



हरियाणा HARYANA

C 457743

RANJAN NARULA
ARBITRATOR

Appointed by the .In Registry - National Internet Exchange of India

In the matter of:
Television Food Network, G.P.
75 Ninth Avenue
New York, NY - 10011

...Complainant

Arif Siddiqi
319 Forest Walk Ln
Fort Mill, AL 29708
US

...Respondent



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1) The Parties:

The Complainant is **Television Food Network, G.P.**, 75 Ninth Avenue, New York, NY - 10011. The Complainant is represented by its authorized representatives Halle Markus of Arent Fox LLP, 1050 Connecticut Ave NW, Washington, DC 20036, US, and Binny Kalra and Jaya Negi of Anand and Anand, First Channel, Plot No. 17A, Sector 16A, Film City, Noida who have submitted complaint against the domain. The Respondent is Arif Siddiqi, 319 Forest Walk Ln, Fort Mill, AL 29708, US.

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.foodnetwork.in. The Registrar is IOldomain, Inc. The registrant is Arif Siddiqi (Respondent).

3) Procedural History:

The Complainant filed this complaint with the .IN Registry and the .IN Registry appointed "Ranjan Narula" ("The Arbitrator") as the Sole Arbitrator under clause 5 of its policy. On, March 30, 2010. The complaint was produced before the Arbitrator and

following email confirmation to NIXI on no conflict of interest, the Arbitrator submitted his statement of acceptance and declaration of impartiality and independence. The notice was issued to the Respondent on April 12, 2010 at his email address with a deadline of 10 days to submit his reply to the arbitration. Since no response was received, the Arbitrator sent a reminder to the Respondent vide email dated April 28, 2010. The Respondent was provided a final deadline of May 3, 2010 to respond. Subsequently, the Respondent filed his response vide email dated April 29, 2010, and the Complainant filed a rejoinder thereto vide email dated May 11, 2010. Thereafter the Respondent filed another response vide email dated May 13, 2010, and the Complainant again filed a rejoinder vide email dated May 15, 2010. The Respondent filed a final rejoinder on May 17, 2010. In the final rejoinder, the Respondent has alleged that he did not receive a copy of the complaint. By way of email dated 16 June 2010, NIXI has clarified to the Arbitrator that the Complainant has provided an incorrect address for service, and that all efforts to serve the complaint were unsuccessful. NIXI has specifically indicated that FEDEX was unable to accept the packet since "the country code is incorrect and hence they refused to accept the packet".

Since both parties have filed their respective submissions/ contentions, the Arbitrator is proceeding to decide the present dispute.

4) Summary of the Complainant's contentions in the Complaint:

- i. That the Complainant, its partners, licensed affiliates, subsidiaries, etc have for over 10 years been engaged in the business of creating products and services in the cooking and culinary arts industry, including cable television broadcasting services and the provision of culinary arts information online at its website, foodnetwork.com, all of which have been under the trademark FOOD NETWORK.
- ii. That the 'Food Network' television network made its television airing debut in 1993. The Complainant submits that the 'Food Network' television network is currently distributed to more than ninety-six (96) million households, making it one of the largest television networks devoted to cooking, the culinary arts, and its corresponding culinary lifestyle, in the world. Further, that the 'food Network' is one of the most popular channels in the United States.



- iii. That the Complainant's programming can also be viewed internationally in Canada, Australia, Korea, Thailand, Singapore, the Philippines, Monaco, Andorra, Africa, France, and the French-speaking territories in the Caribbean and Polynesia. The Complainant submits that its headquarters are in New York City and that it has offices through the United States, including in Atlanta, Los Angeles, Chicago, Detroit and Knoxville.
- iv. That in addition to being one of the most viewed cable television networks devoted to cooking and culinary arts, Television Food Network provides 'Food Network' information on cooking and culinary arts via its website at <foodnetwork.com> and has been doing so since at least as early as 1996.
- v. That each year Television Food Network spends tens of millions of dollars on advertising, marketing and promotional materials with the Television Food Network Marks in connection with offering its cooking and culinary arts television broadcasting and online services and products.
- vi. That the Complainant adopted the trademark 'FOOD NETWORK' in the year April 1996 and has been using it continuously and extensively, not only on trademark but also as a prominent key, and leading portion of its corporate name.
- vii. That the Complainant is the registered proprietor in India of the trademark 'FOOD NETWORK'. The Complainant's registration for said mark is in Class 41 for 'entertainment services, namely, production and distribution of television programming' and bears the registration number 1236844. That the Complainant is also the proprietor, in the United States, of the following trademark registrations:

FOOD NETWORK (US Reg. 2771532) in Class 41; FOOD NETWORK (US Reg. 2791044) in Class 38; FOOD NETWORK (US Reg. 2924168) in Class 38; FOOD NETWORK (US Reg. 2924169) in Class 41; FOOD NETWORK (US Reg. 2929656) in Class 43; FOOD NETWORK (US Reg. 3607718) in Class 8; FOOD NETWORK (US Reg. 3607719) in Class 21; FOOD NETWORK (US Reg. 3607720) in Class 11; FOOD NETWORK (US Reg. 3607721) in Class 24; FOOD NETWORK (US Reg. 3607722) in Class 24; FOOD NETWORK (US Reg. 3607723) in Class 21; FOOD NETWORK (US Reg. 3607724) in Class 8; FOOD NETWORK (US Reg. 3607725) in Class 9; FOOD NETWORK (US Reg. 3607726) in Class 11; FOOD NETWORK (US Reg. 3613969) in Class 9; FOOD NETWORK CHALLENGE (US Reg. 3545784) in Class 41; FOOD NETWORK-HD (US Reg. 3319967) in Class 41; FOOD NETWORK HD (US Reg.



3689134) in Class 41; FOOD NETWORK HD (US Reg. 3691970) in Class 38; and FOOD NETWORK ON DEMAND (US Reg. 2926822) in Class 41

- viii. That the Complainant through its website www.foodnetwork.com provides thousands of recipes, tips and techniques, as well as the ability to rate, save and comment on the user's favourite recipes.
- ix. That the Complainant at present owns a number of domain names, the majority of which contain the 'FOOD NETWORK' mark. A list of the domain names which are claimed to be owned by the Complainant have been attached with the Complaint.

5) Summary of Registrant's/ Respondent's response

By way of email dated 29 April 2010, the Registrant/ Respondent filed their response to the complaint filed by the Complainant. The Respondent's allegations/ submissions are summarized as under:

- i. That his website is only meant for India; whereas the Complainant's business is restricted to the USA, and not India
- ii. That his logo is "foodnetwork.in", and that the rival products/ services are different;
- iii. That Food Network is a dictionary keyword, and anybody can own domains with dictionary keywords;
- iv. That he has used the domain for the last 5 years, and that '.in' domains are meant for parties of Indian Origin;
- v. That he owns and uses the domain name in good faith, and to promote Indian food.

6) Further submissions/ contentions raised by both parties

The Complainant filed their rejoinder to the Respondent's reply, by way of email dated 11 May 2010. The key contentions raised by the Complainant in their rejoinder are summarized below:



- i. That domain names are accessible anywhere in the world, and not just in India;
- ii. That the Complainant has provided information/ service to its users through the internet since the year 1996;
- iii. The mark 'FOOD NETWORK' is registered both as a trademark and as a service mark in various classes.
- iv. The mark 'FOOD NETWORK' is not a mere dictionary word and that it is a registered trade mark. Further, that the 'Television Food Network marks' have become exclusively associated with the Complainant.
- v. The Respondent is not only trying to promote Indian food as claimed by him; his website also promotes and features other international cuisines.

By way of email dated 13 May 2010, the Respondent filed another rejoinder to the Complainant's contentions. The key submissions made by the Respondent are summarized below:

- i. That he registered in the domain www.foodnetwork.in in good faith and had not met with any objection to their use of the domain during the 'sunrise period'. That other domains such as 'foodnetwork.net.in' and 'foodnetwork.ind.in' are available for registration by the Complainant;
- ii. That the Complainant does not have a worldwide presence and all their web-traffic comes from within the USA. The Respondent has referred to third party domains which incorporate the mark 'FOOD NETWORK' in other countries;
- iii. That the Complainant's service mark falls under U.S. jurisdiction. The Respondent has referred to third party companies listed on the website of the USPTO, which incorporate the mark 'FOOD NETWORK' (such as INTERNATIONAL FOOD NETWORK, GOOD FOOD NETWORK GARDENS, etc);
- iv. That the Complainant has registered the service mark 'recently' with a view to usurp the Respondent's domain name.



Further to this, the Complainant filed a further rejoinder by way of email dated 15 May 2010. In the aforesaid rejoinder the Complainant refuted all the Respondent's contentions and reiterated their earlier submissions.

