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Sl. No. : 896 Date.:16/2/2009. Rs.:100/-
Sold To : Arni
W/o. : Arni V. Narayana Swamy R/o. Hyd
To Whom : Self.

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K. Rama Chandravathi
K. RAMA CHANDRAVATHI
STAMP VENDOR (L. No:27/99, RL.No. 16/2008),
6-3-387, Beside Banjara Durbar Hotel, Panjagutta
HYDERABAD - 500 082. Phone.No. 23351799

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

Domain Name Dispute

Case No. _____ of 2009

<hotcourses.in>

Arni Narayana Swamy

In The Matter Between

Hotcourses Limited
Hotcourses India Private Limited

Complainants

Versus

Rahul Kaila

Respondent

1. The Parties

The first Complainant, Hotcourses Limited is entity based in London, United Kingdom and the second Complainant, Hotcourses India Private Limited, is a subsidiary of the first Complainant based in Chennai, India. In these proceedings they are referred to collectively as "The Complainant", unless separate reference is made to each Complainant. DePenning & DePenning, Chennai India are the Complainant's authorized representatives in these proceedings.

The Respondent in these arbitration proceedings is Mr. Rahul Kaila of Delhi, India.

2, The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name <hotcourses.in>. The registrar for the disputed domain name is Direct I Internet Solutions Pvt. Ltd., Mumbai.

The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996, the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").



3. Procedural History

The Arbitrator received the hard copy of the Complaint from the .IN Registry on January 7, 2009. On January 9, 2009 the Arbitrator send by "Registered Post Acknowledgement Due" (R.P.A.D) a notification of commencement of the arbitration proceedings to the Respondent under paragraph 5 (c) of the INDRP Rules, and by email to other interested parties to the dispute.

The Respondent was given fifteen days time from the date of the notification to file a Response. The Respondent's Response was received by the Arbitrator on 27 January 2009, through courier. The Arbitrator condones the delay due to January 25, 2009 being a Sunday and January 26, 2009 being a national holiday. The Arbitrator proceeds to determine the case based on the submissions made by the parties and the materials on record.

Factual Back ground

The Complainant is a provider of online educational services and uses the trademark and service mark HOTCOURSES for its business and on its website. The Complainant is the registered proprietor of the HOTCOURSES mark under Registration No. 1207528 and No. 1209318 in classes 16 and 9 in India. The Complainant has provided documentary evidence of its registration certificates for the said HOTCOURSES marks and has additionally provided a list showing the goods and services for which it has registered trademark rights for the term HOTCOURSES in India.

The Respondent has identified himself as Rahul Kaila in the Response, and has provided no further information about himself or his area of business.

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4. Parties contentions

A. Complainant

The following contentions are made by the Complainant:

The first Complainant which has its head quarters in London was established in the year 1996. It offers educational services by on-line delivery through its website at www.hotcourses.com. which was registered on December 6, 1999. The Complainant further states that an associated website was launched in the year 2000, which offers one million online courses and provides user information to find schools, colleges and universities based on the area on interest. The Complainant alleges that users of its services associate the HOTCOURSES mark with the Complainant.

The second Complainant Hotcourses Indian (P) limited is a one hundred percent subsidiary of the first Complainant, which functions as a software development center for the first Complainant, Hotcourses Ltd UK. The second Complainant manages databases that comprises of over 1 million educational courses, information on 27, 000 schools and 20,000 educational providers. The Complainant alleges it has generated substantial reputation and goodwill in India in the name HOTCOURSES.

The Complainant states that it provides information and guidance on graduate, under graduate and post graduate degree courses, adult education courses, full time and part time courses. The Complainant claims that its operations combine global expertise with local knowledge in each of its markets and that it has approximately ninety employees in London, one hundred and thirty six employees in Chennai and a wholly owned, subsidiary in Australia and software developers in South Africa.

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The Complainant argues that the Respondent has no plausible reason to register a domain name using its HOTCOURSES mark, except to take advantage of its goodwill and reputation. The Complainant states the Respondent's use of the domain name <hotcourses.in>, is likely to damage its goodwill and reputation. Further, the use of the disputed domain name by the Respondent is unauthorized use of its mark which is likely to result in confusion and deceiving the public as they may assume it is sponsored, affiliated or endorsed by the Complainant.

The Complainant states that it is a prior adopter, user and promoter of the HOTCOURSES mark and the website www.hotcourses.com, and owns the intellectual property for the trademark world wide and for various other domain names registrations for, which is identified with the first Complainant. Its website has a large number of visitors which the Complainant states generates business and efficient services, goodwill and repute.

