

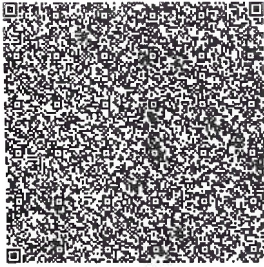


सत्यमेव जयते

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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE No. 1006

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Harini Narayanswamy

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE No. 1006

In the Matter of

**NAVI MUMBAI INTERNATIONAL
AIRPORT PRIVATE LTD.
Terminal 1-B, 1st Floor,
Chhatrapati Sivaji International Airport
Santa Cruz(E)
Mumbai 400099**

Complainant

Versus.

**SUGRA HAIDER
FOR ENQUIRIES CONTACT EMAIL BELOW
Banjara Hills
Hyderabad
Telangana 500034**

Respondent

1. The Parties

The Complainant is Navi Mumbai International Airport Private Limited represented in these proceedings by BananaIP Counsels of Bangalore India. The Respondent is Sugra Haider of Hyderabad, India.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <nmia.co.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Dynadot LLC located in San Mateo United States of America. The Arbitration proceedings are conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

Haider Narayana

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry by email on June 15, 2018 and by courier on June 18, 2018. The Arbitrator sent an email notifying the parties regarding the commencement of the arbitration proceedings on June 20, 2018. In the said notification, the Respondent was given twenty-one days to file the Response. The Respondent requested further time to send the Response and filed the Response on July 18, 2018. The Complainant filed a reply to the Response on July 24, 2018.

4. Factual Background

The Complainant is engaged in the design, construction, operation and maintenance of a greenfield international airport at Navi Mumbai in Maharashtra. It is the second international airport being developed for the Mumbai Metropolitan area. The Complainant was incorporated under the name “Navi Mumbai Airport Developers Limited” on March 26, 2007, for developing and operating the new airport through Public-Private Partnership (PPP) model with City and Industrial Development Corporation (CIDCO) of Maharashtra. The Government of India gave the “in-principle” approval for the airport in July 2007 and Government of Maharashtra approved the same in 2008. The Complainant changed its name to “Navi Mumbai International Airport Private Limited” with effect from November 11, 2017.

The Respondent registered the disputed domain name <nmia.co.in> on October 26, 2016. There is no website functioning from the disputed domain name. The disputed domain name resolves to a parked page, with a message stating: “The domain name nmia.co.in maybe for sale by its owner!”. Clicking on the hyperlink redirects users to SEDO, where a minimum price is specified for the disputed domain name.

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5. The Parties Contentions


A. Complainant's Submissions

The Complainant claims rights in the trademarks NAVI MUMBAI INTERNATIONAL AIRPORT and NMIA. The Complainant states that after the Maharashtra Government announced its intention to construct the new international airport at Navi Mumbai, the Complainant and its trademarks NAVI MUMBAI INTERNATIONAL AIRPORT and NMIA have received extensive coverage by the media. The foundation stone for the project was laid by the current prime minister Shri Narendra Modi on February 18, 2018, which was also widely reported. The Complainant claims rights in the marks by virtue of prior adoption, extensive media coverage and wide publicity it has received.

The Complainant states it has applied for trademark registration for its marks NAVI MUMBAI INTERNATIONAL AIRPORT and NMIA under numerous classes and many of these applications have been accepted and are likely to be registered shortly. The Complainant claims common law rights in the marks due to continuous use and media coverage and relies on the case *BBA PLC Aberdeen airport Limited v. Mr. H Hashimi*, WIPO Case No. D2004-0717.

The Complainant states the disputed domain name is identical or confusingly similar to a trademark in which it has rights. As the Government of India has approved only one airport in Navi Mumbai, the Complainant argues, that the disputed domain name will be associated with the Complainant and it would mislead persons seeking information about the Complainant.

The Complainant states that the Respondent lacks rights or legitimate interest in the disputed domain name. The Complainant argues that the Respondent is not commonly known by the disputed domain name, has no trademark rights and is not authorized to use its mark. The Complainant states that the Respondent has not made any demonstrable preparations to use the disputed domain name for a *bona fide* offering of goods or services, or for any legitimate fair-use purposes. The Complainant states that the Respondent has registered the disputed domain name on the basis of media publicity regarding the project to make illegal profit.



