



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl. No. 7734 Dt. 21/11/14
Sold to. Harini Narayan Swamy
S/o, D/o, W/o. B. Narayan Swamy H.O. And
To Whom. self

Kodali Geetha Rani
BH 322736

KODALI GEETHA RANI
Licenced Stamp Vendor
Licence No 16-04-1/2013
8-3-191/132 167/C. Behind E-Seva
Kengal Rao Nagar, Hyderabad (South)
Cell: 94920 25252

BEFORE THE NATIONAL INTERNET EXCHANGE OF
INDIA

ARBITRATION AWARD

In The Matter Between

GATI LIMITED
Plot No 20 Survey Number 12
Kothaguda , Kondapur
Hyderabad
India

Complainant

Versus.

SUSHIL PANWAR
Pointer Soft
321 A Hari Nagar

Respondent

Harini Narayan Swamy

**Ashram
New Delhi**

And

**Gati Packers and Movers
D-6 Sai Kunj
Near Maharish
New Palm Vihar
Gurgaon
Haryana**

1. The Parties

The Complainant is Gati Limited of Hyderabad India, represented in these proceedings by Nidhish Mehrotra of ANM Global Advocates & Solicitors New Delhi India. The Respondents are Sushil Panwar, of New Delhi India and Gati Packers and Movers of Gurgaon, Haryana.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <gatipackersmovers.co.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Webiq Domains Solutions Private Limited. The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

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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 Complaint from the .IN registry on December 11, 2015 and on December 13, 2015 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent 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 sent no formal response.

Factual Background

The Complainant is in the business of cargo, courier, express distribution and supply chain management. The Complainant uses the trademark GATI in connection with its business and is the registered proprietor for the said trademark. The Complainant has filed copies of its trademark registration certificates. Details of some of the Complainant's registered trademarks are:

Sr. No	Trademark	Trademark No and Date	Class	Status
1.	GATI (word mark)	1079199 February 8, 2002 renewed till 2022	01	Registered

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2.	GATI (device mark)	1079204 February 8, 2002 renewed till 2022	06	Registered
3.	GATI (device mark)	1079205 February 8, 2002 renewed till 2022	07	Registered

The first Respondent, Sushil Panwar registered the disputed domain name <gatipackersmovers.co.in> on February 26, 2013. The name of the Registrant organization on record is Pointer Soft of Delhi. There is no information regarding the second Respondent.

The Parties Contentions

A. Complainant's Submissions

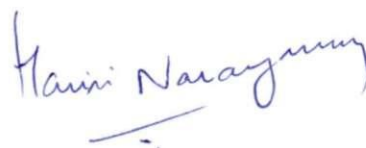
The Complainant states it is a public company that has pioneered express distribution and supply chain management services in India. The Complainant contends that it was one of the first to print its delivery date on the docket and offered money back guarantee, by accepting payment after producing proof of delivery to its customers. It started its operations as a division of Transport Corporation of India (TCI) in 1989 under its founder

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Mahendra Agarwal. In 1994 it separated from TCI, although the legal separation took place in 1996. The Complainant states it was among the first logistics company to be awarded an ISO 9001 certification.

In 2001, the Complainant states it launched the millennium parcel express service, an exclusive cargo train between Mumbai and Kolkata in association with the Indian Railways. It established Singapore as its international business hub. In 2003, the Complainant states it launched Gati@web for customer information to be retrievable in one click at its front offices. In 2005, the Complainant states it established several mechatronic warehouses in all major cities across India. In 2006, the Complainant states it introduced Gati Students Service, online employee information and performance systems, customer convenience centers and redemption coupons to settle cashless claims. The Complainant states that it has been the recipient of several awards, some of these are: "The Best Logistics Company by Frost and Sullivan, "Best Logistics Partner" by HCL, Champion CIO – Enterprise Connect Award and Amity HR Excellence Award that it has won for a period of five years.

The Complainant states that it expanded its network in India, China and Europe and has made strategic tie ups with logistics service partners. In 2008, the Complainant states it launched the Centralized Call Center in Nagpur and from the year 2010 onwards it introduced numerous other services to expand its business. Apart from its business expansion, the Complainant states it has been actively involved in social responsibility related activities including serving tsunami and earth quake victims,



education and training to small scale industries and other green initiatives like tree planting.

The Complainant states that it has used the GATI mark since its incorporation in 1989 and that the trademark has been registered since 2004. The Complainant states it has forty trademark registrations for the GATI mark under different classes, but primarily under classes 39 and 42. Further, the Complainant states it has used the name “Gati” as its corporate name for twenty-six years. Due to extensive use of the GATI mark, the Complainant states that its mark enjoys vast goodwill and reputation that is exclusively associated with its services.

