



हरियाणा HARYANA

M 682658

**BEFORE THE NATIONAL INTERNET EXCHANGE OF  
INDIA**

**ARBITRATION AWARD**

**In The Matter Between**

**ROVIO ENTERTAINMENT LIMITED**

**Keilaranta**

**FI -02150 ESPOO**

**FINLAND**

**Complainant**

**Versus.**

**THOMAS LEE**

**Hokar Group**

**Haizhu District , Guangzhou**

**CHINA**

**Respondent**

*Hann Narayana*

## **1. The Parties**

*The Complainant is Rovio Entertainment Limited and is represented in these proceedings by S.S.Rana & Co. of India.*

*The Respondent is Thomas Lee of China.*

## **2. The Domain name, Registrar and Policy**

The present Arbitration proceeding pertains to a dispute regarding the domain name <angrybirds.in>. The registrar for the disputed domain name is IN Registrar d.b.a. inregistrar.com (R123-AFIN). The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

## **3. Procedural History**

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on October 3, 2013 and on October 6, 2013 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute.

*Harini Narayanswamy*

The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not respond.

## **Factual Background**

The undisputed fact of the case are that the Complainant is a Finnish Company and was founded in 2003 as a mobile game developing studio. It is best known for its famous ANGRY BIRDS mobile game that was launched in 2009. The Complainant has registered the trademark ANGRY BIRDS in several jurisdictions and under several classes.

The Complainant's Indian trademark applications for ANGRY BIRDS word mark are: Application number 1987884, date July 1, 2010 classes 9,16,28,41 Application number 2137092, dated April 28, 2011 classes 3,14, 18, 20, 21, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38 and 43. ANGRY BIRDS Device mark application number 2137093, date April 28, 2011 classes 3, 14,18,20,21,24,25,27,29,30,32,33, 34, 35, 36, 38 and 43.

The Respondent registered the disputed domain name <angrybirds.in> on November 13, 2010.

## **The Parties Contentions**

### **A. Complainant's Submissions**

The Complainant states that Angry Birds is a causal puzzle game application for various mobile operating systems. The game was released in Helsinki

*Hansi Narayana*

Finland in 2009 and since then over 1.7 billion downloads of the game have been done on all platforms and over 23 million downloads are from India. The success of its game has led to expansion in other areas of business and the Complainant states that it presently uses the trademark for marketing other merchandise. The Complainant alleges that it employs about 500 people in its headquarters in Espoo Finland and has offices in Tampere, China and Sweden. The Complainant states that it has copyright protection for artistic work of the angry birds characters and has filed a detailed listing of its copyright registrations in various jurisdictions. The Complainant is also the registered proprietor for the trademark ANGRY BIRDS and characters of ANGRY BIRDS in many countries and has furnished a list of its international trademark registrations that runs to more than eleven pages.

The Complainant states that its website linked to its domain name <angrybirds.com> is viewed by millions of customers. The Complainant states based on its extensive usage, the ANGRY BIRDS trademark is a well known with a high level of recognition. The Complainant submits its worldwide sales figure runs into millions of Euros and that it spends a substantial amount in advertisement of its mark and has provided figures of its sales and revenue for the period 2010 – 2012. The Complainant states that there are many news articles and media coverage concerning its mark and has provided a list of articles and news items in the print media about ANGRY BIRDS. The Complainant refers to famous personalities who have played the game and books and essays written about Angry Birds, one such book is titled “Angry Birds Yoga”. Angry birds is popular in Social Online media such as Face book and Twitter says the Complainant, and also provides a list of awards that have been won by Angry Birds.

*Hanvi Narayana*

The Complainant states that the franchise for ANGRY BIRDS in India has been given to Mattel, and in August 2012 merchandising rights have been given to Dream Theatre to introduce t-shirts, plush toys and accessories. Dream Theatre have in turn entered into partnership with BATA India for its new collection of merchandise, school shoes, casual shoes, and accessories for shoes and accessories.

The Complainant claims that its ANGRY BIRDS mark is exclusively associated with the Complainant and its products and has substantial reputation and goodwill associated with its well-known mark. As the reputation of the mark travels across national boundaries in a matter of seconds due to Internet communication, the Complainant contends the mark is famous within the meaning of Section 2 (zg) of the Trademark Act 1999 (India) and Article 6 (bis) of Paris Convention. The Complainant states that it makes every effort to protect and defend its trademark rights internationally. The Complainant states the disputed domain name is identical and confusingly similar to its trademark. The Respondent has no rights or legitimate interest in the disputed domain name and the domain name was registered and is being used in bad faith. The Complainant requests for transfer of the disputed domain name.

