26th DAY OF SEPTEMBER TWO THOUSAND ELEVEN AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- | | |
|--|--|
| 01. Names and addresses | Maruti Suzuki India Ltd. |
| Of the Complainant: - | Plot No.1, Nelson Mandela Road.
New Delhi. 110070. |
| Through its authorized
representative | L.S.Davar & Co.
5/1, First Floor, Kalkaji Extension
New Delhi. 110019. |
| 02. Name and address of
The Respondent: - | Mrs.Divya Poduval
117, Nelson Manickam Road,
Amnjikarai, Chennai. 600029. |

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	19/08/2011
02	Acceptance given by me	19/08/2011
03	Hard copy of the complaint received	29/08/2011
04	Notice of arbitration issued	30/08/2011
05	Submission of say by the Respondent	07/09/2011
06	Submission of rejoinder by the Complainant	15/09/2011
07	Submission of rejoinder by the Respondent	23/09/2011
08	Award	26/09/2011

I] PRELIMINARY:

- 1) M/s Maruti Suzuki India Ltd., having its registered office at Plot NO.1, Nelson Mandela Road, Vasant Kunj, New Delhi 110070, **(The Complainant)** have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**mgp.co.in**' (**the disputed domain name / domain name**), through its authorised representative M/s L.S.Davar & Co., having their office at 5/1, First Floor, Kalkaji Extension, New Delhi, 110019.
- 2) The Complainant has disputed registration of domain name '**mgp.co.in**' in the name of **Ms. Divya Poduval, 117, Nelson Manickam Road, Amnjikarai, Chennai, 600029. (The Respondent)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 30th August 2011 with the instructions to file his say latest by 9th September 2011.
02. The Respondent filed her reply to the Complaint by 7th September, 2011.
03. Thereafter the notice was sent to the Complainant to submit his rejoinder, if any, latest by 14th September 2011.
04. The Complainant filed rejoinder by 15th September 2011.
05. Thereafter the Respondent was given opportunity to file her rejoinder latest by 23rd September 2011 which was accordingly filed.
06. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
07. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT: -

(A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- a) The Complainant is a public limited company duly incorporated under the Companies Act, 1956 in India. It is one of the leading automobile manufacturers and the market leader in the car segment. It offers 13 brands and over 150 variants of cars including Maruti 800, Alto, Ritz, Star, Swift, Wagon R, Estilo, DZire, SX 4 etc.
- b) The Complainant is also a manufacturer of genuine parts of automobiles under the trademark MGP (Maruti Genuine Parts) in which component Maruti is derived from the trading name of the Complainant. This company is a subsidiary of Suzuki Motor Corporation, Japan, which owns 54.2% of Maruti Suzuki. The rest is owned by public and financial institutions.
- c) The Complainant is listed on Bombay Stock Exchange and National Stock Exchange in India
- d) The word 'mgp' is an integral / prominent component of subject domain name which is registered Trademark of the Complainant and which was adopted in 1989. The said Trademark is registered vide registration No.677876 dated 24.08.1995 and the Complainant is using the said Trademark since 03.12.1989 in India. It stands duly renewed on the date of filing of the Complaint.
- e) The Trademark 'mgp' is based on trading name of the Complainant in which M denotes Maruti which is well known trademark of the complainant and has about 21 trademarks registrations throughout the world including India.
- f) The approximate sales of the Complainant, during the past 5 years, have grown from Rs.11891 M in 2005-06 to Rs.289585 M in 2009-10.
- g) The goods sold and offered by the Complainant under the trademark Mgp(L) are of excellent quality and thus have acquired reputation and goodwill throughout the world including India.
- h) The Complainant is exclusive proprietor of trademark Mgp along with wing device in respect of the aforesaid goods.
- i) In terms of Paragraph 3(b)(VI)(1) of the .IN Domain Name Resolution Policy the domain name 'mgp.co.in' is identical to the registered trademark mgp(L) of the Complainant.

- j) In terms of Paragraph 3(b)(VI)(2) of the said policy the Respondent has no right or legitimate interest in respect of the impugned domain name.
- k) In terms of Paragraph 3(b)(VI)(3) of the said policy the Respondent has adopted the impugned domain name with dishonesty and bad faith with the mala-fide intention to trade upon the goodwill and reputation associated with the trademark mgp.co.in of the Complainant.
- l) Apparently the Respondent has registered the impugned domain name for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant, who is the proprietor of the Trademark mgp(L) or to a competitor of the Complainant for a valuable consideration.
- m) By using the impugned domain name, the Registrant has intentionally attempted to attract internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's trade name or trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.
- n) The Complainant has attached copies of fresh certificate of incorporation consequent upon change of name of the company, list of Trade mark applications in various countries, registration certificate in respect of trade mark 'Maruti', and certificates of trade mark registrations in various other countries. The Complainant has also submitted a copy of registration certificate dated 24th August 1995 of Trade Mark No.677876 in class 12 and also a copy of renewal upto 24.08.2015 containing its winged Maruti word accompanied by the words GP. If read in combination it reads as MGP.

IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent / Registrant has filed say / reply. In her reply the Respondent has submitted following points for consideration as her defense: -

- 1. MGP Associates Private Limited (formerly Vibration Engineers & Consultants Pvt. Ltd.) was incorporated under the Companies Act, 1956 in March 1986.
- 2. The company has changed its name on 28.06.2004 to MGP Associates Private Limited by combining initials of its Managing Director and founder Mr.M.G.Poduval, a renowned expert in the field of machine maintenance engineering.
- 3. The company is known as MGP as a brand name. Ms.Divya Poduval is the director of the company and eldest daughter of Mr.M.G.Poduval.

4. The Respondent is a prior user of the word MGP which is derived from the name of founder Managing Director Mr.M.G.Poduval.
5. The Respondent or the said company is not manufacturers or dealers of any components or parts and our business scope has nothing to do with automobile parts and as such there is no question or possibility of encashing on the goodwill of the Complainant.
6. The Respondent has the right and legitimate interest in respect of the domain name as MGP is the personal and surname of the Respondent.
7. The domain name has not been adopted with dishonesty and bad faith or with any false intent to trade upon the goodwill and reputation associated with the Complainant.
8. The Respondent has no intentions of selling, renting or transferring the domain name to the Complainant or any other person.
9. The Respondent has denied all the allegations of the Complainant.

VJ REJOINDER OF THE COMPLAINANT: -

The complainant has filed his rejoinder in which he has raised following additional points:-

1. The reply dated 07.09.2011 submitted by Mr.M.G.Poduval is not maintainable and cannot be read as the domain name in dispute is registered in the name of Ms.Divya Poduval.
2. In absence of strict proof in support of the contention that Ms.Divya Poduval is the Director of company and is the eldest daughter of Mr.M.G.Poduval is denied.
3. The averments to the effect that Respondent is not manufacturer or dealer of any component or has nothing to do with automobile parts is not a defense to escape their malafide intention.
4. The Complainant adopted the trademark 'mgp' since December 31, 1989 and also filed an application for registration on August 24, 1995 and obtained registration which is valid and in force. The Complainant is regularly advertising in magazine, newspaper, FM radio and general public recognised that the component 'mgp' belongs only to the Complainant and none other.

The Complainant has also attached few copies of advertisement material pamphlet, magazine etc. to his rejoinder.

VI] REJOINDER FILED BY THE RESPONDENT / REGISTRANT

The Respondent has filed her rejoinder to reply to the complaint and has raised following additional points: -

1. The reply was filed by Mr.M.G.Poduval, Managing Director of MGP Associates Private Limited, which is a company duly incorporated under the provisions of the Companies Act, 1956 and hence is valid for consideration.
2. Ms.Divya Poduval, being qualified engineer and director of the MGP Associates Private Limited, was entrusted with the responsibility to register the disputed domain name and the said registration was done for the organization and not for herself.
3. The word 'mgp' was coined and is derived from the initials of Mr.M.G.Poduval which is as per prevailing English language practice.
4. Mr.M.G.Poduval is popularly known by his initials mgp. He has served many big names like Bharat Heavy Electricals Ltd. in Indian industrial sector. He was President of SKF Bearings Ltd. which is a multinational company. Later on he started his own advisory business and incorporated MGP Associates Private Limited. Being learned, expert and reputed person in his field, his name was also used by companies like IBM in their advertisements. He is National Vice-President of Indian Institution of Plant Engineers. He is also visiting faculty at IIT, Madras at Chennai and other colleges and institutions. To sum up he has earned good credit as a respectable person and hence his initials are important to his company, clients and others.
5. Ms.Divya Poduval is a Director of MGP Associates Private Limited and in support of this an extract from RoC records is attached. Similarly she has attached a copy of her PAN card where at the place of Father's name the name of Mr.M.G.Poduval appears.
6. The Respondent is prior user of the word MGP and hence no one else can claim it.
7. If the Complainant is a prior user of the word MGP and also registered trade mark in the same name, why it did not register disputed domain name at that time.

In support of her contentions, the Respondent has attached copies of the following documents: -

- a. List of customers of MGP Associates Pvt. Ltd.
- b. Extract of signatory details from the portal of Ministry of Corporate Affairs dated 22.09.2011

- c. Copy of Economic Times ad wherein Mr.Poduval's name appears
- d. Copy of her PAN card
- e. Visiting cards of Mr.Poduval and Ms.Poduval as Directors of MGP Associates Pvt. Ltd.
- f. Fresh Certificate of Incorporation dated 28th June 2004 issued by the Registrar of Companies, Chennai in evidence of change of name of the company from Vibration Engineers & Consultants Pvt. Ltd. to MGP Associates Pvt. Ltd.

VII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has been commonly known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	Yes
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	No
07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	No

08	Has the Registrant 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?	Yes
09	Whether the Registrant has engaged in a pattern of such conduct?	No
10	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	No
11	Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?	Yes

VIII] BASIS OF FINDINGS: -

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'mgp' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademark of the Complainant which was adopted in 1989. The said Trademark is also registered vide registration No.677876 dated 24.08.1995 and the Complainant is using the said Trademark since 03.12.1989 in India. The Complainant has also filed copies of various ads and details of ad material which has been regularly published on Radio, in newspapers, magazines and journals.

