

महाराष्ट्र MAHARASHTRA

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प्रधान मुद्रांक कार्यालय, मुंबई
प. सु. वि. क्र. ८००००२०
S 15 SEP 2017
सक्षम अधिकारी

श्रीमती. एस. वि. मसुरकर

ARBITRATION AWARD

**BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)**

Google Inc. ...Complainant

v/s

Vinit Keshav ...Respondent

In the matter of Disputed Domain Name "Googleplace.in".

1 The Parties

The Complainant is Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA, represented by Fidus Law Chambers.

The Respondent is Vinit Keshav, Xanax Infotech, Street 26/3F, M. B. Nagar, New Delhi - 110044.

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2 Procedural History

- 2.1 A Complaint dated November 28, 2017 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On December 19, 2017, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before January 3, 2018. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 Since the Complainant's foundation in 1997 the Google search engine has become one of the most highly recognized and widely used Internet search services in the world.
- 3.2 The trademark Google is also the Company name and has been consistently used by the Complainant as a trade name apart from just as a trademark for its search engine services along with many other products. The products and services of the Complainant reach more than 150 countries worldwide including India. The Complainant has consistently used the trademark Google as a part of its products, services and business since the year 1997.
- 3.3 The Complainant's search engine service under the trademark Google lets users search for text in publicly accessible documents offered by web servers globally. The search engine service under the trademark Google is available in 123 languages and handles more than 3 billion searches in a day.

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3.4 The search engine services under the Complainant's trademark Google was ranked number one by Alexa Internet Inc., a famous web traffic data and analytic company.

3.5 The Complainant is the registrant of the domain names <google.com> which was registered on September 15, 1997 whereas the disputed domain name <googleplace.in> was registered on October 5, 2014.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical to its trademark Google; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant's trademark Google is a registered trademark in the US, India and other countries. The trademark Google is well known trademark in India. The Disputed Domain Name <googleplace.in> incorporated the Complainant's trademark Google in its entirety with mere addition of the generic word "place" and the generic top-level domain ".in". It is well-

established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The “.in” suffixes should not be taken into account while comparing the Complainant’s trademark and the Disputed Domain Name. Similarly, the addition of merely generic word “place” would be insufficient to avoid a finding of confusing similarity¹. Therefore, the Arbitrator finds that the Disputed Domain Name <googleplace.in> is confusingly similar to the Complainant’s trademark Google.

5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that it has not authorized or licensed the Respondent to use the trademark Google. The Respondent is using the Disputed Domain Name to profit commercially via exploitation of the Complainant’s well-know trademark Google by luring customers to his website and encouraging them to use the services offered that are identical to the Complainant’s online web mapping services under the trademark Google Maps. The Complainant has made out a prima facie case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent². The Respondent chosen not to challenge the Complainant’s allegations. There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <googleplace.in>.

5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant’s trademark Google was well known trademark in India. The Disputed Domain Name incorporated the Complainant’s trademark and unauthorisedly providing online web mapping services on the Disputed Domain Name. At the time of registration the Disputed Domain Name, the Respondent should have been aware of the famous trademark Google. The Respondent showcases the trademark Google and its logo on his website to lead Internet users to believe that his website is being sponsored by or affiliated with the Complainant. These facts supports the inference that the purpose of the Respondent’s


¹ See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0)

² See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

diversion of traffic from the Complainant to the Respondent is for his own commercial gain. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. **Decision**

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <googleplace.in> be transferred to the Complainant.


Dipak G. Parmar
Sole Arbitrator

Date: January 19, 2018