

தமிழ்நாடு தமில்நாடு TAMILNADU

18/36
8/9/15

Harini Narayanswamy
Chennai

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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

In The Matter Between

ACCOR
110 avenue de France
75013 Paris
FRANCE

Complainant

Versus.

Respondent

ASHOK KUMAR
1/406 Varsoya
Andheri Mumbai 400050
Maharashtra
INDIA

Harini Narayanswamy

1. The Parties

The Complainant is Accor, of France, represented in these proceedings by Nathalie Dreyfus of Dreyfus & Associates, France. The Respondent is Ashok Kumar of India.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <novotel-escort.in> (hereinafter referred to as the disputed domain name). The registrar for the disputed domain name is GoDaddy.com, LLC. The Arbitration proceeding is 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”).

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 on October 7, 2015 and on October 13, 2015 transmitted by email, a notification of commencement of the arbitration proceedings to the Respondent. Copies of the said notification were sent to other interested parties to the dispute, as per the INDRP Rules. The Respondent was given twenty-one days from the date of the notification to file a response in these proceedings.

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Factual Background

The Complainant is a leading international hotel chain that owns the NOVOTEL trademarks. The present dispute is based on the Complainant's NOVOTEL trademarks. Details of some of the registered trademarks are:

Country	Trademark	Number	Class	Date
INDIA	NOVOTEL	1244252	42	October 17, 2003
INDIA	NOVOTEL	1244249	42	October 17, 2003
INDIA	NOVOTEL	1518686	42	January 8, 2007

The Complainant also owns the domain names: <Novotel.com> registered on April 10, 1997 and <Novotel.in> registered on February 26, 2005.

The Respondent registered the disputed domain name <novotel-escort.in> on September 16, 2014. The Respondent did not file a response and there is other no information about the Respondent except the information provided in the Whois domain name registration records.

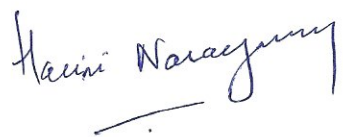
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The Parties Contentions

A. Complainant's Submissions

The Complainant states it is a world leader in economic and midscale hotels and a leading player in luxury and upscale hospitality services. The NOVOTEL brand was started in 1967 in the four-star hotel category. The Complainant states that it operates more than 3700 hotels in 94 countries worldwide and has over 495,000 rooms. Its portfolio of trademarks includes: PULLMAN, M-GALLERY, NOVOTEL, SUITE NOVOTEL, MECURE, IBIS, IBIS STYLES, IBIS BUDGET and THANASA SEA AND SPA.

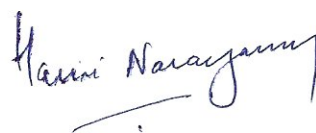
The Complainant states it has a presence in India with 31 owned, leased and managed hotels having about 5965 rooms and employs about 1431 persons. The NOVOTEL brand has about 400 hotels worldwide and 12 of these are in India. NOVOTEL hotels are located in the heart of international cities, business districts and in tourist destinations. It is constantly expanding with the opening of hotels in places like Phuket (Thailand), Moscow (Russia), Lodz (Poland), Danang (Vietnam), Goa (India), Panama (Panama), Dubai (United Arab Emirates), Salvador (Brazil). In 2013 – 2014, the brand opened new hotels in Rotterdam (Netherlands), London Brentford (England), Jeddah Tahlia Street (Saudi Arabia), Rio de Janeiro (Brazil), New Delhi (India), Tangerang (Indonesia) , Melaka (Malaysia) , Yangon (Myanmar), Phuket (Thailand), and there are plans to open another 128 hotels by 2018.

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The Complainant states it noticed the disputed domain name and the linked website proposing escort and sexual services in India, and on August 31st, 2015 sent a cease and desist letter to the registrant of the disputed domain name requesting the adult content on linked website be removed. The Complainant states it has filed the present Complaint on the grounds:

The disputed domain name is identical and confusingly similar to its well known trademark, and it reproduces the mark in its entirety. Previous panels have found that the NOVOTEL mark is well known in the hotel business. (See WIPO Case 2013 - 1729, WIPO Case DCO 2011-0004). The Complainant argues the incorporation of a well known mark in its entirety is sufficient to find confusing similarity. The additional generic term “escort” and hyphenation is insufficient to avoid likelihood of confusion with the mark. Further, its trademark is used widely around the world and the public may assume that the disputed domain name is owned by Complainant.

The Complainant states the Respondent lacks rights and legitimate interests in the disputed domain name as the Respondent is not commonly known by the Novotel name and is not affiliated with the Complainant. The Respondent is not authorized or licensed by the Complainant to use the mark. The Respondent has not demonstrated use of made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to a parking page displaying commercial links some are related to hotels, booking websites and inexpensive accommodation. The website resolves to a page that offers services from female escorts depicted in a sexual manner. “Whois” searches revealed that the Respondent has


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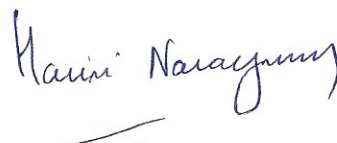
registered around 50 domain names reproducing well known trademarks such as GOOGLE, RADDISON, RAMADA, and SONY. Given these circumstances, the Complainant argues, it cannot be inferred that the Respondent is making legitimate use of the disputed domain name or has any rights in it.