Against this the Respondent has no registered trade mark or service mark consisting of the word 'mgp'.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.
Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant is Miss. Divya M. Poduval. She has not commonly been known by the domain name 'mgp'.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

According to the Respondent the word 'mgp' are initials of her father Mr.M.G.Poduval, who has been a reputed and expert engineer. He has served many big industries and has been serving as advisor a host of companies including very reputed companies in India. He is also a founder / Director of MGP Associates Private Limited. Though she has been applicant for registration of domain name, she has done it in her capacity as expert Director of MGP Associates Pvt. Ltd. Moreover she is a natural daughter of Mr.M.G.Poduval whose initials have been taken together while registering the domain name. She has also furnished copies of her PAN card, extract from MCA portal regarding directors etc.

Therefore my finding on this issue is affirmative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

When I visited the website created by the Registrant, it appeared that the main thrust is on real estate and realty activities, though the name of the company suggests advisory activities as the main activity. There is no link to any of the websites of the Complainant nor there is any attempt to suggest any patronage of the Complainant to this site.

Therefore my finding on this issue is negative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

The Registrant has been using the domain name for its business purpose which is totally different from the business of the Complainant. The Registrant has never offered to the Complainant, directly or indirectly, to sell, transfer or rent the domain name to him or to his competitor for valuable consideration. The Complainant also has not alleged in his complaint or rejoinder to this effect. On the contrary the Registrant has been contesting vehemently for retaining the domain name with her.

Therefore my finding on this issue is negative.

8. Has the Registrant 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?

The main business activity of the Registrant is totally different than the business activity of the Complainant. However registration of disputed domain name in her name has prevented the owner of the trade mark or service mark from using it for its purpose.

Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has engaged in a pattern of such conduct?

Though there is a dispute regarding the entitlement to the disputed domain name, there are no traces of the Registrant having engaged in the pattern of such conduct. There is no such allegation made by the Complainant also.

Therefore my findings on this issue are in negative.

10. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

There is a difference in businesses of the Complainant and Registrant. There is no link established on the Registrant's website connecting to the Complainant's website or products. I am therefore of the opinion that there was no intention of the Registrant to attract internet users by creating confusion in their minds.

Therefore my finding on this issue is negative.

11. Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?

According to the whois lookup on www.registry.in the Registrant registered disputed domain name on 05.09.2008. The Complainant has not furnished details of serving notice upon the Registrant before filing this Complaint with NIXI. Currently the website is all up and functioning well for the purpose of the Registrant's business.

Therefore my finding on this issue is in affirmative.

IX] BASIS OF AWARD: -

If we analyze major events and chronology of the same following points emerge: -

- a. Mr.M.G.Poduval incorporated company in the name Vibration Engineers and Consultants Private Limited on 10th March 1986. The name of the company was changed to MGP Associates Private Limited on 28th June 2004. Against this the Trademark 'mgp' was put to use by the Complainant in 1989 and was also registered in 1995. Thus even after assuming, for the sake argument, relevance of the Registrant to the word 'mgp', it is much later than the registration of the trademark by the Complainant.
- b. Ms.Divya Poduval was appointed as Director on 20th March 2008 in MGP Associates Pvt. Ltd. This appointment is also after a substantial period from the registration of trademark by the Complainant.
- c. The disputed domain name 'mgp.co.in' was registered on 5th September 2008 by Ms.Divya Poduval. This registration is also after a substantial period from the registration of trademark by the Complainant
- d. Against this the Complainant had registered its Trade Mark on 24th August 1995. Thus it can be inferred that the Complainant's use of the trade mark which consists of the word MGP was much prior to any direct / indirect relation established of the Registrant with the said word. Thus the Complainant happens to be prior user of the word 'mgp'.
- e. Sunrise policy announced by NIXI on 20th December 2004 giving preferential treatment to holders of registered trademarks / service marks for registration of relevant domain names. The same policy continued in .IN Domain Name Dispute Resolution Policy (INDRP), except where the Registrant also has been using the domain name prior to registration of trademark/service mark by the Complainant or has similar trademark / service mark.
- f. There are some technical issues / lacunae that the Registrant herself is not known by the word 'mgp'. Similarly her nexus to the word mgp is rather remote as compared to one of the Complainant to the registered trademark and resultantly to the disputed domain name. The reply filed by Mr.M.G.Poduval is not tenable since he is not the Registrant and bad for misjoinder.
- g. Though the Complainant could not establish mala fides of the Registrant in registering the disputed domain name, the Registrant also could not establish her bona fides fully, within the INDRP framework.
- h. Considering all the facts, issues raised and discussed above and averments of both the Complainant and the Registrant, I am of the opinion that the balance of convenience is more in favour of the Complainant.

On the basis of issues, findings on the same and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.mgp.co.in and hence the same be transferred to the Complainant.
02. No orders as to the costs of these arbitral proceedings.

Dated: - 26.09.2011
Place: - Pune


(S.C. NAMDAR)
SOLE ARBITRATOR