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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Merryvale Limited -vs- Vikramaditya Ashtikar

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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 - <betway-sports.in>

In the matter of:

Merryvale Limited
Kingsway House

Havilland Street

St Peter Port

Guernsey GY1 2QE

Complainant

-vs-

Vikramaditya Ashtikar
Manas Kapadia Limited
157 Shyamla Hills Rd, Shymala Hills
Bhopal 462013 Madhya Pradesh, India

Respondent

1. THE PARTIES

- 1.1 The Complainant in these proceedings is Merryvale Limited, a company incorporated under the laws of Guernsey of the address Kingsway House, Havilland Street, St Peter Port, Guernsey GY1 2QE. The Complainant is represented in these proceedings by its attorneys, Lex Orbis, 709/710, Tolstoy House, 15-17, Tolstoy Marg New Delhi-110 001.
- 1.2 The Respondent in these proceedings is Vikramaditya Ashtikar of the address Manas Kapadia Limited, 157, Shyamla Hills Rd, Shymala Hills, Bhopal 462013 Madhya Pradesh, India.

2. DISPUTED DOMAIN NAME AND REGISTRAR

- 2.1 This dispute concerns the domain name betway-sports.in (the 'disputed domain name') registered on July 7, 2019. The Registrar with which the disputed domain name is registered is TLD Registrar Solutions, 35-39 Moorgate, 6th Floor, London England EC2R 6AR United Kingdom.

3. PROCEDURAL HISTORY

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- 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).
- 3.2 NIXI vide its email dated August 10, 2020 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 the same day.
- 3.3 Arbitrator was appointed vide NIXI's email of August 11, 2020 and sent an email to the Respondent on August 14, 2020 providing time of two weeks to file reply. Subsequently, the Arbitrator was informed by NIXI that its emails to the Respondent were returned undelivered. Since courier delivery from NIXI was not possible due to COVID-19 lockdown, the Arbitrator requested the Complainant to send the complaint and documents to the Respondent by post and this packet was sent on August 28, 2020.
- 3.4 Keeping the above circumstances in mind, on September 02, 2020, the Arbitrator sent an email extending the time for reply till September 7, 2020. By email of September 8, 2020, the Arbitrator sought an update on delivery of the speed post and was informed that Delivery has been attempted four times every time the door has been found to be locked. Accordingly, Arbitrator sent an email to all concerned parties that the Panel would proceed to pass its award ex-parte taking into consideration all the material presented before it. The language of these proceedings is English.

4. BACKGROUND OF COMPLAINANT AND ITS RIGHTS IN BETWAY AND BETWAY SPORTS AS SUBMITTED BY THE COMPLAINANT

- 4.1 The Complainant is a member of the BETWAY Group of companies which operate a number of online gaming websites under the trademark "BETWAY". The BETWAY brand entered the online gaming market in 2006, via the website <betway.com> (the "BETWAY Website").
- 4.2 Since its inception, the activity under the trademark BETWAY has been at the forefront of and has helped to shape the online gaming industry. The BETWAY Website is considered as one of the leading gaming websites in the world with approximately 8 million registered users. The current monthly average number of registered and active customers accessing the BETWAY branded services is approximately 195,000 customers. As a result, the Complainant enjoys a substantial worldwide reputation as a market leader in the field of online gaming. A simple search for the term "BETWAY" on Google search engine reveals exclusive results pertaining to the Complainant's online gaming business.



