



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

68547 11/9/2008 100/-
s. No.....D.....Rs.....

Sold To.....Harini.....

For/W/o/D/o.....R. Narayana Swamy Rao Hyderabad

For Whom.....Self.....

P 384869

K. Rama Chandravathi

K. RAMA CHANDRAVATHI
STAMP VENDOR (L. No:27/99, RL.No.16/2008),
6-3-387, Beside Banjara Durbar Hotel, Panjagutta,
HYDERABAD - 500 082. Phone. No. 2335179

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

In The Matter Between

BARCLAYS BANK PLC

Complainant

Versus.

ONIKER Privacy Services

Respondent

Harini Narayana

1. The Parties

The Complainant, BARCLAYS BANK PLC is an International financial and banking entity based in the United Kingdom. Lovells LLP of the United Kingdom is the Complainant's authorized representative in these proceedings.

The Respondent is Moniker Privacy Services of the United States of America.

2. The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name <barclaycards.in>. The registrar for the disputed domain name is Key Systems- GmbH.

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").

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.

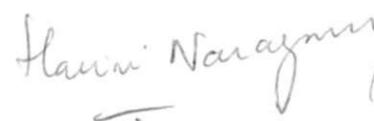
The Arbitrator received the hard copy of the Complaint from the .IN Registry on August 1st 2009. On August 4, 2009 the Arbitrator transmitted by email a notification of commencement of the arbitration proceedings to the Respondent under paragraph 5 (c) of the INDRP Rules, and copies by email to other interested parties to the dispute.

The Respondent was given twenty-one days time from the date of the notification to file a Response. The Respondent did not file a formal response in these proceedings. The Arbitrator proceeds under paragraph 11 of the Rules, to determine the case on its merits based on the submissions made by the Complainant and the documents on record.

Factual Back ground

The Complainant is a leading international banking and financial group that has worldwide operations in several countries. It owns numerous trademarks including the 'BARCLAYCARD' mark, which is relevant to the present domain name dispute. The Complainant owns Community Trademark Registrations (CTM) registration numbers 552,236 and 2315554 for word mark "BARCLAYS" and also owns CTM registration 55,277 for BARCLAYCARD (word) mark. The Complainant has also filed Indian trademarks 1, 297,655 and for BARCLAYCARD, application number 1519366.

The Complainant states it owns a number of gTLD and ccTLD domain names which include <barclaycard.com>. <barclaycard.de>, <barclaycard.co.uk>, <barclaycard.it> and



several other domain names comprising of its marks, including <barclaycard.in> which is relevant to these proceedings. The Complainant also owns the domain names <barclays.com> and <barclays.in> with its BARCLAYS mark.

4. Parties contentions

A. Complainant

The Complainant states it was founded more than three hundred years ago and presently has operations spreading over fifty countries. It claims that it employs 155,000 people and has a customer base of fifty million worldwide. The Complainant states it has been in India for over three decades with its initial entry to India being through Barclay's Capital, an investment Bank, and via its retail and commercial banking services. It states that it launched its commercial services in India in November 2006 and has two thousand three hundred clients, which includes large multinationals, public sector companies, and small and medium enterprises. It states its spectrum of services include loans, deposits, payments and cash management services, trade finance and treasury solutions.

According to the Complainant its Global Retail and Commercial Banking (GRCB) division, includes Barclaycard in India and since its launch in India in May 2007, it has more than 900,000 customers. Its registered head office in India is in Mumbai and it has representative offices in New Delhi, Kanchipuram, Nelamangala and Junahgadh.

Barclaycard states the Complainant is its credit card division, which is one of Europe's leading credit card and consumer lending businesses. It has over 8.8 million credit cards issued outside the UK. Barclaycard entered the Indian credit card market in 2007 and since then it has established itself as a leading credit card service provider. The Complainant states that its profits before tax for the 2008 year-end financial results for its global retail and commercial banking (for emerging markets) increased by 34 % to GBP 134 million which includes its expansion in India.

