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MHG IP HOLDING (SINGAPORE) PTE. LTD, Singapore Vs. Jay Mistry, Gujarat
INDRP Case no. 1587
Arbitrator: Mr. P.K.Agrawal

Statutory Alert:

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AWARD

1. The Parties

The Complainant is M/s **MHG IP HOLDING (SINGAPORE) PTE. LTD**, 2, Alexandra Road, 05-04/05, Delta House, Singapore, 159919.

The Respondent is Jay Mistry, Shiv charan Soc-2, behind somnath temple, Bilimora, Gujarat -396321, India.

2. The Domain Name and Registrar

The disputed domain name is *<anantarahospitality.co.in>*. The said domain name is registered with the Registrar – GoDaddy.Com LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D693E9AD8808E4FF1AFDB498E8C0BCC70-IN
- b. Date of creation: November 6, 2021
- c. Expiry date: November 6, 2022

3. Procedural History

- (a) A Complaint dated 12th July, 2022 has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that 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) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Advocate and former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on

5.08.2022 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 5.08.2022. The Complainant was advised to submit amended copy of complaint with the Respondent's address as reflected in WHOIS details. The Complainant submitted & served the amended complaint through email. The Respondent was given 14 days for reply to the complaint. The Notice email was served upon the Respondent email id given in WHOIS details which was delivered; however, it could not be served upon the postmaster@anantarahospitality.co.in as it was returned undelivered by Gmail due to non- acceptance by the recipient's server. The Complainant, through his email dated 8.08.2022 has submitted the proof of dispatch of his Complaint to the Respondent through India Post. In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent responded through email dated 17.8.2022 to the Complaint served to him and gave a short reply.

4. Factual Background

The Complainant in this arbitration proceedings is M/s MHG IP HOLDING (SINGAPORE) PTE. LTD, 2, Alexandra Road, 05-04/05, Delta House, Singapore, 159919. According to the details given in the complaint, the Complainant owns and operates resorts and spas which combine luxury with the culture and natural beauty in the most enchanting destinations in the world. The Complainant is a subsidiary of Minor International PCL which currently operates over 530 hotels, resorts and serviced suites and over 2,000 restaurants that they have built and developed over the course of over 50 years of operation, in 56 countries across the Asia Pacific, the Middle East, Europe, South America, Africa and the Indian ocean. The Complainant claims to be amongst the largest hospitality and leisure companies in the Asia Pacific region and also owns and operates a highly successful spa business, consisting of over 70 branded spas in various parts of the world including Asia, Africa and the Middle East. M/s ANANTARA HOSPITALITY (OPC) PVT LTD is incorporated as per Indian laws on 6.1.2020.

The Complainant, among other things, is the owner of various trademarks with the letters "ANANTARA". The Complainant, through their group companies, operates and manages hotels, resorts and spas, including those under the ANANTARA Trademarks. In addition, to the Complainant's hotels and resorts under the well-known ANANTARA

Trademarks, the Complainant operates hotels under many other prestigious brands, i.e. AVANI, TIVOLI, NH, NH Collection, NHow, Oaks Hotels & Resorts, Elewana Collection, JW Marriott, Four Seasons Hotels & Resorts, St. Regis, Radisson and Minor International.

The Complainant claims that the Complainant adopted the ANANTARA Trademarks in respect of their resorts and spas in the year 2000, and since then, have continuously expanded their business under the said trademarks by opening ANANTARA resorts and spas in a number of countries around the world. Today, the Complainant owns, operates and/or manages over 50 luxury hotels, resorts and premium serviced apartments and over 30 spas under the ANANTARA Trademarks in Asia, the Middle East, Africa and Europe including in countries such as Thailand, Sri Lanka, Vietnam, Cambodia, China, Indonesia, Maldives, Mozambique, Portugal, the United Arab Emirates, Oman and Qatar etc.

The Complainant submits that the use of the ANANTARA Trademarks have been extensive and continuous since their respective adoptions. Besides having a significant presence in offline business, the Complainant has extensive presence and outreach to global customer base, through its dedicated website, <https://www.anantara.com/en> which website was created in the year 2000. The said website has been accessible from India since its inception, and it has been possible at all times for residents in India to book their stay at the Complainant's ANANTARA resorts through this website.

By virtue of such extensive and widespread use, advertisement and promotional activities, public renown of ANANTARA and goodwill and reputation arising therefrom, internationally including in India, the ANANTARA Trademarks have acquired a very high degree of distinctiveness and qualify to be considered as well-known trademarks. In view of the above, it is submitted that the ANANTARA Trademarks have become exclusively associated with the Complainant and are identified by the members of the public and trade across the globe, as well as in India, solely with the Complainant and the goods and services provided by them.

