

தமிழ்நாடு தமில்நாடு TAMILNADU

16/6/2018
14/06/2018

DR. SUDHIR RAJA RAVINDRAN

BN 677344

V. BEDHARAJAN
Stamp Vendor
L.No: 12144/B1/96
Ekkattuthangal, Ch-32
Mobile No: 9710019475

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: JUNE 27, 2018

IN THE MATTER OF:

Bennett, Coleman & Co. Ltd.
Times of India Building,
Dr. D.N. Road,
Mumbai, Maharashtra - 400 001
INDIA

VERSUS

COMPLAINANT

Nanda Ravi

1075 Hickory Road, Windsor,
Ontario Canada, N8Y3S2

RESPONDENT/ REGISTRANT

DISPUTED DOMAIN NAME: "WWW.ETIMES.IN"

1. The Parties:

1.1. The Complainant in this arbitration proceeding is represented by Mr. Rishi Mody, INTTL ADVOCARE, 803. 8th Floor, "Arcadia", 195 Nariman Point, Mumbai - 400 021.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Mr. Nanda Ravi.

2. The disputed Domain Name:

2.1. The disputed domain name **www.etimes.in**. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Dynadot LLC (R117 –AFIN).

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	15/05/2018
2.	Date on which consent was given to act as an Arbitrator	15/05/2018
3.	Date of appointment of Arbitrator	17/05/2018
4.	Date on which Respondent sent an email to NIXI enquiring about the timeline.	22/05/2018
5.	Date on which NIXI responded the Respondent	23/05/2018
6.	Date on which Arbitrator replied to the Respondent	23/05/2018
7.	Date on which the Hard copy of the complaint was received by Arbitrator	25/05/2018
8.	Date on which notice was issued to the Respondent	25/05/2018

9.	Due date for filing to Counter Statement by the Respondent	1/06/2018
10.	Date on which Respondent filed his counter without any Legal Representation	1/06/2018
11.	Date on which the Arbitrator's sent an email to respondent.	1/06/2018
12.	Date on which the Complainant requested time for filing rejoinder	5/06/2018
13.	Date on which the Arbitrator granted time for filing rejoinder and response to the rejoinder	5/06/2018
14.	Due date for filing the rejoinder by the Complainant to the response of the Respondent.	12/06/2018
15.	Due date for filing a Response to the Rejoinder of the Complainant.	19/06/2018
16.	Date on which Complainant Filed a rejoinder	13/06/2018
17.	Date on which the Arbitrator condoned the delay for filing rejoinder by the Complainant and granted additional time for the Respondent to file the response to the rejoinder.	13/06/2018
18.	Extended Due Date for filing a Response to the Rejoinder of the Complainant.	20/06/2018
19.	Date on which the Respondent filed a reply to the rejoinder	20/06/2018

4. Procedural History:

4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon

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the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 4.4. On May 22, 2018, the respondent sent an email to NIXI enquiring about the timelines for the arbitration proceeding. In reply to this email, NIXI sent an email dated May 23, 2018 stating that an Arbitrator has been appointed and to communicate directly with the Arbitrator.
- 4.5. On May 23, 2018, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before June 1, 2018.
- 4.6. On June 1, 2018, the Respondent had sent his reply to the Complaint filed against him on, without a formal legal Representative.
- 4.7. On June 1, 2018, the Arbitrator had accepted the Respondent's reply by sending an email to the respondent.
- 4.8. On June 5, 2018, the Complainant requested time to file a rejoinder and the Arbitrator granted time for the Complainant to submit the rejoinder.
- 4.9. On June 5, 2018, Arbitrator granted time for the Complainant to file the rejoinder and the Respondent to respond to the rejoinder. Due date for filing the rejoinder and response to rejoinder were June 12, 2018 and June 19, 2018, respectively.
- 4.10. On June 13, 2018, the Complainant had filed the rejoinder and apologized for the delay in submission of the rejoinder.

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4.11. On June 13, 2018, the Arbitrator condoned the delay and allowed the Complainant to file the rejoinder to the case and granted additional time for the Respondent to file their response to the rejoinder.

