



दिल्ली DELHI

S 397450

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"makemytripindia.in"

MAKEMYTRIP(INDIA)PVT. LTD.

...COMPLAINANT

AND

VINAY SINGH

...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 19/01/2012. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier and also supply a copy of the same to this Arbitral Tribunal.

2. That the Tribunal again directed the Complainants vide the order dated 30/01/2011 to comply with the order of 19/01/2012 which the complainants complied and sent a copy of Blue Dart Courier waybill bearing no. 43830123293. The tracking records of the courier sent by the complainant showed "Cnee'S Add Incorrect/Incomplete/Not Located, Contact Customer Service."
3. The notices/ orders sent by the Tribunal to the Respondents at the notified address have been received back undelivered. It was

also seen that the emails sent by this Tribunal too had also bounced back. Hence this Tribunal reserved its award vide order dated 07/02/2012 giving liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication.

4. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried to serve the Respondents at his last known address. Hence, this Tribunal takes the Respondent as served.

5. In view of the above peculiar facts and circumstances and in view of INDRP this Tribunal is to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.



CLAIM

This Complaint claims as under:

- A. That MakeMyTrip was incorporated on 13th April, 2000 in India and it is a leading online travel company and was founded in the year 2000 to empower the Indian traveller with instant booking and comprehensive choices.
- B. It is claimed that MakeMyTrip is the largest online travel company in India, based on gross bookings for 2009, according to PhoCusWright.
- C. That ever since its operations in 2000 the complainant focused on the non-resident Indian market in the United States, servicing mainly their need for United States-India inbound air tickets. The complainant started their Indian business with the launch of its Indian website in September 2005 and during the initial years of its operations, it

invested significant capital in its infrastructure as well as in sales and marketing efforts to build its brand and gain recognition.

D. It is claimed that in fiscal year 2010, 1.6 million transactions for domestic air tickets in India were booked through the complainants website and it generated \$31.1 million in revenue less service cost from air ticketing business which rose up to \$47.6 million in the FY 2011.

E. It is claimed that MakeMyTrip has designed its websites to provide its customers with a user-friendly experience. According to comScore, www.makemytrip.com was the second most visited travel website in India (after the Indian Railways' website) in each of the years from 2007 to 2009 and had an average of over 1.7 million unique visitors per month in 2009. Further, in fiscal year 2010, 2.0 million transactions executed through its websites accounted for approximately 94.5% of its total transactions and in fiscal

year 2011, 3.6 million transactions were executed through its websites, accounting for approximately 96.0% of its total transactions. It is claimed that MakeMyTrip has built an advanced and secure technology platform, which integrates its sales, customer service and fulfilment operations. Its technology platform is scalable and can be upgraded to handle increased traffic and complexity of products with limited additional investment.

F. It is also further claimed that MakeMyTrip was ranked third overall and first in the professional services industry and have been recognized by being given 1st rank in the special category awards of "Fun@Work" & "Employee Involvement & Collaboration" as well as 3rd rank for "Inspiring trust amongst people" in a ranking published on June 25, 2011, of "India's Best Companies to Work For 2011" by the Great Place to Work Institute, an independent global research and consulting firm, and The Economic Times, a daily business newspaper in India.

G. It is claimed MakeMyTrip is the first and only online travel agency brand to be selected as a Superbrand™ in India for 2009-2010 and it has invested in developing and promoting its brand since its inception, using a combination of traditional channels such as print, radio and television, mass media campaigns, as well as search engine marketing and other innovative digital marketing tools, such as viral marketing and online display banners, to broaden its reach to travellers in India and overseas. It is claimed that MakeMyTrip believes that its reputation and market position has also provided it with better leverage when contracting with airlines, hotels and other suppliers.

H. It is claimed that MakeMyTrip is currently operating the websites www.makemytrip.com (including the sub-domain us.makemytrip.com) and www.makemytrip.ae, servicing the Indian domestic and outbound market, the United States-India inbound market (focusing in particular on non-resident

Indians in the United States) and the United Arab Emirates as well as neighbouring Middle East countries, respectively.

I. The complainants have given a list of relevant trademarks owned by them as **Annexure C and Annexure D**.

J. It is claimed that the trademark "MakeMyTrip" is an invented word that forms a predominant feature of MakeMyTrip's corporate name. The sales turnover of the Complainant is \$ 124.7 Million. Additionally, Complainant's promotion/advertisement expenses also run into millions. In the circumstances, the Complainant's trademark, "MakeMyTrip", is an internationally well-reputed mark. Further, the Complainant has also registered the following domain names:-

1. Makemytrip.com
2. makemytrip.net
3. Makemytrip.org
4. Makemytrip.co.uk
5. makemytrip.co.in

6. Makemy-trip.net.in
7. Makemy-trip.co.in
8. Makemy-trip.in
9. Make-my-trip.net.in
10. makemytripdeals.com
11. Makemytriphpotels.com
12. makemytrip-mail.com
13. Makemytrip.hk
14. makemytrips.org
15. makemytrip.ae
16. makemytrip.ca
17. makemytripmails.com
18. Makemytrip.eu
19. Makemytrip.tw
20. Makemytrip.com.tw
21. Makemytrip.com.lk
22. Makemytrip.my
23. Makemytrip.com.my
24. Makemytrip.sg
25. Makemytrip.com.sg
26. Makemytrip.fr
27. Makemytrip.co.nl
28. Makemytrip.nl
29. Makemytrip.com.sa
30. Makemytrip.co.jp