The Complainant argues that the disputed domain name was registered in bad faith and is being used in bad faith, as there is evidence of the Respondent trying to sell the disputed domain name. The disputed domain name resolves to a parked page with an advertisement for its sale that states:

“Buy This Domain.

The domain name nmia.co.in maybe for sale by its owner!”

On clicking the link, the visitor is redirected to SEDO, where the disputed domain name is listed for sale with a minimum offer price of 75 GBP and the page has sponsored links. The Complainant argues that the evidence shows the disputed domain name has been created primarily for purpose of selling, which is recognized as bad faith under paragraph 4 (iii) and paragraph 6 (i) of the INDRP. The Complainant adds that parking the disputed domain name is not considered *bona fide* use.

The Complainant states that on November 16, 2017, an authorized representative of the Complainant contacted the Respondent with intention of acquiring the disputed domain name. Subsequently, the Respondent in an email wrote: *“I am looking for a 10 figures, in dollars, I am willing to accept payment in installments over ten years and hand over full ownership after this period. The domains can be used by you immediately.”* In a further email the Respondent has stated *“Sorry, that is 8 figures US Dollars, not 10 as stated below”*. The Complainant contends the Respondent has registered other domain names: <navimumbai-airport.com>. <navimumbaiairport.in> and <nmia.in> and provided an incomplete address while registering the disputed domain names. The Complainant requests for transfer of the disputed domain name.

Respondent’s Response

The Respondent states the disputed domain name is an acronym domain name registered in good faith and does not infringe any trademark. The Respondent states the trademark for NMIA was registered on December 26, 2017 and NAVI MUMBAI INTERNATIONAL AIRPORT mark is not registered. The Respondent argues that Complainant “did not materialize” until November 2017 and that the Complainant could have used any name for

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their business. The Respondent states that the disputed domain name has been registered long before, and the Complainant is trying to acquire it by “reverse domain name hijacking”.

The Respondent states that the GVK Group won the bid for constructing and operating the airport in Navi Mumbai in early 2017, and that GVK Group is a shareholder in Mumbai International Airport limited (MIAL). The Complainant was then formed by MIAL in November 2017. MIAL has a trademark for Mumbai International Airport since 2012 and does not use the domain names <csia.com>, <csia.co.in>, <mumbaiairport.com> etc. The Respondent argues that the said domain names were not registered by MIAL when it was available and alleges that the registrants of the said domain names ought to be encroaching on the common law trademark rights of MIAL.

The Respondent states that its disputed domain names were registered long ago, whereas the Complainant’s trademark registration is recent. The Respondent argues that for the Mumbai Airport, the Complainant decided the airport name as Chhatrapati Shivaji International Airport, and the domain name as <csia.in>. The Respondent argues that the Complainant decided not to trademark the airport name and the domain name as they got the domain name <csia.in>. The Respondent further argues that as the trademark Mumbai International Airport Private Limited, is not registered, they choose not to use “Mumbai Airport” termed domain names.

The Respondent states for the Navi Mumbai airport, the Complainant decided the airport name as Navi Mumbai International Airport Private Limited and selected the Respondent’s four domain names for their domain names. As the four domain names, <navimumbai-airport.com>, <navimumbaiairport.in>, <nmai.in> and <nmia.co.in> were not available, the Respondent argues the Complainant has “trademarked” NAVI MUMBAI INTERNATIONAL AIRPORT and NMIA recently, to use the Policy to obtain the domain names.

The Respondent argues that the disputed domain name has intrinsic value as an acronym and parking such a domain name is considered legitimate, provided it does not infringe other third-party rights. The Respondent argues that the links on the parking page to which the disputed domain name resolves does not correspond to the services provided by the

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Complainant, and the links are automatically generated based on the semantic meaning of the domain name.

The Respondent argues that the incorporation certificate submitted by the Complainant is for “Navi Mumbai Airport Developers Private Limited”, dated March 2007, of which public or Respondent had no knowledge and questions the Complainant’s assertion of it being a “well-known mark”. As “Navi Mumbai International Airport Private Limited” or NMIA did not exist when the Maharashtra government announced intention to develop a new greenfield airport, the Respondent argues that the mark was formed recently in November – December 2017 when the Complainant approached the Respondent for the disputed domain names. The Respondent claims rights in the four domain names that are claimed by the Complainant, and states these are not identical or confusingly similar to the Complainant’s mark and are registered in good faith.