- 4.3 The BETWAY Website is powered by state-of-the-art software which makes it both a safe and one of the most advanced venues to play in the internet.
- 4.4 The Complainant has invested substantial sums in promoting the Betway Group's offerings under the BETWAY brand around the world and the BETWAY brand is extensively advertised on offline and online modes.
- 4.5 The Betway Group also offers its online gaming services in India through the websites www.betway.com/in and www.betway.net. These websites allow Indian consumers to place bets for various sporting competitions such as T-20 International World Cup, Indian Premier League, and bilateral cricket series. The Betway Group is very popular in India, this is evident by the various news articles, media pieces and excellent reviews written about it.
- 4.6 The Complainant is the registered proprietor for the trademark "BETWAY" in India under No. 3202826 dated March 4, 2016 in classes 9 and 41. The Complainant is also the proprietor of trademark registrations for the trademark "BETWAY" in, inter alia, the European Union, United States, United Kingdom, Canada, Argentina, Brazil, Mexico, South Africa, Australia and New Zealand (together the "Betway Marks"). BETWAY SPORTS is registered in the name of the Complainant in Australia and New Zealand.
- 4.7 The Complainant has successfully taken actions against parties who had wrongly got domain names including the trademark BETWAY registered in their names such as <betwaybingo.com>, <casinobetway.com>, <betwy88.com>, <betwayas.com>, and <betwaytrading.com> etc.
- 4.8 In view of the above, the Complainant is the sole and exclusive owner of the said trademark, and as such, if any entity uses the said trademark in its domain name, the said domain name will come to be associated with the Complainant.

5. LEGAL GROUNDS

- 5.1 Complainant submits that disputed domain name is a duplication of the Complainant's trademark, with a mere addition of the generic and descriptive word - "sports". Moreover, the word "sports" refers to/indicates the Complainant's business area. Further, the Complainant has a registration for the mark BETWAY SPORTS in Australia and New Zealand. The term "Sports" is also used in addition to "Betway" on Complainant's web pages.
- 5.2 For the purpose of comparing a trademark with a disputed domain name, it is a settled position that the top level domain name (e.g., ".com", ".org") and country code top-level domains (ccTLD), i.e., ".co.", ".de", which in this case is ".in", can be excluded from the comparison.
- 5.3 It is submitted that Respondent has no rights or legitimate interests in the disputed domain name <betway-sports.in>.
- 5.4 It is submitted that the Respondent is not commonly known by or associated with the disputed domain name. Respondent has not been authorized by Complainant to use or register BETWAY in any way, nor is the Respondent

- affiliated to or connected to the Complainant.
- 5.5 Complainant's search has not revealed any pertinent or long use of mark BETWAY by the Respondent. The disputed domain name was parked as a Wordpress website until recently, and there was no use of the mark BETWAY by the Respondent that could have garnered any rights. Even if the Respondent's website is active now, it grants no legitimate rights to him in BETWAY.
 - 5.6 Respondent has no prior rights or legitimate interests in the disputed domain name. The adoption, use as well as registration of the trademark BETWAY by Complainant precede the registration of the disputed domain name. Any subsequent adoption, or use or registration on the part of the Respondent cannot secure legitimate rights in the trademark BETWAY.
 - 5.7 The Respondent is not using the domain name for bona fide offering of goods and services. The services being offered by the Respondent are identical to the services of the Complaint. Therefore, the subsequent use of an identical mark by the Respondent for identical services cannot be deemed bona fide and create no legitimate rights in favour of the Respondent. The Respondent knew of Complainant's trademark BETWAY since it is a "well-known" and "famous" trademark. The Respondent cannot reasonably pretend that it was intending to develop a legitimate activity through the disputed domain name. The Respondent has registered the disputed domain name for the purpose of illegal trading and trafficking.
 - 5.8 The domain name was registered and is being used in bad faith.
 - 5.9 The Complainant adopted, used and registered the trademark BETWAY long before Respondent's registration of the disputed domain name. The Respondent knew about the Complainant and its business activities under the trademark BETWAY. Any subsequent adoption or use of the trademark BETWAY by way of a domain name or otherwise cannot be considered as a fair or honest use.
 - 5.10 The Respondent intentionally attempted to attract Internet users to its Website by creating a likelihood of deception and confusion with the BETWAY trademark with respect to the source, sponsorship, affiliation, or endorsement of that website. This will result in losses of profits and reputation of the Complainant.
 - 5.11 The addition of the word "Sports" to BETWAY in the disputed domain name indicates that the Respondent knew about the Complainant's business and actively tried to register an identical/confusing domain name for hijacking Complainant's traffic. The adoption of BETWAY and "Sports" which refers to the Complainant's business activities is a deliberate attempt to register a deceiving and confusing domain name for the purpose of diverting the traffic by creating deception and confusion with the BETWAY trademark with respect to the source, sponsorship, affiliation, or endorsement of that website.
 - 5.12 The Respondent has also copied the style of writing of BETWAY and the color scheme as the Complainant's website. On the Respondent's website hosted on the disputed domain name B E T W A Y is written in lower case letters with "W" having elongated left hand. The color scheme is also identical - the mark is

written in white color on a black background.

