



दिल्ली DELHI

M 376722

BEFORE THE INTERNATIONAL EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR : S SRIDHARAN

Dated : 11.10.2010

Six Continents Hotels Inc USA - Complainant
-Vs-

Lv Bin, Shanghai - 200240
- Respondent

Sridharan
Arbitrator

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 11th October 2010

Six Continents Hotels Inc, USA ... Complainant

Versus

Lv Bin, Shanghai 200240 ... Respondent

1. The Parties

1.1 The complainant is Six Continents Hotels, Inc., a Delaware corporation with its principal place of business at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, USA represented by an Indian law firm Archer and Angel at K-4 South Extension 2, New Delhi through its counsel Sanjay Chhabra and The Giga law firm in the United States of America through its counsel Douglas M Isenberg Esq.

1.2 Respondent is Lv Bin at F0605103, No.800 Dongchuan Road Shanghai 200240.

The Domain Name and Registrar

1.3 The disputed domain name < corwneplaza.in > is registered with Directi Web Services Pvt Ltd Mumbai.

2. Procedural History



- 2.1 On 13th August 2010, the Arbitrator was asked by email by NIXI about his availability and consent to take up the Complaint for arbitration. Arbitrator informed his availability and consent. Arbitrator also informed NIXI that he had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 23rd August 2010, the Arbitrator received hardcopy of the Complaint along with Annexures.
- 2.3 On 24th August 2010, the Arbitrator issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. Arbitrator also sent an email about his appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to him.
- 2.4 On 25th August 2010, Arbitrator received a soft copy of the Complaint from the Complainant.
- 2.5 On 26th September 2010, the Arbitrator informed all by email that the Respondent had not filed any response to the Complaint and he would pass an award within 10 days on the basis of the materials made available by the Complainant. The Respondent was granted another period of 5 days to file his response if any.
- 2.6 The Respondent has not entered appearance. He has not filed any reply to the Complaint of the Complainant.

Sridharan

2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. **Factual Background**

A **Complainant**

3.1 Complainant is a subsidiary of Intercontinental Hotels Group ("IHG"), the world's largest hotel group by number of rooms. Complainant was known as Bass Hotels & Resorts Inc until 13th July 2001. IHG owns, manages, leases or franchises through various subsidiaries more than 4,400 hotels and 650,000 guest rooms in nearly 100 countries and territories around the world.

3.2 Affiliates of the Complainant include Holiday Inn Hotels and Resorts, Holiday Inn Express, Intercontinental Hotels & Resorts, Hotel Indigo, Staybridge Suites and Candlewood Suites. IHG also manages the world's largest hotel loyalty program, Priority Club Rewards. Complainant has filed documents on its business activities and that of its group at Annex 2, 3 and 8.

3.3 Complainant's predecessors-in-interest adopted the brand name "Crowne Plaza" in 1983 and today is used in connection with 373 hotels worldwide, which collectively offer 102,667 hotel rooms.

3.4 Complainant and its affiliates have registrations in various classes in about 95 countries or geographic regions worldwide for trademarks that consist of or contain the mark CROWNE PLAZA. Complainant has two Indian

Indelivants

registrations for the mark CROWNE PLAZA, one under Application No.755207 in class 16 with effect from 21st March 1997 registered in the name of the Complainant's predecessor and another under Application No.627707 in class 16 with effect from 11th May 1994 registered in the name of the Complainant. Complainant has filed copies of registration certificate and status report at Annex 10.

3.5 Complainant has three registrations in the United States of America as below. Complainant has filed computer prints out of the registrations in Annex 9. The registration at serial no.1 was acquired from the Complainant's affiliate Holiday Inns Inc.

S. No	Mark	Reg. No.	Date of First Use
1	CROWNE PLAZA	1,297,211 in class 42	June 21, 1983
2	CROWNE PLAZA	2,329,872 in class 42	November 1, 1994
3	CROWNE PLAZA HOTELS & RESORTS	2,895,328 in class 43	September 1, 2002

3.6 Complainant has obtained a Community Trade Mark registration for the mark CROWNE PLAZA under No. 001017946 in class 42 on December 17, 2002. A computer print out of registration is at Annex 11.