The Complainant states that the disputed domain name is confusingly similar to its GATI trademark. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent has “hijacked” the domain name. The Complainant further asserts that the Respondent has no proprietary or contractual rights in any trademark resembling the disputed domain name and that the Respondent no longer has any connection with the Complainant. The Complainant asserts that the Respondent is not commonly known by the disputed domain name and has no authorization to use the mark. The Complainant states the disputed domain name has been registered and is being used in bad faith and requests for cancellation of the disputed domain name and for costs.

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B. Respondent's Submissions

The Respondent did not file a formal response in these proceedings but sent two emails on December 9, 2015. In these emails, the Respondent essentially states:

“We are not related to this domain. We just designed the website only. How can we help you in this matter please suggest. For this website please contact Mr. Sunil.” The Respondent provides a mobile phone number for Mr. Sunil. In the second email sent by the Respondent, the contents of the first email are repeated, and the Respondent provides his own mobile phone number.

On January 9, 2016 the Complainant's counsel sent an email stating that: “The Respondents are still doing business in the name of Gati, through its website and our clients are suffering huge losses”. On January 9, 2016, in reply to the Complainant's mail, the Respondent replied: “i don't know. he is not in our contact you can communicate with him. website is not working now.”

There were no other communications or representations made by the Respondent in these Arbitration proceedings, except for the said emails.

By an email dated January 11, 2016, the Arbitrator gave the Respondent one more opportunity to file a reply and requested the Respondent to submit a formal response along with supporting documents within a week. The Arbitrator also clearly mentioned in that email that the Respondent is responsible for the disputed domain name and all activities done from its

website, as he is the present registrant of the disputed domain name. No reply or response to this email was received from the Respondent.

Discussion and Findings

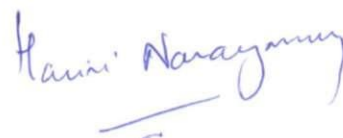
Under the INDRP Policy the Complainant has to establish the following three elements to succeed in the proceedings:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has established 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 or is being used in bad faith.

Identical or Confusingly Similar

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.

The Complainant has submitted evidence that demonstrates it has statutory rights in the GATI trademark. From the material on record, the Arbitrator finds the Complainant is a prior adopter of the GATI trademark. The evidence filed by the Complainant includes its trademark registrations for the GATI mark, statements of its expenses for promotion and advertisement



for its mark for the period April 2010 to 2015, duly certified by a chartered accountant, a list of awards and recognitions that demonstrate the well known character of its trademark. The Arbitrator finds, based on the evidence on record, that the Complainant has clearly established its rights in the GATI trademark.

The disputed domain name incorporates the Complainant's trademark GATI in its entirety with the generic words "packers" and "movers". In the Arbitrator's view, the words "packers" and "movers" being dictionary words, are not capable of distinguishing the disputed domain name from the mark. It is well established that by adding words and terms to a trademark, the confusing similarity between the mark and the domain name is not reduced. See *Google Inc. U.S.A v. Vibhav Jain*, INDRP CASE No. 132 (April 3, 2010) in connection with the domain name <google-money-system.in>, it was found that the mere addition of the terms "money" and "systems" with the complainant's trademark in that case, GOOGLE did not differentiate the domain name from the mark by the addition of generic words. It was also found that, the sole purpose of registering such a domain name was for purpose of creating confusion in the minds of the public due to the use of the famous trademark in the domain name. In the present case also, the Arbitrator finds the GATI trademark is the distinct and primary portion of the disputed domain name and despite additional words, it is found that the disputed domain name is confusingly similar to a mark in which the Complainant has established its rights.

The Complainant has accordingly satisfied the first element under paragraph 4 of the Policy.

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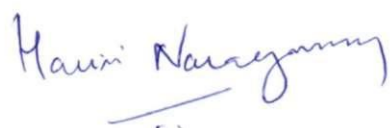
Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The onus of proving rights and legitimate rests with the Respondent, the registrant of the disputed domain name.

The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that shows (i) that before notice of the dispute, the respondent 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 respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

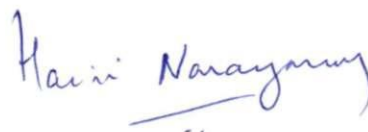
The Arbitrator finds there is no evidence on record that shows the Respondent has any *bona fide* rights or legitimate interests in the domain name. The Respondent has not shown that he is commonly known by the disputed domain name. The registration details give the Respondent's name as Sushil Panwar, and the registrant organization on record is Pointer Soft. The Respondent has also not argued or submitted that he uses the disputed domain name in connection with any legitimate non-commercial fair use.