The Complainant also actively promotes and advertises its ANANTARA Trademarks and goods and services thereunder through numerous social media sites/platforms such as Facebook, YouTube, Instagram, Twitter etc. The popularity of ANANTARA is also evident from the popularity of its social media pages. Notably, the Complainant's Facebook page has over a lakh follower as of June 2022, their YouTube page over eighteen thousand subscribers as of June 2022. The Complainant also maintains Twitter and Instagram pages with an average of more than nineteen thousand followers each. The Complainant has obtained several trade mark registrations for the well-known mark "ANANTARA" and its

formatives in various relevant classes of products and services in India and in over 65 jurisdictions of the world including in Australia, New Zealand, European Union, Indonesia, Malaysia, Philippines, to name a few.

The Complainant claims that its trademark "ANANTARA" qualifies as a well-known trademark, enjoying exclusivity across all classes of products and services. ANANTARA Trademarks have predominantly become synonymous with the Complainant and their quality services and, therefore, the Complainant is entitled to exclusive proprietary rights therein. Further, the ANANTARA Trademarks have become so well-known to the public at large including those in India, that the use of an identical or similar mark in relation to identical/similar or cognate and allied services/goods of another would likely be taken as indicating a connection between those services/goods with the Complainant.

Respondent's Identity and Activities

The Respondent's activities are not known as per WHOIS details. According to the Complainant, the Respondent is his competitor. The Respondent responded on 17.8.2022 to the Notice and complaint served upon him through emails and couriers. As per email of the Respondent, the Respondent is Master in Computer Application and owns a personal site - <jaymistry.in>.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the Complainant's well-known brand and registered mark, 'ANANTARA' is the most prominent and in fact, the essential feature of the impugned domain i.e., www.anantarahospitality.co.in. Moreover, the Respondent is using the Complainant's mark, in association with the term, 'hospitality', which is commonly used in respect to the services offered by the Complainant. From the website, it is also apparent that the Respondent has given significant emphasis on the Complainant's mark, thereby giving an impression that the Respondent is in fact, ANANTARA. As elaborated above, the Complainant enjoys both statutory and common law rights qua the trademark ANANTARA in India and throughout the world. It is submitted that the Respondent has adopted and is using the impugned domain name, to clearly denote that the Respondent is associated with or

is affiliated to the Complainant. Pertinently, the Respondent is using the Complainant's trademark, as part of its domain name, company name and trading style, in respect to identical services i.e. tours, travel and tourism. This leaves no or very less doubt in the mind of the consumers that the Respondent is either the Complainant itself or is closely associated with the Complainant. On account of use of identical mark for identical services, the Respondent is clearly infringing upon the Complainant's well-known brand and trademark, ANANTARA.

It is submitted, as is the modus operandi of the Respondent to cheat the consumers is apparent from the fact that the Respondent has adopted and is using the impugned identity of Anantara Hospitality, and is using the same, also as part of the impugned domain name, to piggy ride the Complainant's immense goodwill and reputation.

The Complainant submits that the disputed domain name is identical to the Complainant's registered trademark, 'ANANTARA' and is used in order to attract the internet users and consumers for its own commercial gain by abusing the goodwill and reputation of the Complainant's 'ANANTARA' Trademarks. It is pertinent to note here that the Complainant had registered its domain name, www.anantara.com in the year 2000 and thus has much prior, continuous and extensive use of its well-known brand and trademark, even in terms of online presence. Owing to identical / confusing similarity of the disputed domain name with the Complainant's well-known brand, registered marks and even domain name, the Respondent's adoption and use of the impugned domain name is highly prejudicial to the Complaint's exclusive and proprietary rights and interest.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. The Complainant submits that there is no credible or legitimate reason for the Respondent to have chosen to adopt a domain name consisting of the identical 'ANANTARA' mark. It is apparent that the Respondent has adopted the disputed domain name with the sole intention to use the fame of the Complainant's 'ANANTARA' Trademarks to generate web traffic and confuse the internet users and the public at large. Such use by the Respondent is neither bonafide, nor a legitimate fair use of the disputed domain name.



The Complainant contends that the Respondent has registered and is using the impugned domain name to:

- a. Attract the internet users who will believe that the Respondent's services have been authorized and/or licensed by the Complainant.
- b. Misrepresent the relevant users and pass off its illegal and fraudulent services as that of the Complainant; and
- c. Misappropriate the Complainant's reputation, goodwill and customer loyalty for its own wrongful profits.

According to the Complainant, the Respondent has adopted and is using the identical domain name to usurp the immense reputation and goodwill associate with the Complainant's ANANTARA trademarks. Admittedly, the Complainant is the registered proprietor and owner of the ANANTARA trademarks and hence the Respondent has no right or any interest, whatsoever, in respect of the said mark, also as part of the impugned domain name, other than that of reaping undue and illegal benefit.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the bad faith is implicit in the registration of the Disputed Domain Name. The Respondent's bad faith is writ large from the fact that the Respondent has deliberately registered the impugned domain name, www.anantarahospitality.co.in and is flagrantly using the Complainant's brand on its website, to create public confusion as to the source of the services. Moreover, the Respondent has been successful in cheating unwary customers under this disguised association, through the impugned domain name. The Respondent has registered the domain name with ulterior motive to commit fraud and cheating, which are serious offences under the law.

