

சாமிநாதா தமில்நாடு TAMILNADU

Dr. Sudhir Raja Ravindran .

BMN 35914  
V. BEDHARAJAN

Stamp Vendor

L.No: 12144/B1/96

Ekkattuthangal, Ch-32

Mobile No: 9710019475

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: August 21, 2017

Rational Intellectual Holdings Ltd.,

Douglas Bay Complex, King Edward Road,

Onchan, Isle of Man, IM3 1DZ,

British Isles

COMPLAINANT

VERSUS

Sunny Karira

2/7, Sarat Bose Road,

Vasundhara Building,

705, Kolkatta, West Bengal – 700 020

**RESPONDENT/REGISTRANT**

**DISPUTED DOMAIN NAME: "WWW.STARPOKER.IN"**

**1. Parties**

1.1. The Complainant in this arbitration proceeding is represented by Mrs. Gowree Gokhale, Nishith Desai Associates, 3, North Avenue, Maker Maxity, Bandra-Kurla Complex, Bandra East, Mumbai, Maharashtra – 400051.

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

**2. The Dispute:** The domain name in dispute is **WWW.STARPOKER.IN**. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is GoDaddy.com (R101 – AFIN).

**3. Calendar of Major Events:**

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	03.07.2017
2.	Date on which consent was given to act as an Arbitrator	03.07.2017



3.	Date of appointment of Arbitrator	04.07.2017
4.	Date on which the Hard copy of the complaint was received	07.07.2017
5.	Date on which notice was issued to the Respondent	10.07.2017
6.	Due date for filing of Counter Statement by the Respondent	18.07.2017

#### 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 Indian 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 July 10, 2017, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before July 18, 2017.

## 5. Factual Background:

- 5.1. The Complainant is a member of Rational Group of companies (together the "Complainant Group"), which is engaged in the business of offering online services, such as poker rooms and platforms for the hosting of the skill based card game of poker to consumers across numerous jurisdictions under, among others, the well-known trademark "PokerStars". The Complainant Group enjoys a worldwide reputation as the market leader in the field of online poker and its online poker card room platform operated under the "PokerStars" Mark is the world's largest and best-known. Further, the Complainant also has its own mobile application for provision of an online poker card platform. The Complainant Group has claimed its date of use in India from February 15, 2010 for the mark "Pokerstars".
- 5.2. The Respondent registered the disputed name "WWW.STARPOKER.IN" on May 04, 2015.

## 6. Parties Contentions

### 6.1. Complainant's Submission:

6.1.1. The Complainant claims that the Complainant Group has registered its trademark "**PokerStars**" which is distinctive and has an established reputation in many countries in the world.

6.1.2. In India, the Complainant claims that the Complainant Group has applied for registration of Trademarks with the Indian Trademark Registry for its trademark "**PokerStars**" in Class 9, 18, 25, 28, 36, 41 and 42 under trademark Application numbers 2446933, 2446934, 2446932, 3415037, 3384419, 3357852 and 3357327.

6.1.3. The Complainant claims that the Complainant Group has spent substantial time and efforts in developing the trademark and brand name "PokerStars" and its variants. By virtue of its above activities, the Complainant Group has accrued trans-border reputation and goodwill in numerous jurisdictions (including India) to such an extent that the relevant customer base, engaged in playing the game of poker in any form whatsoever is aware of the PokerStars brand and the PokerStars trademark and associates such brand with the Complainant Group alone and no one else. The Complainant claims that they have registered 220 trademarks worldwide and submitted a list of the trademark applications for the PokerStars trademark and a couple of variations, owned by the Complainant in India.

6.1.4. The Complainant claims that the Complainant Group has also won various recognitions and accolades for its brand worldwide. The Complainant claims that the Complainant's PokerStars brand won a prestigious award for "Best Poker

Operator of the Year” in 2005. In 2006, the PokerStars Website was acknowledged as the world’s largest online poker site and has even won Guinness World Records for hosting the world’s largest online poker tournaments. In addition, the Complainant (itself or through its group companies) promotes its PokerStars trademark by organizing the biggest weekly online poker tournament “the Sunday Million” plus the annual World Championship of Online Poker (WCOOP) through its PokerStars branded platforms.

6.1.5. The Complainant claims that the “PokerStars” Websites have remained the world’s largest and best-known online poker websites and handle huge volumes of traffic every day with over 65 million registered users from approximately 250 countries and over 155 billion hands dealt since 2001.

6.1.6. The Complainant claims that they adopted the trade mark “PokerStars” and has been continuously using the same since 2001, providing services under this mark across more than 250 jurisdictions.