The grounds under which the Complainant requests for transfer of the domain name are: The disputed domain name is confusingly similar to the Complainant's mark and its domain name < barclaycard.in> . The disputed domain name is identical to its mark except for the additional letter "s" after the word "card" argues the Complainant. The Complainant cites the INDRP decision 26, where it was held that the absence of a single letter "s" was found confusingly similar to the SONYERRISION mark.

The Complainant further argues that disputed domain name is being used to generate revenue by the Respondent as the website sports pay per click (PPC) links and features advertisements of relevance to the user. The website additionally features auto generated content, and is therefore different from the standard pay per click sites in this respect. It comprises two parts. The sponsored advertisement links are provided via Google's sponsored advertisements and are displayed on right and left hand side and below the main body of the text. The sponsored link with auto generated content and which

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purports to provide information and news about the Complainant's credit card division, Barclaycard is provided by Google news stream and from Wikipedia content.

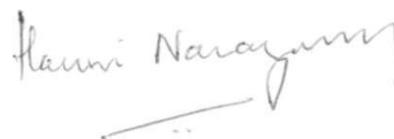
The Complainant contends that the auto generated sections provided by Google news stream, in combination with wording featured on the webpage, which states "barclaycard.in" is an unofficial guide to Barclaycard India, is an attempt by the Respondent to give its website an "air of legitimacy". Further, the subject matter of sponsored advertisements may confuse people that it is being operated by the Complainant, due to the strong connection between the goods and services being offered and advertised at the disputed domain name. Such confusion and association, asserts the Complainant, would only benefit the Respondent but disrupt the Complainant's business and dilute its mark and also expose it to other risks such as fraud.

The Complainant states that the Respondent has no rights and legitimate interests in the domain name as the disputed domain name was registered on November 11, 2007, which is two years after the Complainant had started its operations in the Indian markets from its website <barclays.in>. The Respondent has not been authorized, or licensed to the use its marks. Further, as it has prior registered trademark rights in BARCLAYS AND BARCLAYSCARD, the Respondent ought to have been aware of the Complainant's worldwide repute and has intentionally registered the disputed domain name for exploiting its goodwill and reputation and to profit from misleading users.

The Complainant contends that the disputed domain name was registered and is used in bad faith as its marks have acquired substantial good will and reputation through out the world, including India. The registration of the disputed domain name was done with knowledge of Complainant's rights in the mark. The Respondent's registration of the disputed domain name has also capitalized on any prospective or existing customers attempting to locate card services provided by Barclaycards. Adding the letter "s" is a deliberate attempt to typo-squatt, as users are likely to make the typographical error.

The Complainant alleges that the Respondent uses the disputed domain name to direct users to sponsored pay-per-click links which are purportedly related to Complainant, but are actually linked to third parties offering services in direct competition with the Complainant's business. Such use causes deception to the public and the Complainant and is likely to result in dilution of its mark.

Under paragraph 6(iii) of the Policy, the Complainant alleges that the disputed domain name has been registered and used in bad faith as it intentionally attempts to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name or mark as to the source of sponsorship, affiliation or endorsement of the Respondent's website. The Respondent's attempts to legitimize its website by posing as a news or information service is a sham argues the Complainant. Finally, the Complainant argues that the Respondent has used a privacy registration, which is an additional factor indicative of bad faith under the circumstances of the case.



B. Respondent

The Respondent did not file a formal response in these proceedings, but in reply to the notification sent by the Arbitrator, sent an email dated August 5, 2009, which states:

"I have no further questions and/or actions regarding this domain, I accept that the domain is confusingly similar to the Barclaycard trademark and I have no vested interest in the domain. Without question the domain should be released to the registry or transferred directly to Barclays in good faith.

The domain is currently blocked by Moniker. Both Moniker and yourselves have my authorization to transfer the domain out forthwith, please contact Moniker for further information and to initiate this process. Alternatively, you can supply me with a Moniker account number and email address and I will facilitate the transfer out."

The email bears no name but it can be seen from the records that it was sent from admin@oinkha.com.

5. Discussion and Findings

Under the .IN 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, in compliance with the .IN Policy and the INDRP Rules.

The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- (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 and is being used in bad faith.