3.7 Complainant owns the domain name www.crowneplaza.com. The domain name was registered on March 31, 1995. The print out from "whois" data base is Annex 12.

Srinivasan

- 3.8 Complainant is vigilant in protecting its proprietary rights in the mark CROWNE PLAZA all over the world and has prevailed in numerous proceedings under the Policy, including the largest UDRP complaint ever filed, which resulted in a decision ordering the transfer of 1,519 domain names to Complainant and its affiliates.
- 3.9 The disputed domain name < corwneplaza.in > was registered in the name of the Respondent on 18th January 2010. On 17th May 2010, counsel for Complainant contacted Respondent regarding the disputed domain name < corwneplaza.in >, informing Respondent of Complainant's rights in the CROWNE PLAZA Trademark and demanding transfer of the disputed domain name < corwneplaza.in > to Complainant by May 31, 2010. Copy of the notice issued by the Complainant is at Annex 5.
- 3.10 On May 29, 2010, Respondent sent an e-mail refusing to transfer the disputed domain name <corwneplaza.in>. The contents will be discussed appropriately below. A copy of the email is at Annex 6.
- 3.11 On June 11, 2010, counsel for Complainant again contacted Respondent demanding him to transfer the disputed domain name < corwneplaza.in > to Complainant. Counsel for Complainant requested a response no later than June 18, 2010. A copy of the letter is at Annex 7. There was no reply from the Respondent.
- 3.12 Since the Respondent did not respond favorably to the notices of the Complainant, Complainant has initiated this arbitration.



B Respondent

3.13 The Respondent has not filed any reply to the Complainant's Compliant in this arbitration.

3.14 Respondent, however, replied the notice dated 17th May 2010 issued by the Complainant. Respondent in his reply dated 29th May 2010 stated that the words crown and plaza are general English words. He registered the disputed domain name <corwneplaza.in> for his personal purpose. He gave up using it temporarily. He would use the disputed domain name <corwneplaza.in> during Shanghai EXPO. Respondent was however ready to transfer the disputed domain name <corwneplaza.in> to the Complainant on an equal and mutually beneficial manner. He expected an acceptable offer from the Complainant. He asked the details of registration obtained by the Complainant.

3.15 Respondent did not respond the second notice dated 11th June 2010 issued by the Complainant.

4. Parties Contentions

A Complainant

4.1 The disputed domain name <corwneplaza.in> contains Complainant's CROWNE PLAZA Trademark in its entirety.

4.2 The disputed domain name <corwneplaza.in> is identical or confusingly similar to Complainant's CROWNE PLAZA Trademark.



- 4.3 The Respondent has no rights or legitimate interests in the disputed domain name **<corwneplaza.in>**. Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the CROWNE PLAZA Trademark.
- 4.4 Respondent has never used, or made preparations to use, the disputed domain name **<corwneplaza.in>** or any name corresponding to the disputed domain name **<corwneplaza.in>** in connection with a bona fide offering of goods or services. Respondent is using the disputed domain name **<corwneplaza.in>** only in connection with a website that contains links for hotel services that compete with the hotel services offered by Complainant under its CROWNE PLAZA Trademark. Such use is clearly not bona fide under the Policy and, therefore, does not confer upon Respondent any rights or legitimate interests in the disputed domain name **<corwneplaza.in>**.
- 4.5 Respondent has never been commonly known by the disputed domain name **<corwneplaza.in>** and has never acquired any trademark or service mark rights in the disputed domain name **<corwneplaza.in>** and, therefore, Respondent has no rights or legitimate interests in the disputed domain name **<corwneplaza.in>**. Given the Complainant's established use of the CROWNE PLAZA Trademark for more than 26 years, it is exceedingly unlikely that the Respondent is commonly known by this trademark.