The Complainant states its annual turnover is £ 9 million and claims to have spent a considerable amount of money promoting its mark HOTCOURSES worldwide, which includes participating in and sponsoring various events and exhibitions, national and international since 1996. The Complainant states its promotion of HOTCOURSES covers all media and it releases annually 52 publications including course guides distributed to 356 countries in 17 languages.

The Complainant further states that given the publicity it has undertaken for its HOTCOURSES mark, the use of the same term by the Respondent in the disputed domain name is an attempt to usurp the goodwill attached to the Complainant's service to derive monetary gain. This amounts to the infringing use of its mark by the Respondent, which is actionable in the courts and is a clear case of cyber squatting. The Complainant contends that upon knowing of the disputed domain name it sent a legal notice to the Respondent on 22 February, 2008. Furthermore, the Respondent is using the disputed domain name for identical or similar services and activities as those of the Complainant.

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Under the first requirement of the Policy, the Complainant states the Respondent's domain name is identical **or** confusingly similar to a mark in which it has rights. The Complainant is the registered proprietor of the mark HOTCOURSES in India and the Respondent's domain name does not reflect distinctiveness or ownership **in** the term "hotcourses". **The Respondent's use of the** domain name would **be detrimental to the** character of **the** Complainant's mark; corporate name and its domain name as the Respondent **is** not an honest adopter or actual user **of the** name. Users are likely to **be** misled that the Respondent's website has been authorized by **the** Complainant.

The Complainant further argues that the Respondent has no rights or legitimate interests in the domain name. The disputed domain name was created after Complainant's adoption and use and launch of its website in 1999 and after it has acquired good will and reputation in the HOTCOURSES mark. The Respondent therefore, ought to have been aware of the Complainant's rights **in** the term HOTCOURSE. Further, as the Respondent is using the website for a similar area of business, the Respondent is a cyber-squatter, whose intention is to take advantage of the Complainant's reputation and to tarnish the goodwill of the Complainant's mark. The Complainant believes the Respondent was not commonly known by the mark or the name HOTCOURSES or any variation thereof prior to the disputed domain name registration.

Finally, the Complainant contends that the domain name was registered and is being used in bad faith. The Complainant has a well established presence internationally for online educational services much prior to the Respondent's registration of the domain name. The Respondent's adoption **of** the mark in the domain name and the website **in** a similar area of business is *mala-fide*. The registration of the domain name and its use **by** the Respondent is a deliberate attempt by the Respondent to attract for commercial gain Internet users **to** another online location by creating a likelihood **of** confusion with the Complainant's HOTCOURSES mark and to mislead the public **to** believe that the domain name is sponsored, endorsed **or** authorized **by** the Complainant.

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The Complainant requests for the transfer the domain name <HOTCOURSES.in> for the above stated reasons.

B. Respondent

The Respondent has put forward the following arguments in support of his case:

The Respondent's first argument in reply to the Complaint is that the Complainant has not registered the domain name when it was available on February 5, 2007. The Respondent states that as the domain name was available on that date he has registered the disputed domain name. The Respondent further alleges that he has spent money and time on promoting the disputed domain name HOTCOURSES.IN for the past two years. No supporting documents have been filed by the Respondent to substantiate these claims.

The Respondent states that the Complainant does not have any site by the name HOTCOURSES specifically for India, and argues that <hoteourses.in> is for meant only for Indian Institutions. The Respondent further argues that ".in" is an Indian extension, meant only for Indian entities and therefore the Complainant is not entitled to use its mark or a domain name in the ".in" domain as the Complainant, Hotcourses Ltd., is a foreign company. The Respondent argues that the Complainant seeks to "snatch" the disputed domain name to "milk Indian Education Business". The Respondent concludes by stating that the Complainant's Chennai facility is only for software development.

The Respondent requests justice, based on "domain dispute law" for the above stated reasons.

5. Discussion and Findings

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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.

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

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

The following are the findings of the Arbitrator based on all the material on record.

Identical or Confusingly Similar

The Complainant is required to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which it has rights.

The Complainant has demonstrated its ownership in the HOTCOURSES marks by providing evidence of its trademark registrations in India. It has additionally provided evidence of use of the mark as a business identifier. The Complainant has demonstrated its prior adoption of the HOTCOURSES mark and its sustained use over a period of time. These factors establish the Complainant's ownership in the mark as a distinct identifier of its services offered under the name HOT COURSES.

