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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Bharti Airtel Limited - Versus - Gopal Gosawi

Divya

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ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name – < coairtel.in >

IN THE MATTER OF:

Bharti Airtel Limited

Bharti Crescent, 1, Nelson Mandela Road

Vasant Kunj Phase-II, New Delhi 1100 070

India

(COMPLAINANT)

-vs-

Gopal Gosawi

580 Malad Mindspace

Mumbai – 400 012

(RESPONDENT)

1. THE PARTIES

1.1 The Complainant in these proceedings is Bharti Airtel Limited, a company incorporated under the laws of India, having its registered office at Bharti Crescent 1, Nelson Mandela Road, Vasant Kunj, Phase II, New Delhi 110 070, represented by Mamta R. Jha of INTTL ADVOCARE, Express Trade Tower, B-36, Sector-132, Noida Expressway, Noida – 201303. The Respondent in these proceedings is Mr. Gopal Gosawi, having address as 580 Malad Mindspace, Mumbai 400 012.

2. DISPUTED DOMAIN NAME AND REGISTRAR

2.1 This dispute concerns the domain name www.coairtel.in which was registered on January 25, 2019 (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is GoDaddy.com, LLC, 14455 North Hayden Rd, Ste. 226, Scottsdale, AZ 85260, USA.

3. PROCEDURAL HISTORY

3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).

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- 3.2 NIXI vide its email dated April 29, 2019 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on April 30, 2019.
- 3.3 Arbitrator was appointed vide NIXI's email of May 5, 2019.
- 3.4 Arbitrator sent email on May 6, 2019 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days. Response to the complaint has not been received from Respondent in the given timeframe. Hence, Arbitrator sent email of May 23, 2019 informing Respondent of absence of response and the decision to proceed with an ex-parte order.
- 3.5 The language of these proceedings is English.

4. INFORMATION ABOUT THE COMPLAINANT AND ITS RIGHTS IN AIRTEL TRADEMARK

- 4.1 The Complainant is one of the biggest telecom companies engaged in a variety of telecommunication services including broadband and internet services, satellite, carrier, international services, calling card, e-business services, etc. Its flagship brand is AIRTEL. The Complainant was previously incorporated as Bharti Tele-Ventures Limited. Thereafter in the year 2006, the name of the company was changed to Bharti Airtel Limited.
- 4.2 The Complainant has operations in 16 countries across Asia and Africa. Headquartered in New Delhi, India, the company ranks amongst the top 3 mobile service providers globally in terms of subscribers. In India, the Complainant's product offerings include 2G, 3G and 4G wireless services, mobile commerce, fixed line services, high speed DSL broadband, DTH, enterprise services including national & international long distance services to carriers. In the rest of the geographies, it offers 2G, 3G and 4G wireless services and mobile commerce. The Complainant had over 456 million customers across its operations as of June 2018.
- 4.3 In the year 1994 the Complainant conceived, invented, coined and adopted the said new and distinctive mark AIRTEL as its trade mark for its goods as well as services. The word AIRTEL is not used in common language and does not find any place in any dictionary. It is a coined word and is therefore, entitled to a very high degree of protection.
- 4.4 The mark AIRTEL not only forms a prominent part of the Complainant's corporate name, the same is also its registered trade mark, which has been continuously and uninterruptedly used across several countries, including in India. The Complainant is the registered owner, user and proprietor of the trade mark AIRTEL in India as well as in several jurisdictions worldwide. The

- Complainant has provided details of several of its trademarks in India and outside for AIRTEL /comprising of AIRTEL with other matter.
- 4.5 By virtue of the aforesaid registrations and by virtue of the provisions of the Trade Marks Act, 1999, the Complainant has the exclusive right to use the aforesaid trademarks inter-alia in respect of the goods and or services for which they are registered. Additionally, by virtue of the registrations and by virtue of the provisions of Section 31 of The Trade Marks Act, 1999, the above mentioned registration(s) are prima facie evidence of their validity. Further, owing to the prior, continuous and uninterrupted use of the AIRTEL marks, the Complainant is also vested with Common Law Rights in the said trademarks. Needless to add, the trade mark AIRTEL, apart from being the Complainant's trade mark, features prominently as the trade name / corporate name.
- 4.6 The Complainant also has domain name registrations for various domain names that include the trade mark AIRTEL. Illustrative list has been provided.
- 4.7 The Complainant has incurred expenses running into crores of Rupees for marketing its trade mark AIRTEL and other such related trademarks. This has ensured that the presence and knowledge about the trade mark AIRTEL is spread throughout the world including in India. Also as a direct result of the above mentioned marketing, the Complainant has garnered large sales for its goods and services under its trade mark AIRTEL.
- 4.8 The Complainant has zealously guarded its Intellectual Property Rights in the mark AIRTEL and has obtained protection from Courts, Tribunals and other authorities around the world, including in India. The Complainant has provided several instances where their AIRTEL mark and name has been granted protection by the Courts in India as well as under the Uniform Dispute Resolution Policy.
- 4.9 By virtue of regular, continuous and extensive use of the trade mark AIRTEL by the Complainant, domestic and international registrations of trademark and domain name, the efforts taken by the Complainant in popularizing its brand/mark and services, and by reason of superior quality and efficacy of the services provided by the Complainant, and enforcement of its rights, the trade mark AIRTEL enjoys an extremely high level of goodwill and reputation across the globe, including in India. Consequently the said trade mark has become distinctive of the Complainant and the services offered by it and none else.