Vide email dated 17 May 2010, the Respondent filed a final rejoinder with the Arbitrator. By way of the aforesaid rejoinder, the Respondent raised the following key contentions/ submissions:

- i. That the Respondent has not received a copy of the original complaint along with the documents filed by the Complainant. That the Respondent only received intimation of the filed complaint from the Arbitrator on April 12, 2010 along with a brief description of the complaint;
- ii. That the Complainant has made self-contradictory submissions regarding their ownership and interest in the conflicting domain;
- iii. That the Complainant is not the rightful owner of the mark 'FOOD NETWORK'. The Respondent has referred to an entity International Food Network, Inc. who, they suggest, is entitled to ownership of the mark 'FOOD NETWORK';
- iv. That the Complainant has no internet presence in any of the top four Gross Domestic Product (GDP) countries or top 4 economies in the world;
- v. That the word 'NETWORK' has been disclaimed in the Complainant's US registration no. 2924169; and
- vi. That the domain 'foodnetwork.in' is different from the Complainant's mark 'FOOD NETWORK'

7) Discussions and Findings:

At the outset, the Arbitrator notes that the Respondent in his final rejoinder (vide email dated 17 May 2010) has alleged that he has not received a copy of the Complaint or accompanying evidence. However, by way of email dated 16 June 2010, NIXI has clarified to the Arbitrator that the Complainant has provided an incorrect address for service, and that all efforts to serve the complaint were unsuccessful. Thus, the complainant by not providing the correct address has violated the essential



condition of registration of a domain name. In the circumstances, the Arbitrator finds that sufficient steps were taken by NIXI to serve the complaint and is deemed to have been served. Further, the Arbitrator finds that the Respondent has raised such a contention at a belated stage of the proceedings, despite being given sufficient opportunity to raise it at an earlier stage. In view of the foregoing, the Arbitrator finds this contention/allegation of the Respondent questionable.

The Arbitrator is of the view that the Respondent been given a fair opportunity to present his case, and will therefore proceed to a decision on the Complaint. Paragraph 12(a) of the Rules provide that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, and any law that the Arbitrator deems fit to be applicable. In accordance with paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Complainant and/or Respondent's statement, conduct and reply in the present proceedings.

Having perused the submissions and documentary evidence placed on record, the Arbitrator is inclined to agree that the Complainant has established better and prior rights in the mark FOOD NETWORK. Further, the Arbitrator is of the view that the Complainant has satisfied all three conditions outlined in paragraph 4 of the Policy, viz. -

- A. The Domain Name is identical or confusingly similar to the trade mark/ name FOOD NETWORK in which the Complainant has the rights;
- 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 in bad faith.

The Arbitrator holds this view for the reasons discussed in the paragraphs below:

- A. The Domain Name is identical or confusingly similar to the trade mark/ name FOOD NETWORK in which the Complainant has rights**



The Complainant is prior to the Respondent in their adoption and use of the trade mark FOOD NETWORK. The Complainant has for over 10 years been engaged in the business of creating products and services in the cooking and culinary arts industry, including cable television broadcasting services and the provision of culinary arts information online at its website, foodnetwork.com, all of which have been under the trademark FOOD NETWORK. The aforesaid mark also forms an integral part of the Complainant's corporate name. The Complainant's programs are viewed across several countries including Canada, Australia, Korea, Thailand, Africa, etc. Further, the Complainant has spent large sums of money for advertising/ marketing/ promoting their products and services. In addition to the foregoing, the Complainant owns registrations for the mark FOOD NETWORK in the U.S. as mentioned in paragraph m. of the Complaint. It is pertinent to note that the earliest these registrations date back to the year 2003, and use has been claimed since 1996. Even in India, the Complainant has registered the mark FOOD NETWORK under no. 1236844 in class 41. Thus, the Complaint has successfully demonstrated their rights in the mark FOOD NETWORK.

On the other hand, the documents/evidence on record indicate that the Respondent adopted the domain not earlier than 2 June 2005, which is much subsequent to the Complainant's adoption and use of the trade mark 'FOOD NETWORK'. In the Arbitrator's view, the Respondent has not offered any plausible or credible explanation for his adoption of a domain name which is identical/ confusingly similar to the Complainant's registered mark. The Respondent has merely stated that he is entitled to do so because he is of Indian origin and that he wishes to promote Indian food. The Arbitrator finds that this explanation is insufficient to establish the Respondent's rights in the mark FOOD NETWORK, or his bona fides in adoption.

