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BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

Arbitrator: S. SRIDHARAN

Dated: 11th December 2008

Societe Hiv France; Complainant

-vs-

Dns Admin-Dom Hiv - Respondent

Sridharan

BEFORE THE INTERNET EXCHANGE OF INDIA

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ARBITRATOR: S.SRIDHARAN

DATED: 11th December 2008

Societe Air France

Complainant

Versus

DNS Admin - Dom Fly

Respondent

1. The Parties

- 1.1 The Complainant is Societe Air France, a limited company registered under the laws of France, at 45 rue de Paris, 95747 Roissy CDG Cedex, France represented by its counsel, Valentine BENTZ, MEYER & Partenaires, Bureaux Europe - 20 Place des Halles 67000 Strasbourg.
- 1.2 Respondent is DNS Admin, Dom Fly P.O.Box 0987, Qutab Institutional Area New Delhi.

The Domain Name and Registrar

- 1.3 The disputed domain name <www.airfrance.in> is registered with Direct Information Pvt Ltd.

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2. Procedural History

- 2.1 On 18th November 2008, the Arbitrator sent an electronic version of the signed Statement of Acceptance and Declaration of Impartiality and Independence.
- 2.2 On 19th November 2008, I received hardcopy of the Complaint along with Annexures.
- 2.3 On 19th November 2008, I issued by mail a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent a mail to the Complainant to send an electronic version of the Complaint, preferably as a word document to the Arbitrator at the earliest.
- 2.4 On 20th November 2008, the Complainant informed the Arbitrator that the disputed domain name was mis-spelt in the notices issued by the Arbitrator to the Respondent and the Complainant.
- 2.5 On 20th November 2008, the Arbitrator issued a notice with correct domain name to the Respondent and the Complainant. The Respondent was informed that his time to send to reply started from 20th November 2008.
- 2.6 ON 24th November 2008, NIXI informed the Arbitrator that the address given of the respondent given in the WHOIS data base was incorrect. NIXI sent a copy of the complaint by courier to the respondent on the new address received from the registrar of disputed domain name. But the courier was returned for the reason that the address was incorrect.

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2.7 On 25th November 2008, the Arbitrator was informed that NIXI received a new contact address from the Respondent and forwarded a copy of the complaint to the Respondent at the new address, Dom Fly, c/o Sunny Kuper, 721 Huda Sector-11, Panipat, 132103, Haryana

2.8 The Respondent has not filed any reply.

3. **Factual Background**

A Complainant

3.1 The Complainant, Societe Air France, is one of the world's major airline companies in the world. The Complainant has been in the airline industry since 1933.

3.2 Societe AIR FRANCE is the trade name of the Complainant, used in commerce since 1933. The Complainant is the registered owner of a large number of trade marks consisting or including the words **AIR FRANCE** in a great majority of the countries in the world, including France, United States of America and India.

3.3 In India, the Complainant has a registration for the mark **AIR FRANCE** under Application No.1276424 in classes 35, 38 and 39. The registration is valid for 10 years from 02-04-2004.

3.4 The Complainant's trade mark **AIR FRANCE** is well known throughout the world and easily recognizable as such.

3.5 The Complainant was informed that the Respondent registered the disputed domain name <www.airfrance.in> on March 10, 2008. The

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Complainant could not imagine any good purpose or legitimate interests from the Respondent in registering the disputed domain name <www.airfrance.in>

- 3.6 Consequently the Complainant has submitted this matter for arbitration seeking transfer of the disputed domain name <www.airfrance.in> to the Complainant from the Respondent.

B Respondent

- 3.7 The Respondent has not filed any reply to the Complainant's Complaint.

4. Parties Contentions

A Complainant

- 4.1 The Complainant is the proprietor of the mark **AIRFRANCE** and has been using the mark **AIRFRANCE** since 1933. The Complainant has got registrations in India, France and United States of America for the mark **AIRFRANCE** under different classes.

