

उत्तर प्रदेश UTTAR PRADESH

AW 038418

18 NOV 2011

BODHISATVA ACHARYA
ARBITRATOR

(Appointed by. IN Registry-National Internet Exchange of India)

Case No. Of 2012.

ARBITRATION AWARD: DISPUTED DOMAIN NAME: www.ibis.co.in

In the matter of:

ACCOR

2 rue de le Mare Neuve

91000 Evry

FRANCE

Filed by its authorized representative attorney --

Nathalie Dreyfus

Dreyfus & associates

78 Avenue Raymond poincare

75116 Paris

FRANCE

E-mail: contact@dreyfus.fr

...Complainant

Vs.

TANG WEI

Jianhu

Yan Cheng 224700

CHINE

E-mail: klaoban@gmail.com

.....Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is ACCOR, 2 rue de la Mare Neuve filed by its authorized representative Nathalie Dreyfus, Dreyfus & associates, 78 Avenue Raymond Poincare, 75116 Paris, FRANCE with email address as contact@dreyfus.fr

Respondent in this arbitration proceeding is TANG WEI, Jianhu, Yan Cheng 224700, CHINE. E-mail: klaoban@gmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.ibis.co.in



3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI regarding the disputed domain name www.ibis.co.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Mr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on December 31st, 2011 and the complaint was produced before the Arbitrator on January 18th, 2012 and the Arbitrator sent a notice of Arbitration proceeding to Respondent on January 20th, 2012 through the email of Respondent but Respondent never filed his reply therefore the complaint is being decided as Ex-parte on March 1st, 2012.

4. Factual Background:

- A. Accor I the world leader in economic and mid-scale hotels, and a major player in upscale and luxury hospitality services. For more than 40 years, it has provided customers with expertise acquired in this core business. Accor operates more than 4,200 hotels in 90 countries worldwide and more than 500,000 rooms, from economy to upscale. The group includes notable hotel chains such as PULLMAN, NOVOTEL, MERCURE, IBIS. Accor's brands offer hotels stays tailored to the specific needs of each business and leisure customer and are recognized and appreciated around the world for their service quality.
- B. Accor is well known throughout the world, and particularly in India where Accor operates six IBIS hotels, Ibis hotels offer consistent quality accommodation and services. Complainants owns, among others, the following domain names: www.accorhotels.com, www.ibishotel.com, and www.accor.com. It mainly communicates on the internet via these websites where Internet users can easily and quickly find and book hotel rooms or benefit from other services.
- C. This proceedings, Respondent sent an email to Complainant on April 27, 2010, suggesting to sell out the domain name <ibis.co.in> He knew perfectly that Ibis is the trademark of Accor Group. He



signed the mail with the name Klaoban but according to the Whois database, the name of the registrant is Tang Wei, living in China. However, Complainant noticed that the domain name < accor.co.in> had the same registrant. The INDRP decision given by NIXI, in 2010, authorized the transfer of the domain name <accor.co.in>

- D. Respondent filed no reply and hence the complaint is decided as ex-parte on March 1st , 2012.

5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent never filed his reply properly.

6. Discussion & Findings:

Under the Paragraph 4 of the Policy (INDRP) Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right.



- (ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used with bad faith

After having gone through the records, documents, produced by the Complainant, Arbitrator's findings are:

- (i) Complainant and its trademark IBIS enjoy a worldwide reputation. Complainant owns numerous IBIS trademark registrations across the world and notably in China where Respondent is located in India.

Accor is notably the owner of the following trademarks:

- Indian trademark IBIS No. 1298094, dated of July 21, 2004, covering services in class 42.
- International trademark IBIS No. 829736, dated of May 13, 2004, designating China and covering services in class 43.