The disputed domain name has been registered and is being used in bad faith asserts the Complainant. It is implausible that the Respondent was unaware of the Complainant's well known NOVOTEL trademark.

Reproducing the mark in entirety in a domain name where the mark is so obviously connected to the Complainant, suggests opportunistic bad faith states the Complainant. Furthermore, the Respondent has represented to the registrar at the time of registration that the disputed domain name does not infringe third party rights. The Respondent owns fifty other domain names reproducing famous trademarks and this shows the Respondent ought to have been aware of all those trademarks including the Complainant's mark. The Respondent is using the disputed domain name to attract Internet traffic to his website offering escort services by deliberately confusing users as to source. This may lead to tarnishing the mark and is evidence of bad faith. The Complainant requests for transfer of the disputed domain name with costs.

B. Respondent's Submissions

The Respondent did not submit any response. The Arbitrator notes from the material on record, that the case documents have been sent to the Respondent at the contact address provided by the Respondent in the registration records. These have been returned unserved.


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Discussion and Findings

Under the INDRP Policy the Complainant has to establish the following three elements to succeed in the proceedings:

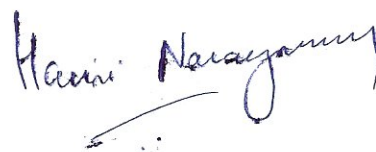
- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in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

Identical or Confusingly Similar

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

The Complainant has filed details of its trademark registrations for the NOVOTEL marks in India. Trademark registration is *prima facie* evidence of rights in the mark. Based on the evidence filed by the Complainant, it is found that the Complainant has demonstrated and established it has rights in the NOVOTEL trademarks in these proceedings.

The disputed domain name incorporates the Complainant's mark NOVOTEL in its entirety, along with the word "escort" preceded by a hyphen and the ccTLD ".in". The Panel agrees with the Complainant's

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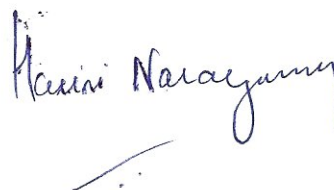
submissions that the additional generic word “escort” with a hyphen does little to distinguish the trademark from the disputed domain name. The disputed domain name is found confusingly similar to the mark which is the distinctive part of the disputed domain name.

Accordingly, it is found the Complainant has satisfied the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

The INDRP Policy requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The Policy provides the Respondent an opportunity to rebut the Complainant’s contention and demonstrate any rights and legitimate interests in the disputed domain name by filing a response. The Respondent has not availed the opportunity to file a response in these proceedings.

The Complainant has argued that the Respondent has not been known by the disputed domain name or any name similar to it. The Complainant further argues that the Respondent is not a *bona fide* adopter and has no rights and legitimate interests in the disputed domain name. The Respondent’s intention is to take advantage of the Complainant’s reputation, to confuse the public and tarnish the reputation of the Complainant. The disputed domain name has pay per click links to make unjust gains. The Respondent is not authorized, licensed or allowed by the Complainant to use the mark.

A handwritten signature in blue ink, reading "Haimi Narayany". The signature is written in a cursive style with a long horizontal stroke at the end.

The Arbitrator finds there is no evidence on record that shows the Respondent has used the disputed domain name in a *bona fide* manner or that the Respondent has been commonly known by the disputed domain name or used it in connection with any legitimate use. The Complainant has stated that no authorization has been given to the Respondent to use its trademarks or any variant of its marks. Given the circumstances where the Respondent is found to be offering escort services by using various domain names with other famous trademarks, the un-refuted allegations of the Complainant prevails: that the Respondent ought to have registered the disputed domain name for the trademark value of the Complainants' mark, and lacks rights or legitimate interest in the disputed domain name containing the trademark of the Complainant.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds the Complainant has established the second element under paragraph 4 of the Policy.

Bad Faith

The third element of paragraph 4 of the INDRP Policy requires the Complainant to establish the domain name was registered in bad faith or is being used in bad faith.

The evidence on record shows: (i) The trademark NOVOTEL has been extensively used by the Complainant and is associated with the Complainant (ii) The Complainant already has a well-established business presence globally under the said mark prior to the registration of

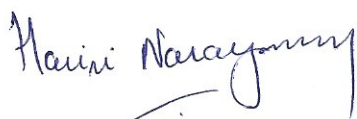
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the disputed domain name (iii) The Complainant has demonstrated the reputation, fame and popularity of the mark (iv) The evidence on record and circumstances show the Respondent does not make any *bona fide* use of the disputed domain name but has placed pay per click links on the website and posted adult content to derive gains based on the Complainant's mark.

The Arbitrator finds based on the evidence, that the Complainant has established that the Respondent has used the domain name to intentionally attract Internet users to its website by creating a likelihood of confusion with the trademark of the Complainant, which is considered bad faith registration and use of the disputed domain name under the Policy. The Complainant is found to have satisfied the third requirement under paragraph 4 of the Policy.

Decision

In light of all that has been discussed, it is ordered that the disputed domain name <novotel-escort.in> be transferred to the Complainant .



Harini Narayanswamy

(Arbitrator)

Date: December 7, 2015