Indira

- 4.6 Respondent is not making a legitimate non-commercial or fair use of the disputed domain name <corwneplaza.in>, without intent for commercial gain misleadingly to divert consumers or to tarnish Complainant's CROWNE PLAZA Trademark, and, therefore, has no rights or legitimate interests in the disputed domain name <corwneplaza.in> Rather, Respondent has made an illegitimate, commercial, unfair use of the disputed domain name <corwneplaza.in>, with intent for commercial gain misleadingly to divert consumers. Specifically, Respondent is using the disputed domain name <corwneplaza.in> in connection with a website that contains links for hotel services that compete with the hotel services offered by Complainant under its CROWNE PLAZA Trademark.
- 4.7 Respondent has acted in bad faith under the INDRP because the Respondent has intentionally attempted to attract internet users to the Respondent'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 Respondent's website or location or of a product or service on the Respondent's website or location
- 4.8 There can be no doubt that Respondent knew of Complainant's CROWNE PLAZA mark when it registered the disputed domain name <corwneplaza.in>, leading to evidence of bad faith. As set forth above, the CROWNE PLAZA mark is a well-known, internationally recognized mark registered in numerous countries or geographic regions worldwide. This demonstrates that Respondent must have not only been aware of

Sudhanshu

Complainant's marks, but even knew of Complainant's related domain names and constitutes strong evidence of bad faith. A further indication of bad faith under the Policy is the fact that Complainant's rights in the CROWNE PLAZA Trademark pre-dates Respondent's registration of the disputed domain name <corwneplaza.in> by approximately 27 years.

B. Respondent

4.9 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

5.1 Since the Respondent has chosen not to respond to this Complaint within the original and extended time granted to him, I am proceeding to determine this Complaint on merits based on the materials available on record. Though the Respondent has not filed any reply to this Complaint, he had effectively answered the Notice dated 17th May 2010 of the Complainant. I will discuss appropriately the answer of the Respondent herein below.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (i) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

Sudhakar

- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark CROWNE PLAZA and has been using the mark CROWNE PLAZA since 1983. The Complainant has registrations for the mark CROWNE PLAZA in India, USA and Europe and its associates have in other countries. Complainant owns the domain name <www.crowneplaza.com>. This domain name was registered on 31st March 1995. The Complainant's trade mark was registered first in India in 1994. The disputed domain name <corwneplaza.in> was registered by the Respondent only on 18th January 2010. The Complainant is the prior adopter of the mark CROWNE PLAZA. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark CROWNE PLAZA.

5.5 The Complainant's CROWNE PLAZA mark is well known throughout the world including India. It is clearly seen that the disputed domain name



<corwneplaza.in> wholly incorporates CROWNE PLAZA, the prior registered trade mark of the Complainant.

5.6 The mark CROWNE PLAZA has attained secondary significance by reason of substantial use made by the Complainant. Therefore, the Respondent's argument in his reply to Complainant's first notice that the mark CROWNE PLAZA is a combination of two generic expressions deserves no merit.

5.7 I, therefore, find that:

(a) The Complaint has both common law and statutory rights in respect of its trade mark CROWNE PLAZA.

(b) The disputed domain name <corwneplaza.in> is identical to the Complainant's prior registered trade mark CROWNE PLAZA.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.8 It is already seen that:

(a) The Complainant is the prior adopter and user of the mark CROWNE PLAZA. The Complainant's mark CROWNE PLAZA is well known in many countries across the globe including India.

(b) The Complainant's trade mark was adopted in the year 1983. It was registered first in India in 1994. The disputed domain name <corwneplaza.in> was registered by the Respondent only on 18th January 2010.