- 4.2 The Complainant is operating an international web portal at www.airfrance.com . The Complainant has also registered in its favour a number of domain names consisting of or incorporating the trade mark AIRFRANCE, for example, www.airfranceairways.com , www.travel-airfrance.com , www.airfrancereservation.com , www.arifranceflight.com, www.arifranceuk.com, www.airfrance.fr, www.airfrance.us, www.airfrance.in

- 4.3 The Complainant's mark AIRFRANCE is not only registered and used in commerce in great majority of countries in the world, but is well known.

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4.4 The disputed domain name <[wwwairfrance.in](http://www.airfrance.in)> is confusingly similar to the Complainant's registered trade mark AIRFRANCE. The Complainant's registered trade mark **AIRFRANCE** is reproduced in the disputed domain name <wwwairfrance.in>. The disputed domain name <wwwairfrance.in> combines the Complainant's famous trade mark with the prefix www. WWW is the well known acronym for World Wide Web and is an extremely common prefix in the context of domain names. The mere addition of the prefix www in front of the Complainant's well known trade mark is not sufficient to confer a self distinctiveness to the disputed domain name, but is designed to take advantage of the mistake likely to be made by internet users when trying to access the Complainant's Indian dedicated website at www.airfrance.in . The mere addition of a generic or descriptive term to an otherwise distinctive or well known trade mark does not serve to distinguish the domain name from the Complainant's trade mark. The Complainant claims that the Respondent is obviously engaged in a typo-piracy conduct. The disputed domain name <wwwairfrance.in> is confusingly similar to its trade mark **AIRFRANCE**.

4.5 The Respondent has no rights or legitimate interests in respect of the disputed domain name <wwwairfrance.in>. The Respondent is not related in any way to the Complainant's business. The Respondent is not one of the Complainant's agents and does not carry out any activity for or has any business with it. The Respondent is not currently and has never been known under the wording **AIRFRANCE**. No license or authorization

has been granted to the Respondent to make any use, nor apply for registration of the disputed domain name <www.airfrance.in>. The Complainant did not find any other sort of right owned by Respondent, related to the naming **AIRFRANCE** or the disputed domain name <www.airfrance.in>. The Complainant claims that the disputed domain name <www.airfrance.in> has been registered by the Respondent to take advantage of the Complainant's well known trade mark to confuse and divert internet users to other websites through a "pay per click" domain parking solution. Such use is not a bonafide offering of goods or services or a non-commercial or fair use. As a matter of fact, the Respondent has not engaged in any action that shows the Respondent has rights or legitimate interests in the disputed domain name <www.airfrance.in>.

- 4.6 The Complainant contends that the Respondent registered the disputed domain name <www.airfrance.in> in bad faith. The Respondent could not have ignored the Complainant and its well known trade mark **AIRFRANCE** at the time the Respondent applied for registration of the disputed domain name <www.airfrance.in>. The Complainant has established the strong reputation and the widely known character of its mark **AIRFRANCE** throughout the world for a long time. The notoriety of a Complainant's trade mark creates a prima facie presumption that the Respondent registered the disputed domain name <www.airfrance.in> for the purpose of selling it to Complainant or one of its competitors or that it was intended to be used in some way to attract for commercial gain users to the web

site by creating a likelihood of confusion with the Complainant's mark. In registering the disputed domain name <www.airfrance.in>, there is no doubt that the Respondent wanted to refer to the Complainant. The Respondent has registered the disputed domain name <www.airfrance.in> precisely because he knew the well known character of the trade mark AIRFRANCE for the only purpose of generating commercial gain by intentionally taking advantage of internet traffic and divert internet users to other commercial websites through hyperlinks. The combination of facts is asserting the bad faith registration of the disputed domain name <www.airfrance.in> by the Respondent.

- 4.7 The Complainant contends that Respondent's operating of the disputed domain name <www.airfrance.in> constitutes bad faith use. The Respondent uses the disputed domain name to divert internet users to web pages on which several hyperlinks are displayed, consisting for some of them of results in the field of tourism and travel. By clicking on these hyperlinks, users are directed to competing third party commercial web sites. Some of those hyperlinks generated revenue to the benefits of the Respondent through a pay per click solution. Considering that it is obvious that the Respondent was intending to realize material benefits by diluting the fame and renown of the Complainant's trade mark. The Respondent's argument which would consist on saying that activity of the disputed domain name <www.airfrance.in> was not controlled by him, but due to a parking program or any other affiliation program is not admissible.

