



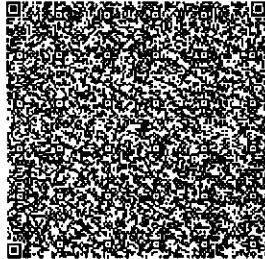
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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: July 27, 2012

In the matter of:

**M/s. PVR Limited
61, Basant Lok
Vasant Vihar,
New Delhi-110017**

Complainant

Vs

**Chinmay
Main Road
Bangalore-560061
Karnataka**

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is M/s. PVR Limited with registered office at 61, Basant Lok, Vasant Vihar, New Delhi-110057
- (b) Respondent firm is: Chinmay , Main Road, Bangalore-560061, Karnataka. It is also a consulting firm but its details are sketchy. It has presence on internet with domain name of www.pvrcinemas.co.in which is subject of dispute.



2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.pvrcinemas.co.in registered with the DOT IN Registry through the Transecute Solution Pvt. Ltd.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.

3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

M/s PVR Limited was incorporated on April, 1995, a joint venture agreement between Priya Exhibitors Private Limited and Village ROADSHOW Limited and the mark PVR an abbreviation for Priya Village Roadshow came into existence. Complainant pioneered multiplex revolution in the country by opening first multiplex leading a new era in Indian cinema viewing experience and changed the industry forever. There on PVR Limited initiated many path breaking innovations. To ramp up its presence across the retail entertainment landscape, complainant entered into a Joint Venture with Major Cineplex Group in 2008, a leading Film exhibition and retail entertainment company of Thailand, to bring lifestyle entertainment concepts to Indian consumers, setting up of bowling alleys, karaoke centers, ice skating rinks and gaming zones across the country.

The complainant's cinema circuit in India consists of 36 cinemas with 158 screens spread over 20 major cities. In the year 2011 the PVR brand has been successful in entertaining more than 19 million esteemed patrons. Complainant contributes 20-25% of domestic box office collections of leading Hollywood movie and 12-13% leading Bollywood movie, highest across the Indian Film Exhibition space.

Complainant has established itself as a premium entertainment company, with leadership position in Film Exhibition, Distribution and Production. Company also operates a film distribution and production through PVR pictures, a 100% subsidiary of PVR Limited.

Complainant adopted the mark **PVR**, in respect of its services in the year 1995. The marks PVR and PVRCINEMAS feature on the web address of the Complainant, www.pvrcinemas.com, the domain of which was registered on April 24, 2001. Printouts of complainant's website **Annexure-B.** & printouts of the who is <pvrcinemas.com> in



Annexure-C. The mark PVR forms Complainant's corporate name/trading style is a service mark of the Complainant for all the services provided by it.

PVR trademark/trading style has acquired substantial goodwill and is an extremely valuable commercial asset of the Complainant company. Complainant is also the registered proprietor of the trademarks 'PVR' and PVRCINEMAS in various classes in India.

True copies of the Registration Certificates are in **Annexure-D**.

Copies of articles write-ups reflecting goodwill and reputation Complainant mark PVR and PVRCINEMAS are in **Annexure-E**.

The trademarks/service marks 'PVR' and 'PVRCINEMAS' exclusively identified and associated with the Complainant, in respect of retail entertainment services.

Present dispute has registered the domain name <pvrcinemas.co.in>

Ms. Deepa Gupta, has been appointed as the Sole Arbitrator to decide the disputed domain name.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

a) THAT INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH PVR LIMITED HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS.

That impugned domain name <pvrcinemas.co.in> is identical to Complainant's trademark 'PVRCINEMAS' which also forms part of the Complainant's URL / website located at www.pvrcinemas.com . An internet user is highly likely to be misled into visiting the respondent's web address. Impugned domain name <pvrcinemas.co.in> has the following listings "PVR Cinema", "PVR Tickets", "PVR Online Ticket Booking", "PVR Theatre", "Get a free Combo at PVR". Therefore, an internet user could be confused into believing that the Complainant is using the impugned domain name <pvrcinemas.co.in> to advertise its services online. A copy webpage <pvrcinemas.co.in> is provided as **Annexure-F**. An internet user who will search <pvrcinemas> , will find domain name stands in the name of the respondent, further resulting in considerable confusion in the mind of such user that respondent is in some way, connected to or affiliated with Complainant or being endorsed/ promoted by the Complainant. Domain names and URLs form part and parcel of the online identity of an entity and serve the function of its trade/service mark upon the internet. Act of the respondent in registering the domain name, <pvrcinemas.co.in>, is in contravention to



trademark rights of the Complainant in the marks 'PVR', 'PVRCINEMAS' and domain name <pvrkinemas.com>. Domain name <pvrkinemas.co.in> is identical to the web address <pvrkinemas.com> of the complainant, which makes confusion and deception inevitable.

b) THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF DOMAIN NAME

Trademarks/service mark PVR consist unique combination and collection of letters, Priya Village Roadshows".