5.9 I visited the web site of the Respondent under the disputed domain name <corwneplaza.in>. The disputed domain name <corwneplaza.in> was offered for sale with the display: *The domain crownplaza.in may be for sale by its owner!* . A click on the display led to another window and the visitor was asked to enter his bid amount. In addition to this, the disputed domain name <corwneplaza.in> provided links to lots of web sites offering hotel services that compete with the services offered by Complainant under its CROWNE PLAZA trademark. It is obvious without any reasonable doubt that the Respondent registered the disputed domain name <corwneplaza.in> only for the purpose of selling it and never intended to use the disputed domain name <corwneplaza.in> in connection with a bona fide offering of goods or services.

5.10 I gather from the Notice of the Complainant and the reply thereto by the Respondent that the Respondent is not a licensee of the Complainant. The Complainant has not granted any permission or consent to the Respondent to use the trademark CROWNE PLAZA in any manner or to incorporate the same in a domain name <corwneplaza.in>. Respondent has never been commonly known by the disputed domain name <corwneplaza.in> and has never acquired any trademark or service mark rights in the disputed domain name <corwneplaza.in> and, therefore, Respondent has no rights or legitimate interests in the disputed domain name <corwneplaza.in>. Given the Complainant's established use of the

Sudhakar

CROWNE PLAZA Trademark for more than 26 years, it is exceedingly unlikely that the Respondent is commonly known by this trademark.

5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name **<corwneplaza.in>**.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant's well known trade mark CROWNE PLAZA was adopted in the year 1983. It was registered first in India in 1994. The Respondent got registered the disputed domain name **<corwneplaza.in>** on 18th January 2010. Complainant's rights in the CROWNE PLAZA trademark pre-dates Respondent's registration of the disputed domain name **<corwneplaza.in>** by approximately 27 years. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark CROWNE PLAZA of the Complainant at the time he acquired the disputed domain name **<corwneplaza.in>**.

5.13 As seen above, Respondent registered the disputed domain name **<corwneplaza.in>** only for the purpose of selling it and never intended to use the disputed domain name **<corwneplaza.in>** in connection with a bona fide offering of goods or services. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name **<corwneplaza.in>** is nothing but an unjust exploitation of

the well known reputation of the Complainant's prior registered trade mark <corwneplaza.in>.

5.14 Respondent's lack of response to the second notice dated 11th June 2010 of the Complainant indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's trademark CROWNE PLAZA. Admittedly, Respondent registered the disputed domain name <corwneplaza.in> for his personal purpose. He gave up using it temporarily. He would use the disputed domain name <corwneplaza.in> during Shanghai EXPO. Respondent was however ready to transfer the disputed domain name <corwneplaza.in> to the Complainant on an equal and mutually beneficial manner. He expected an acceptable offer from the Complainant.

5.15 It is obviously clear from the admission of Respondent that he registered the disputed domain name <corwneplaza.in> only with an intention to transfer the same to the Complainant at a later time for substantial gain. He never desired to use disputed domain name <corwneplaza.in> for any other useful, commercial purpose. He is currently using the disputed domain name primarily for inviting bids from potential purchasers. Respondent's bad faith registration is evidently clear from his offer to sell the disputed domain <corwneplaza.in> to the Complainant or any other potential bidders.

5.16 Respondent has acted in bad faith because the Respondent has intentionally attempted to attract internet users to the Respondent'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 Respondent's website or location or of a product or service on the Respondent's website or location.

5.17 Thus it is clearly established that Respondent registered the disputed the disputed domain name <corwneplaza.in> in bad faith.

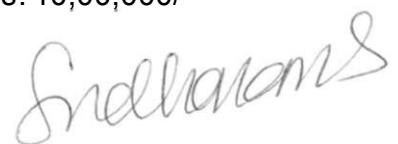
5.18 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent registered the disputed domain name <corwneplaza.in> only with an intention to gain substantial monetary benefit from the Complainant or any other potential purchasers. He never intended to put the disputed domain name into any other fair/useful purpose. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name be transferred to the <corwneplaza.in> Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs. 10,00,000/- (Rupees ten lakhs only) towards costs of the proceedings.



S.Sridharan

Arbitrator