



हरियाणा HARYANA

C 578411

**NAMRATA AGRAWAL**

Arbitrator appointed by the (.IN Registry)  
National Internet Exchange of India  
New Delhi

**ARBITRATION AWARD**

Disputed Domain Name : **www.tigerairways.in**

In the matter of:

**Tiger Airways PTE. LTD.**  
Changi Airport Post Office  
P.O.Box 82  
Singapore 918143

.....Complainant

Vs.

**Mr. Steven Toumbas**  
1, Althorp Close,  
Barnet Gate Lane  
London  
EN5 2AY, Great Britain

.....Respondent

1. **The Parties**

The Complainant in this Arbitration proceeding is Tiger Airways PTE. LTD.,  
a private Limited Company incorporated under the laws of Singapore with

its registered office at 4, Battery Road, #15-01, Bank of China Building, Singapore.

The Respondent / Registrant in this Arbitration proceeding is an individual, one Steven Toumbas the following details obtained from the .IN Registry WHOIS database, a copy of which has been submitted by the Complainant along with the Complaint :

Registrant ID:PA1730\_101

Registrant Name: Steven Toumbas

Registrant Street: 1, Althorp Close

Registrant City: London

Registrant Postal Code:EN5 2AY

Registrant Country: GB

Registrant Phone:+44.2075611.010

Registrant Email:[steven@toumbas.co.uk](mailto:steven@toumbas.co.uk)

## 2. Details of the disputed Domain Name and Registrar

The disputed domain name is [www.tigerairways.in](http://www.tigerairways.in) and has the following details

Domain Id	D2481156-AFIN
Created on	15-Mar-2007 19:20:04 UTC
Expiration Date	15-Mar-2011 01:49:49 UTC
Sponsoring Registrar	PlanACorp (R70-AFIN)
Registrant Id	PA1730_01



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### 3. About procedures adopted in the Complaint

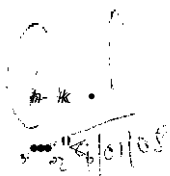
This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under.

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.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed me as a the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. I had submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

The arbitration proceedings commenced on 19.12.2007, when notice of proceeding was issued by the arbitrator. The Respondent was advised to file his reply to the complaint within 10 days and a reminder thereafter on

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8.1.2008. The notices were by the email to the addresses provided by the Complainant and email addresses available on the WHO US DATA BASE.

NIXI (.IN Registry) confirmed of having sent the copy of the Complaint to the Respondent on 2.11.2007.

No reply or communication was received from the Respondent either by the Arbitrator or NIXI (.IN Registry). In these facts and circumstances, in-person hearing was unnecessary for deciding the complaint, and consequently on the basis of the statements and documents submitted on record, the present Award is passed.

According to Paragraph 9 of the Rules the language of the proceedings was in English.

#### **4. Parties' Contentions**

##### **(a) Complaint**

The Complainant in his Complaint, interalia, contends as follows:

The Complainant was formed on 11 December 2003 and is a private limited company incorporated under the laws of the Republic of Singapore. The Shareholders include Singapore Airlines Limited, Indigo Singapore Partners L.P and RyanAsia Limited and Dahila Investments Pte. Ltd.

The complainant owns and operates an airline company called "Tiger Airways" and since its establishment in December 2003, it has become one of Asia's leading low fare airlines.

To enable global reach to, and access by customers all around the world, as well as for ease of booking of airline tickets (and amendments to bookings, the complainant offers an online booking service at [www.tigerairways.com](http://www.tigerairways.com) allowing customers to book air tickets online 24 hours a day.

The Internet remains the principal means to promote and sell the Complainant's products and services.

The mark "Tiger Airways", having been extensively used in the relation to the business of the Complainant, has acquired distinctiveness and is understood and associated by consumers globally as the mark of the Complainant denoting its services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith.

The Respondent in the present dispute has registered the domain name www.tigerairways.in thereby misappropriating illegally and without authority the trademark "Tiger Airways" which is the exclusive property of the Complainant.

The Complainant contends that the Respondent is not either as an individual, businesses or other organization, commonly known as the name "Tiger Airways". Secondly the Complainant has not licensed or otherwise permitted the Respondent to use its Mark "Tiger Airways " or to apply for any domain name incorporating this mark.

In support of his contentions the Complainant has annexed enough material to prove his rights on the impugned domain name. The material submitted along with the complaint include :

- (a) The Proof of registration of the Complainant company as private limited company incorporated under the laws of the Singapore (Annexure C).
- (b) Proofs of registration of the trade mark "TIGER AIRWAYS in 48 different countries in the name of the Complainant including India, Singapore, United Kingdom, US, Australia etc. (Annexure D).