4.12. On June 20, 2018, the respondent filed his response to the rejoinder filed by the complainant.

5. Factual Background

5.1. The Complainant is from "The Times Group" which started more than 178 years ago with the business of publishing newspapers, journals, magazines and books. Today, The Times Group has emerged as multi-edition, multi-product organization, and a clear leader in the segment it operates. The Times group has more than 40 dailies and periodicals in 6 languages with 150 editions having 33 publishing centers and 37 printing centers across the country providing a combined readership of over 40 million. In these proceedings, the Complainant and their group companies are all collectively referred to as the "Times Group" unless the context demands otherwise.

5.2. The Respondent registered the disputed name <www.etimes.in> on March 03, 2015.

6. Parties Contentions:

6.1. Complainant's Submission:

6.1.1. The Complainant claims that "TIMES GROUP" is a leader not only in the print business in India, but also in relation to variety of other media business including radio, TV, internet etc such as TimesJobs, one of India's leading job search portals; MagicBricks (one the leading property search portals), Times Now and ET Now, India's leading English news and business news channels. The "Times Group" comprises of various independent companies engaged in carrying on variety of business such as media and entertainment including publications of newspapers and magazine, television and radio broadcast, motion pictures,

event management, outdoor advertising, educational services, syndication services, internet services etc., as enumerated hereunder. The trademark/trade name TIMES has been used by the Applicant as key, distinguishing and dominant feature which is common and consistent in all its ventures.

6.1.2. The Complainant claims that Times Internet Ltd. has the largest Indian Internet Network and is the digital venture of the Times Group; India's largest media and entertainment group. Since its inception in 1999, Times Internet Ltd. has been at the cutting edge of digital innovation in India. Times Internet Ltd. is also among the fastest growing web based networks worldwide. Further claims that Times internet Ltd. has been at the forefront of the internet revolution in India and has emerged as India's foremost web entity, running diverse portals and niche websites. It seeks to provide its users with support, assistance, and guidance with its interactive media by providing innovative platforms for internet users across the globe to assist them in every aspect of their lives. It covers everything from art to airlines, jobs, knowledge events to telecom and integrated marketing through various domain names. Hence, various websites under the domains/ sub-domains registered in favor of the various companies belonging to the Times Group, as listed in the page 6 of the Complaint.

6.1.3. The Complainant Claims that, it has registrations of its newspapers with regard to the subject mark "Etimes" which is published and circulated in the state of Maharashtra, UT of Chandigarh, Delhi etc. The details of the registrar of Newspaper for India (RNI) registrations are given below:

Title	Reg. No.	Title Code	Owner	Publication City	Varification Date	State	Langua ge
E Times	57137	MAHENG05753	Bennett, Coleman & Co. Ltd.	MUMBAI	11-05-1994	MAH	ENG
E	57403	DELENG09087	Bennett,	DELHI	30-06-1994	DEL	ENG

Times			Coleman & Co. Ltd.				
E Times	-	CHAENG01134 (Title Verified in the name Bennett, Coleman and Co Ltd. And is pending Registration)	Bennett, Coleman & Co. Ltd.	CHANDIGARH	19-05-2017	CHA	ENG

6.1.4. The Complainant claims that "E Times" is a registered trademark in word and device with a registered number 624240 and 689283, since 1994 and 1995, respectively. Further the complainant claims, taking into consideration the extensive use and the enormous popularity of the subject mark "ETIMES", the Complainant has also applied for Registrations for the mark ETimes, word and logo, in various classes which include Class 03, 16, 25, 38, 41 and 43 and the same are pending Registrations.

6.1.5. The Complainant claims that the complainant came to know that the Respondent herein has obtained a domain name registration for *www.etimes.in* (the disputed domain name). The website appears to be a broken link, which despite appearing as a result on the Google search page, reads the following message once opened: *"This site can't be reached. www.etimes.in's server DNS address could not be found"*.

6.1.6. The Complainant claims that a mere glance at the disputed domain name *www.etimes.in* gives rise to enormous confusion as to its origin because the disputed domain name uses the Complainant's name/mark 'TIMES' in its entirety. The disputed domain name is identical to the Times Group's mark TIMES/E-Times and domain name *www.timesofindia.indiatimes.com/etimes*.

