

महाराष्ट्र MAHARASHTRA

2017

SN 209863

प्रधान मुद्रांक कार्यालय, मुंबई
प. मु. वि. क्र. ८००००२०

23 JAN 2018

सक्षम अधिकारी

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

श्रीमती. एस. हि. मसूरकर

Navi Mumbai International Airport Private Limited
v/s

...Complainant

Sugra

...Respondent

In the matter of Disputed Domain Name <NaviMumbaiAirport.in>.

1 The Parties

The Complainant is Navi Mumbai International Airport Private Limited, Office of the Airport Director, Terminal 1-B, 1st Floor, Chhatrapati Shivaji International Airport, Santacruz (E), Mumbai – 400 099, represented by Dr. Kalyan C. Kankanala, Advocate.

The Respondent is Sugra, Banjara Hills, Hyderabad, Telengana – 500 034.

[Signature]

2 Procedural History

- 2.1 A Complaint dated May 10, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently 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 (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. 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.
- 2.3 On June 16, 2018, the Arbitrator had directed the Respondent to file her reply to the Complaint on or before July 1, 2018. On July 2, 2018, the Arbitrator had sent the final reminder to the Respondent with direction to file reply on or before July 9, 2018. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed *ex-parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 The Government of India in July, 2007 had given its "in-principle" approval for the development of a greenfield international airport at Navi Mumbai. In turn, the Government of Maharashtra in July, 2008 had notified the City and Industrial Development Corporation of Maharashtra Limited ("CIDCO") as the nodal agency to act on its behalf to undertake the development of Navi Mumbai International Airport approved by the Government of India under the Public Private Partnership ("PPP") framework.
- 3.2 The Complainant was incorporated in 26th March 2007 with the objective of designing, constructing, building, financing and operating the NAVI MUMBAI INTERNATIONAL AIRPORT through PPP model with CIDCO. NAVI MUMBAI INTERNATIONAL AIRPORT or NMIA as it is popularly known, is the second international airport being developed for the Mumbai Metropolitan area after the existing Chhatrapati Shivaji International Airport. The Complainant is currently engaged in design, construction, operation and maintenance of NAVI MUMBAI INTERNATIONAL AIRPORT.



- 3.3 Ever since the Government of Maharashtra announced its intention to design, develop, construct, finance and operate a new international airport at Navi Mumbai, the Complainant and its marks NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED and NMIA were extensively reported by the print, television and digital media and continues to be the subject of reports and discussions till date.
- 3.4 On December 22, 2017, the Complainant had applied for registration of the marks NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED and NMIA under classes 8, 9, 12, 16, 18, 20, 24, 25, 32, 35, 36, 37, 39, 42 and 43. But till date, these marks are not registered.
- 3.5 The disputed domain name <NaviMumbaiAirport.in> was registered on March 21, 2008.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical or confusingly similar to its trademark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

- 5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.
- 5.2 According to the INDRP, the Complainant must prove that:
- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
 - (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
 - (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant's trademark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED is an unregistered trademark in India but most of the pending applications for registration of the same will be declared as registered in the next one or two months. Prior the Uniform Dispute Resolution Policy ("UDRP") panels have held that it is possible to obtain

unregistered trademark rights to a trade name sufficient to satisfy the requirements of paragraph 4(a)(i) of the UDRP¹. Further, prior UDRP panels have found the use of a term in connection with specific products can give rise to unregistered trademark rights². The Complainant is currently engaged in design, construction, operation and maintenance of NAVI MUMBAI INTERNATIONAL AIRPORT³. Due to continuous and uninterrupted use and widespread media presence, the mark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED has become a distinctive identifier of the Complainant and the public at large associate the mark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED exclusively with the Complainant. Thus, the Complainant has acquired common law rights over the trademark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED. The Disputed Domain Name <NaviMumbaiAirport.in> incorporates the dominant and essential portions of the Complainant's trademark and the generic top-level domain ".in". It is well-established in various decisions under the UDRP and the INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. In *Airport Authority v. Hong Kong Airport Inc Case No D2001-1417*, the WIPO Panel held that the disputed domain Hong Kong Airport is confusingly similar to the Complainant's Hong Kong International Airport Mark. The Panel observed that in Hong Kong there is only one airport and the absence of the word "international" from the domain name is insignificant to the members of the public and hence insufficient to prevent consumer confusion. Therefore, the Arbitrator finds that the Disputed Domain Name <NaviMumbaiAirport.in> is confusingly similar to the Complainant's trademark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED.