Complainant’s Supplemental Submissions

The Complainant states it was necessary to file the supplemental submission due to the unanticipated, misleading and irrelevant arguments made by the Respondent. Further, during the pendency of these proceedings, the Complainant states that it has received favorable decisions for three domain name disputes filed against the Respondent and has received trademark registrations for the NMIA mark.

The Complainant refutes the Respondent’s allegation that the disputed domain name was registered before the Complainant’s incorporation, as the disputed domain name was registered in October 2016, whereas the Complainant was incorporated in 2007.

The Complainant argues that the trademark and domain name policy of the Complainant’s shareholders MIAL and GVK have no relevance in this matter. The Complainant refutes the Respondent’s submission that the disputed domain name is a premium acronym domain name and argues that the acronym is not “intrinsically attractive” but has been made attractive due to its association with the Complainant and the Respondent is trying to gain from Complainant’s reputation. The Complainant asserts that NMIA is an acronym of its trademark NAVI MUMBAI INTERNATIONAL AIRPORT and is associated with only the

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Complainant in the aviation industry. The Complainant cites other acronym trademarks such as IBM, NAF NFL, AMEX and WIPO and argues that the Respondent does not have rights in an acronym if a third party has prior rights.

The Complainant refutes the Respondent's argument that its trademark registration for NMIA was received after the registration of the disputed domain name, and states that the Complainant has common law rights in the mark from its inception in 2007. The Complainant argues that due to extensive media coverage and the use of the mark in commerce, it has acquired trademark rights in NMIA although its trademark applications were filed in 2017.

The Complainant states the allegations of Reverse Domain Name Hijacking (RDNH) are unfounded, as Respondent must show that the Complainant had knowledge of Respondent's rights or legitimate interests in the disputed domain name and also show evidence of harassment or similar conduct by the Complainant in the face of such knowledge. The Respondent has not provided any such evidence to prove rights or legitimate interests or RDHN.

The Complainant states the Respondent has erroneously argued that the Complainant was incorporated in 2017 and the document filed is for change of name of the Complainant in 2017. The Complainant has rebutted the Respondent's argument and stated that the Corporate Identity Number (CIN) is the same in the earlier certificate of incorporation of 2007 and in the certificate of name change of 2017.

The Complainant states, that the Respondent had the duty to verify whether the disputed domain name violated any third-party rights prior to its registration. The Complainant further states that the Respondent ought to have known of the Complainant's rights given the widespread media reports. The documents submitted by the Respondent also shows that the Navi Mumbai Airport has been in the planning stages since 1990. In the absence of any business interests in the Navi Mumbai Airport venture, the Respondent lacks rights.

The Complainant rebuts to the Respondent's argument that the present dispute was filed when the Complainant failed in its attempt to purchase the disputed domain names, and states that it is entitled to try for a settlement prior to filing a case. Regarding the Respondent's

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contention that Complainant could have used any other name, the Complainant states that an airport name is determined by the Government of the state, after following due process. In reply to the Respondent's argument that the Complainant should follow the policy of its shareholder MIAL, the Complainant states it is irrelevant to the present dispute. The Complainant adds that it follows independent policies to secure its intellectual property rights, and the policies of its shareholders have no bearing in this matter.

The Complainant states that the Respondent is a habitual cyber-squatter who has registered almost 100 domain names including the domain names <csmirport.com>, <csmia.com> and <csmaimumbai.com> within 3 months of the announcement of change of name of Chhatrpati Shivaji International Airport (CSIA) to Chhatrpati Shivaji Maharaj International Airport (CSMIA). The Complainant requests that the Respondent's claims be rejected.

6. Discussion and Findings

Under the INDRP Policy, the Complainant has to establish the following three elements to obtain the remedy of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainants have rights, and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The term "trademark or service mark" as used in the Policy encompasses both registered and unregistered or common law marks. To establish unregistered or common law rights in a trademark for purposes of the Policy, a complainant must show that its mark has become a

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distinctive identifier that consumers and the public at large associate with the complainant's goods and /or services. The Arbitrator finds that the Complainant has filed sufficient evidence of several news reports that show third party and media recognition of its mark in leading national and international newspapers. Accordingly, on the basis of the evidence, it is found that the Complainant has common law rights in the mark.