6.1.7. The Complainant claims that Respondent prejudicially affects the Complainant's credibility and enviable goodwill as a provider of quality services. It is submitted that the

Respondent has no business connection, approval or consent from the Complainant in any manner to use the mark TIMES /E-TIMES as part of its domain name or any authorization to solicit or conduct any business thereunder. It is amply clear that the present is classic case of riding upon the immense goodwill and reputation of the Complainant's well known mark TIMES in relation to various services, which the Respondent has unauthorized and unlawfully adopted to earn illegal commercial gains and profits, apart from committing fraud on the public at large. Therefore, it is clear that the Respondent has no legitimate interests in the disputed domain name, but has registered it with the intent for wrongful commercial gain and to misleadingly divert consumers from the Complainant's website www.timesofindia.indiatimes.com/etimes.

6.1.8. The Complainant claims that the Respondent has registered the disputed domain name primarily for the purpose of interfering with and disrupting the business of the Complainant. The search of the website on any browser redirects to the disputed domain name, but the website is not functional suggests that the said webpage has been created to prejudicially affect the business activities of the Complainant and thus, it can be said beyond doubt that the disputed domain name has been registered in bad faith

6.1.9. The Complainant requests for the following relief:

- i. issue a decision that the domain name www.etimes.in be transferred to the Complainant;
- ii. award cost of the proceedings in favor of the Complainant;
- iii. Such other reliefs the Administrative Panel feels fit and proper.

6.2. Respondent's Submission:

6.2.1. The Respondent claims that for an organization that claims such clout and presence in submitted documentation, it is hard to believe it failed to register the domain name before



general availability during sunrise period when .IN ccTLD launched about thirteen years ago. Times Group failed to protect what it believes to be its intellectual property which it claims to be fiercely protecting, which is evident again in submitted documentation itself. Exclusive claim on generic words and word combinations is not a welcomed practice, failure to proactively defend what it deems to be so valuable will amount to irresponsibility on their part beyond reason. Generic domains are registered globally as investment assets and for development. Any such domain becoming unreachable while still showing up in search results, will not constitute infringement. It isn't Times Group's or anyone's concern to violate other's rights with false claims such as this. There is no provable infringement in terms of how etimes.in domain name is used or not used, as mentioned earlier generic domains can also be investment assets unresolvable without active websites, this does not amount to any crime, it is a free-will exercise of the registrant in choosing to do so which is protected under the Law.

6.2.2. The Respondent claims that there is no 'etimes' trademark held by Times Group, hence there is no scope for etimes.in to impugn a nonexistent trademark. Claims of similarity and confusion raised because of Times Group's misuse of generic word and word combinations as trademarks. A bad practice like this should be put to an end because people in huge numbers also use those words or combinations. Corporations must be prevented from committing this mistake by making necessary changes to the Trademarks and Copyright laws. Meanwhile no generic domain registrant should be subjected to undue proceedings like this one. In the respondent's view Trademark and Copyright system must play catch-up and all concerned officials must become aware of this problem. Too many bad precedents have been set in this regard globally with quite a few mega corporations holding trademarks to generic words or combinations overpowering the public and other

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small-scale businesses in litigations and legal battles like this one. It is solemn duty of Trademarks and Copyright system and officers like yourself to protect the rights of citizens, citizens in any numbers including Respondent should not be subjected to disputes like this because they can kill the spirit and become financially burdensome which are totally unnecessary, system should become efficient, in that before it and its personnel play catch-up no one should suffer unjustly, and all things must be considered.

6.2.3. Complainant's repeated blames are unfounded. While complainant acknowledges the importance of domain names on the web and potential for millions of users to visit etimes.in website, they claim all that as their own which is not the case. The word times or whole India is not Times Group's making. Generic words and India are public wealth, complainant does not have discretion in this regard to limit or consider other's use of same generic words and '.IN' domains illegitimate. There is no bad faith and complainant seems to be making a deliberate attempt to literally steal the domain from me, constant reference to bad faith plus other blames in their submission are clear tactics of intimidation, Times Group should have minimum decency, courtesy and strength to apply same rules and thought processes that apply to them to other's as well while valuing and protecting intellectual property. Complainant's request for an award to cover the cost of this proceeding is appalling.