Respondent could have no justification for registering a domain name incorporating well known trademarks 'PVR' and 'PVR Cinemas' . Registration of the impugned domain name pvrkinemas.co.in on the June 25,2010 is subsequent to the date of adoption of trademarks/service marks 'PVR' and 'PVRCINEMAS' by Complainant . Even the domain name 'pvrkinemas'.com was registered way back on April 24,2001. Complainant the registered proprietor of marks PVR and PVRCINEMAS has been extensively and continuously using the same since 1995. Respondent has at no point in time being known by the name PVR or PVRCINEMAS or the impugned domain name pvrkinemas.co.in. Respondent has no use for the domain name other than to profit from squatting on the same intent to commercially gain by misleadingly diverting internet users to its own webpage.

c) THE IMPUGNED DOMAIN NAME PVRCINEMAS.CO.IN HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH.

Domain name <pvrkinemas.co.in> registered to gain illegitimate consideration from the Complainant respondent has parked the impugned domain name <pvrkinemas.co.in> with sponsored listings, and domain name was acquired primarily to unlawfully gain from such sponsored listings and to usurp huge amount of money from the complainant or any of its competitor, in return for transferring the domain name. Respondent by this unlawful activities is diluting the distinctiveness of the complainant's domain name <pvrkinemas.co.in> and gaining illegitimate online reputation for the impugned domain name <pvrkinemas.co.in>. Respondent has intentionally attempted to attract for commercial gain, internet users to www.pvrkinemas.co.in , by creating a likelihood of confusion among internet users that the respondent has some association with the complainant. Respondent is a professional squatter. Reverse whois lookup of the email id cpurpal@gmail.com at <http://whois.domaintools.com/pvrkinemas.co.in> the contact given register impugned domain name <pvrkinemas.co.in> , shows same is used for registration of around 239 domain names. It is unlikely that the respondent who does not appear to be carrying on any bonafide business would have interests in around 239 domain names. Printout reverse whois provide as **Annexure G**. In the light of the above



the domain name has been registered and is being used in bad faith. It is submitted that the impugned domain name pvr cinemas.co.in is an instrument of fraud and deception causing considerable damage to complainant's business interest apart from prejudicing substantial public interest.

Unlawful registration of the domain name by the Respondent is resulting in dilution of the Complainant's well known trademarks 'PVR' and 'PVR CINEMAS'. Causing irreparable damage and injury to reputation and business interest. Complainant has significant presence in India and the impugned domain pvr cinemas.co.in in the name of the Respondent, is precluding the Complainant from obtaining a domain name registration which is India-specific, and is invaluable in the marketing and sale of its services in the territories of India.

It is respectfully prayed to direct the transfer of the domain name 'pvr cinemas.co.in' in favour of the Complainant and award costs of the present proceeding in favour of the Complainant and against the Respondent.

B. Respondents Contentions

Not responded at all.

5. OPINION:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year April 1995 and is using the mark 'PVR' since then and has made massive efforts to promote the brand name 'PVR' by consuming various resources available at his end and word 'PVR' has certainly acquired a popular Brand name the length and breadth of the India and a prominent place in internet electronic media also.

On the basis of the records submitted by the complainant it's proved that the domain name 'pvr cinemas.co.in' is related to the business of Complainant and is being used for purpose related to his work.



It is confirmed that Complainant is user of name 'PVR'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark ' PVR ' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in India as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'PVR' marks in India and throughout the world through global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'PVR' and 'PVRCINEMAS' marks as a domain name in India.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglia or illegality of its operation and to ensure that no illegalities are committed.

.The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not , still the respondent proceeded with registration of the domain name in question to intentionally trade on PVR Limited's reputation, goodwill and trademarks and was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with PVR reputation and services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that pvr cinemas.com is a registered and protected trademark of the Complainant.



Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark .Due to the strong reputation of the trademarks PVR, Internet users will apparently and reasonably expect an offer of the Complainant or authorized or affiliated enterprises only under "pvrcinemas.co.in".

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

.The logo 'PVR' and similar domain names ,i.e., 'pvrcinemas.com' were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'pvrcinemas.co.in' and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking for sale through direct or indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.



III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name www.pvrcinemas.co.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 15000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 27th day of July 2012.


Deepa Gupta
Arbitrator