The Complainant submits that the Respondent has illegally adopted and is using the infringing domain name / website to pass off their unregulated and assumingly, illegal hospitality services, under the garb of being the Complainant itself or an entity, affiliated, associated or endorsed by the Complainant. Besides, causing grave harm and loss of revenue and reputation to the Complainant, the Respondent is causing severe losses to the users/ consumers, who may use the Respondent's services, under a belief that the same are provided by the Complainant and thereby duping them off heavy monetary losses. There have also been instances of actual consumer confusion wherein customers after being defrauded and duped by the Respondent have approached the Complainants for recovery of money.

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According to the Complainant, the Respondent has deliberately The Respondent can have no plausible explanation as to how it came to adopt the impugned domain name <http://www.anantarahospitality.co.in/> in the first place except to have picked up the Complainant's identical trademark ANANTARA in its entirety and making the same part of the domain name to draw an apparent association with them and to depict to the public at large that they are the authorized service provider, partner/affiliate or related entity for the Complainant when that is not the case. As the Respondent is not affiliated or authorized by the Complainant, it is apparent that they are impersonating the Complainant's business and brand, to usurp illegal profits. The Respondent has no right to be exploiting or encashing upon the goodwill and reputation earned by the Complainant in its earlier and well-known trademark ANANTARA, and use of the same as part of the domain name has been done only in bad faith. The Respondent can neither have any explanation whatsoever for adoption of the impugned domain name nor can any explanation be accepted in such a case of blatant copying of the Complainant's rights in its well-known, registered and earlier trademark ANANTARA. In the above circumstances, it is clearly evident that the Respondent has malafidely adopted the impugned domain name, being totally aware of the trade name and trademark ANANTARA.

The Complainant has contended that the evidence submitted by them overwhelmingly supports the conclusion that the impugned domain name is being registered and used in bad faith, in light of the Complainant's extensive prior use and registration of its 'ANANTARA' marks and its domain www.anantara.com. It is further submitted that given the prominence and well-known stature of the Complainant's services under its house mark, it is incomprehensible that the Respondent would have been unaware of the Complainant's brand and trademark 'ANANTARA', at the time when the disputed domain name was registered. This behaviour of the Respondent constitutes bad faith use and may tarnish the Complainant's reputation by, *inter alia*, attracting Internet users to a webpage that appears to be endorsed by the Complainant when there is no such endorsement.

The Complainant submits that despite the prior knowledge of the Complainant's 'ANANTARA' mark, the Respondent registered the disputed domain name www.anantarahospitality.co.in in year 2021, which is virtually identical to the Complainant's registered trademarks. In light thereof, it is submitted that the Respondent's conduct and adoption of the identical domain name amounts to bad faith. Having said so, it is further submitted that the Respondent intentionally adopted the identical domain name in order to attract the internet users to the disputed domain and its website thereon with a view to derive unfair monetary advantage

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Respondent's use of a privacy service to conceal its identity and provision of false or incomplete WHOIS information, further evidences the Respondent's bad faith registration and use of the Disputed Domain.

B. Respondent

The Respondent through his email dated 17.8.2022 has stated as follows – “Dear Sir, As per telephonic conversation, I am sending you the screenshot of the domain. It is been put off and we are not using it. Please check the attached screenshot for the same. As well as the domain is also deleted from my account and it is released from my end.”

He did not submit any evidence or argument indicating his relation with the disputed domain name <anantarahospitality.co.in > or any trademark right, domain name right or contractual right.

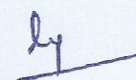
6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

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

Although Respondent has not offered any arguments to defend himself on this complaint, the default does not automatically result in a decision in favour of the Complainant. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.



A. Identical or Confusingly Similar

The disputed domain name < *anantarahospitality.co.in* > was registered by the Respondent on November 6, 2021.

The Complainant is an owner of the registered trademark "ANANTARA" for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is < *anantarahospitality.co.in* >. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "ANANTARA" products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name < *anantarahospitality.co.in* > is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) 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; or
- (ii) 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

- (iii) 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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Respondent has not responded in this case despite sufficient notice. There is also no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not ANANTARA as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "ANANTARA" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name < *anantarahospitality.co.in* > under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation,

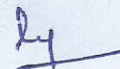
shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) 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
- (ii) 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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 contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

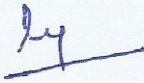
The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.



7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar 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 domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <anantarahospitality.co.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator

Dated: 20th August, 2022