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P 447227

## ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure

### IN THE MATTER OF:

MakeMyrip (India) Pvt. Ltd.  
103 Udyog Vihar Phase I,  
Gurgaon – 122016,  
Haryana

..... Complainant

### VERSUS

QA Aviations Ltd.,  
Bangalore-12213

..... Respondent

**1. THE PARTIES:**

The Complainant in this administrative proceeding is MakeMytrip(India) Pvt. Ltd., 103 Udyog Vihar Phase I, Gurgaon - 122016, Haryana. Represented through Mohan Associates, Ceebros Building, D-4, 3<sup>rd</sup> Floor, 11, Cenotaph Road, Teynampet, Chennai 600 018, India.

The Respondent is QA Aviations Ltd., Bangalore-12213, Phone:+91.717171717], E-Mail:[qaaviations@gmail.com](mailto:qaaviations@gmail.com)

**2. THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <**Makemytrip.net.in**> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Name.com LLC, 125 Rampart Way, Suite 300, Denver, Colorado 80230 USA.

**3. PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry-, National Internet Exchange of India (NIXI), against QA Aviations Ltd., Bangalore-12213. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraphia) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration **and** Conciliation Act, 1996, Rules framed there under, In Dispute Resolution Policy and Rules framed there under on **May 2, 2011**. The parties were notified about the appointment of an Arbitrator on **May 2, 2011**,

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules



(paragraph-6). The arbitration proceedings commenced on **May 2, 2011**. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

- 3.3 The Respondent by its e-mail dated May 3, 2011 did not dispute the contentions raised by the Complainant in his Complaint and submitted his informal reply.
- 3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

#### 4. **FACTUAL BACKGROUND**

- 4.1 The Complainant in these administrative proceedings is MakeMyrip (India) Pvt. Ltd., 103 Udyog Vihar Phase I, Gurgaon - 122016, Haryana.
- 4.2 The Complainant is a leading online travel company and was founded in the year 2000 to empower the Indian traveler with instant booking and comprehensive choices. MakeMyTrip began its journey in the US-India travel market. It aimed to offer a range of best-value products and services along with cutting-edge technology and dedicated round-the clock customer support.
- 4.3 The Complainant is the largest online travel company in India, based on gross bookings for 2009, according to PhoCusWright. Through its primary website, [www.makemytrip.com](http://www.makemytrip.com), and other technology-enhanced platforms, travelers can research, plan and book a wide

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range of travel services and products in India as well as overseas. MakeMyTrip services and products include air tickets, hotels, packages, rail tickets, car hire and ancillary travel requirements such as facilitating access to travel insurance.

- 4.4 The Complainant commenced operations in 2000 and in the first five years following its inception, MakeMyTrip focused on the non-resident Indian market in the United States, servicing mainly their need for United States-India inbound air tickets. MakeMyTrip started their Indian business with the launch of its Indian website in September 2005. During the initial years of its operations, it invested significant capital in our infrastructure as well as in sales and marketing efforts to build its brand and gain recognition.
- 4.5 Using MakeMyTrip websites, customers can easily and quickly review the pricing and availability of nearly all its services and products, evaluate and compare options, and book and purchase such service and products online within minutes. Customers can also purchase ancillary travel-related services and products such as travel insurance as part of the booking process. Certain packages for MICE or other customized packages **cannot** be purchased online although customers can submit inquiries through our websites and our sales representatives will **contact** such customers to follow up and process the transaction. **If** required.

**MakeMytrip's Products include the following:**

- International and Domestic Air Tickets. Holiday Packages and Hotels
  - Domestic Bus and Rail Tickets
  - Private Car and Taxi Rentals
  - MICE (Meetings, Incentives. Conferences & Exhibitions)
- 4.6 The Complainant submits that trademark "MakeMyTrip" is an invented word that forms a predominant feature of the Complainant's corporate name. The sales turnover of

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the Complainant is \$ 83.5 Million. Additionally, Complainant's promotion/advertisement expenses also run into millions. In the circumstances, the Complainant's trademark, "MakeMyTrip", is an internationally well-reputed mark.

- 4.7 The Complainant has also registered the following domain names:-

S.No.	Domain Name
1.	<u>Makemytrip.com</u>
2.	<u>Makemytrip.net</u>
3.	<u>Makemytrip.org</u>
4.	<u>Makemytrip.co.uk</u>
5.	Makemytrip.co.in
6.	M akemy-trip. net. in
7.	Makemy-trip.co.in
8.	Makemy-trip.in
9.	Make-my-trip.net.in
10.	<u>Makemytripdeals.com</u>
11.	<u>Makemytriphpotels.com</u>
12.	<u>MakemyUip-mail.com</u>
13.	Makemytrip.hk
14.	make my trips. org
15,	makemytrips.ae
16.	m akemytrip. ca
17.	<u>makemytripmails.com</u>
18.	Makemytrip.eu
19.	Makemytrip.tw
20.	Makemytrip.com.tw
21.	<u>Makemytrip.com.Ik</u>
22.	Makemytrip.my
23.	Makemytrip.com.my
24.	Makemytrip.sg
25.	<u>Makemytrip.com.sg</u>
26.	<u>Makemytrip.fr</u>
27.	<u>Makemytrip.eo.nl</u>
28.	Makemytrip.nl