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The Complainant also has registered and / or uses the following domain names :

[www.tigerairways.com](http://www.tigerairways.com)

[www.tigerairways.com.au](http://www.tigerairways.com.au)

[www.tigerairways.com.sg](http://www.tigerairways.com.sg)

[www.tigerairways.co.in](http://www.tigerairways.co.in)

**(b) Respondent**

The Respondent was duly sent the copy of the Complaint by .IN Registry and was also duly sent the notice by the Arbitrator. However the Respondent has not filed reply to the complaint nor has sent any communication in this regard to .IN Registry or the Arbitrator.

**3. Discussion and Findings**

**(a) The Respondent's Default**

The Rules paragraph 8(b) requires that the Arbitrator ensure that each party is given a fair opportunity to present its case. Paragraph 11(a) of the Rules reads as follows:

*"11. Default*

*(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

The Respondent was given notice of this proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably



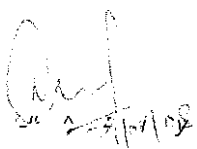
available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated, the Respondent did not reply to the Complaint thus has chosen not to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent was given a fair opportunity to present his case. Once the complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. The Respondent has failed to do this and thus has defaulted as per para 11 of the Rules. The Arbitrator will proceed to decide the case accordingly.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

**The issues involved in the dispute**

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads

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**"Types of Disputes**

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

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

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

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

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

The Complainant has given substantial documents to prove that he has Intellectual property and other rights in the mark "TIGER AIRWAYS". The name of the Complainant is Tiger Airways PTE LTD. The mark is being used by the Complainant since the year 2003 in relation to its business. The Complainant has registered the mark TIGER AIRWAYS in 48 countries. The INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any body. Since the Complainant's





mark "TIGER AIRWAYS" is a famous and well-known mark and is registered in so many countries including the country of the Respondent , it is unlikely that the Respondent did not know about the Complainant's rights in the mark or the domain name.

Paragraph 3 of the INDRP is reproduced below:

*" The Registrant's Representations*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:*

*(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;*

*(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*

*(c) the Registrant is not registering the domain name for an unlawful purpose; and*

*(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.*

*It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."*

The Respondent has failed in his responsibility discussed above and in the presence of the pleadings and documents filed by the Complainant, the Arbitrator has come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' "TIGER AIRWAYS" mark. Accordingly, the Arbitrator concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

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

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

The burden of proof on a complainant regarding this element is light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name. This clearly leads to the conclusion that the Respondent does not have any legitimate interest in the domain name.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

**(n) the Registrant's domain name has been registered or is being used in bad faith.**

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

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Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

(i) "Circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its 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

(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

The Complainant has submitted copies of the email communications (Annexure F) that have been exchanged between the parties which indicate that the Respondent has registered the domain name with the intention of selling the domain name and not for personal use.

From the circumstances of the case and from the evidences submitted by the Complainant the Arbitrator is of the of the opinion that the Respondent has registered the domain name www.tigerairways.in with the intention of either selling the domain name to the complaint or its competitors at a higher price. Further he has prevented the Complainant

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who is the owner of the service mark "TIGER AIRWAYS " from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "TIGER AIRWAYS" as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Thus all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent / Registrant is a registration in bad faith.

#### **8. Decision**

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name. Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant. Further the email exchanges between the Complainant and the Respondent also indicate that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.'

As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is

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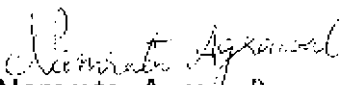
clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation in order to confuse the public to the detriment of the Complainant.

Considering the infringement of the Complainant's trademark by the Respondent the Arbitrator directs that:

- (a) The Respondent stops and refrains from using the mark TIGERAIRWAYS in any manner whatsoever
- (b) that the registration of the disputed domain name [www.tigerairways.in](http://www.tigerairways.in) be **transferred** from the Respondent to the Complainant immediately at Respondent's own costs and expenses. NIXI (.IN Registry) to monitor.
- (c) The Respondent shall pay to the Complainant the legal costs of Indian Rupees 30,000 which have been paid by the Complainant to NIXI for the adjudication of this case and the lawyer's fees upon production of the evidence thereof.
- (d) The Complainant has liberty to approach the appropriate forum for the damages claimed.

Sole Arbitrator

  
(Namrata Agrawal)

Dated: 28<sup>th</sup> January , 2008.