Identical or Confusingly Similar

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

The Arbitrator finds the Complainant has provided evidence of its ownership rights in the trademark BARCLAYCARD and its use in India. The Complainant has also demonstrated its prior adoption of the BARCLAYCARD mark for its services and has therefore established its rights in the mark.

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It is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. See for instance *Ingersoll-Rand Co. Frank Gully d/b/a Advcomren* , WIPO Case No.D2000-0021. <ingersol-rand.net>, and *Boehringer Ingelheim Pharma GmbH &Co.KG v. Philana Dhimkana*, WIPO Case No.2006 -1594, where it was held that, if a well known trademark was incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark.

The Arbitrator finds the BARCLAYCARD trademark has been used in its entirety in the domain name. Incorporating the term BARCLAYCARD and adding the letter "s" to the trademark in the domain name does not distinguish the domain name from the mark. See *Deutsche Telekom AG v. Vision Computer S.L.*, WIPO Case No. D2001-1240.

For the reasons discussed, the Arbitrator finds that the disputed domain name is confusingly similar to the Complainant's mark BARCLAYCARD.

Rights and Legitimate Interests

The second criterion requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that it has not authorized the Respondent to use its marks in any manner. The Complainant has submitted printouts of the Respondent's websites and its featured pay per click links, which show that it is redirecting Internet users to other sites. The selection of a domain name by the Respondent with a well known trademark which is being used to redirect to other websites is not a *bona-fide* use and does not confer rights or legitimate interests; See *Factory Mutual Insurance Company v. Rhianna Leatherwood* WIPO Case No.D2009- 0144 and *HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager*, WIPO Case No.D2006-0062.

Under paragraph 7 of the Policy, the registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant 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 Registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The Registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain. The Arbitrator finds there is no evidence on record to show that Respondent has any rights in the disputed domain name.

The Arbitrator finds the Respondent has no rights or legitimate interests in the disputed domain name.

Bad Faith

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Under the INDRP Policy the Complainant is required to prove that the domain name was registered and is being used in bad faith.

Under paragraph 6 (iii) of the Policy, if the registrant 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 mark, it is considered evidence of bad faith. The Arbitrator finds that the Respondent has registered the domain name with knowledge of the Complainant's trademark and uses it with the intention of attracting Internet users to its website. These factors clearly show the Respondent's bad faith in registering and using the disputed domain name.

Given the distinctiveness of the Complainant's mark, the misspelling of the mark constitutes bad faith registration and use under the Policy. See *National Association of Professional Baseball Leagues v. Zuccarini*, WIPO Case No. D2002-1011. It is evident that the Respondent uses the domain name for the purposes of displaying links for commercial use, and it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. The use of a domain name to attract consumers to a website featuring links, which are unconnected to the Complainant, is evidence of bad faith. See *Digipoll Limited v. Domain Administrator*, WIPO Case No. D2007-0999.

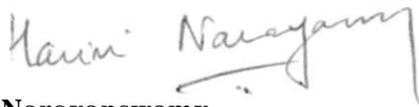
The Respondent has used a privacy service to suppress his true identity. While the use of privacy service in and of itself does not show bad faith, given the overall circumstances and the lack of legitimate use by the Respondent, the Arbitrator finds it reasonable to infer that the Respondent has opted for a privacy service to suppress its true identity.

Finally, where a Respondent has consented to transfer the domain name the requirements under the Policy are fulfilled. See *Lonely Planet Publication Pty Ltd. V. Hoang Anti Minh andcivn.com*, WIPO Case No. D 2003-0355 and *eMusic .comlnc.v. Mp3DownloadCity*, WIPO Case No. D2004-0967 and *Sanofi Aventis v. Day Corporation*, WIPO 2004-1075.

The Arbitrator finds the disputed domain name has been registered and used in bad faith under paragraphs 4 and 6 the Policy.

6. Decision

For all the reasons discussed above the Arbitrator orders that the Domain Name <barclaycards.in> be transferred to the Complainant.



Harini Narayanswamy

Arbitrator

Date: September 5, 2009