29.	Makemytrip.com.sa
30.	Makemytrip.co.jp
31.	Makemytripcanada.ca
32.	Makemytrip-canada.ca
33.	Makemytripflights.ca
34.	Makemytrip.at
35.	Makemytrip.co.at
36.	<u>Makemytrip.com.es</u>
37.	Makemytrip.com.ph
38.	Makemytrip.es
39.	<u>Makemytrip.it</u>
40.	<u>Makemytrip.nom.es</u>
41.	<u>Makemytrip.org.es</u>
42.	Makemytrip.ph
43.	<u>Makemytrips.cn</u>
44.	<u>Makemytrips.com.cn</u>
45.	Makemytrip.com.fr
46.	Makemytrip.jp
47.	Makemytrip.in.th
48.	<u>Makemytrip.us.com</u>
49.	<u>makemytrip.cn.com</u>
50.	makemytrip.la
51.	<u>mails-makemytrip.com</u>
52.	makemytrip.tv
53.	makemytrip.ws
54.	makemytrip.bz
55.	makemytriptimes.co.in
56.	<u>makemytriptimes.com</u>
57.	<u>emails-makemytrip.com</u>
58.	<u>makemytrip-deals.com</u>
59.	<u>makemytrip-offers.com</u>
60.	makemytripp.in
61.	<u>makemytripflights.com</u>
62.	<u>makemytripbus.com</u>
63.	makemytripreviews.com
64.	makemytrip.in
65.	makemytripflights.ae
66.	Makemytrip.eom.hk



The Complainant further submits that the registration only adds to the legitimate claim of the Complainant, by virtue of being the creators of the word "MakeMyTrip" and because of the global recognition that their names and brands enjoy.

- 4.8 The Respondent has registered the disputed domain name <Makemytrip.net.in> on through the Name.com LLC, 125 Rampart Way, Suite 300, Denver, Colorado 80230 USA.
- 4.9 The respondent has not submitted formal reply to the contentions raised by the Complainant in the Complaint. However, by his e-mail dated May 3, 2011, the respondent submitted an informal reply to the contentions raised by the Complainant.

## 5. PARTIES CONTENTIONS

### 5A COMPLAINANT

5A(1) The Complainant is an Online Travel Company in India with a Well-Recognized Brand. Since commencing travel business in India in 2005, MakeMyTrip has become the largest company in the Indian online travel market, based on gross bookings for 2009, according to PhoCusWright.

5A(2) The Complainant believes that its brand is well-recognized in the Indian travel industry. The Complainant submits MakeMyTrip is the first and only online travel agency brand to be selected as a Superbrand TM in India for 2009-2010. It has invested in developing and promoting its brand since its inception, using a combination of traditional channels such as print, radio and television, mass media campaigns, as well as search engine marketing and other innovative digital marketing tools, such as viral marketing and online display banners, to broaden its



reach to travelers in India and overseas. MakeMyTrip believes that its reputation and market position has also provided it with better leverage when contracting with airlines, hotels and other suppliers.

5A(3) The Complainant has built an advanced and secure technology platform, which integrates its sales, customer service and fulfillment operations. MakeMyTrip has designed its websites to be user-friendly, providing its customers with extensive low price options and alternative routings, as well as offering them combinations of flight and hotel bookings at cost effective rates. Its websites also enable its customers to find their right destinations easily by using colloquial names or major landmarks.

5A(4) The Complainant currently operate the websites [www.makemytrip.com](http://www.makemytrip.com) (including the sub-domain [us.makemytrip.com](http://us.makemytrip.com)) and [www.makemytrip.ae](http://www.makemytrip.ae). servicing the Indian domestic and outbound market, the United States-India inbound market (focusing in particular on non-resident Indians in the United States) and the United Arab Emirates as well as neighboring Middle East countries, respectively.

5A(5) The Complainant was incorporated on 13<sup>th</sup> April, 2000 in India.

B. **RESPONDENT**

5B (1)The Respondent was given opportunity to File his response to the Complaint by the panel by its notice dated May 2, 2011.

5B(2) The Respondent did not dispute any contentions raised by the Complainant in the Complaint, but submitted an informal reply dated May 3, 2011 and surrender letter dated May 26, 2011.

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5B(3) In view of the willingness expressed by Respondent to transfer the disputed domain name to the Complainant, the parties were required to enter into mutual agreement for the transfer so that the said agreement is made as a final award in the matter. The Complainant, however, refused to enter into mutual agreement and desired an order/award on the basis of the material on record.

