

AND IN THE MATTER OF:-

Six Continents Hotels, Inc.

Three Ravinia Drive, Suite 100

Atlanta, Georgia 30346

USA

.....Complainant

Versus

Google Creater / Natraj Pencil

09, Mumbai Andheri East

Mumbai, Maharashtra – 400001

India

.....Respondent

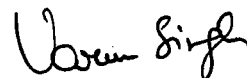
AWARD

24.03.2025

1. The present arbitration proceedings are initiated under and in accordance with the INDRP, and the INDRP Rules of Procedure which are adopted by the National Internet Exchange of India (NIXI) which governs the dispute in connection with .IN domain name.
2. The Registrant/Respondent has registered the <holidayinnhotel.in> (hereinafter 'disputed domain name') with the domain name Registrar duly accredited with the NIXI i.e. HOSTINGER operations, UAB since 30 September, 2024.

Procedural history

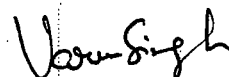
3. The consent of the Arbitrator was sought for in the present matter by the NIXI vide email dated 20.01.2025 and the Arbitrator gave his consent along with his statement of acceptance and declaration of impartiality vide his email dated 20.01.2025.



4. I was appointed as an Arbitrator by the NIXI in the present matter vide their email dated 24.01.2025 which email containing the complaint and all relevant documents was marked to the Respondent (<hotelcreate56@gmail.com>) as well. The Arbitrator issued a notice dated 25.01.2025 under Rule 5(c) of INDRP Rules of Procedure whereby the Respondent was directed to file its reply to the Complaint till 15.02.2025. The said notice issued by the present Arbitrator was marked via email to the Complainant and to the Respondent, which email did not bounce back. The Respondent was duly served with the complaint and documents vide email dated 24.01.2025 by NIXI. Thereafter, the notice 25.01.2025 of the Arbitrator was also duly served on the Respondent vide Arbitrator's email dated 25.01.2025.
5. Due to the Respondent's failure to file a reply, the Arbitrator, by email dated 08.03.2025, extended a final opportunity for submission. The learned Counsel of the Complainant was requested to serve the Respondent once again through email and courier. Pursuant to the said email dated 08.03.2025, the learned Counsel of the Complainant served the Respondent with the complaint and annexures thereto vide his email dated 10.03.2025. The learned Counsel of the Complainant vide his email dated 10.03.2025 had informed the Arbitrator that :-
 - a. The Respondent was served through email dated 10.03.2025 (copy of the said email dated 10.03.2025 to the Respondent was an attachment to the email dated 10.03.2025 to the Arbitrator), and that the said email did not bounce back;

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- b. The Respondent was also served through courier (an invoice for courier was attached with the email)
6. Moreover, the said email dated 10.03.2025 of the learned Counsel of the Complainant to the Arbitrator, was also addressed to the Respondent.
 7. The email dated 10.03.2025 which was sent by the learned Counsel for the Complainant to the Respondent did not bounce back. Moreover, the invoice of the courier sent to the Respondent by the learned Counsel of the Complainant shows that all possible attempts were made to serve the Respondent. The Respondent was duly served with the Complaint by the Complainant vide his email dated 10.03.2025.
 8. The Arbitrator vide his email dated 08.03.2025, by way of abundant caution, granted final opportunity to the Respondent to file its reply within seven days of the receipt of the Complaint. However, no such reply is filed till date. As mentioned in paragraph 4 above, the Respondent was already duly served with the complaint by NIXI. The Respondent was served once again by the learned Counsel for the Complainant, as mentioned above. It is apparent that the Respondent was served more than once with the Complaint and its documents, but has failed to file its reply.
 9. In view of foregoing, it is safe to hold that Respondent was duly served with the present complaint and annexures thereto, and is aware of the present proceedings. The Respondent has avoided any participation in the present proceedings.



10. Rule 5(d) of the INDRP Rules of Procedure states that the date of commencement of the arbitration proceeding shall be the date on which the arbitrator issues notice to the Respondent. Therefore, the date of commencement of arbitration in the present case is 25.01.2025. Rule 5(e) of the INDRP Rules of Procedure states that an Arbitrator shall pass an award within a period of 60 days from the date of commencement of the arbitration proceeding and in exceptional circumstances, the timeline may be extended by a maximum period of 30 days by the Arbitrator subject to a reasonable justification in writing. The present award is passed within the timelines prescribed under the INDRP Rules of Procedure.

