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INDRP ARBITRATION

FH 201274

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TREASURY A

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION

INSTANT DOMAIN SEARCH, INC. V MARK CAMBRIDGE

<instantdoma.in>

SOLE ARBITRATOR: ANKUR RAHEJA, FCS LLB MCA

In the matter of:

Instant Domain Search, Inc.

...Complainant

10796 Madrona Drive  
North Saanich, BC V8L 5M7  
Canada

Versus

Mark Cambridge

...Respondent

6 Hardrada Way, York,  
Yorkshire YO41 1LT  
United Kingdom

ARahaj  
31-10-2020

# **ARBITRATION AWARD**

**Disputed Domain Name: instantdoma.in**

## **1. The Parties:**

Complainant is, Instant Domain Search Inc. (“*Complainant*”), British Columbia, Canada represented by Brett E. Lewis, Esq. and Michael D. Cilento, Esq. of Lewis & Lin LLC, New York, USA. Respondent is, Mark Cambridge (“*Respondent*”) Yorkshire, United Kingdom

## **2. The Domain Name and Registrar:**

The domain name at issue is <**instantdoma.in**>, created on 29th October 2018, registered with Godaddy.com LLC.

## **3. Procedural History:**

The Complaint was originally filed with .IN Registry. Arbitrator received an email, inquiring if Nixi can avail of its services as an arbitrator for the dispute pertaining to the domain name <**instantdoma.in**>. Arbitrator confirmed availability and sent the signed Statement of Acceptance and Declaration of Impartiality and independence as required by rules.

Arbitral Proceedings commenced on 09th September 2020 by issue of a notice by the Arbitrator by email to the Respondent, directing Respondent to file his response to the Complaint by 20th September 2020, which was successfully delivered on the WHOIS Email ID.



The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was delivered successfully. NIXI had already delivered the Soft Copy of the Complaint upon Respondent on 09th September 2020. Though, the hard Copy of the Complaint was dispensed with, amid the pandemic of COVID-19.

Further on failure of the Respondent to file any response to the first notice, another opportunity was provided to the Respondent to respond by 26th September 2020 but he failed to comply with the same as well. In the facts and circumstances of the case, an order for closure of the proceedings was issued on 01 October 2020, as no response was received from the Respondent. No personal hearing was requested / granted / held. The language of these proceedings is in English.

#### **4. Factual Background:**

The Complainant is a Canadian company that provides online domain name services. The Company was founded and established by Beau Hartshorne in 2003 and Mr. Hartshorne registered the accompanying domain name <instantdomainsearch.com> on October 17, 2005.

Complainant is the exclusive owner of a Canadian registered trademark No. TMA1005883 for INSTANT DOMAIN SEARCH in Nice Class 35 for selling domain names and in Nice Class 45 for domain name registration; leasing of internet domain names; and registration of domain names for identification of users on a global computer network.

Since its launch in 2005, Instant Domain Search has been wildly successful, and it has established an impeccable reputation of high-quality services. As described more fully herein, Instant Domain Search began receiving media



attention as soon as November 2005, and over the years since, has received extensive media coverage, including countless positive reviews and recommendations in numerous articles, books, technical guides, and blogs.

## **5. Parties Contentions**

### **A. Complainant**

The Respondent registered the Disputed Domain in October 2018 with full knowledge of Complainant and Complainant's rights in the INSTANT DOMAIN SEARCH mark. Respondent has directed the Disputed Domain to <bussinessnamegenerator.com>, an entirely similar and competing business to Instant Domain Search. By using the Disputed Domain to direct to its competing business, Respondent has created confusion with Instant Domain Search users, and are profiting off of such confusion by siphoning off Instant Domain Search users and customers.

This current proceeding is being brought after Complainant filed a previous and entirely similar UDRP proceeding with the National Arbitration Forum (NAF) on March 20, 2020, against the same Respondent, Mark Cambridge, over the disputed domain names <instantdomains.com> and <instantdomain.com> - Claim Number FA2003001889089. The Panel issued a decision in favor of the Complainant, finding all elements under the UDRP had been established, and Ordered that the <instantdomains.com> and <instantdomain.com> domain names be transferred from Respondent to Complainant.

Complainant is the exclusive owner of a Canadian registered trademark No. TMA1005883 for INSTANT DOMAIN SEARCH in Nice Class 35 for selling domain names and in Nice Class 45 for domain name registration; leasing of internet domain names; and registration of domain names for identification of

users on a global computer network. The trademark was filed on April 20, 2017, registered on October 1, 2018, and notes a first use date of October 17, 2005.

As the previous Panel rightfully pointed out, the core part of Complainant's mark is "INSTANT DOMAIN" which is the same as the Disputed Domain. The absence of the word "search" does not render the domain name functionally distinct from Complainant's mark. As such, the Disputed Domain is confusingly similar to Complainant's INSTANT DOMAIN SEARCH mark.

The Company has been using the INSTANT DOMAIN SEARCH mark and <InstantDomainSearch.com> domain name exclusively and extensively in commerce since 2005 as a source identifier for the online domain services the Company offers. Respondent's registration and use of the Disputed Domain is an obvious attempt to damage a competitor and steal its business, by redirecting to a similar and competing domain name services business. Using the Disputed Domain in this manner is neither a bona fide offering of goods or services under Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii).

It is also undisputed that the Respondent is not commonly known by any of the Disputed Domain, and was certainly not authorized by Complainant to use its INSTANT DOMAIN SEARCH mark in the Disputed Domain. Even without that inference, however, here there is overwhelming evidence suggesting that Respondent registered and is using the Disputed Domain in bad faith.

