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Six Continents Hotels, Inc., USA vs hotes india, India
INDRP Case no. 1825
Arbitrator: Mr. P.K.Agrawal

1 | Page

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AWARD

1. The Parties

The Complainant is Six Continents Hotels, Inc.; and Six Continents Limited, Three Ravinia Drive, Suite 100 Atlanta, Georgia 30346, USA.

The Respondent is hotes india, Hotel India, Visakhapatnam - 530002, Andhra Pradesh, India .

2. The Domain Name and Registrar

The disputed domain name is <ihghotelsresorts.in>. The said domain name is registered with the Registrar – GoDaddy.com, LLC. (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D170A059A6BF94FA49DC3942F6B8FD020-IN
- b. Date of creation: Jan 28, 2024.
- c. Expiry date: Jan 28, 2025.

3. Procedural History

- (a) A Complaint dated 3.03.2024 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.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 7.03.2024 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 7.03.2024. 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 through Notice dated 7.03.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed on 10.3.2024 through email that the complaint with annexures was communicated to the Respondent through email. The Complainant has pointed out through email dated 10.3.2024 that Respondent's address mentioned in the Whois record, as shared by the good office of NIXI, is incomplete. As the address is incomplete, the Complainant will not be in a position to serve the physical copy of the complaint to the Respondent through courier or post. The Respondent was advised through email dated 15.3.2024 to respond to the above submission or submit his updated address with necessary documents. If nothing is heard from him on this issue, it will be presumed that the Complaint & its annexures have been duly served upon the Respondent. Further proceedings will follow as per law. The Respondent has not responded to the Notice. In view of the aforesaid, the Complaint and its annexures may be 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 Six Continents Hotels, Inc.; and Six Continents Limited, Three Ravinia Drive, Suite 100 Atlanta, Georgia 30346, USA. Complainant is one of a number of companies collectively known as IHG Hotels & Resorts ("IHG"), one of the world's largest hotel groups. Companies within IHG own, manage, lease or franchise, through various subsidiaries, 6,261 hotels and 929,987 guest rooms in about 100 countries and territories around the world. IHG owns a portfolio of well-recognized and respected hotel brands including Holiday Inn Hotels; Holiday Inn Express Hotels; Holiday Inn Club Vacations; Crowne Plaza Hotels & Resorts; Hotel Indigo; InterContinental Hotels & Resorts; Staybridge Suites; Candlewood Suites; Six Senses Hotels, Resorts & Spas; Regent Hotels & Resorts; Kimpton Hotels & Restaurants; Hualuxe; Even Hotels; avid Hotels; and voco Hotels; and also

manages one of the world's largest hotel loyalty programs, IHG Rewards Club.

According to the Complainant, the Complainant (or its affiliates) owns approximately 1,390 registrations in approximately 170 countries or geographic regions worldwide for trademarks that consist of or contain the mark HOLIDAY INN. Many previous domain name dispute panels have found that Complainant has strong rights in and to the HOLIDAY INN Trademark.

The details for some of the Complainant's word marks that consist of or include IHG in the United States of America are:

- U.S. Reg. No. 3,544,074 for IHG (registered December 9, 2008) in international class 35, for use in connection with, inter alia, "business advisory and business consultancy services relating to hotel management and to hotel franchising"
- U.S. Reg. No. 4,921,698 for IHG (registered March 22, 2016) in international class 9, for use in connection with, inter alia, "hotel services"
- U.S. Reg. No. 7,080,612 for IHG HOTELS & RESORTS (registered June 13, 2023) in international class 43, for use in connection with, inter alia, "[h]otel accommodation services"

The details for some of the Complainant's word marks that consist of or include IHG in India are:

- India App. No. 2,502,243 for IHG (application date March 25, 2013) in international class 35, for use in connection with, inter alia, "business consultancy services relating to hotel management and to hotel franchising"
- India App. No. 3,647,185 for IHG CONCERTO (application date September 29, 2017) in international class 35, for use in connection with "business information consultancy and advisory services relating to hotel management, operations, franchising, sales, reservations, and marketing provided only to hotel personnel of applicant's affiliates, franchisees, and licensees"
- India App. No. 5,634,299 for IHG ONE REWARDS (application date April 7, 2022), in international class 35, for use in connection with, inter alia, "promoting hotel, resort, travel, and vacation services through a customer loyalty program"

Respondent's Identity and Activities

The Respondent's Identity and activities are not known. He has not responded to the Notice.