6.1.7. The Complainant claims that they organises several poker championships and festivals across the globe for its users under the brand names ‘POKERSTARS CHAMPIONSHIP’, POKERSTARS FESTIVAL’ and ‘POKERSTARS MEGASTACK’ which can be accessed on <http://www.pokerstarslive.com/>. The Complainant Group additionally, also sponsors several live poker tournaments globally and it also has live poker rooms, operating under the PokerStars Mark, in London (<http://www.pokerstarslondon.com/>), Macau (<http://www.pokerstarsmacau.com/>) and Manila (<http://www.pokerstarsmanila.com/>)



/www.pokerstarslivemanila.com/tournaments/). The Complainant Group also provides a platform under its PokerStars trademark where the customers can qualify for live POKERSTARS CHAMPIONSHIP, POKERSTARS FESTIVAL and POKERSTARS MEGASTACK poker events in various countries around the globe, including but not limited to London, Monaco, Bahamas, Sochi, Macau, USA and Chile.

6.1.8. The Complainant claims that they co-organised several live poker championships in the Casino Royale Goa cruise ship in India.

6.1.9. The Complainant claims that the Complainant has registered numerous country code top level domain names to redirect users searching for its websites in these countries to its PokerStars Websites and to provide online poker services to those countries where it holds a local license issued to one of the entities under the Complainant Group. Currently, the Complainant provides its services via websites located at "pokerstars.us", "pokerstars.org.cn", "pokerstars.com.au", "www.pokerstars.be", "www.pokerstars.dk", "www.pokerstars.it", "www.pokerstars.fr", "www.pokerstars.es", and "www.pokerstars.ee", respectively. The Complainant claims that they have 208 domain names owned and operated by the Complainant worldwide which use the PokerStars trademark.

6.1.10. The Complainant claims that through its poker education website www.pokerschoolonline.com (which contains PokerStars branding), the Complainant Group also educates players on the nuances of the game.

6.1.11. The Complainant claims that the Complainant Group also records and airs television programs around the world which feature the PokerStars Mark, including via its website [www.pokerstars.tv](http://www.pokerstars.tv).

6.1.12. The Complainant claims that the Complainant's PokerStars trademark has a significant presence on several social media platforms such as Facebook, Twitter, Instagram, YouTube and LinkedIn, where promotional material and information is also available and accessible to the Indian public at large.

6.1.13. The Complainant claims that the services offered by Complainant Group under its PokerStars Mark have always been promoted through famous sports celebrities such as Rafael Nadal in the past and presently by Cristiano Ronaldo, Neymar Jr., Dwyane Wade and Kevin Hart, all of whom have a global and mass appeal among the public.

6.1.14. The Complainant claims that the Complainant Group's poker business has grown rapidly since its inception and is, today, the world's largest poker business with approximately 65% of the market share in worldwide online poker.

6.1.15. The Complainant claims that over the years the Complainant Group have invested, and continue to invest, substantial sums in promoting the PokerStars Mark and PokerStars Websites, which, as noted above, have acquired substantial reputation and goodwill in the market in general and in the gaming industry in particular. Recognition of the PokerStars Mark is so extensive that it is a famous and well-known mark, as defined under the Paris Convention. Indeed, in several



WIPO cases, the Panel agreed that the PokerStars Mark enjoyed a significant degree of recognition throughout the world.

6.1.16. In support of its contentions, the Complainant relied on the decisions in the cases of Rational Entertainment Enterprises Limited v. Sorin Cristea, WIPO Case No. DRO2011-0005, Rational Entertainment Enterprises Limited v. Luis Wu, WIPO Case No. D2011-1521, Rational Intellectual Holdings Limited v. Avigdor Loblianski, WIPO Case No. D2013-1591, Giorgio Armani S.P.A. Milan, Swiss Branch Mendrisio v. Jin Yi, WIPO Case No. D2013-0158, Altria Group Inc. V. Steven Company, WIPO Case No. D2010-1762, Zingametall BVBA v. Alexey Navalny, INDRP Case No. 639, Para 34 to 39 of the decision in Radico KHaitan Limited v. Brima Sagar Maharashtra Distillers Ltd. 2014 (60) PTC 405 [Del], Para 34 of the decision in Power Control Appliances v. Sumeet Machines Pvt. Ltd 1994 (2) SC 448: 1995 (15) PTC 165(SC), Charles Jourdan Holding AG v. AAIM, WIPO Case No.D2000-0403 and Digi Int'l Inc. v. DDI Sys., FA 124506 (Nat. Arb. Forum Oct. 24, 2002).

6.1.17. The Complainant requests for the following relief: "that the disputed domain name **"WWW.STARPOKER.IN"** be transferred to the Complainant".

## 6.2. Respondent:

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

*Perk*  
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## 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

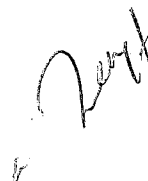
7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

### 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 "PokerStars" in numerous jurisdictions including India.

7.3.3. Brief research by the Arbitrator shows that:





7.3.3.1. The Respondent has registered the trademark [Star Poker logo]

with trademark no 3001142 claiming user date as 01/07/2015. The trademark is registered in class 41 over the services "Online Skill Gaming Portal; Providing A Web-Based System And On-Line Portal For Customers To Participate In On-Line Gaming, Operation And Coordination Of Game Tournaments, Leagues And Tours For Recreational Computer Game Playing Purposes".

