



தமிழ்நாடு தமில்நாடு TAMILNADU

17134

30.4.2015

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Ravindran  
Chennai

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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: APRIL 30, 2015

Park Hospitality Worldwide LLC

Carlson Parkway, P.O. Box 59159

Minneapolis, Minnesota

United State of America

COMPLAINANT

VERSUS

1

2015

**Kristin Frankfurter**

Grabengasse 1

Heidelberg

Brandenberg 69117

Germany

**RESPONDENT**

**DISPUTED DOMAIN NAME: "PARKPLAZA.IN"**

**1. Parties**

1.1. The Complainant in this arbitration proceeding is Park Hospitality Worldwide LLC, represented by Punita Bhargava, Inventure IP, Delhi.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Kristin Frankfurter.

**2. The Dispute:** The domain name in dispute is parkplaza.in. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Webiq Domains Solutions Pvt. Ltd.

**3. Calendar of Major Events:**

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	10.03.2015
2.	Date on which consent was given to act as an Arbitrator	10.03.2015



3.	Date of appointment of Arbitrator	<b>12.03.2015</b>
4.	Date on which the Hard copy of the complaint was received	<b>13.03.2015</b>
5.	Date on which notice was issued to the Respondent	<b>16.03.2015</b>
6.	Due date for filing of Counter Statement by the Respondent	<b>23.03.2015</b>

#### 4. Procedural History

4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).

4.4. On March 24, 2015, NIXI informed the Arbitrator that the notice to the respondent is undelivered being lying at destination due to incomplete address of consignee (respondent) and the courier agency are not able to contact the respondent on the given number.

4.5. On March 24, 2015, the Arbitrator advised NIXI that in accordance to Rule 2(a)(ii) of INDRP Rules of Procedure to send the Complaint in electronic form (including annexes to the extent available in that form) by e-mail to the e-mail addresses shown in the domain name's registration data through .IN REGISTRY's WHOIS function at [www.registry.in](http://www.registry.in); and [postmaster@\[the contested domain name\]](mailto:postmaster@[the contested domain name]). This was done by NIXI on March 24, 2015.

4.6. Paragraph 2(a) of the Rules provides that it is the provider's responsibility to employ reasonably available means calculated to achieve actual notice to the Respondent. The paragraph further provides that this responsibility is discharged by sending the Complaint to all postal-mail and facsimile addresses shown in the domain name's registration data through .IN Registry's WHOIS database at [www.registry.in](http://www.registry.in) and to any other address notified to the sender by Respondent or provided by Complainant. The Panel is of the opinion that in the light of the information available to it, NIXI has employed all means reasonably available to it to achieve notice to Respondent.

## **5. Factual Background:**

5.1. The Complainant is a part of the Carlson Rezidor Hotel Group, an acknowledged worldwide in the hospitality industry. The Carlson Group has more than 1350 hotels and resorts in operation or under development, spanning more than 105 countries. It owns a portfolio of hotel brands including 'PARK INN', 'RADISSON', 'PARK PLAZA', 'RADISSON BLU' and 'COUNTRY INN & SUITES BY CARLSON' hotels and also manages an extensive hotel loyalty program. The Complainant's predecessors have been using the PARK PLAZA brand since the year 1989. Since then the Complainant and the Carlson Group have expanded the brand globally with PARK PLAZA hotels in over 45 locations. In India, the first PARK PLAZA hotel became operational in 1996. As on date there are more than ten PARK PLAZA hotels in cities across India.

5.2. The respondent registered the disputed name <PARKPLAZA.IN> on January 07, 2013.

## **6. Parties Contentions**

### **6.1. Complainant's Submission:**

6.1.1. The Complainant has registered its trademark PARK PLAZA and its variants in numerous countries in classes 42/43. In India, the Complainant has obtained registration for PARK PLAZA & logo in class 42 under no. 1239471 and has applied for registration of the PARK PLAZA (word) under no. 2101636 in class 43.

6.1.2. The Complainant owns over 80 (eighty) domain names which incorporate the PARK PLAZA mark such as <parkplaza.com>, <parkplaza.biz>, <parkplaza.info>, <parkplaza.co.in>, <parkplaza.co.at>, <parkplaza.com.ar>, <parkplaza.eu>, etc.

6.1.3. In January 2013, the Complainant learnt that the disputed domain name had been registered by the Respondent and that the Respondent offered the disputed domain name for sale on a website [www.sedo.com](http://www.sedo.com). Subsequently, the Respondent has on multiple occasions approached the Complainant offering to sell the disputed domain name. The disputed domain name currently redirects to a webpage hosted by [www.sedo.com](http://www.sedo.com) and provides links to online hotel booking portals.