6.2.4. The Respondent claims that system should evolve and not condemn emerging business models attributing illegitimacy and bad faith and that the Complainant appears to have used stealth 3rd party source to acquire etimes.in for an amount of \$10,000 USD, received multiple offers at the same time with some offering up to \$40,000 USD. Please note that this domain was not put up for sale and all offers were unsolicited and are from interested parties. The Respondent claims that they decided to hold on to the domain and not sell

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and continue working on its development, that the Complainant may have filed INDRP as part of plan B for failing to acquire for the amount they are willing to pay.

6.2.5. The Respondent further claims that he does not have the domain name etimes.in or other domains in his portfolio that are generic in nature, for reselling renting or leasing them. He sells some of them when he's happy with the offer he naturally receives because of the generic nature of the domain name, this funds his venture and helps in its building and maintenance. The respondent further states that he takes this to be a natural process and is in no way breaking the domain registration agreements or terms and conditions in any which way he's aware of.

6.2.6. The respondent states that he is open to direct negotiation with the complainant to sell the disputed domain at a fair market price, as the domain is in line for development without an active website now.

7. Discussion and findings:

7.1. 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.

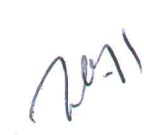
7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

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

7.3. Identical or Confusingly Similar



7.3.1. 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.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its various registered trademarks has established that it has rights for "E-Times" in word and device having its trademark registration number 624240 and 689283 respectively in India. Additionally, the Complainant also has registrations of its newspapers with regard to the subject mark "ETimes" which is published and circulated in the states of Maharashtra, UT of Chandigarh, Delhi etc. The documents filed by the Complainant/s also show that it has used the mark extensively.

7.3.3. The disputed domain name incorporates the trademark in its entirety it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. This position was upheld in *Akshaya Pvt. Ltd. v. Mr. Prabhakar Jeyapathy*, (INDRP/277), *G.A Modefine S.A v. Naveen Tiwari*, (INDRP / 082) and *L'Oreal v. Zeng Wei <loreal-paris.in>*, (INDRP/342).

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

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

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if,



- i. Before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bonafide 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.

7.4.3. The Respondent has not provided any evidence to substantiate that before the notice of this dispute, the Respondent had use or made demonstrable preparation to use the domain name in connection with a bonafide offering of goods or services.

7.4.4. The Respondent has also not provided any evidence to substantiate it is commonly known by the disputed domain name or the Respondent actually engages in any business or commerce under the name "etimes". Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes. The fact that the Respondent has admitted that he is willing to sell the domain name shows that he has no legitimate interest and is not commonly known by the disputed domain name.

7.4.5. Furthermore, the Respondent has not provided evidence to show that he is making a legitimate, non- Commercial or fair use of the domain name without intent of commercial gain.

7.4.6. The Arbitrator finds that there are reasonable grounds to believe that the Respondent has no rights and legitimate interests in the disputed domain name and the Complainant has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement.



Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. In Paragraph 6 (i) of .IN Domain Name Dispute Resolution Policy provides for, *"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"*.

7.5.3. The Respondent's intention to sell the domain name is evident from the Respondent's statement that he is open to direct negotiation with the complainant to sell this domain at a fair market price, it is apparent that the Respondent's intention to demand an amount far more than its out-of pocket costs for registration. According to the above policy, registering a domain name for the purpose of selling or transferring the domain name for excessive consideration is evidence of bad faith registration. This indicates that the Respondent has engaged in registration of the disputed domain name or holding on to the disputed domain name in bad faith.

7.5.4. Accordingly, for the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith and the Complainant has satisfied the third element under paragraph 4 of the Policy.

8. Decision:

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.



8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name **www.etimes.in** to the Complainant without any cost.

8.3. The Award is accordingly passed on this day of 27th day of June, 2018.

Place: Chennai

Date: 27-06-2018



Dr. Sudhir Raja Ravindran

Sole Arbitrator