- 1 G. Bellentani 1821 S.p.A. v. Stanley Filoramo, WIPO Case No. D2003-0783 (reasoning that "it is possible to obtain unregistered trademark and/or service mark rights to a trade name and unregistered trademark and/or service mark rights are sufficient for the purposes of paragraph 4(a)(i) of the Policy"); see also Nu Mark LLC v. Bui, Long, WIPO Case No. D2013-1785 (finding complainant's trade name "Nu Mark" had become a distinctive identifier associated with its business and products on its website and thus demonstrated complainant's unregistered trademark rights).
- 2 See *Uitgeverij Crux v. W. Frederic Isler*, WIPO Case No. D2000-0575 (finding that complainant demonstrated unregistered trademark rights in a term based on evidence that complainant had been using the mark in association with its business for years prior to the registration of the domain name in dispute); see also *Endeavors Technology, Inc. v. Dick In Jar*, WIPO Case No. D2001-0770 (finding that complainant's use of a term as a trade name in connection with its product on its website was sufficient evidence that complainant had tied its business name to its product in advertising and promotion and, consequently, was sufficient evidence of complainant's rights in the trade name as an unregistered trademark).
- 3 In *Sydney Opera House Trust v. Trilynx Pty Limited* WIPO Case No. D2000-1224, the WIPO Panel found that the body corporate charged with the management and administration of the centre for performing arts was entitled to use the mark SYDNEY OPERA HOUSE as a common law trade mark. Moreover, in *BAA PLC, Aberdeen Airport Limited v. Mr. H Hashimi* Case No. D2004-0717, the WIPO Panel found that the complainant has common law rights over the mark Aberdeen Airport.

Q. J. M. M.

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that the Complainant has not authorized or licensed the Respondent to use the trademark "NAVI MUMBAI AIRPORT". The use of a domain name that is identical or confusingly similar to a trademark that applies to products or services provided by a Respondent is not a bona fide use if the domain name serves as a "bait" to attract customer to Respondent's website, rather than merely as descriptor of the Respondent's products or services.⁴ The Disputed Domain Name is primarily descriptive of Complainant's services as it incorporates the dominant and essential portions of the Complainant's trademark. The Respondent registered the Disputed Domain Name with the sole intention of earning illegal profits. The Respondent's use of the Disputed Domain Name to divert internet users to a SEDO parking website cannot be deemed as a bonafide use of the Disputed Domain Name⁵. The Complainant has made out a *prima facie* case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent⁶. The Respondent chosen not to challenge the Complainant's allegations.⁷ There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <NaviMumbaiAirport.in>.

5.5 Registered and Used in Bad Faith

The Disputed Domain Name was registered by the Respondent with the primary purpose of selling the Disputed Domain Name. Any person who visits the Disputed Domain Name will be redirected to page with the following message:

Buy This Domain:

The domain navimumbaiairport.in may be for sale by its owner!.

If a visitor clicks on the hyperlink provided along with the text "Buy This Domain", the visitor will be redirected to another domain being www.sedo.com⁸ where the Impugned Domain is listed for sale with minimum offer as 75 GBP. The Respondent's act of demanding an exorbitant amount⁹ from the Complainant which is in excess of the expenses incurred by her itself prove beyond reasonable doubts her malafide intent behind registration and limited use of the Disputed Domain Name. In *Lyonnaise de Banque v.*

4 See Adobe Systems Incorporated v. Domain OZ WIP case no. D2000-057 <adobeacrobat.com> and <acrobatreader.com>

5 In Master Card International Incorporated v. North Tustin Dental Associates Case No D2007-1412, the WIPO panel held that respondent holds no right or legitimate interests over the disputed domain as he has not developed any website at the domain and is therefore not using the domain in connection with offering any goods or services. See Asl Teachers Insurance and Annuity Association of America v. Wrecks Communication Group Case No. D2006-0483.

6 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

7 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.

8 Sedo.com is a domain name and website marketplace and a domain parking provider based out of Cambridge, Massachusetts and Germany.

9 8 figures amount in USD

Richard J Case No D2006-0142, the WIPO panel held that respondent's registration of the disputed domain primarily for attracting internet users to a SEDO parking website amounts to bad faith. The Respondent also follows the same approach by merely parking the domain with www.sedo.com and providing a webpage with sponsored links or links to sponsored links. The Disputed Domain Name is not the only domain that is illegally parked by the Respondent. The Respondent registered four domains comprising of the trademarks owned by the Complainant including the Disputed Domain Name. The details of other domains registered by the Respondent are provided hereunder:

- www.navimumbai-airport.com


- www.nmia.in

- www.nmia.co.in

The Respondent has not yet used or made any demonstrable preparations for using these domains and has merely parked these domains with www.sedo.com. The Respondent's act of registering various domains incorporating the dominant and essential portions of the Complainant's trademark NAVI MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED or NMIA clearly proves Respondent's bad faith. These facts supports the inference that the Respondent deliberately registered and using the Disputed Domain Name using the Complainant's trademark with the intention to exploit it. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. Decision

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <NaviMumbaiAirport.in> be transferred to the Complainant.


Dipak G. Parmar
Sole Arbitrator

Date: July 12, 2018