5B(4) The Respondent, by its e-mail of 26 May, 2011, agreed again for the transfer of disputed domain name.

5B(5) The Panel, therefore, has no other option but to decide the complaint on the basis of the material on record and in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder and to pass appropriate award.

## 6. **DISCUSSIONS AND FINDINGS**

6.1 The Complainant(s), while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings In terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3

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of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The Complainant has filed evidence by way of **Annexures-'A' to 'E'** with the Complaint.

The Respondent did not dispute any contentions raised by the Complainant in the Complaint. The Respondent, however, agreed to the transfer of disputed domain name to the Complainant.

6.5 The onus of proof is on the Complainant(s). As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <**Makemytrip.net.in**> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.



**A. IDENTICAL OR CONFUSINGLY SIMILAR**

- 6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights,
- 6A.2** The Complainant contends that the domain name Makemytrip.net.in essentially capitalizes on the use of the trademark, trade name, corporate name and domain name of the Complainant per se.
- 6A.3** The Complainant contends that the domain name capitalizes on the invented word "MakeMyTrip" which is a root cause for the confusing similarity. Moreover, as the Complainant is globally recognized and is a global player, the use of such a misleading term only adds to the confusion in the minds of an Internet user that these domain names are associated with the Complainant. In no manner do these terms/domain names serve to distinguish the domain names from the Complainant's trademarks and tradenames.
- 6A.4** The Complainant further contends that the acts of the Respondent in registering a domain name comprising entirely of, and identical to the Complainant's well known trademark/servicemark in its entirety and in a manner clearly intended to cause confusion/deception as to the source/origin of such domain name, creates an irrefutable impression **of an association/sponsorship/relationship between the** Complainant and Respondent, which is not the case in any manner whatsoever.
- 6A.5** The Respondent has not disputed any contentions raised by the Complainant. The Respondent by its e-mail dated **May 3, 2011** submits that "I'm extremely apologies about this has been done unknowingly. To accept my apologies, I am ready to transfer the domain to the concern authorities. Please update me with the further process".

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6A.6 The Panel also find and hold that the disputed Domain Name <Makemytrip.net.in> is identical and/or deceptively similar to the registered trade marks and Domain Names of the Complainant.

B. **RIGHTS OR LEGITIMATE INTERESTS**

6B.1 The Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name;

6B.3 The Complainant submits that "MakeMyTrip" which is the trade name and is the main part of many of the trademarks of the Complainant, is an invented word. The trademarks have attained widespread fame and recognition **not only** in India but also in several countries including the United States, Europe and Asia. In the disputed domain name, the Respondent has used the word "MakeMyTrip" to falsely indicate that he has a trade nexus with the Complainant, whereas, in fact, the Respondent has no such relationship with the Complainant.

6B.4 The Complainant further submits that there is no element on the website of the Respondent that would in some way justify the **use of the word "MakeMyTrip" within** the disputed **domain** name registered by the Respondent. The Respondent's website hosts some content, which is in any event irrelevant, to promote itself as a travel website, related in some manner to the Complainant herein, which is clearly not the case. The Respondent's website and its content have been hosted with the calculated intent **of** squatting upon the Complainant's valuable and varied intellectual property rights.

6B.5 The Complainant contends that the Respondent has no legitimate right to use the word "MakeMyTrip". The

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Complainant has not permitted the Respondent to use the word "MakeMyTrip".

- 6B.6 The Complainant further submits that the trademark is unique to the Complainant and the Complainant has not authorized or licensed its use by the Respondent. The Respondent's manner of usage as seemingly a travel services site, which potentially could add features and content in the future given the Complainant's growing popularity could cause considerable commercial loss to the Complainant herein and cause irreparable dilution to their brand across the globe. Presently, the Respondent's site hosts the advertisements of the Complainant's competitors and is clearly intended to exclusively pass off as the Complainant herein and free ride on its reputation and goodwill. The Respondent site only uses the Complainant's trademarks, domain name and corporate name to divert customers to competitor sites, by hosting Google Ads of competitors. This is itself *prima facie* proof of its intent to piggyback on the reputation of the Complainant and make illegal gains off its worldwide reputation and goodwill. This also causes irreparable loss to the goodwill and reputation of the Complainant and, immense and ongoing commercial losses by malafide diversion of consumers intending to procure the services of the Complainant.
- 6B.7 The Respondent cannot be said to have legitimately chosen to use the domain name unless it was seeking to create an impression of an association with the Complainant. Since there is no such authorized association, the Respondent's use of the domain names cannot be said to be legitimate.
- 6B.8 The Respondent's submits that "I'm extremely apologies about this has been done unknowingly. To accept my apologies, I am ready to transfer the domain to the concern authorities. Please update me with the further process".
- 6B.9 The Panel therefore holds that the circumstances listed above-clearly demonstrate the rights of the Complainant in the disputed domain name and the willingness of the Respondent

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