

महाराष्ट्र MAHARASHTRA

● 2015 ●

NA 443793

ARBITRATION AWARD

**BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)**

Google Inc.

...Complainant

v/s

Pablo Rigo

...Respondent

In the matter of Disputed Domain Name "GMAILLOGIN.IN".

1 The Parties

The Complainant is Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA, represented by Fidus Law Chambers.

The Respondent is Pablo Rigo, Bolivar, Cordoba 5000, Argentina.

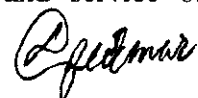
2 Procedural History

- 2.1 A Complaint dated June 17, 2015 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (hereinafter referred to as the "Policy") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate, as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On July 7, 2015, the Arbitrator had emailed to the Respondent setting forth the relief claimed in the Complaint and directed the Respondent to file his reply to the Complaint on or before July 17, 2015. On July 11, 2015, the Respondent submitted his reply.
- 2.4 Email is the mode of communication of this arbitration and each email is marked to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures and the reply of Respondent, the Arbitrator has found the following facts:

- 3.1 Since the Complainant's foundation in 1997 the Google search engine has become one of the most highly recognized and widely used Internet search services in the world.
- 3.2 The Complainant has used the trademark GMAIL in United States commercially since 1998, in connection with the provision of email and electronic messaging services. On March 21, 2004, the Complainant publicly launched its GMAIL email and electronic messaging services and the official launch date was April 1, 2004. Since then, the GMAIL service has emerged as one of the premier free, web-based email services in the world, with over 900 million active users worldwide as of May, 2015. The Primary GMAIL website is located at <http://gmail.com>. Like the Google search engine, the GMAIL email service integrates with various other products and service of the



Complainant. Due to widespread and substantial international use, the GMAIL Mark have become famous all over the world.

- 3.3 The Complainant also offers the Gmail Help Center in connection with its GMAIL email service. The Gmail Help Center provides support and information regarding, among other topics, Gmail accounts, messages, contacts and technical issue troubleshooting.
- 3.4 The Complainant is the registrant of the domain names <GMAIL.COM> which was created on August 13, 1995 whereas the Disputed Domain Name <GMAILLOGIN.IN> was registered on August 14, 2013.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark GMAIL; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Respondent registered and is using the Disputed Domain Name in bad faith.

4.2 Respondent

The Respondent claims that the Disputed Domain Name is an informative site and helps users to learn about the GMAIL email service. It also provides step by step how to guide for using the GMAIL email service. The Respondent is willing to transfer the Disputed Domain Name but on/by November 30, 2015 so that he can support his studies from the income generated from the Disputed Domain Name.

5. Discussion and Findings

- 5.1 According to the Policy, the Complainant must prove that:
- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
 - (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
 - (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.2 Identical or Confusingly Similar

5.2.1 The Complainant's trademark GMAIL is a registered trademark in the US, India and other countries. The trademark GMAIL is famous in



India and other parts of the world.

5.2.2 The Complainant is the registrant of the domain names <GMAIL.COM> which was created on August 13, 1995 whereas the Disputed Domain Name <GMAILLOGIN.IN> was registered on August 14, 2013.

5.2.3 The Disputed Domain Name <GMAILLOGIN.IN> incorporated the Complainant's trademark "GMAIL" in its entirety with mere addition of the descriptive term "login" and the generic top-level domain ".in". It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The ".in" suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Similarly, the addition of merely descriptive word "login" would be insufficient to avoid a finding of confusing similarity¹. I, therefore, find that the Disputed Domain Name <GMAILLOGIN.IN> is identical to the Complainant's trademark GMAIL.

5.3. Rights or Legitimate Interests

5.3.1 The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name.

5.3.2 The Complainant asserts that it has not authorized or licensed the Respondent to use the trademark GMAIL. The Respondent admitted that through the Disputed Domain Name, he is providing step by step how to guide for using the GMAIL email service. Such unlicensed and unauthorized usage is not bona fide offering of services. It is clear from the reply of the Respondent, he is riding over the reputation of the Complainant's trademark GMAIL for commercial gain.

5.3.3 The Complainant has made out a prima facie case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent². The Respondent chose not to challenge the Complainant's allegations. There is no evidence before me to support any position contrary to these

¹ See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0)

² See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762



allegations, and therefore I accept these arguments. Consequently, I find that the Respondent has no rights or legitimate interests in the Disputed Domain Name <GMAILLOGIN.IN>.

5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant's trademarks are famous around the world, including India. The Disputed Domain Name incorporated the Complainant's trademark and unauthorisedly providing step by step how to guide for using the GMAIL email service on the Disputed Domain Name. At the time of registration the Disputed Domain Name, the Respondent was aware of the famous mark GMAIL. The Respondent's display of the GMAIL mark and logo on webpages addressed by the confusingly similar domain name is designed to lead Internet users to believe that such webpages are sponsored by or affiliated with Complainant. The Respondent admitted that he is profiting through use of the Disputed Domain Name and is willing to transfer the Disputed Domain Name but on/by November 30, 2015 so that he can support his studies from the income generated from the Disputed Domain Name. These facts supports the inference that the purpose of the Respondent's diversion of traffic from the Complainant to itself is for the Respondent's own commercial gain. I, therefore, find that all above facts constitute bad faith under paragraph 6 of the Policy.

6. Decision

In light of the foregoing findings, namely, that the Disputed Domain Name is identical to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and that the Disputed Domain Name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules; the Arbitrator orders that the Disputed Domain Name <GMAILLOGIN.IN> be transferred to the Complainant.



Dipak G. Parmar
Sole Arbitrator

Date: July 21, 2015