7.3.3.2. The Examination Report dated 17/12/2016 issued in relation to the Complainant's trademark application number 3415037 cites the Respondent



registered the trademark [Star Poker logo] with trademark no 3001142, accordingly the Complainant is seized of this registration.

7.3.3.3. Further, the Complainant in its response Examination Report dated 05/12/2016 issued in relation to the Application Number-2446932 registration of the trademark "PokerStars", has stated that *"We further submit that no one can be monopolize generic / descriptive word like poker. The said word is devoid of distinctiveness"*.

7.3.4. The Complainant's asserts that Respondent's mere inversion of the order of the words of the Complainant's trademark in the contested domain name does not render it dissimilar from the Complainant's trademark. The Complaint's stand that no one can monopolize generic / descriptive word like poker and the said word is devoid of distinctiveness, estopples the Complainant to any claims to the contrary.

A handwritten signature in black ink, appearing to be "J. H. K." or similar, written in a cursive style.

A small, handwritten mark or signature in black ink, possibly a checkmark or a stylized letter.

7.3.5. The Arbitrator finds that the disputed domain name is not identical to or confusingly similar to a mark in which Complainant has rights.

7.3.6. In light of the conclusion that Complainant failed to establish the first element, it is not necessary to address the issue of Respondent's rights or legitimate interests in, or bad faith in registering and using, the disputed domain name. However, in the interests of completeness, the Arbitrator includes the findings on the second and third two elements.

#### **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. 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 Complainants assert that the Respondent has no rights or legitimate interest in the domain name. The assertions are, in essence, that Complaint's trademark is well-known and the use by Respondent of the domain name <www.starpoker.in> is to increase traffic to its website.

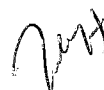


7.4.4. The Respondent has not filed a Response, which is regrettable. However, the Complaint has itself provided evidence of the Respondent's legitimate interest in the name and offering of services before notice of the dispute.

7.4.5. With regard to a respondent's rights or legitimate interests, it is well established, that, although it is sufficient that a complainant shows a *prima facie* evidence in order to shift the burden of production on a Respondent, a complainant's mere allegation without supporting evidence is not sufficient in this regard. In the present case, the Complainant merely alleges that the Respondent is not known by the disputed domain name, that the Respondent provides a website at the disputed domain name and that he must have been aware of the Complainant.

7.4.6. The Complainant fails to address or make any pleadings on the evidence that the Respondent has a valid trademark registration and address the presumption of legitimacy that the trademark registration confers.

7.4.7. Although, the Complainant's Pokerstar trademark is protected for various classes in India, the Complainant has stated the word Poker to be generic. The disputed domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning. Based on this view, the Arbitrator believes that it is the Complainant's burden to prove that the Respondent is not primarily using the disputed domain name in connection with the promotion of poker but to trade off the Complainant's trademark rights. The evidence provided by the Complainant shows that the Respondent offers services and the disputed domain name is used in connection with a purpose relating to the



generic and descriptive meaning of “Poker” and therefore be considered as *bona fide* under the Policy. Consequently, the Arbitrator is of the opinion that the Complainant failed to demonstrate that the Respondent has or ever had the malicious intent to trade off the Complainant's trademark rights.


7.4.8. The Arbitrator finds that the Complainant has failed to sufficiently demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

#### **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 “PokerStars” and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose. The Complainant's prior adoption of the mark predates the Respondent's domain name registration by more than 10 years and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.3. The Complainant claims that the Respondent has infringed its copyright. However, the Arbitrator is unconvinced that copyright infringement *per se* necessarily leads to a finding of bad faith. In cases where there is full scale reproduction of another's site there may well be both copyright infringement and



bad faith but it is the unauthorised, unjustified and wholesale impersonation that justifies the bad faith finding.

7.5.4. In coming to its conclusions, the Arbitrator expresses no view of the Complainant's claim that the Respondent's activities involve copyright infringement and that to bring in an assessment of whether a registrant's activities are an infringement of copyright is both unnecessary and undesirable.

7.5.5. In regards to the Complainant's claims that its services and trademark registration predate the offer by the Respondent, given that the disputed domain name is comprised of dictionary word and that the Respondent's service relates to their meaning, the Complainant's allegations are not sufficient for a finding of bad faith registration.

7.5.6. For the reasons discussed, the Arbitrator finds the disputed domain name has not been registered and used in bad faith under the Policy.


## **8. Decision**

8.1. Since, the Complainant has failed to make out all of the conjunctive requirements of Paragraph 4 of the Policy, the Complaint and the remedy sought are denied.

8.2. It is hereby order that the domain name <www.starpoker.in> remain with the Respondent.

8.3. The Award is accordingly passed on this the August 21, 2017.

Place: Chennai

  
Dr. Sudhir Raja Ravindran  
Sole Arbitrator