Issues for consideration

11. Paragraph 4 of the INDRP provides the grounds on which a Complaint can be filed by the aggrieved Complainant who considers that a registered domain name conflicts with his/her legitimate rights or interests on the following grounds:

(a) the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights; and

(b) the Registrant has no rights or legitimate interests in respect of the domain name; and

(c) the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

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Contention of the Parties

12. The Complainant in its complaint, *inter alia*, states the following:-

- a. The Complainant states that it is part of the Inter-Continental Hotels Group which is the one of the world's largest hotel groups.
- b. Complainant's brand 'Holiday Inn' was founded in 1952 and is used in connection with 1,234 hotels, offering 2,22,184 rooms worldwide.
- c. The trade mark 'HOLIDAY INN' of the Complainant is registered in USA. The said trade mark is registered in India vide trade mark registration no. 1240888 in class 43 and trade mark no. 1240889 in class 43. The date of the application/registration in India is 30.09.2003 with the user date of the said trade mark shown as 31.12.1973.
- d. The Complainant and its related companies including Inter-Continental Hotels Corporation have prevailed in numerous domain name dispute proceedings involving the HOLIDAY INN trade mark including a complaint which resulted in the transfer of 1519 domain names to the Complainant – *Inter-Continental Hotels Corporation, Six Continents Hotels, Inc v. Daniel Kirchof, WIPO Case No. D2009-1661*.
- e. The Complainant created its domain name <holidayinn.com> on 21 March 1995 which is 29 years before the disputed domain name.
- f. The Respondent is not using the disputed domain name in connection with an active website. The Complainant states

that at least one security vendor has reported that the disputed domain name is associated with malicious activities according to a report from VirusTotal, a service that analyses files and URLs for viruses, worms, trojans and other kinds of malicious content.

13. The Respondent has not filed any reply to the Complaint filed by the Complainant.

Respondent's disputed domain name confusingly similar to Complainant's trade mark

14. The trade mark 'HOLIDAY INN' of the Complainant is a registered trade mark with the date of use of the trade mark shown as far back as 21.12.1973. Section 28 of the Trade Marks Act, 1999, confers rights to the Complainant by registration of the trade mark 'HOLIDAY INN' including the right to exclusive use of the said trade mark.
15. The domain name of the Complainant i.e. <holidayinn.com> was created on 21.03.1995 is still in use. This invariably shows the prior use of the trade mark of the Complainant.
16. The Complainant has successfully filed numerous domain name disputes to protect its trade mark 'HOLIDAY INN' such as WIPO Case No. D2012-0757(domain name <holidayinnkandooma.net> was transferred to the Complainant), WIPO Case No. D2007-0472(domain name <crowneplazaescort.com> and <holidayinnescort.com>) were transferred to the Complainant, WIPO Case No. D2005-0755 (domain name <holidayinnmanassas.com> was directed to be transferred to the Complainant), WIPO Case No. D2003-065 (domain name

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<holidayinnsunspreeresort.com> was directed to be transferred to the Complainant), and WIPO Case No. D2005-1249 (domain names <theholidayinnexpress.com>, <theholidayinnresort.com> and <wwwholidayinns.com> were directed to be transferred to the Complainant). The Complainant has proved that it has taken steps to protect the exclusivity attached to its trade mark.

17. The Complainant has produced documents including trade mark registrations in India and abroad, WHOIS record, extracts from website to show the prior use of the trade mark 'HOLIDAY INN'. Furthermore, the Complainant has taken steps to protect its trade mark by filing domain name complaints and has received awards in its favour. As mentioned above, the WIPO cases wherein the domain names were transferred in favour of the Complainant were passed much before the registration of the disputed domain name. Therefore, the Complainant has established its use of the trade mark 'HOLIDAY INN' much prior to the creation of the disputed domain name.

18. The Complainant has mentioned cases wherein the domain names comprising of word 'hotel' was held to be confusingly similar to the trade mark 'HOLIDAY INN' of the Complainant. In *Six Continents Hotel, Inc v. Steven Hetzer*¹, the domain names <holidayinnresorthotel.com and <holidayinnresorthotels.com> were found to be confusingly similar to the trade mark 'HOLIDAY INN' of the Complainant. In *Six Continents Hotel, Inc v. Trasporto di*

¹ WIPO Case No. D2013-1916

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*Networ and Pro Intel*², the domain names <holidayinnexpresshotels.com>, <hollidayinnhotels.com> and <holidayinholtel.com> were found confusingly similar to the trade mark 'HOLIDAY INN' of the Complainant.

