



INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

सत्यमेव जयते

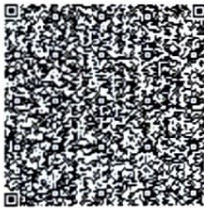
₹100

e-Stamp

₹100 ₹100 ₹100 ₹100

Certificate No. : IN-DL39132507709763W
Certificate Issued Date : 19-Aug-2024 10:37 AM
Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL-SELF31323634904351W
Purchased by : PRABODHA AGRAWAL
Description of Document : Article 12 Award
Property Description : INDRP CASE NO. 1892 - ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : PRABODHA KUMAR AGRAWAL
Second Party : NOT APPLICABLE
Stamp Duty Paid By : PRABODHA KUMAR AGRAWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)

₹100



SELF PRINTED CERTIFICATE TO BE
VERIFIED BY THE RECIPIENT AT
WWW.SHCILESTAMP.COM

IN-DL39132507709763W

Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA
B-901, 9th Floor Tower B,
World Trade Centre, Nauroji Nagar
New Delhi-110029, India

B&B HOTELS, France vs Doubletree Hospitality Solutions, Kerala
INDRP Case no. 1892
Arbitrator: Mr. P.K.Agrawal

ly 1 | Page

Statutory Alert:

- 1 The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
- 2 The onus of checking the legitimacy is on the users of the certificate.
- 3 In case of any discrepancy please inform the Competent Authority.

AWARD

1. The Parties

The Complainant is B&B HOTELS, 271 RUE DU GENERAL PAULET, 29200 BREST, FRANCE.

The Respondent is Doubletree Hospitality Solutions, 2nd Floor Thahi Complex, Chakkaraparambu Road, Vennala Kochi, Kerala-682028, India.

2. The Domain Name and Registrar

The disputed domain name is <bbhotelsandresorts.in>. The said domain name is registered with the Registrar – Endurance Digital Domain Technology LLP (IANA ID: 801217). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D8B627F198F38437EA89601ED03C7103F-IN
- b. Date of creation: Mar 14, 2024.
- c. Expiry date: Mar 14, 2025.

3. Procedural History

- (a) A Complaint dated 2.07.2024 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

8.08.2024 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 8.08.2024. 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 8.08.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed through email dated 9.8.2024 that the complaint with annexures was communicated to the Respondent through email dated 9.8.2024 and that they had served a copy of the Complaint along with the annexures upon the Respondent through "Shree Maruti" courier to the Respondent on the same day.

- (d) 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, B&B HOTELS, 271 RUE DU GENERAL PAULET, 29200 BREST, FRANCE, is a French budget hotel chain which was founded in Brest in Brittany in the year 1990. The Complainant's principal place of business is France, and it does business in many countries around the world. The Complainant has tripled its growth over the past 10 years and today, it has more than 770 hotels in 17 countries. The Complainant has been using its famous name B&B HOTELS as a brand, a commercial name and a shop sign since as early as 1990.

The Complainant further states that in order to proactively protect and market B&B HOTELS trademark on the Internet, the complainant registered many domain names, as early as 1998, consisting in the elements "BB" and "HOTEL" combined (with or without hyphens), either under the format "BB(-)HOTEL(S)" or "HOTEL(S)(-)BB". The Complainant also owns several trademarks composed of the elements "BB" and "HOTEL", such as the EU trademark B&B HOTELS No. 004767323, the French trademark bb-hotel No. 023182313, the French trademark bbhotel No. 023182311 and many other. It is submitted that any Internet search done on the popular search engines i.e. Google, Yahoo, etc. for the Complainant's trademark/tradename B & B HOTELS leads to the

products/website/information about the Complainant. This clearly substantiates the popularity of the Complaint's marks in India.

There are various international registrations for the B & B HOTELS trademark world over.

In India, the Complainant is the proprietor of the following trademark:

Trademark	Class	Trademark No.	Status
B & B HOTELS	43	2243721	Registered

(The above-mentioned registration is valid, subsisting and in full legal force.)

The Complainant has its domain name registration: <https://www.hotel-bb.com>.

It also owns the domain name bbhotels.com (registration date 18/10/2022), bbhotels.in (registration date: 02/01/2012), bbhotels.co.in (registration date 02/01/2012), bbhotelsboutique.com (registration date: 01/12/2023) bbshotelapartment.com (registration date 27/03/2023) registered well before the registration of the domain name bbhotelsandresorts.in dated March 14, 2024.

The Complainant's B & B HOTELS WIPO decisions: The Complainant claims that there have been many favorable orders by WIPO Arbitration and Mediation Center and various other registries including:

- D2023-4094, 05/12/2023 against the domain name hotelbyb.com
- D2023-4483, 18/12/2023 against the domain names bbhotel.top and hotelbb.top
- D2023-4116, 30/11/2023 against the domain name hotelbb.com
- D2023-3998, 14/11/2023 against the domain name managerhotelbb.com
- D2023-4472, 09/11/2023 against the domain name bbbhostel.com
- D2023-2450, 30/07/2023 against the domain name bestbbhotels.com
- D2023-0327, 20/03/2023 against the domain name hotelbbcatania.com
- D2023-0325, 15/03/2023 against the domain name bbhotelromafiumicino.com
- D2023-0328, 13/03/2023 against the domain name bandb-hotel-rome.com
- D2022-4804, 8/02/2023 against the domain name bbshotelapartment.com
- D2022-4803, 14/02/2023 against the domain name bbhotelbooking.com
- D2022-2559, 01/09/2022 against the domain name hotellbb.com
- D2022-2297, 01/09/2022 against the domain name bb-hostels.store
- D2022-2293, 02/09/2022 against the domain name bb-hostel.com
- D2022-0155, 08/03/2022 against the domain name hotel-bb.online
- D2021-3268, 05/01/2022 against the domain name hotellbb.net
- D2021-2511, 11/10/2021 against the domain name hotel-bandb.com

- D2021-1400, 26/07/2021 against the domain name hotelbb.net
- D2021-0386, 08/04/2021 against the domain name bbb-hotels.com
- D2021-0369, 08/04/2021 against the domain name bbb-hotel.com
- D2020-2727, 14/12/2020 against the domain name bbhotels.net
- D2020-2837, 16/12/2020 against the domain name groupebbhotels.com
- D2011-1864, 28/12/2011 against the domain name hôtel-bb.com, hôtelbb.com.

Respondent's Identity and Activities

The identity and 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 (INDRP) 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. The Complainant argues that:

- i. The Respondent's registration of the said domain name is identical to the famous and registered trademark B & B HOTELS of the Complainant.
- ii. The domain name of the Respondent is visually, conceptually and phonetically identical to the Complainant's famous trademark/tradename B & B HOTELS.
- iii. The registration of the domain name is likely to falsely lead the public into believing that the Respondent and the website to which the domain name directs is sponsored by or affiliated to or associated with the Complainant and will lead to confusion and deception.
- iv. The Respondent's registration and use of the domain name is a clear case of cyber-squatting with the intention of taking advantage of the Complainant's substantial reputation and its prominent presence on the internet in order to deceive the public into believing that there is a trade connection between the Complainant and Respondent.

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 <bbhotelsandresorts.in>.

The Complainant submits that:

- i. The Complaint has prior rights in the B & B HOTELS trademark/tradename, which precede the Respondent's registration of the disputed domain name.
- ii. The Complaint's trademark/tradename B & B HOTELS is present in many countries around the globe including in India and therefore the disputed domain name will cause confusion and amount to passing-off as well infringement.
- iii. The disputed domain name used by the Respondent is a fake/spam website which is evident on the perusal of the said website. The details of the same are:
 - a) All the pictures used in website are evidently fake.
 - b) The address of the hotel is given as BB HOTELS & RESORTS, 11/30 Kummatti Building, Near Hotel Nalanda, Kurial Lane, Cherootty Road, Kozhikode – 673001 but the phone number provided is with the Swizz code and address of Australia i.e. +41-1234-5678 & PO Box 16222 Collins Street West, Australia.
 - c) The language used in many places after the heading/sub-headings is Latin and has no meaning whatsoever.
 - d) The booking is being taken in USD (for Indians) which is not valid as per the Indian banking norms.
 - e) The booking did not require any cards or confirmations and you simply got email confirming our booking.
- iv. It is also submitted that the Respondent's website has done nothing to disclaim any relationship with the Complainant. It has done nothing to dispel any possible suggestion that it might be the trademark owner, or that the website might be the official site of, or authorized by, the Complainant.
- v. The Respondent's use of the trademark/tradename B & B HOTELS as his domain name does not satisfy the test for bona fide use.
- vi. There is no license, consent or other right by which the Respondent would have been entitled to register or use an identical domain name as that of the Complainant's trademark/tradename B & B HOTELS.

- vii. The use of the disputed domain name by the Respondent is solely with mala fide intentions in order to deceive people browsing on the Internet into believing that the disputed domain name is associated with the Complainant whereas such association does not exist.
- viii. There is no doubt that the Respondent is aware that the tradename/trademark B & B HOTELS corresponds to excellent quality of services and disputed domain name has been registered to ride on the goodwill enjoyed by the trademark of the Complainant.

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. The Respondent has no prior right and no authorization to use the trademark/tradename B & B HOTELS.
- ii. The Respondent's awareness that the trademark/tradename B & B HOTELS is popular and famous world over including in India. As the Complainant has been using the name B & B HOTELS extensively and continuously since the year 1990 world over. Thereby, the Respondent cannot claim to be unaware of the said trademark/tradename.
- iii. The use of the domain name with .IN identical to the trademark/tradename B & B HOTELS of the Complainant will mislead the Internet users and make them believe that it is the related website of the Complainant.
- iv. The disputed domain name is a fake/spam website which can cause serious injury to the Complainant if the said domain name is not transferred to it.

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 <bbhotelsandresorts.in> was registered by the Respondent on Mar 14, 2024.

The Complainant is an owner of the registered trademark B&B HOTELS 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 <bbhotelsandresorts.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 B&B HOTELS 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 <bbhotelsandresorts.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 B&B HOTELS 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 B&B HOTELS 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.

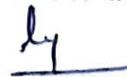
I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <bbhotelsandresorts.in> under INDRP Policy, Para-4(ii).

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 <bhotelsandresorts.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal
Sole Arbitrator

Dated: 23rd August, 2024