5. LEGAL GROUNDS

The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights:

- 5.1 A mere glance at the disputed domain name www.coairtel.in gives rise to enormous confusion as to its origin because the disputed domain name uses the Complainant's name/mark 'AIRTEL' in its entirety. The Complainant has been

using and promoting its trade mark AIRTEL for more than two decades and therefore, consumers and the public at large who are well aware of the goods/services and business of the Complainant are bound to get confused by the disputed domain name and deceptively similar trade mark COAIRTEL.

- 5.2 The Complainant has several domain names registered which incorporate the brand AIRTEL. An Internet user who wishes to visit the Complainant's websites for information regarding the Complainant's services, but not being entirely familiar with the exact web address of the Complainant's websites, might be taken to the Respondent's website instead, thereby gravely prejudicing the interests and reputation of the Complainant.
- 5.3 The Complainant's adoption, use and registration of the mark predate the registration of the disputed domain. Pertinently, the mark AIRTEL has achieved global fame much prior to the registration of the disputed domain name and the same is instantaneously associated with the Complainant's commercial activities.
- 5.4 Further, the disputed domain name will lead to confusion qua the Complainant's mark as search engines are likely to turn up hits for Respondent's site based on searches for 'AIRTEL'. The adoption of the disputed domain name which is identical to the Complainant's mark 'AIRTEL' as well as the Complainant's website www.airtel.in is misappropriation of the Complainant's goodwill and reputation and constitutes acts of misrepresentation to the members of public at large that the Respondent's disputed domain name is associated to the Complainant, amounting to unfair competition and tort of passing off.
- 5.5 The blatantly dishonest and malafide adoption of the disputed domain name by the Respondent will also inevitably lead to dilution and erosion of the uniqueness and inherent distinctiveness associated with the Complainant's well known mark 'AIRTEL' as well as the Complainant's website www.airtel.in by reducing its capacity to identify and distinguish the services as originating from a particular source. In other words, the unauthorized use by the Respondent is bound to result in the whittling away of the selling power, distinctive quality and value of the Complainant's well known and famous mark 'AIRTEL' as well as the Complainant's website www.airtel.in.
- 5.6 Accordingly, the Complainant submits that the disputed domain www.coairtel.in is liable to be considered identical/confusingly similar to the Complainant's trade mark and trade name AIRTEL and domain names, particularly www.airtel.in.

The Respondent has no rights or legitimate interests in respect of the domain name:

- 5.7 As indicated hereinabove, it is apparent that the Respondent has no rights to legitimate interests in the disputed domain name. The Respondent has registered the same to block the Complainant from asserting its lawful rights and to extort money from the Complainant. The disputed domain will create a likelihood of confusion with the

Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website. The Respondent's registration of the disputed domain name is contrary to the conditions outlined under the Policy and clearly shows that the Respondent has no legitimate interests in the disputed domain name but has registered the domain name only to tarnish the image of the Complainant.

5.8 The Respondent's activities also prejudicially affect the Complainant's credibility and its enviable goodwill. A perusal of the disputed domain name will show that the Respondent has registered the disputed domain name in the absence of any business connection, approval or consent from the Complainant, which may mislead the Complainant's present as well as future subscribers/customers into visiting the website. It is submitted that the Respondent has no business connection, approval or consent from the Complainant in any manner to use the trade mark AIRTEL as part of its domain name. It is amply clear that the present is a classic case of cyber-squatting while riding upon the goodwill and reputation of the Complainant's well known mark 'AIRTEL'. Therefore, it is clear that the Respondent has no legitimate interests in the disputed domain name, but has registered it with the intent for wrongful commercial gain and to misleadingly divert consumers who are looking to visit the Complainant's website www.airtel.in.

5.9 The Respondent has no legitimate right and interest in the disputed domain name because the name/mark 'AIRTEL' is distinctive, unique and an invented mark and has been used by the Complainant since the year 1994. A mere mention of the name/mark 'AIRTEL' establishes an identity and connection with the Complainant and no one else. In fact, due to the continued usage of the mark 'AIRTEL' for more than two decades and the popularity of services there under amongst the members of the public in India as well as globally, the mark/name has acquired secondary meaning as people connect all of the Complainant's services with AIRTEL. A search on popular engines such as Google evidences that the mark AIRTEL is associated with the Complainant and none else. It is thus evident that the Respondent has no legitimate rights or interest in the disputed domain name.

The domain name was registered and is being used in bad faith:

5.10 The Respondent's conduct clearly establishes that the disputed domain name was registered by the Respondent to traffic the disputed domain name as well as misuse the proprietary and legitimate legal rights wherein, vests with the Complainant alone. The name of the impugned domain www.coairtel.in has been deliberately chosen to target the millions of consumers of the Complainant especially in India and is a dishonest attempt to piggy back upon the enormous goodwill and reputation of the Complainant. The disputed domain name ought to be transferred to the Complainant on this ground alone.