19. It is well established law that the specific top-level domain such as '.com', '.net', '.in' etc does not affect the domain name for the purpose of determining whether it is identical or confusingly similar (*Relevant decision:- Rollerblade, Inc. v. Chris McCrady*³). Therefore, TLD '.in' is to be disregarded while comparing the disputed domain name with the trade mark of the Complainant.
20. The Respondent has entirely used the trade mark 'HOLIDAY INN' of the Complainant in its disputed domain name. The Respondent has merely mentioned the suffix 'hotel' to the trade mark 'HOLIDAY INN' and a TLD '.in' in the disputed domain name which is not capable to distinguish the disputed domain name from the registered and prior used trade mark of the Complainant.
21. Therefore, a mere addition of the descriptive word 'hotel' would not make the disputed domain name distinguishable from the trade mark 'HOLIDAY INN' of the Complainant.
22. In view of foregoing, it is apparent that the disputed domain name <holidayinnhotel.in> is confusingly similar to the domain name <holidayinn.com> of the Complainant, and its registered trade mark 'HOLIDAY INN'. Therefore, The

² WIPO Case No. D2004-0246

³ WIPO Case No. D2000-0429

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Complainant has established its case under paragraph 4 (a) of the INDRP.

Respondent has no rights or legitimate interests in disputed domain name

23. The Respondent has used entire trade mark 'HOLIDAY INN' of the Complainant, in the disputed domain name. The Respondent is not known by the domain name. The disputed domain name is not shown to be active. The disputed domain name is not being used in connection with an active website. Furthermore, the registration of the domain name is created and used without any consent of the Complainant.
24. The disputed domain name also makes a hopeless attempt to make an association with the Complainant's domain name which can never be termed as legitimate use of the disputed domain name. The disputed domain name uses in its entirety the word 'HOLIDAY INN' which is the registered trade mark of the Complainant to divert the users from the Complainant's platform.
25. The Respondent cannot be said to have any legitimate right or interest in the disputed domain name which is confusingly similar to a registered trade mark of the Complainant which is being used much prior to the disputed domain name.
26. The disputed domain name incorporates a trade mark which is neither owned by the Respondent nor the Respondent is known by the name 'HOLIDAY INN'.
27. Furthermore, failure to make an active use of the disputed domain name demonstrates that Respondent is not using the

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disputed domain name for a bona fide offering of goods or services or a legitimate non-commercial fair use.

28. Therefore, the Respondent/Registrant has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established its case under paragraph 4 (b) of the INDRP.

Baid Faith

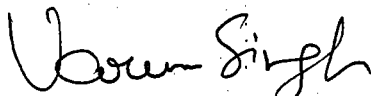
29. Given that 'HOLIDAY INN' is a registered trade mark which is also an internationally recognized trade mark, I believe that when Respondent registered the disputed domain name, he must have known of Complainant's trade mark. This means that Respondents must have known of the Complainant's trade mark, which is evidence of bad faith.
30. The Respondent registered the disputed domain name in a bad faith attempt to confuse internet users as to a possible association between the disputed domain name and the Complainant. The registration of the disputed domain name is in bad faith according to paragraph 7(c) of the INDRP.
31. The registration of the disputed domain name affects the rights of the Complainant vis-à-vis its registered trade mark 'HOLIDAY INN' which finds its place prominently in its domain name i.e. <holidayinn.com>. Therefore, the Complainant's right to exclusively use its registered trade mark 'HOLIDAY INN' is affected by the registration of the disputed domain name.
32. The disputed domain name will negatively affect the goodwill and reputation of the Complainant thereby disrupting business of the Complainant. Therefore, the

registration of the disputed domain name is in bad faith according to paragraph 7(d) of the INDRP.

33. In *Telstra Corporation Limited v. Nuclear Marshmallows*⁴ it was observed that *"It is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith."* Notwithstanding the absence of activity on the disputed domain name, its confusing similarity to the Complainant's registered trademark, coupled with the Respondent's lack of legitimate rights, demonstrates bad faith registration.
34. In view of foregoing, it is apparent that the registration of the disputed domain name is in bad faith to hurt the commercial activity of the Complainant. The Complainant has established its case under paragraph 4 (c) of the INDRP.

Decision

35. In view of the foregoing, it is ordered that the disputed domain name <holidayinnhotel.in> be transferred to the Complainant. Parties are ordered to bear the cost of the present proceedings.


(VARUN SINGH)
Sole Arbitrator

Varun Singh

Advocate-on Record

1203, Tower-8, SDS NRI Residency,
GH 04/A, Sector-45, Noida,
Uttar Pradesh-201303

⁴ WIPO Case No. D2000-0003