The Arbitrator further finds that the Complainant has submitted evidence of its trademark registrations for the NMIA word mark, registered under numerous classes. The Complainant has submitted copies of the registration certificates for its registered marks. The relevant application / registration numbers are:

Registration No.3709737 under class 8, No.3709738 under class 9, No.3709739 under class 12, No.3709740 under class 16, No.3709741 under class 18, No.3709742 under class 20, No.3709743 under class 24, No.3709744 under class 25, No.3709745 under class 32, No.3709746 under class 36, No. 3711285 under class 37, No.3711286 under class 39, No. 3711288 under class 42, No. 3711287 under class 43.

Trademark registration is considered *prima facie* evidence of rights in a mark. On the basis of the evidence submitted by the Complainant, it is found that Complainant has successfully established its rights in the NMIA trademark.

The disputed domain name incorporates the Complainant's NMIA mark in its entirety. It has been consistently held in numerous cases that the use of the entire trademark shall render the disputed domain name identical to the trademark. See for instance *TV Sundram Iyengar and Sons Private Limited, v Raja Manickam*, INDRP Case No. 976 (June 22, 2018), where the use of the TVS mark in the domain name was found to render the domain name identical or confusingly similar to its mark.

The Arbitrator finds that the Complainant has successfully established the first requirement under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

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Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a *prima facie* case, then the Complainant prevails.

The Complainant has argued that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has no authorization to use its mark. The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

The Arbitrator finds there is no evidence on record that show rights or legitimate interest in favor of the Respondent. The Respondent has not presented evidence that any preparations have been made by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name.

The Respondent has asserted that the disputed domain name is an acronym and therefore has rights and legitimate interests in the disputed domain name. Registration of an acronym domain name *per se* and parking it could be legitimate provided the acronym does not encroach any third-party rights. The disputed domain name is an acronym, but it is also a trademark that is owned by the Complainant who has proven rights in the mark. Given the



extensive media reports surrounding the Navi Mumbai airport project, the use of the NMIA mark by the Complainant, the registration of the disputed domain name and three other domain names show the Respondent's intention to ride upon the goodwill and reputation attached to the NMIA trademark. Such registration and use of the disputed domain name is not *bona fide* and does not establish rights or legitimate in favor of the Respondent. Accordingly, on the basis of the evidence and the circumstances discussed, it is found on balance, that the Respondent has not established rights or legitimate interests in the disputed domain name.

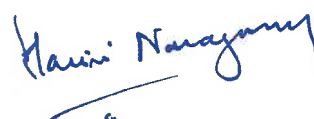
The Complainant is found to have successfully made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second requirement under paragraph 4 of the Policy has been met.

Bad Faith

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

It is well established under the Policy, that the registration of a domain name with the intention of creating confusion in the mind of Internet users and thereby attracting Internet traffic based on the reputation associated with a trademark is considered bad faith registration and use under the Policy. See *PepsiCo Inc. v Wang Shuang*. (<pepsi.in>) INDRP Case No. 400 (December 13, 2012) where it was found that the misleading use of another's trademark in a disputed domain name is considered bad faith under the Policy.

The Arbitrator finds based on the evidence and the circumstances discussed, that the Respondent has exhibited a pattern of registration of domain names that has targeted the Complainant's trademarks. The Respondent has also displayed a pattern of making opportunistic domain name registrations such as registration of the domain names <csmia.com> and <csmiamumbai.com> when the name of the present Mumbai airport, Chhatrpati Shivaji International Airport (CSIA) was changed from to Chhatrpati Shivaji Maharaj International Airport (CSMIA).



The evidence on record also shows that the Respondent intends to sell the disputed domain name with the objective of deriving excessive profits. The Arbitrator finds the Respondent has therefore registered the disputed domain name for the purpose of exploiting the Complainant's rights, which is recognized as bad faith under the Policy.

The Arbitrator notes that the Complainant has obtained favorable decisions with respect to the domain names <navimumbaiairport.in> and <nmia.in> under the INDRP and for the domain name <navimumbai- airport.com>, under the UDRP in the case *Navi Mumbai International Airport Private Limited v. Sugra Haider / Sugra* WIPO Case No. D2018-1146. In line with the reasoning in the above case, the Arbitrator finds that the disputed domain name in the present case was registered in bad faith and is being used in bad faith.

The Complainant has established the third element under paragraph 4 of the Policy.

Decision

It is ordered that the disputed domain name <nmia.co.in> be transferred to the Complainant.



Harini Narayanswamy

(Arbitrator)

Date: Aug 15, 2018