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,

1. Complainant (or its affiliates InterContinental Hotels Group PLC and Inter-Continental Hotels Corporation) owns about 523 registrations in about 116 countries or geographic regions worldwide for trademarks that consist of or contain the mark IHG (the "IHG Trademark").
2. The oldest of the IHG Trademark registrations that consist solely of the letters "IHG" are for those registered in 2006 and 2007 in Armenia, Azerbaijan, Malaysia, New Zealand, and South Africa.
3. Previous Panels under the UDRP have found that Complainant has rights in and to the IHG Trademark. See, e.g., InterContinental Hotels Group PLC, Six Continents Hotels, Inc., Six Continents Limited v. Domain Admin, Whois Privacy Corp. / Maddisyn Fernandes, Fernandes Privacy Holdings, WIPO Case No. D2017-1072.
4. The Disputed Domain Name contains, in its entirety, those of the IHG Trademarks that consist solely of "IHG" as well as those that consist solely of "IHG HOTELS & RESORTS" (other than the ampersand, "&" – a character that cannot be registered in a domain name).
5. Where, as here, a disputed domain name "wholly incorporates... the prior registered trade mark of the Complainant," the disputed domain name is identical or confusingly similar to the trademark for purposes of the INDRP. Kenneth Cole Productions Inc v. Viswas Infomedia, NIXI Case No. INDRP/093.

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 <ihghotelsresorts.in >.

The Complainant submits that:

1. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

2. Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the IHG Trademark in any manner. Accordingly, where, as here, “the Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant’s mark,” the panel should find a lack of rights or legitimate interests under the INDRP. *Sony Ericsson Mobile Communications AB v. Salvatore 11 Morelli*, NIXI Case No. INDRP/027. See also *Six Continents Hotels, Inc. v. Patrick Ory*, WIPO Case No. D2003-0098 (“There is no evidence of any commercial relationship between the Complainant and the Respondent which would entitle the Respondent to the mark. Consequently, the Panel concludes that the Respondent has no rights nor legitimate interests in the Domain Name given there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Domain Name.”).

3. Here, just as in *Accenture Global Services Limited v. Vishal Singh*, NIXI Case No. INDRP-999: Given the long and widespread reputation of the Complainant’s trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant’s widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant’s trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant’s site, or the site of official authorized partners of the Complainant, while in fact it is neither of these. As a result, the panel said that the respondent lacks rights or legitimate interests in respect of the disputed domain name.

4. By using the Disputed Domain Name in connection with a website that falsely appears to be a website for, or associated with, Complainant, Respondent cannot establish rights or legitimate interests in the Disputed Domain Name. As set forth in section 2.13 of WIPO Overview 3.0: “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.” (Emphasis added.)

5. Upon information and belief, Respondent has never used, or made preparations to use, the Disputed Domain Name or any name

corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services and, therefore, Respondent cannot establish rights or legitimate interests under Paragraph 6(a) of the INDRP. As stated above Respondent is using the Disputed Domain Name in connection with a website that falsely appears to be a website for, or associated with, Complainant, by promoting a hotel described as “IHG Hotels & Resorts | Holiday Inn Kolkata Airport,” which the website says is “an IHG hotel” – despite the fact that Respondent’s website using the Disputed Domain Name has no connection with, and is not authorized by, Complainant. Such use is clearly not bona fide and, therefore, does not confer upon Respondent any rights or legitimate interests in the Disputed Domain Name. See, e.g., Hitachi Limited v. Kuldeep Kumar, NIXI Case No. INDRP/1092 (finding no rights or legitimate interests where “the disputed domain name is being used to impersonate the Complainant”); Scott and White Memorial Hospital and Scott, Sherwood, and Brindley Foundation v. Bao Shui Chen, WIPO Case No. D2009-0174 (finding no rights or legitimate interests where “the Respondent was... using the disputed domain name to re-direct Internet users to commercial websites that promote the services of competitors in the same business as the Complainant”).

6. To Complainant’s knowledge, Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name under paragraph 6(b) of the INDRP. The Whois details provided by NIXI, do not identify the registrant of the Disputed Domain Name as “IHG” or any variation thereof. “This fact, combined with the lack of evidence in the record to suggest otherwise, allows the Panel to rule that Respondent is not commonly known by any of the disputed domain names or any variation thereof...” Alpha One Foundation, Inc. v Alexander Morozov, Forum Claim No. 0766380. In addition, given Complainant’s registration of the IHG Trademark for more than 18 years (including in India), it is exceedingly unlikely that the Respondent is commonly known by this trademark.

7. As stated above, Respondent has used the Disputed Domain Name in connection with a website that falsely appears to be a website for, or associated with, Complainant. This is clearly misleading under paragraph 6(c) of the INDRP. See, e.g., Six Continents Hotels v. “m on”, WIPO Case No. D2012-2525 (“[a]t the heart of the Complaint is the Complainant’s contention that the Respondent has taken the trademark of the Complainant with a view to attracting Internet users to a website offering [competitive] services, the Respondent has intentionally attempted to attract, for

commercial gain, Internet users to a website... The Panel accepts that such activity clearly does not provide the Respondent with a legitimate interest in the Domain Name"); BHP Billiton Innovation Pty Ltd v. Zong Wang, WIPO Case No. D2017-0537 (where complainant alleged that "the disputed domain name resolved to a website purporting to be an official website of the Complainant," such "use of the disputed domain name in connection with a website that creates a misleading impression of association with the Complainant does not give rise to any rights or legitimate interests in the disputed domain name on the part of the Respondent").