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It is now established that even if such use commonly occurs on so called parking pages, Respondent has a responsibility for the content Respondent allows to be posted at the site. The Respondent is obviously not making any legitimate non-commercial or fair use of the disputed domain name <wwwairfrance.in> because such use could mislead consumers by offering competing services without having acquired any license or permission from the Complainant which is the legitimate owner of the trade mark AIRFRANCE. The Complainant claims that this use of disputed domain name <wwwairfrance.in> by the Respondent has to be considered as unfair competition. As a consequence, the Respondent is undoubtedly not making any good faith use of the disputed domain name.

B. Respondent

4.8 Respondent has not filed any reply to the Complainant's Complaint.

5. Discussion and Findings

5.1 The postal address for service as given by the Respondent in the WHOIS data was found to be incorrect and the copy of complaint sent to the Respondent on the given address was returned. NIXI contacted the registrar of the disputed domain name <wwwairfrance.in>, i.e. Direct Information Pvt Ltd and got a different address. In the mean time, NIXI received the current address for service from the Respondent himself and NIXI served him. I sent separately a notice by email to the Respondent to answer the complaint within 15 days. The Respondent did not contact me by either email or post. Respondent neither filed any reply to the complaint

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nor sought any extension of time for reply. The Respondent's conduct has forced me to decide the Complaint on its merits without hearing the Respondent.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark AIRFRANCE and has been using the mark AIRFRANCE since 1933. The Complainant is the registered proprietor of the mark AIRFRANCE in many countries across the world, including India. The Complainant's said trademark was first registered in the United States of America on August 2, 1955, and in India

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in 2004. AIRFRANCE marks are well-known throughout the world. The Complainant also owns various domain names containing the mark AIRFRANCE, for example,

<airfranceairwavs.com>.

<travel-airfrance.com>,

<airfrancereservation.com>,

<airfranceflight.com>.

<airfranceuk.com>,

<airfrance.fr>,

<airfrance.us>.

<airfrance.in>

5.5 The disputed domain name <wwwairfrance.in> was registered by the Respondent only on 10th March 2008. The Complainant is the prior adopter of the mark AIRFRANCE as well as the domain names incorporating the said trade mark. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark AIRFRANCE.

5.6 The Complainant's AIRFRANCE mark is well known throughout the world including India. It is clearly seen that the disputed domain name <wwwairfrance.in> wholly incorporates (a) AIRFRANCE mark and



(b) AIRFRANCE domain names of the Complainant. It is established by WIPO cases that:

- (a) [WIPO Case D2003-0639 involving <wwwairfrance.com>] - The prefix 'www' is the well known acronym for World Wide Web and is an extremely common prefix to the domain name in an URL for a web page on the internet. The letters 'www' thus have no distinguishing capacity in the context of domain name.
- (b) [WIPO Case D2003-0346 involving <www-MTV.com>] - The disputed domain name adds "www", a dash "-" and the top level domain indicator "com" to the Complainant's famous mark. The dash is not distinctive and, in the context of the internet, neither "www" nor "com" is distinctive. The only distinctive element of the disputed domain name is the Complainant's mark MTV.

5.7 The panels in the above decisions correctly applied the principles of comparison of trade marks and I fully endorse the decisions. In the instant case, the distinctive feature of the disputed domain name <wwwairfrance.in> is AIRFRANCE, the prior registered trade mark of the Complainant. The prefix "www" and the suffix "in" do not distinguish the disputed domain name <wwwairfrance.in> from the Complainant's trade mark AIRFRANCE and other AIRFRANCE domain names.

5.8 I, therefore, find that:

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- (a) The Complaint has both common law and statutory rights in respect of its trade mark AIRFRANCE.
- (b) The disputed domain name <wwwairfrance.in> is confusingly similar to the Complainant's prior registered trade mark AIRFRANCE.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.9 It is already seen that the Complainant is the prior adopter and user of the mark **AIRFRANCE**. The Complainant has got registration for the mark **AIRFRANCE** in India. The Complainant's mark **AIRFRANCE** is well known in many countries across the globe including India.