31. Makemytripcanada.ca
32. Makemytrip-canada.ca
33. Makemytripflights.ca
34. Makemytrip.at
35. Makemytrip.co.at
36. Makemytrip.com.es
37. Makemytrip.com.ph
38. Makemytrip.es
39. Makemytrip.it
40. Makemytrip.nom.es
41. Makemytrip.org.es
42. Makemytrip.ph
43. Makemytrips.cn
44. Makemytrips.com.cn
45. Makemytrip.com.fr
46. Makemytrip.jp
47. Makemytrip.in.th
48. makemytrip.us.com
49. makemytrip.cn.com
50. makemytrip.la
51. mails-makemytrip.com
52. makemytrip.tv
53. makemytrip.ws
54. makemytrip.bz
55. makemytriptimes.co.in



56. makemytriptimes.com
57. emails-makemytrip.com
58. makemytrip-deals.com
59. makemytrip-offers.com
60. makemytripp.in
61. makemytripflights.com
62. makemytripbus.com
63. makemytripreviews.com
64. makemytrip.in
65. makemytripflights.ae
66. Makemytrip.com.hk

K. The complainants have cited a list of various awards won by them which are as under:

- Great Places To Work 2011 - 3rd Best Company to Work for & #1 in Professional Services
- Great Places To Work 2010 - 2nd Best Company to Work for & #1 in Professional Services
- Best Online Travel Portal of the Year by Class of Travel &
- Tourism Awards in 2010
- Superbrand India – 2009-10
- Best Online Travel Agent for Excellence in the Indian Travel Market by TravelBiz Monitor 2009
- Great Places To Work 2009 - #2 in Professional Services

- Best Travel Website – CNBC Awaaz – 2008-09
- Most Visited Travel Website – comScore – 2005-09
- Most Preferred Online Travel Agency – Travel Biz Monitor Survey – 2008
- Number One Online Travel Agency – JuxtConsult – 2008
- Gold and Silver – Abby Award – 2007-08
- Among the Top Ten Websites visited by Indians – comScore – 2007
- Nominated World Travel Awards – WTA – 2007
- Among 100 IT Innovators – NASSCOM – 2007
- Best Online Travel Company – Galileo Express Travel World – 2007
- Emerging India Award – ICICI Bank & CNBC TV18 – 2006
- Asia's Hottest Technology Startup – Red Herring – 2006
- Air Canada – Outstanding Performance – 2008
- Singapore Airlines – Top Passenger Agent – 2007-08
- British Airways – Outstanding Revenue Contribution – 2007-08
- Air Mauritius – All India Top Ten Agent//Top North India Sales Award – 2006-07//2007-08
- Cathay Pacific – Outstanding Performance – 2007
- Malaysia Airlines – Top Agent Award – 2007
- Lufthansa – Outstanding Performance – 2006-07
- Kingfisher Airlines – Outstanding Performance – 2006-07

- Indian Airlines – Achieving Highest Domestic Passenger Sales – 2006-07
- Air India – Outstanding Contribution to Passenger Sales – 2005-06
- Jet Airways – Award of Excellence – 2005-06
- Gulf Air – Continuous Support

L. The Complainants allege that the disputed domain names is identical and confusingly similar to the marks of the Complainant and it capitalizes on the use of the trademark, trade name, corporate name and domain name of the Complainant and the use of such a misleading term only adds to the confusion in the minds of an Internet user that these domain names are associated with the Complainant.

M. It is vehemently alleged that the acts of the Respondent in registering a domain name comprising entirely of, and identical to the Complainant's well known trademark/service mark in its entirety and in a manner clearly intended to cause confusion/deception as to the source/origin of such domain

name, creates an irrefutable impression of an association/sponsorship/relationship between the Complainant and Respondent.

- N. It is also alleged that the Respondent has no rights or legitimate interests in the disputed domain name, and has used the word "MakeMyTrip" to falsely indicate that he has a trade nexus with the Complainant, whereas, in fact, the Respondent has no such relationship with the Complainant.
- O. Furthermore, there is no element displayed on the web site of Respondent that would in some way justify the use of the word "MakeMyTrip" within the disputed domain name registered by the Respondent. It is also alleged that the Respondent's website hosts some content, which is in any event irrelevant, to promote itself as a travel website, related in some manner to the Complainant herein, which is clearly not the case. It is alleged that the Respondent's website and its content have



been hosted with the calculated intent of squatting upon the Complainant's valuable and varied intellectual property rights.

P. It is urged that the trademark is unique to the Complainant and the Complainant has not authorized or licensed its use by the Respondent. Further, the Respondent's manner of usage is likely to cause considerable commercial loss to the Complainant and cause irreparable dilution to their brand across the globe.

Q. The Respondent s have relied upon decisions

(Telstra Corporation Limited v. Nuclear Marshmallows D2000-0003.)(WIPO Decision) & *(Rediff.Com India Ltd Vs Abhishek Verma and Anr INDRP/001); ACCOR v. Tigertail Partners, D2002-0625 (WIPO Decision) & *Microsoft Corporation vs. Yan Wei INDRP/145.**

R. The Complainants also allege that the disputed domain name has been registered and is being used in bad faith as the

Respondent's website purports to offer services identical to that of the Complainant and the sole intention of the Respondent is to capitalize on the Complainant's well known mark, and to mislead internet users searching for the same and take undue benefits from this activity.

ORDER

6. This Tribunal has given an anxious consideration to the allegations of the complainants and notes that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted. Be it that as it may, in view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <makemytripindia.in> hence this Tribunal directs the Registry to transfer the domain name <makemytripindia.in.in> to the complainants. The Complainants

too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 18th day of February 2012.



NEW DELHI
18/02/2012

V. SHRIVASTAV
ARBITRATOR