### **Respondent's Response.**

The Respondent did not respond or file a Response.

*Hansi Narayana*

## Discussion and Findings

Under the INDRP Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry alleging that there has been a violation of Complainant's rights. Paragraph 4 of the INDRP Policy mandates that the Complainant has to establish the following three elements to succeed in the proceedings:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

### Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has submitted extensive evidence to show that it has rights in the ANGRY BIRDS trademark. Such evidence *inter alia* includes (i) detailed list of its international trademark registrations running to over five pages, (ii) its Indian trademark registrations for both word and device marks

*Hanvi Narayana*

in numerous classes, (iii) list of media reports, articles and books written about ANGRY BIRDS and awards it received (iv) Sales turnover under the mark (v) Advertisement, promotion of the mark. Trademark registration is considered *prima facie* evidence of rights in a mark, based on evidence on record, the Complainant is found to have established its rights in the trademark ANGRY BIRDS.

The disputed domain name consists of the ANGRY BIRDS trademark in its entirety and the country code Top Level domain (ccTLD) “.IN”. A domain name that consists of the trademark in its entirety is considered identical or confusingly similar to the trademark.

Accordingly, for the reasons discussed, the Arbitrator finds that the disputed domain name is identical and confusingly similar to a mark in which the Complainant has rights. The Complainant has satisfied the first element under paragraph 4 of the Policy.

### **Rights and Legitimate Interests**

The second element requires the Complainant to show that the Respondent lacks rights and legitimate interests in the disputed domain name. It is sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Paragraph 7 of the Policy, provides a non-exhaustive set of circumstances that a respondent could rely on to establish

*Hanin Narayana*

rights in the domain name. These briefly are: (i) if before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name as the Complainant has not licensed or otherwise permitted the Respondent to use its mark. Further it is stated that the Respondent uses the disputed domain name to offers links to other third party sites. The Respondent has not responded or rebutted the Complainant's allegations. It is well established that a website that offers links to third party sites, using a domain name that is confusingly similar to another's trademark is not legitimate activity under the Policy. See for instance the case *AB Electrolux v. Ruo Chang*, <electrolux-professional.co.in> INDRP Case No. 333 (April 2, 2012), where a domain name with a well known trademark was used for placing links to other third party sites and was not considered legitimate use. Further, given the international popularity of the ANGRY BIRDS mark it is reasonable to infer that there can be no conceivable legitimate use of the disputed domain name by a person or entity that is not connected with the trademark or the Complainant.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate

*Hanin Narayana*

interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

### **Bad Faith**

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. The Complainant has urged that the Respondent has intentionally registered the disputed domain name to exploit the fame of its well-known trademark ANGRY BIRDS and Internet users are likely to be misled by the Respondent's domain name. The Complainant has also argued that the Respondent has advertised the sale of the disputed domain name through one of the links on the said website, and such use shows the Respondent's bad faith motives concerning the domain name.

As discussed earlier it is found that the Complainant has adopted and used the mark ANGRY BIRDS extensively in several jurisdictions and its registered marks bear testimony to this fact. The fact that the disputed domain name bearing the Complainant's famous trademark is being used to link to other sites and diverts users looking for the Complainant has the potential to create confusion in the minds of Internet user and derive revenue by exploiting the goodwill associated with the Complainant's trademark.

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad

*Hanin Narayanan*

faith. The Arbitrator finds the circumstances here suggest that the Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely to attract Internet traffic to the Respondent's website, which is considered bad faith registration and use of the disputed domain name under the Policy.

It is highly unlikely that the Respondent could have been unaware of Complainant's rights in the mark at the time he registered the domain name. On balance, given the circumstances and use of the disputed domain name by the Respondent to attract Internet users to his website based on the trademark, and offering the domain name for sale on one of the links is indicative of registration and use of the disputed domain name in bad faith under the INDRP Policy.

Based on all the facts and circumstances of the case the Arbitrator has no hesitation in finding that the disputed domain name was registered in bad faith and has been used in bad faith. The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy.

### **Decision**

For the reasons discussed, it is ordered that the disputed domain name <angrybirds.in> be transferred to the Complainant.



**Harini Narayanswamy (Arbitrator)**

**Date: December 28, 2013**