5.10 The disputed domain name <wwwairfrance.in> was registered by the Respondent only on 10th March 2008.

5.11 The Respondent has not filed any reply and has not come up with any reason for adopting the disputed domain name <wwwairfrance.in>.

5.12 The Complainant filed copies of computer print outs in Annexure E of the web site under the disputed domain name <wwwairfrance.in>. I tried to visit the web site under the disputed domain name <wwwairfrance.in>. I typed the disputed domain name <wwwairfrance.in>. But it did not resolve into any web site. It appears that the Respondent has stopped, after the filing of the Complaint, using the disputed domain name

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<wwwairfrance.in>. But, according to WHOIS data base, the Respondent still is the registrant of the disputed domain name <wwwairfrance.in>.

5.13 The disputed domain name <wwwairfrance.in> has been registered by the Respondent to take advantage of the Complainant's well known trade mark to confuse and divert internet users to other websites. The Annexure E shows that the disputed domain name <wwwairfrance.in> was used by Respondent to divert the internet users to other web sites through a "pay per click" domain parking solution.

5.14 Respondent has stopped using the disputed domain name <wwwairfrance.in> for "pay per click" services after the filing of the Complaint by the Complainant. Respondent's such use is not a bonafide offering of goods or services or a non-commercial or fair use. The Respondent has not engaged in any action that shows the Respondent has rights or legitimate interests in the disputed domain name <wwwairfrance.in>.

5.15 The very filing of the Complaint shows that Respondent is not related in any way to the Complainant's business. I accept the contentions of the Complainant, in the absence of anything contrary thereto from Respondent, that the Respondent is not one of the Complainant's agents and does not carry out any activity for or has any business with it. The Respondent is not currently known under the wording **AIRFRANCE**. Complainant has not granted any license or authorization to the

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Respondent to make any use, or apply for registration of the disputed domain name <wwwairfrance.in>.

For the above reasons, I conclude that the Respondent has no right or legitimate interest in respect of the disputed domain name <wwwairfrance.in>.

indent's domain name has been registered or is being used in bad

The Complainant's well known trade mark **AIRFRANCE** adopted in the year 1933 and the registrant registered the disputed domain name <wwwairfrance.in> only in the year 2008. Therefore, the Respondent could not have ignored the well-known trade mark **AIRFRANCE** of the Complainant at the time he acquired the disputed domain name <wwwairfrance.in>.

I agree with the WIPO panel's decision in WIPO case D2002-0028 regarding <airfrance-delta.com> and <airfrance-delta.net> and hold that the notoriety of the Complainant's trade mark creates a prima facie presumption that the Respondent registered the domain name for the purpose of selling it to complainant or one of its competitors or that it was intended to be used in some way to attract for commercial gain users to the website by creating a likelihood of confusion with Complainant's mark.

Respondent has registered the disputed domain name <wwwairfrance.in> precisely because he knew the well known character

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of the trade mark **AIRFRANCE**, for the only purpose of generating commercial gain by intentionally taking advantage of internet traffic and divert internet users to other commercial websites through hyperlinks.

5.20 WIPO panel in case D2003-0639 involving a similar facts held that it was an intentional effort to gain internet traffic from the typing errors of users seeking the Complainant's website. The practical effect of preceding a trade mark with the letters "www" in a domain name is so called typo-piracy, that is attracting to a different website the internet users who mistakenly fails to insert a period after the letters "www" when typing the URL of the intended website.

5.21 The above facts have clearly established the bad faith registration of the disputed domain name <wwwairfrance.in> by the Respondent.

5.22 The Respondent used the disputed domain name <wwwairfrance.in> for "pay per click" services until the filing of the Complaint by the Complainant. Respondent's discontinuance of such use has clearly established that such use of Respondent was in bad faith.

5.23 The actions of the Respondent should not be encouraged and should not be allowed to continue. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

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6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <wwwairfrance.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of US\$ 10,000/-(US Dollars ten thousand only) towards costs of the proceedings.



S.Sridharan
Arbitrator