

Bond



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Haryana Government**



Date :12/01/2018

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(Rs. Zero Only)

Deponent

Name: Rachna Bakhru

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

District : Gurugram

Landmark : Na

State : Haryana



Purpose : ALL PURPOSE to be submitted at Other

RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Indeed, Inc.
6433 Champion Grandview Way,
Building 1, Austin,
Texas 78750,
United States of America

....Complainant

Indeedworld
Nayapalli, Bhubaneswar 751002,
Orissa, India

.....Respondent

Disputed Domain Name: <WWW.INDEEDWORLD.IN>

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Indeed, Inc., a Delaware corporation. The Complainant is represented by its authorized representatives namely, ALG India Law Offices LLP.

The Respondent in this arbitration proceeding is the current Registrant under the name, indeedworld of the address Nayapalli, Bhubaneswar 751002, Orissa, India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is <indeedworld.in>. The Registrar is Endurance Domains Technology LLP (R173-AFIN)

As per the Whois Database, the Registrant is 'indeedworld' of the address Nayapalli, Bhubaneswar, Orissa- 751002, India


3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a) and (b), NIXI formally forwarded the copy of the Complaint to the Respondent and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on November 23, 2017 and the notice was issued to the Respondent on November 27, 2017 at the listed email address with a direction to submit his reply to the arbitrator. The said notices to the Respondent's email addresses bounced back and were not delivered.
- The Arbitrator has passed Procedural Order No. 1 dated January 03, 2018 wherein it was observed that all diligent efforts were made by NIXI and the Arbitrator to serve the Respondent with the complaint, however, the physical and email addresses furnished by the Respondent for domain name registration were incorrect.



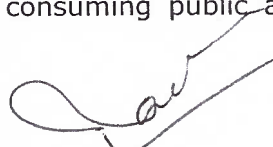
Hence, the present complaint is deemed to have been communicated to the Respondent under the INDRP Rules.

- In view of no response/acknowledgement/communication from the Respondent, the complaint is being decided *ex-parte* and solely based on materials and evidence submitted by the Complainant and contentions put forth by them.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- a) The Complainant operates the world's largest job site, with over 200 million unique visitors every month from over 60 different countries. It helps companies of all sizes hire employees and also helps job seekers find employment opportunities. The Complainant adopted and commenced use of its flagship trademark **INDEED** since the year 2004, and has given job seekers access to millions of jobs from thousands of company websites and job boards. The Complainant provides online computer databases, job search engines and software for mobile applications featuring job listings, resume postings, and other job search information, as well as employment placement services, advertising services, and an interactive website that facilitates the preparation of resumes.
- b) The Complainant's offices are located at various global locations including Hyderabad city in India. The Complainant's official website is at www.indeed.com and also operates various country specific websites such as www.indeed.co.in for India, www.indeed.ca for Canada.
- c) The Complainant is the owner of the trademark INDEED and various marks incorporating INDEED mark such as INDEED ACADEMY, INDEED JOB SPOTTER for which it owns several trademark registrations and applications in several countries/jurisdictions including United States of America, European Union, Canada, United Kingdom, and many more. The first registration of the mark INDEED as detailed out by the Complainant dates back to December 2004 in USA.
- d) In India, the mark INDEED is registered under no. 2044682 in classes 35 and 42. The said registration stands in favour of the Complainant since October 27, 2010.
- e) The Complainant owns several INDEED and INDEED formatted domain names including <indeednow.com>, <indeedjobz.com>, <indeed.online>, <indeed.co.uk>, etc.
- f) The Complainant claims that online search results generated by conducting a search for "INDEED" on internet search engines such as Google, Yahoo! and Bing mostly pertains to the Complainant's trademark which shows that the said trademark is prominently and exclusively associated with the Complainant.
- g) The Complainant's trademark INDEED is actively promoted through social media networking like Facebook, LinkedIn, YouTube, Twitter and Instagram. Based on the Complainant's extensive and continuous use of its trademark INDEED, it has come to be widely recognized among the relevant consuming public and trade as being



exclusively associated with the Complainant. The Complainant enjoys immense reputation and goodwill in its trademark INDEED.

