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Hotel Engine, Inc, USA vs Rishabh Nandi, Byrut Business Solutions, India
INDRP Case no. 1816
Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainant is Hotel Engine, Inc ; 950 South Cherry Street, 10th Floor, Denver, CO 80246, United States.

The Respondent is Rishabh Nandi, Byrut Business Solutions, 39, R. P. Road, Dugnabad, Port Blair, Andaman and Nicobar Islands - 744101.

2. The Domain Name and Registrar

The disputed domain name is <hotelengine.in>. The said domain name is registered with the Registrar – NameCheap, Inc. (IANA ID: 1068). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D3846DC51BB034D76989A799E8FA45843-IN
- b. Date of creation: Jul 20, 2023.
- c. Expiry date: Jul 20, 2024.

3. Procedural History

- (a) A Complaint dated 17.01.2024 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that 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 (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 1.02.2024 by email. The Arbitrator served the Notice under Rule 5(C) of

INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 1.02.2024. The Complainant was advised to serve copies of the domain complaint along-with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator vide Notice dated 1.02.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. According to the Complainant's emails dated 8.2.2024, the Complaint with annexures was sent to the Respondent through email on 8.2.2024 and Blue Dart Courier on 6.2.2024. Therefore, it would be just & reasonable if the Complaint and its annexures are regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant in this arbitration proceedings is Hotel Engine, Inc; 950 South Cherry Street, 10th Floor, Denver, CO 80246, United States.

The Complainant Hotel Engine, Inc., is a Denver-based travel tech company that connects businesses with lodging partners to drive savings and efficiency for both sides. The Complainant has developed a no-contract hotel booking platform designed to manage lodging services. The said platform offers customer- centric technology to customize hotel reservations and management, built for control and transparency in billing, enabling businesses to manage their stay at hotels. Founded in the year 2015, today, the Complainant offers the world's largest lodging performance network, having more than 700,000 hotels in more than 185 countries, and caters to more than 35,000 businesses.

In addition to the aforesaid, the Complainant's website, www.hotelengine.com is its primary presence on the Internet for global promotion. The said website clearly shows references to the Complainant's brand 'HOTEL ENGINE' and disseminates all the essential information on the Complainant and its business/services. The aforesaid website is accessible worldwide, including in India, and the public can gather extensive information about the Complainant and its HOTEL ENGINE brand.



The mark 'HOTEL ENGINE' is the Complainant's house mark as well as its company/trade name. The mark HOTEL ENGINE/variants thereof are registered in the U.S.A in Classes 41, 42 and 43, with the earlier registration dating back to the year 2014. A list comprising of the Complainant's applications/registrations in respect of the trade/service mark/name 'HOTEL ENGINE' is as follows:

Mark	Registration No./ Country	Date of Application/ Registration	Class
HOTEL ENGINE	4545476 USA	June 3, 2014	42, 43
HOTELENGINE.COM	4563997 USA	July 8, 2014	41
	4641031 USA	November 18, 2014	43
HOTEL ENGINE	97877601 USA	April 7, 2023	43
HOTEL ENGINE	97877592 USA	April 7, 2023	42
HOTEL ENGINE	UK00003964646 UK	October 6, 2023	42, 43
HOTEL ENGINE	018934480 EU	October 6, 2023	42, 43
HOTEL ENGINE	2285806 Canada	October 10, 2023	42, 43

The above-mentioned marks are valid and subsisting. Thus, the trade mark HOTEL ENGINE forms an integral part of the Complainant's business/activities and serves as its principal trade mark and domain name/website.

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The Complainant is the registered proprietor of the domain name www.hotelengine.com since at least as early as 2013, and it is pertinent to note that the Complainant's website disseminates valuable information and is a source of knowledge of its activities under the 'HOTEL ENGINE' marks. In fact, the Complainant has also sought cancellation/transfer of domain names containing the HOTEL ENGINE mark under the Uniform Domain-Name Dispute-Resolution Policy (UDRP) in the past and has secured favourable orders.

Respondent's Identity and Activities

The activities of the Respondent are not known. The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

According to the Complainant:

- i) The Registrant's impugned domain name 'hotelengine.in' is identical to and comprises in its entirety the Complainant's trade/service mark/name HOTEL ENGINE, which is a registered trade mark of Complainant. It is submitted that the Registrant has registered the impugned domain name 'hotelengine.in' with the mala fide intent to gain undue leverage from it and make illicit pecuniary gains. It is evident that the objectionable domain name, registered by the Registrant, has no meaning or significance independent of the Complainant's trade/service mark/name 'HOTEL ENGINE'. The well-known nature of the Complainant's trade/service mark/name 'HOTEL ENGINE' and the Registrant's use of the same clearly establishes that the Registrant registered the impugned domain name with full knowledge of the Complainant, its business activities and intellectual property rights. Moreover, use of Complainant's true domain name on the impugned site reinforces Registrant's knowledge of Complainant and its mala fide

intent. The unmistakable identity/deceptive similarity between the Complainant's trade/service mark/name on one hand and Registrant's choice of its domain name on the other hand, is patently misleading to the members of the trade and public.