The Arbitrator notes that the Complainant has submitted that the Respondent no longer has any connection with the Complainant, thereby indicating that


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there was some previous connection between the parties. The Complainant has not however explicitly not provided any details regarding any previous relationship between the parties. Furthermore, the Complainant has not shown how the second Respondent mentioned in these proceedings is related to the disputed domain name or why the second Respondent ought to be a party to these proceedings. Accordingly, the second Respondent is not considered a party to these Arbitration proceedings. The Arbitrator also notes from an email dated December 17, 2016, the NIXI legal department informed the Arbitrator that the courier sent to the address of the second Respondent was returned unserved.

The first Respondent has mentioned in his emails that he is not connected to the disputed domain name but has merely developed the website. No evidence has been placed by the Respondent to show that he not connected with the disputed domain name. However, the registration details for the disputed domain name clearly shows that the first Respondent is the named registrant of the disputed domain name and therefore by definition, he is the Respondent in the Arbitration proceedings. The Respondent has made unsupported statements and has not provided any evidence to establish the veracity of his statements. In the absence of any evidence, and based on the fact that the Respondent remains the registrant of the disputed domain name on record, the Arbitrator holds that the as the registrant, the Respondent in these proceedings is responsible for the registration and choice of the disputed domain name. The Respondent is also responsible for the website content and the manner of use of the disputed domain name.

The signature is written in blue ink and appears to read 'Hari Narayana'.

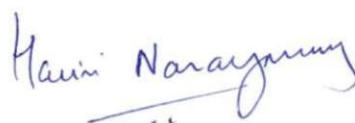
The Arbitrator finds that no material has been put forward by the Respondent showing any rights in the disputed domain name. The facts and circumstances shows that the dispute domain name uses of the trademark of the Complainant to mislead Internet users, which is abusive use of the disputed domain name and devoid of rights and legitimate interests.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

The third element of paragraph 4 of the INDRP Policy requires the Complainant to establish the domain name was registered in bad faith or is being used in bad faith. The Complainant has submitted that the Respondent has intentionally registered the domain name <gatipackersmovers.co.in> to exploit its GATI trademark.

Under Paragraph 6 (iii) of the Policy, if the registrant of a domain name 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 trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that the Respondent's use the Complainant's mark in the disputed domain name appears to be for purposes of attracting Internet traffic to the Respondent's website, by incorporating the trademark of the Complainant for misleading

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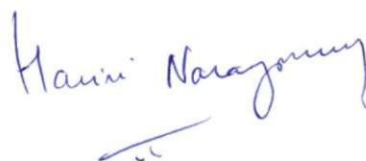
Internet users regarding the source, origin or endorsement of the website linked to the disputed domain name.

The reasons for Arbitrator's finding are : (i) The Complainant's mark GATI is widely known due to its extensive use (ii) The Complainant's mark GATI is associated with the Complainant's services and its business (iii) Circumstances of the case indicate there is no possible good faith reason for the Respondent to register and use the disputed domain name except to gain from the goodwill associated with the Complainant's mark.(iv) The Respondent ought of have been aware of the Complainant's well known mark, at the time of registration and ought to have registered it only for the fame associated with the mark and to exploit it.

When a disputed domain name reflects the corporate name, trademark and domain name of another third party and the public associates that name with the legitimate owner of the trade mark, the use of that mark by another without any authorization is considered bad faith use.

Based on all the facts and circumstances of the case the Arbitrator finds that the disputed domain name was registered in bad faith and is being used in bad faith.

The evidence shows the Complainant is the owner of the GATI trademark and the Respondent has registered a domain name that is identical to the mark. The Respondent has not established any rights or legitimate interests in the disputed domain name and the Complainant has demonstrated that the disputed domain name has been registered and is being used in bad faith.

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The Arbitrator finds the Complainant has satisfied all three elements under paragraph 4 of the Policy.

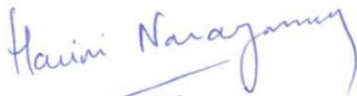
By a communication dated January 11, 2016, the Arbitrator requested the Complainant to file evidence of present use of the website and any evidence of Complainant's loss of business along with a statement of its losses duly certified by an auditor. The Arbitrator provided the Complainant one weeks time from the date of the email to file such documents. There was no reply from the Complainant and no documents were filed by the Complainant regarding any actual or potential loss that it has sustained or was likely to sustain. Hence no award is made for damages.

Decision

In light of all that has been discussed, it is ordered that:

The Complaint is allowed and the disputed domain name <gatipackersmovers.co.in> be cancelled by the Registrar.

The first Respondent, Mr. Sushil Panwar, the registrant of the disputed domain name is ordered to pay an amount of Rupees Twenty-Five Thousand (Rs. 25,000/-) to the Complainant as costs.



Harini Narayanswamy

(Arbitrator)

Date: February 15, 2016