- 5.13 The Respondent is also using the standalone trademark BETWAY on its website. Keeping in mind use of an identical mark with identical representation for identical services, it is impossible that the Respondent was unaware of the Complainant when it registered the disputed domain name. The Respondent, with clear mala fide intention, is trying to usurp the goodwill, reputation as well as corporate identity of the Complainant and unabashedly trying to defraud the netizens and users.
- 5.14 The Complainant also places reliance on Para 6 of the Policy as evidence of registration and use of a domain name in bad faith.

6. DISCUSSION AND FINDINGS

- 6.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant as well as the case law cited by the Complainant. The Arbitral Tribunal has been properly constituted.
- 6.2 The INDRP requires that the Complainant must establish three elements: the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; the Registrant has no rights or legitimate interests in respect of the domain name; and the Registrant's domain name has been registered or is being used in bad faith.
- 6.3 As regards the first element, the Arbitrator notes that the dominant part of the disputed domain name is BETWAY which is identical to Complainant's trademark. The addition of 'sports' is descriptive and does not serve to distinguish the Respondent. Rather, "sports" refers to the Complainant's business area and adds to the element of confusion. The Complainant has a registration for the mark BETWAY SPORTS in Australia and New Zealand. See Fulham Football Club (1987) Limited, Tottenham Hotspur Public Limited, West Ham United Football Club PLC, Manchester United Limited, The Liverpool Football Club And Athletic Grounds Limited v. Domains by Proxy, Inc./ Official Tickets Ltd, WIPO Case No. D2009-0331, and Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union, WIPO Case No. D2013-1304.
- 6.4 It is also a well settled legal position that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded. The Arbitrator finds that the first element is satisfied.
- 6.5 As regards the second element, there are several contentions made by Complainant which show that Respondent does not have rights or legitimate interest in the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor authorized by or connected with the Complainant.
- 6.6 By the time the Respondent registered the disputed domain name, the Complainant had already garnered a high level of reputation in BETWAY for online gaming services plus statutory rights in the same. The Respondent is deemed to know of Complainant's trademark and field of business. The

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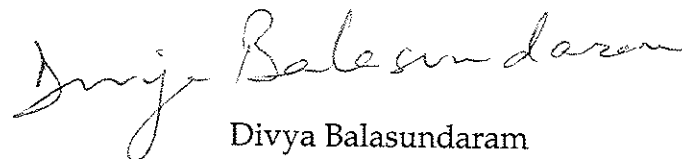
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disputed domain name was parked as a Wordpress website sometime ago, and subsequently the website linked to the disputed domain name pertains to services identical to that of the Complainant.

- 6.7 It has been held that where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. Please see OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org [Case No. D2015-1149] and Document Technologies, Inc. v. International Electronic Communications Inc. [Case No. D2000-0270]. In the present instance too, the Arbitrator finds that the Complainant has prima facie established that the Respondent does not have rights or legitimate interest in the disputed domain name and Respondent has not countered the same.
- 6.8 With respect to the third element of bad faith, the Complainant had well established its rights in BETWAY for its business prior to Respondent's registration of the disputed domain name. Adoption and use by the Respondent of BETWAY with 'sports' for the same services is clearly made in reference to Complainant and is not bonafide. The Respondent has also copied the style of writing of BETWAY and the color scheme as the Complainant's website.
- 6.9 Such action on part of Respondent points to its attempts to divert Complainant's customers away from the Complainant's genuine website and attract users to its own website; and suggesting some sponsorship or affiliation with Complainant. The Respondent is trying to pass off its website, name and services as that of the Complainant; this cannot confer any legitimacy to the Respondent and is indicative of bad faith on part of Respondent.
- 6.10 Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the INDRP.

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 <betway-sports.in > be transferred to the Complainant.
- 7.3 No order as to costs.


Divya Balasundaram

Date: September 10, 2020

Place: New Delhi.