8. Also, by using the Disputed Domain Name in connection with a website that purports to offer Internet users the ability to book hotel rooms, Respondent's actions are clearly commercial and, therefore, Respondent cannot establish rights or legitimate interests pursuant to paragraph 6(c) of the INDRP. See, e.g., The John Hopkins Health System Corporation, The John Hopkins University v. Domain Administrator, WIPO Case No. D2008-1958 (where disputed domain name is used "to re-direct Internet users to commercial websites that promote the goods of competitors in the same business as the Complainants... such action is not a bona fide offering of goods or services, nor is it a legitimate non-commercial or fair use of the domain name")

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:

1. The Disputed Domain Name should be considered as having been registered and being used in bad faith by Respondent.

2. "[T]he mere registration of a domain name that is identical or confusingly similar... to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." WIPO Overview 3.0, section 3.1.4. The IHG Trademark is clearly famous and/or widely known, given that it is protected by about 523 registrations in about 116 countries or geographic regions worldwide, the oldest of which were registered 18 years ago.

3. Indeed, "it is implausible that [Respondent] was unaware of the Complainant when [it] registered the Domain Name given the fame of the Trade Mark." Six Continents Hotels v. Lin hongyu, Cheng Qi Lin, WIPO Case No. D2017-2033. Accordingly, "[t]he only explanation of what has happened is that the Respondent's motive in registering and using the

[domain name] seems to be... simply to disrupt the Complainant's relationship with its customers or potential customers or attempt to attract Internet users for potential gain. These both constitute evidence of registration and use in bad faith." *Pencil, LLC v. Jucco Holdings*, WIPO Case No. D2006-0676.

4. Because the Disputed Domain Name is "so obviously connected with" Complainant, Respondent's actions suggest "opportunistic bad faith" in violation of the Policy. *Research In Motion Limited v. Dustin Picov*, WIPO Case No. D2001-0492. In light of the long history of Complainant's trademarks and Complainant's significant presence and brand recognition, "it is likely that the Respondent knew of the Complainant's mark, and has sought to obtain a commercial benefit by attracting Internet users based on that confusion." *Western Union Holdings, Inc. v. Manuel Rodriguez*, WIPO Case No. D2006-0850.

5. Further, as noted above, Respondent is using the Disputed Domain Name in connection with a website that impersonates Complainant – by promoting a hotel described as "IHG Hotels & Resorts | Holiday Inn Kolkata Airport," which the website says is "an IHG hotel" – which clearly indicates bad faith because it creates a likelihood of confusion under paragraph 7(c) of the INDRP, given that Respondent's website using the Disputed Domain Name has no connection with, and is not authorized by, Complainant. See, e.g., *Hitachi Limited v. Kuldeep Kumar*, NIXI Case No. INDRP/1092 (finding bad faith where "the disputed domain name is being used to impersonate the Complainant"); and *InterGlobe Aviation Limited v. Sonu*, NIXI Case No. INDRP/1115 (finding bad faith where "Respondent is impersonating the Complainant and actively using its name and brand images in respect to website contents"; "use of the disputed domain name constitutes bad faith if it effectively impersonates and/or suggests sponsorship or endorsement by the trademark owner"). See also, *Six Continents Hotels, Inc., v. Bunjong Chaiviriyawong*, WIPO Case No. D2013-1942 (by using disputed domain name in connection with a website that "offers... services in competition with the Complainant... the Respondent, by such use, intentionally attempted to attract Internet users, expecting to reach the website corresponding to the Complainant's services and to obtain information about the Complainant's activity, to services related to another [company], by creating a likelihood of confusion with the Complainant's trademark and business, and damaging the Complainant's business").

6. A further indication of bad faith is the fact that Complainant's registration of the IHG Trademark for 18 years (including in India) pre-dates Respondent's registration of the Disputed Domain Name. Accordingly, "Complainant [is] very well-known and has been using his

mark for [a] very long period, in his commercial/business activities.... The respondent must have known about complainant's mark at the time of registration of his domain name." Morgan Stanley v. M/s Keep Guessing, NIXI Case No. INDRP/024.

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's 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 < ihghotelsresorts.in > was registered by the Respondent on Jan 18, 2024.

The Complainant is an owner of the registered IHG Trademark for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks 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 < ihghotelsresorts.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 held that the domain name has become 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 IHG Trademark 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 <ihghotelsresorts.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 the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not IHG 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 IHG Trademark or to apply for or use the domain name incorporating said trademark. 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 <ihghotelsresorts.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 <ihghotelsresorts.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator

Dated: 21st March, 2024