h) The Complainant has been named as number one source of external hires and interviews as 'Sources of Hire' report for 2017 by SilkRoad. The said report revealed that Indeed delivered more than two times as many hires and interviews than all other branded online sources combined.

i) The Complainant contends that the disputed domain name <indeedworld.in> is identical and/or confusingly similar to the Complainant's trademark INDEED and addition of the generic term "WORLD" does not serve to distinguish the disputed domain name from the Complainant's INDEED mark.

j) The Complainant contends that Respondent has no rights or legitimate interest in either the trademark INDEED or in the disputed domain name <indeedworld.in> and that the Respondent was never authorized or licensed to use the mark INDEED. Further, it is contended that the Respondent is not commonly known by the disputed domain name and has no reason to adopt or register the domain name <indeedworld.in>.

k) The Complainant further contends that the Respondent is using the domain name <indeedworld.in> for fraudulent purposes, namely to imitate the Complainant and deceive job seekers into purchasing/subscribing services that are never provided to job seekers.

l) The Complainant contends that the Respondent registered the disputed domain name on July 28, 2017, by which time the Complainant's trademark INDEED, through extensive and continuous use, had acquired immense goodwill and reputation amongst the public and trade in favour of the Complainant.

m) The Respondent's domain name does not resolve to an active website. The Complainant further contends that the Respondent is using the domain name <indeedworld.in> and email address rehan@indeedworld.in for sending fraudulent 'phishing' emails to impersonate the Complainant and attempts to secure personal information and money from unsuspecting persons. That the domain name <indeedworld.in> is being used in connection with an email phishing scheme whereby the operator of the site defrauds consumers into paying them money for services identical to those of the Complainant, i.e. career and recruitment services.

n) That the email phishing schemes indicate bad faith registration and use under para 4(iii) of the Policy.

5) **Respondent:**

The Respondent has not filed any official response dealing with the contents of the Complaint. The complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.



6) **Discussion and Findings:**

The submissions and registration certificates provided by the Complainant in support of registration of the mark INDEED shows that the Complainant has first adopted the mark INDEED in the year 2004 with first commercial use since November 29, 2004 as per registration details annexed from records of USPTO office(Annexure 5).

Further, the Complainant applied for and secured registration for the INDEED mark in India with effect from October 27, 2010 as shown in Annexure 5. Further, the Complainant has also filed evidence in form of whois details of its ownership of various domain names constituting INDEED trademark which dates back to the year 1998. The Arbitrator notes that the Complainant created the domain www.indeed.com on March 30, 1998 and registered India specific domain name www.indeed.co.in on December 14, 2006.

The disputed domain name was registered by the Respondent on July 28, 2017 which is more than a decade subsequent to first adoption and use of the INDEED trademark and domain name by the Complainant. The Complainant has prior registered trademark rights in India in INDEED mark and filed its first trademark application in classes 35 and 42 on October 27, 2010.

I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

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

Based on submission and evidence filed by the Complainant, it is clear that the Complainant had prior and subsisting rights in the mark INDEED with its earliest adoption and trademark application dating back to year 2004 in United States of America. In India, the Complainant has evidently proved that it had secured trademark registration for the INDEED trademark in classes 35 and 42 since the year 2010. Therefore, it is established that the Complainant has statutory trademark rights in the mark INDEED worldwide including in India. Further, the Complainant has pleaded that it has been commercially using the INDEED trademark since 2004 which hasn't been rebutted and is in consonance with the trademark details annexed by the Complainant as Annexure 5. Therefore, the Complainant also has prior user rights in the INDEED trademark. As complaint under INDRP, it has to be now ascertained if the disputed domain name <indeedworld.in> is identical to or confusingly similar with Complainant's mark.

As per WIPO Jurisprudential Overview 3.0, the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.



While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Further, it is well settled proposition that when the relevant trademark is recognizable within the disputed domain name, the addition of any generic or common language term would not prevent a finding of confusing similarity under the first element of UDRP Policy.