The Respondent has also challenged the Complainant's rights to register/ use the Domain Name on the grounds that their business is primarily U.S. based, and that the Complainant is not of Indian origin. The Arbitrator also does not find this argument acceptable: there is no bar against a third party from registering a '.in' domain name on the grounds that the party is not of Indian origin or because their business is based outside India. In any case, the Arbitrator notes that the Respondent himself is based in the U.S. and is thus making self-defeating claims.



In addition to the foregoing, the Respondent contended that the mark 'FOOD NETWORK' is a dictionary word, and that the Complainant does not have any rights over the said mark. However, the Arbitrator finds that such an argument is not maintainable, especially considering that the Complainant's mark FOOD NETWORK is a registered trade mark. The Respondent has also alleged that third parties are using names/ marks incorporating the word 'FOOD NETWORK'; however, the Arbitrator does not find these submissions to be relevant to the present proceedings. Without prejudice to the aforesaid finding, the Respondent has himself suggested that a third party (International Food Network, Inc.) is entitled to use the mark 'FOOD NETWORK'. In other words, Respondent has himself admitted that he is not entitled to use the mark 'FOOD NETWORK'.

In view of the foregoing, the Arbitrator finds that the documents on record are sufficient to establish that the Domain Name is identical or confusingly similar to the Complainant's mark FOOD NETWORK and that the Complainant has better rights in the domain name.

B. The Registrant has no rights or legitimate interests in respect of the domain name

According to the Policy, the following circumstances, in particular but without limitation to, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 5 (ii):

- (1) *"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;"*

In this case, the Respondent has registered the disputed domain name on 2 June 2005, which is much subsequent to the Complainant's adoption and use of the mark FOOD NETWORK in respect of similar products/ services since the year 1996. There is no evidence to suggest that the Complainant had authorized or licensed the Respondent's registration or use of the Domain Name. For the reasons already mentioned in the preceding paragraphs of this decision, the Arbitrator finds that the Respondent has also not offered any plausible reason or justification for registering or using the Domain Name.



In addition to the foregoing, the Respondent's Domain Name resolves to a page bearing contents that relate to services/ products that are directly competing with the Complainant's. Although the Respondent has contended that his website only promotes Indian food, a mere perusal of the website shows that it also features and promotes other international cuisines. The Arbitrator finds that the Registrant contention in this regard belies the actual content on the website.

(2) *"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"*

The Respondent's name is Arif Siddiqi. There is no evidence to suggest that the Respondent, at any point in time, has been commonly known by the name 'FOOD NETWORK'. 'FOOD NETWORK' is the mark of the Complainant.

(3) *"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."*

For the reasons mentioned in the preceding paragraphs, the Arbitrator also finds that Respondent is not making a legitimate non-commercial or fair use of the Domain Name. The said Domain Name currently resolves to a page featuring services/ products which are directly competing with the Complainant's. Such use supports the Complainant's position that the Respondent is not making 'a legitimate non-commercial or fair use' of the Domain Name. The evidence adduced by the Complainant supports the claim that the Respondent has adopted the Domain Name with intent for commercial gain, and to divert internet users to their website.

Based on the submissions/ evidence made by both parties, the Arbitrator finds that the Respondent has not satisfied any of the conditions laid down by the Policy to establish their rights or legitimate interests in the Domain Name.

C. The Registrant's Domain Name has been registered or is being used in bad faith.



As per the Policy, the following circumstances, in particular but without limitation, shall be evidence of the registration and use of a domain name in bad faith:

"By using the domain name, the Registrant has intentionally attempted to attract 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."

As mentioned earlier, the Respondent's Domain Name currently resolves to a webpage featuring services/ products which are directly competing with the Complainant's. By use of the Complainant's mark FOOD NETWORK, it appears that the Respondent has deliberately tried to attract internet users to his website. Thus, the Arbitrator finds that there is a likelihood that Internet users will be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the services advertised on it considering the Complainant's prior use and adoption of an identical mark/domain name.

The aforesaid circumstances suggest bad faith registration and use of the Domain Name by the Respondent.

8) Decision:

For all the reasons discussed above, the Arbitrator orders that the domain name <www.foodnetwork.in> be transferred to the Complainant.



**RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA**

27 June 2010