- ii) The Complainant states that the impugned domain name 'hotelengine.in' is identical / similar to, the domain name 'hotelengine.com' comprising the trade/service mark/name 'HOTEL ENGINE' registered in the name of the Complainant, as mentioned in paragraph No. 13 and which is not repeated herein for the sake of brevity.
- iii) It is further submitted that as per the WHOIS record, the impugned domain name 'hotelengine.in' was registered on July 20, 2023, whereas the Complainant's domain name 'hotelengine.com' was created/registered many years before the impugned domain name, on April 8, 2002. The trade/service mark/name 'HOTEL ENGINE' is also registered in US since June 3, 2014 and has been in use since at least as early as 2015. Thus, the Complainant's adoption and use of the trade/service mark/name and domain name comprising 'HOTEL ENGINE' is prior to the Registrant's registration of the impugned domain name 'hotelengine.in'. In view of the same, it is apparent that the Complainant has prior rights in the trade/service mark/name and domain name comprising the trade/service mark/name HOTEL ENGINE vis-à-vis the Registrant.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <hotelengine.in>.

The Complainant submits:

- i) The Registrant's adoption and use of a dishonestly adopted and confusingly similar domain name does not amount to a 'bona fide' offering of goods and services. Given the Complainant's mark's well-known nature, its widespread use and repute in the world, including in India, the Registrant's such adoption thereof to provide similar/near identical services under the impugned domain name is not bona fide. Intentional ignorance of the Registrant in not

conducting a trade mark search as part of its due diligence prior to commencing use of the trade/service mark/name 'HOTEL ENGINE' and domain name comprising the said same evidences its mala fide use. It is trite law in respect of domain name proceedings that use which dishonestly and intentionally rides on the repute of another mark cannot constitute 'bona fide' offering of goods and services. Therefore, by no stretch of the imagination, can the Registrant demonstrate any use relating to the bona fide offering of goods or services at any point in time whatsoever.

- ii) It is submitted that the Registrant is not commonly known by the domain name 'hotelengine.in' and is not authorized or licensed by the Complainant to use its trade/service mark/name 'HOTEL ENGINE'. Further, the Complainant has first used the trade/service mark/name 'HOTEL ENGINE' in the year 2015 and registered the domain comprising the trade/service mark HOTEL ENGINE since the year 2002. Due to the extensive and continuous use of the HOTEL ENGINE trade/service marks/name, the same have become well-known and come to be exclusively associated with the Complainant and no one else. Hence, the Registrant cannot establish any association with the domain name in question for any reason/s whatsoever. Even a simple Google search with the search strings "HOTEL ENGINE" indicates information only pertaining to the Complainant and its parent company/sister concerns, which evidences the reputation and goodwill established by it.
- iii) Further, the Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name. In fact, the conduct of the Registrant as highlighted above cannot come under the definition of bona fide use. Registration of the impugned domain is aimed to benefit from the immense goodwill and reputation of the Complainant's trade/service mark/name 'HOTEL ENGINE', divert visitors/customers by creating initial Internet confusion and thereby commercially profit from use of the Complainant's trade/service mark/name 'HOTEL ENGINE'. Thus, the Registrant is indulging in (i) unfair use of the domain name with an intention to reap profits therefrom, (ii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade/service mark/name HOTEL ENGINE. The Registrant, therefore, cannot justify any legitimate interest in the domain name 'hotelengine.in'.

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- i) It is certain that the Registrant was aware of the Complainant's prior rights in its registered marks, as well as of ~~Complaints~~ business, and yet chose to adopt the suspiciously similar domain name 'hotelengine.in' which leads to a website offering similar/near identical services to that of the Complainant. Indeed, Registrant even features Complainant's actual domain name on the impugned website in order to wrongfully associate itself with Registrant. Registration of the impugned domain name 'hotelengine.in' is detrimental to the Complainant's rights in the trade/service mark/name 'HOTEL ENGINE'. Further, unlike most of the many domainnames comprising HOTEL ENGINE, which are registered in the name of the Complainant, the impugned domain name comprising the mark HOTEL ENGINE is being unnecessarily held by the Registrant, thereby preventing a rightful holder to register and use the same in relation to the Complainant's business/services/products.
- ii) The conduct of the Registrant amply proves its *mala fide* to attract Internet users to its website by using the mark/name of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation of the Registrant's website and/or of a product/service on the Registrant's website. Further, Internet users desirous of accessing the Complainant's website will inevitably get confused and therefore may be led to the impugned website. Thus, the Registrant's website may be accessed believing it to still be affiliated with the Complainant and users, especially in India, may access and use Registrant's services believing them to still originate from the Complainant.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in

rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove 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 that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <hotelengine.in> was registered by the Respondent on Jul 20, 2023.

The Complainant is an owner of the registered trademark HOTEL ENGINE for the last many years. The Complainant is also the owner of the similar domain as referred to in the Complaint. This domain name and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <hotelengine.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon’ble Supreme Court of India has in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, [2004Supp. (2) SCR 465] held that the domain name has acquired the characteristic of being a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for HOTEL ENGINE products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that “When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <hotelengine.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by HOTEL ENGINE or hotelengine.in anywhere in the world. The name of the Registrant / Respondent is not HOTEL ENGINE as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark HOTEL ENGINE or to apply for or use the domain name incorporating said trademark / service mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests

in the domain name <hotelengine.in> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."



The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <hotelengine.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 17th Feb, 2024