In addition to these trademarks, Complainant is the owner of several domain names that incorporate the trademark IBIS. Complainant particularly owns the following domain names:

- <ibishotel.com> registered on August 19, 1997;
- <ibis.cn> registered on March 17, 2003;
- <ibis.in> registered on February 26, 2005;

The disputed domain name is identical to Complainant's trademark IBIS. Indeed, the disputed domain name reproduces Complainant's trademark in its entirety, which previous panels have considered to be "well-known" (WIPO Case No. D2009-0243, *Accor and SoLuxury HMC v. Domains by Proxy, Inc. and Therese Kerr*, WIPO Case No. D2006-1366 *ACCOR v. Ata Kivi* and WIPO Case No. D2002-0517 *ACOR, Society Anonyms a Directoire et Conseil de Surveillance v. SEOCHO*).

When a trademark is incorporated in its entirety in the domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

By registering a domain name reproducing the trademark IBIS, respondent has therefore created a likelihood of



confusion with Complainant's mark. It is likely that the public and Internet users may be misled or confused thinking that the disputed domain name, which is identical to Complainant's mark, is in some way associated with Complainant.

For all the above-cited reasons, it is established that Complainant has trademark rights in the name that is reproduced in the domain name in dispute, and therefore the condition of Paragraph 4(i) of the .IN Policy is fulfilled.

- (ii) Respondent is not affiliated with Complainant in any way, nor has Respondent been authorized by Complainant to register and use Complainant's IBIS trademark or to seek registration of any domain name incorporating said mark.

Additionally, IBIS domain names were legally registered by Complainant long before Respondent started the process of registration and were legitimately using the name IBIS for business purposes, which obviously empowers Complainant with prior rights of Respondent in this regard stand defeated in favor of Complainant.

The disputed domain name is not used in connection with a bona fide offering of goods or services. Since the date of registration, Respondent has neither used nor made any demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with bona fide offering of goods or services. Respondent registered the domain name and contacted Complainant to sell him the disputed domain name. Respondent is a cyber-squatter since he already registered the domain name <accor.co.in> which infringed Complainant trademark rights and reproduced its company name. Respondent cannot have a legitimate interest in registering a second domain name reproducing another Complainant's trademark. It is undoubtedly established that Respondent has no rights or legitimate interests with respect to the disputed domain name under Paragraph 4(ii) of the Policy.

- (iii) Respondent knew or must have known Complainant's trademark IBIS at the time it registered the disputed domain name.

IBIS is a well-known trademark throughout the world and Respondent cannot have ignored Complainant's international reputation at the time of registration of the domain name.

The domain name in dispute was adopted by Respondent despite being aware of Complainant's well known trademark and the goodwill attached to it. Such conduct of Respondent clearly reflects the dishonesty and shows the mala fide intention of Respondent. Indeed, it has been held that the registration of a domain name containing a well known mark is strong evidence of bad faith.

It is the responsibility of Respondent to determine before registration that the domain name he or she is going to register does not infringe or violate third party rights. Since Complainant's mark IBIS is a well-known trademark and is registered in so many countries, it is unlikely that Respondent did not know about Complainant's rights in the mark or the domain name. Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favor of Complainant.

Policy, under Paragraph 6 (i), states that if there are circumstances which indicate that the Registrant has registered or acquired the domain name for the purpose of selling renting or otherwise transferring the domain name to Complainant or to a competitor, such registration can be considered a bad faith registration and use of the domain name. In the present case, Respondent offered Complainant to buy the disputed domain name. It demonstrates that the Respondent was aware of the disputed domain name's value and that it planned to make a profit via the offer, which is certainly not evidence of good faith.

Respondent also appears to be engaged in a cyber-squatting pattern. Some years ago, the same Respondent registered the domain name <accor.co.in> decided on February 2nd, 2010. Respondent knows perfectly that IBIS is one of the brands of Accor.




Consequently, the Complainant has established that Respondent both registered and used the domain name <ibis.co.in> in bad faith in accordance with Paragraph 6 of the Policy.

- (iv) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

7. Decision:

Hence the Arbitrator decides, the Disputed Domain Name www.ibis.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.ibis.co.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI 6/1/2012

DATED: March 1st, 2012,
PLACE: NEW DELHI,
INDIA.