Initially, it should be noted that Respondent began directing the Disputed Domain to the competitive business website immediately following the Panel's decision that Respondent was cybersquatting in the First UDRP Proceeding. Clearly, Respondent is simply continuing to try and profit off of Instant Domain Search's reputation and goodwill, undeterred by the Panel's ruling in the First

UDRP Proceeding that this was illegitimate, wrongful behavior done in bad faith.

Furthermore, the initial success of and media attention to Instant Domain Search throughout the World, including on various parts and sites on the internet, also supports the finding that Respondent was made aware of Complainant's rights in the INSTANT DOMAIN SEARCH mark.

## **B. Respondent**

Respondent did not file any Response to Complainant's contentions.

## **6. Discussion and Findings:**

The Arbitrator has reviewed all the documents placed before it by the parties. The Complainant in its complaint has invoked Para 4 of the INDRP, wherein the Complainant is supposed to satisfy all three conditions provided under Para 4 of the .IN Domain Name Dispute Resolution Policy (INDRP).

### **A. Identical or Confusingly Similar**

The Complainant has the Trademark Registration for 'Instant Domain Search' since 2018 under classes 35 and 45 in the jurisdiction of Canada, whose usage has been recognized since October 17, 2005. The said Trademark is valid and subsisting. It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] that trademark registration constitutes prima facie evidence of the validity of trademark rights.

Though the disputed domain name does not completely incorporate the Trademark in its entirety but the dominant feature of the relevant mark is

recognizable in the Disputed Domain Name <instantdoma.in>, when read with the part on the right of the dot. WIPO Overview 3.0 at Para 1.7 states:

*“This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant’s trademark and the disputed domain name to ascertain confusing similarity.”*

Further, the main difference between the Complainant’s trademark and the disputed domain names is that the latter omit the word “search”. In the matter of Instant Domain Search, Inc. v. Mark Cambridge, Thrive Travel Services Ltd. WIPO Case No. D2020-2028, it was held as with the cases where the addition of such a term does not avoid a finding of confusing similarity (WIPO Overview 3.0, section 1.8), so its omission in this case does not affect the analysis. The words “instant” and “domain” are combined in the same order and same way in both the Complainant’s trademark and the disputed domain names. Accordingly, the Complainant’s trademark is visually and aurally recognisable within the disputed domain names.

Therefore, the Arbitrator concludes that the disputed domain name is confusingly similar to Complainant’s mark.

## **B. Rights or Legitimate Interests**

The Respondent is required to prove any of the circumstances provided under clause 6 of INDRP in order to prove legitimate interests:

*(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*

*(b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

*(c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

Though the Complainant has already made out a prima-facie case that the Respondent lacks rights or legitimate interests in the Domain Name, but the Respondent has failed to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The disputed domain name is a domain hack, which when combined with the words on the right of the dot, reads as INSTANTDOMAIN. Domain hack is a creative way to use alternative TLDs to make a word or phrase, like [www.prote.in](http://www.prote.in) (protein), [www.with.in](http://www.with.in) (within), [www.inter.net](http://www.inter.net) (internet), [www.backben.ch](http://www.backben.ch) (backbench). And it does not matter, if the extension is gTLD or even a ccTLD, it should just make sense and these are internationally accepted.

Similar seems to be the Respondent's intention in this matter, as this is not the first proceeding against the Respondent, but the parties have been involved in two other UDRP matters in 2020, where the following similar domain names have been ordered to be transferred:



- (a) instantdomains.com and instantdomain.com [*NAF 1889089; May 02, 2020*]
- (b) <instantdomain.co>, <instantdomain.net>, <instantdomain.org>, <instantdomains.co> and <instantdomains.org> [*WIPO D2020-2028; September 28, 2020*]

Further, no legitimate use of the Domain Name is apparent while the disputed domain name was being redirected to a competitor website and it seems the Respondent has recently started redirecting the same to Complainant website. Otherwise also the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its trademark in any manner. Moreover, none of the circumstances as provided under Para 6 of the .IN Domain Name Dispute Resolution Policy (INDRP) are present in the circumstances of the case, which may prove any legitimate rights or interests on the part of the Respondent.

Therefore, the Arbitrator concludes that the Respondent lacks rights or legitimate interests in the domain name.

### **C. Registered or Used in Bad Faith**

The Complainant in order to be successful under this clause, needs to be prove at least one of the following conditions provided under clause 7 of the INDRP:

- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable*

*consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*

*(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or*

*(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

The disputed domain name <instantdoma.in> was registered in October 2018 by the Respondent who also registered domain names - instantdomain.in and instantdomains.in, which are also subject to INDRP Proceedings. Further, already seven similar domain names have already been ordered to be transferred against the same Respondent under the UDRP, thereby proving Bad Faith on part of the Respondent. In the matter of Barney's Inc. v B N Y Bulletin Board [WIPO Case No D2000-0059] it was held that only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar.

The above facts prove that the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name and he has in fact engaged in a pattern of such conduct. Moreover, the redirection of the disputed domain name to a competitor's website is Bad Faith use as well.

Therefore, the Arbitrator concludes that the Complainant has been able to prove Bad Faith registration and use on the part of the Respondent. Hence, Complainant has been able to prove the third requirement under the INDRP as well.

## **7. Decision:**

For the foregoing reasons, in accordance with INDRP Policy and rules thereunder, the Arbitrator orders that the disputed domain name <instantdoma.in> be transferred to the Complainant.



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Ankur Raheja, MCA FCS LLB  
Sole Arbitrator, NIXI, India  
Date: 31st October 2020  
Place: Agra, India