The Arbitrator notes that it is sufficient for the purposes of this dispute that the Complainant has demonstrated its ownership of the HOTCOURSES mark. The Complainant has additionally established its strong online presence and wide user

Harini Narayanan

awareness of its mark. The Arbitrator is satisfied that the Complainant has established rights in the name HOTCOURSES and that it is a distinct identifier of its services. It has been recognized in numerous prior decisions that incorporating of a trademark in its entirety, is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. See for instance *Investments, Inc v. Dennis Hoffman*, WIPO Case No.D2000-G253. In the present case the disputed domain name is identical to the Complainant's mark except for the ".in" domain identifier, which is inconsequential for a finding of confusing similarity.

The Arbitrator finds, for the all the reasons discussed above that the disputed domain name is identical to the HOTCOURSES mark in which the Complainant has rights.

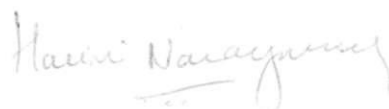
Rights and Legitimate Interests

The Complainant has to show that the Respondent has no rights and legitimate interests in the domain name.

The Arbitrator finds that although the Respondent has stated that he has expended time and money for promoting the name "hotcourses.in", there is no evidence produced by the Respondent to substantiate Its claims. The Arbitrator finds there is nothing on record to show the Respondent has been commonly known by the domain name or that it has made a *bona fide* offering of goods and services to give the Respondent any legitimate rights.

The Respondent has stated that the reason for registration of the disputed domain name was due to it's availability and the fact that the Complainant has not registered the domain name by the said date. In this regard, the Arbitrator draws attention to a significant observation made in *Orikin v. Pesco*, 80 RPC 153 :

"A company's reputation in an area where it does not carry on business is like an asset which has not yet been put up to work, which needs protection. Its non exploitation may be on account of many reasons but



there is no reason why the Law should not protect such an asset and permit the local trader deceiving the public by the use of the trademark.'

This underlying principle forms the basis of the Domain Name Policy which requires the registrant (Respondent) to affirm under the Policy that the domain name will not infringe or violate the rights of any third party. Trying to reap unfair rewards from the reputation and goodwill of another is not a legitimate right. Even if the owner of the mark is a foreign entity there is nothing in the Policy to prevent a foreign entity from registering a ".in" domain name. Nor does it give any right to the Respondent to register the domain name, merely because the Complainant has not chosen to register a domain name reflecting its mark on or before February 5, 2007.

The Arbitrator finds the website linked to the domain name has placed links in the area of education, which is likely to mislead users. The use of a domain name which is identical or confusingly similar to the Complainant's trademark with an intention of deriving advantage from user confusion and diverting Internet users to another commercial site by the Respondent does not confer legitimate rights on the Respondent. See for instance, *Bridgesione Corporation v. Horoshiy, Inc.* WIPO Case No. D2004-0795,

The Arbitrator is therefore convinced that the Respondent has no rights or legitimate interests in the domain name.

Bad Faith

Under the INDRP Policy the Complainant is required to prove that the domain name is being used in bad faith. The Policy provides a non-exhaustive list, of circumstances which indicates bad faith registration and use of a domain name under Paragraph 5 (iii) of the Policy.

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The Arbitrator finds the Respondent has attempted, to obtain for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The Respondent has also placed links on the website which is in the similar area of business as that of the Complainant and which is competing with the Complainant's area of business. As discussed above, there are reasonable grounds in the present case to show the domain name is identical to the Complainant's mark which is likely to mislead Internet users to the Respondent's website. Use of a trademark by a person not connected with the mark for intentionally diverting Internet users to another online location constitutes bad faith registration and use. See for instance. *AT& T Corp. v. Any ad Kauser*, WIPO Case No.D2000 -0327.

The Arbitrator finds that no *bona fide* activity is being undertaken by the Respondent using the domain name. The Complainant has furnished a printout of the Respondent's website which shows that the Respondent has merely provided links to other sites. The sponsored links are for business in the same or similar field as that of the Complainant, which is an indication of bad faith. Although the users who access the Respondent's website may conclude that it is not what they were originally looking for, the Respondent has already succeeded in his purpose of using the Complainant's mark to attract users for commercial gain. See *Deutsche Telecom AG v. Gary Set*, WIPO Case No. D2006-0690 and *Red Bull GmbH v. Unasi Management Inc*, WIPO Case No. D2005-0304.

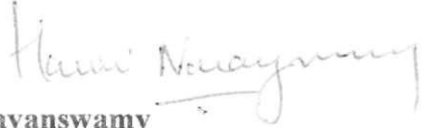
For all the reasons discussed, the Arbitrator finds the domain name has been registered and used in bad faith under paragraphs 4 and 5 (iii) of the Policy.

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6. Decision

For all the reasons discussed above the Arbitrator orders that the Domain Name

- hotcourses.in> be transferred to the Complainant.



Harini Narayanswamy

Arbitrator

Date: February 12, 2009