Based on the above, it is evident in the present case that the disputed domain name <indeedworld.in> is confusingly similar to the Complainant's registered trademark INDEED. The Complainant's trademark INDEED is easily recognisable in the disputed domain name and addition of common terms like "world" doesn't add on any differentiating factor between the Complainant's trademark and disputed domain name. In my opinion, owing the worldwide presence of the Complainant's business, the term 'world' in the disputed domain name will make any Internet users to believe that such domain name and the contents originating therefrom belongs to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(i) is satisfied.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name;

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such prima facie case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.

In the present case, no response was received from the Respondent and none of the contentions put forth by the Complainant against the Respondent were denied or rebutted. Further, it is relevant to mention that the Respondent has failed to mention and furnish correct contact details to the Registrar while registering the disputed domain name which shows that he does not have any legitimate interest in the disputed domain name.

Paragraph 7 of INDRP Policy deals with Registrant's Rights to and Legitimate Interests in the Domain Name:

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :

(i) 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;



(ii) 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; or

(iii) 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.

Keeping in mind instances covered in Paragraph 7 of INDRP Policy, the Arbitrator notes that the disputed domain name resolves to inactive webpage with no contents. Therefore the disputed domain name is not being used in connection with a bona fide offering of goods or services.

While the Registrant/Respondent has stated its name as "Indeedworld" in the whois details, however the rest of physical address and contact details were found to be incorrect. Therefore, the fallibility of whois contact details cannot be ruled owing to Respondent's own action/inaction. Further, there is no evidence on record to show that the Registrant is commonly known by the name INDEEDWORLD or by disputed domain name.

The Complainant has provided documentary evidence in form of email correspondence originating from the email address of the disputed domain name which shows Respondent has been targeting the potential customers of the Complainant to make commercial gains by deceiving them. Therefore, it is established that the Registrant is not making a legitimate non-commercial or fair use of the domain name. Further, the disputed domain name is being used by the Respondent with clear intention of making commercial gain. It is held that use of a domain name for illegal activity including fraud, illicit gain can never confer any legitimate rights or interests in favour of the Respondent.

Since there exists no business relationship or authorization or license between the Respondent and the Complainant, I find the requirement of the INDRP Policy paragraph 4(ii) also satisfied.

(iii) The Registrant's domain name has been registered or is being used in bad faith.

Paragraph 6 of the INDRP policy states Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or



(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) 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..

Based on prior adoption, worldwide use, several trademarks and domain names registrations of trademark INDEED by the Complainant; it is believed that the Respondent was well aware of the Complainant's business and services while registering the disputed domain name constituting the mark INDEED. Further, the disputed domain name was registered on July 28, 2017 wherein the Complainant had commenced the use of trademark INDEED for its business since the year 2004 which was way prior in time. Therefore, based on constructive knowledge of the Respondent and no legitimate business on the disputed domain name/website, it is presumed that the Respondent registered the disputed domain name in order to prevent the Complainant from reflecting the INDEED mark in a corresponding domain name in India.

Further, the Complainant has furnished the email correspondence marked as Annexure 15 wherein it is clear that the Respondent has devised the email address rehan@indeedworld.in (associated with disputed domain name) to trap the potential job seekers and make illicit gains by committing fraud. Further, the Respondent goes on to impersonate itself as the representative of the Complainant and is actively using the Complainant's trademark INDEED on forged identity card to sham an association. All these actions show that the disputed domain name is being used by the Respondent in bad faith. It is observed that use of the disputed domain name constitutes bad faith if it effectively impersonates and/or suggests sponsorship or endorsement by the trademark owner.

The Respondent is using the disputed domain name in relation to same business and services as those of the Complainant i.e. career and recruitment. Based on the content of the email originating from the Respondent, it is clear that the Respondent has registered and is using the disputed domain name with an obvious intention to attract job seekers by creating a likelihood of confusion with the Complainant's INDEED name and mark and is actively associating itself with the Complainant's company and business.


Time and again UDRP Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending emails, phishing, identity theft, etc. Such cases may involve the Respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the Complainant's actual or prospective customers. The present case squarely falls within the premises of bad faith registration and use.



Based on the above, it can be concluded that the disputed domain name was registered and is being used in bad faith, thus fulfilling condition laid down under paragraph 4(iii) of INDRP Policy.

7) **Decision:**

The Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.INDEEDWORLD.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
January 12, 2018