5.11 It is submitted that the fact that the disputed domain name has not yet been used is no obstacle to finding bad faith, especially in the present case of cyber-squatting.

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5.12 The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity. A domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.

5.13 The mere act of registration by the Respondent of the disputed domain name containing the entire trade mark of the Complainant in itself constitutes infringement and passing off and thus ex facie shows that it has been registered in bad faith. It further evidences the Respondent's intention to prevent the Complainant i.e. the trade mark owner from registering its trade mark in a domain name thus prima facie showing that it has been registered in bad faith. In the present case, the Respondent, being based in Mumbai, cannot but be aware of the immense goodwill and reputation of the Complainant's well-known mark AIRTEL.

5.14 The Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives:

a. The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interests in the said domain name. The intention of the Respondent is to blackmail the Complainant and compel it to buy the disputed domain name for a huge sum of money;

b. The Respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name;

c. The Respondent can transfer or sell the domain name to some competing interest of the Complainant who may further develop the website at the disputed domain name and damage the goodwill and reputation of the Complainant even more by inserting prejudicial material in relation to the Complainant. This will lead to complete tarnishment of the Complainant's mark and brand and may dissuade the Complainant's current and potential customers from availing the Complainant's services;

d. The Respondent has attempted to attract Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or service on the Respondent's website or location;

e. The Respondent will have no doubt been aware that prior to its registration of the Domain Name, that there was substantial reputation and goodwill associated with the trade mark AIRTEL which inures and continues to inure to the Complainant.

5.15 The Respondent's registration and use of the disputed domain name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's immense reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

5.16 Recently, the Complainant, to its utter surprise and shock, came to know that the Respondent herein has obtained a domain name registration for www.coairtel.in (the

disputed domain name). Presently, the disputed name is "parked for free". However, it is submitted that mere act of domain registration itself is indicative of the malafides of the Respondent.

5.17 It is submitted that the same has been registered by the Respondent with ulterior motives and being fully aware of the rights of the Complainant in its trade mark AIRTEL with intent to capitalize on the same. Not only has the Respondent adopted the Complainant's trade mark AIRTEL, but also the disputed domain name consists of ".in", which is targeted towards Indian audiences and consumers. There is likelihood of eminent damage being caused to the Complainant through the disputed domain name. It is submitted that if the domain is left at the hands of the Respondent, it may be used to promote illegal and unlawful conduct and disseminate misinformation about the Complainant. There is also imminent threat that the disputed domain can be used to promote activities of the Complainant's competitors or divert consumers from the Complainant. It is submitted that these acts/threats are harming the Complainant's hard earned goodwill and reputation irretrievably.

5.18 It is submitted that the malafide intent of the Respondent is writ large inasmuch as the said Respondent has no affiliation or connection with the Complainant, despite which the Respondent has registered the disputed domain name, which contains the well-known and registered trade mark of the Complainant. The Respondent is beyond a doubt, intentionally and methodically attempting to confuse and deceive consumers at the expense of the Complainant.

5.19 In light of the aforesaid, it is submitted that the registration of the disputed domain name is entirely dishonest and has been made with wholly malafide intentions solely to unfairly enrich from the hard earned reputation and goodwill associated with the Complainant's well-known mark "AIRTEL". In respect of the said violation, the present Complaint is being filed seeking cancellation of domain name www.coairtel.in.

6. DISCUSSION AND FINDINGS

6.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant.

6.2 The Arbitrator finds that the Arbitral Tribunal has been properly constituted.

6.3 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark AIRTEL. The Complainant has adopted the mark AIRTEL in 1994 and has been using the same since then for its telecom and related services. AIRTEL is a coined word. The Complainant has provided extensive details of the use, publicity and trademark and domain name registrations in its name for AIRTEL in India and outside.

6.4 Given the duration and extent of the Complainant's use of AIRTEL, it clearly enjoys an extremely high level of goodwill and reputation in the same in India

and abroad, and has both statutory and common law rights in the same. The rights and reputation of the Complainant in its AIRTEL mark has also been recognised many a time by the Honourable Courts and other fora.

6.5 Being based in India, the Respondent is deemed to be aware of Complainant's business under the AIRTEL mark. The registration of the disputed domain name in 2019 is 25 years later than the adoption of the AIRTEL mark by the Complainant. The Respondent has no right or genuine interest in the mark AIRTEL. Hence, registering the impugned domain name which is identical to Complainant's mark is in bad faith and the Respondent cannot be allowed to continue to retain the same in his name.

6.6 The Complainant has satisfactorily established all the elements necessary to maintain its complaint. Further, the Respondent was given sufficient time to reply to the Complaint, however, he has chosen not to respond.

7. DECISION

7.1 For all the foregoing reasons, the Complaint is allowed.

7.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <coairtel.in> be transferred to the Complainant.

7.3 No order as to costs.



Divya Balasundaram

Sole Arbitrator

Date: May 25, 2019

Place: New Delhi.