6.1.4. The Complainant argues that the Respondent has no rights and legitimate interests in the disputed domain name, as the Respondent is not known by the disputed domain name. The Respondent as per the records is an individual in Germany. The Respondent does not use the disputed domain name in connection with a bonafide offering of goods or services, but uses it to mislead users for commercial gain. As the Respondent is not making any legitimate use of the disputed domain name it indicates Respondent's lack of rights and legitimate interests in the domain name.



6.1.5. The Complainant states that the disputed domain name was registered and used in bad faith as the Respondent seeks to exploit its famous mark to attract Internet users to the Respondent's website or other online location by creating a likelihood of confusion with the Complainant's trademark. The Complainant states that the Respondent has registered and uses the disputed domain name with dishonesty and bad faith to trade upon the goodwill and reputation associated with the trademark PARK PLAZA to earn undue profit and this is evident, as the Respondent has linked the disputed domain name to the Complainant.

6.1.6. The Complainant requests for the following relief: "that the disputed domain name <PARKPLAZA.IN> be transferred to the Complainant".

**6.2. Respondent:**

6.2.1. The Respondent did not file any reply to the Complaint.

**7. Discussion and Findings**

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

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

**7.3. Identical or Confusingly Similar**

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

7.3.2.It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "PARK PLAZA" in numerous jurisdictions including India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

7.3.3.The disputed domain name incorporates the trademark "PARK PLAZA" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

7.3.4.The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

#### **7.4. Rights and Legitimate Interests**

7.4.1.The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2.The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bonafide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the

domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

7.4.3. The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.4. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bonafide use under the Policy.

7.4.5. The Arbitrator finds the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

## **7.5. Bad Faith**

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons: that the Complainant has well-established rights in the trademark "PARKPLAZA", that the Respondent has intentionally attempted to attract Internet users by creating a likelihood of confusion



with the Complainant's mark as to source of endorsement and affiliation. The Complainant's prior adoption of the mark predates the Respondent's domain name registration by several years and the registration of a name that is so obviously connected with the Complainant indicates the Respondent's opportunistic bad faith. Finally, the Respondent's intention to sell the disputed domain name is apparent from the advertisement for sale of the disputed domain name at a price of USD 6,200.

7.5.3. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "PARKPLAZA". Further, the Complainant's trademark applications were clearly made much before the disputed domain name was registered. The evidence on record show the Complainant's trademark is well known and it is likely that the Respondent was aware of the Complainant's prior rights in the trademark when he registered the disputed domain name. The choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.4. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant.

7.5.5. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration

and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely to attract Internet traffic to the Respondent's website and to mislead customers, which is considered bad faith registration and use of the disputed domain name. The Respondent in the present case is found to have registered the disputed domain name to get undue advantage from the goodwill associated with the Complainant's trademark, and as such is found to have registered and used of the disputed domain name in bad faith, as understood under the INDRP Policy.

7.5.6. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. In a previous decision in the case of Vodafone Group PIC v. Rohit Bansal, Case No. INDRP/052, the facts of which are similar, wherein the Respondent through various e-mails indicated that he would transfer the disputed domain name to the Complainant in exchange for certain costs, the learned Arbitrator held the disputed domain name to be identical and confusingly similar to the registered trademark of Complainant in which the Complainant has rights and the Respondent has no right or legitimate interests in respect of the domain name and the Respondent's domain name has been registered or is being used in bad faith.

7.7. In another decision in the case Intercontinental Hotels Corporation v. Jaswinder Singh, Case No. INDRP/265, the Respondent in the proceeding had not filed any response or submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator. Since no formal response was received from the Respondent the learned Arbitrator proceeded with the award ex-parte and held that the Respondent has got registered and used the disputed domain name in bad faith.

7.8. In the case Intercontinental Hotels Corporation v. Abdul Hamid, Case No. INDRP/278, the facts of which are similar to the present case, the Respondent was using the mark of the Complainant in its entirety and further used the disputed domain name with a website containing links to other hotels that compete with the Complainant's business. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and internet users that the disputed domain name may refer to the Complainant. The Arbitrator found that 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.

7.9. The abovementioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by him.

## **8. Decision**

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <PARKPLAZA.IN> to the Complainant without any cost.

8.3. The Award is accordingly passed on this day of April 30, 2015.

Place: Chennai

  
Dr. Sudhir Raja Ravindran  
Sole Arbitrator