

Ranjan Nanda



Associates

74931

Sr. No.
 Amount.....
 Purpose/Use.....

23 JUN 2015

RAJ SINGH STAMP VENDOR
 Gurgaon (Haryana)

RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Girnar Software Pvt. Ltd.

Girnar, 21, Govind Marg,
 Moti Doongari Road,
 Dharam Singh Circle,
 Jaipur – 302 004

.....Complainant

Mr. Piyush
 Jaipur – 302023
 Rajasthan

.....Respondent

Disputed Domain Name: www.bikedekho.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Girnar Software Pvt. Ltd. of Girnar, 21, Govind Marg, Moti Doongari Road, Dharam Singh Circle, Jaipur. The Complainant is represented by its authorized representatives Bharucha & Partners of Cecil Court, 4th Floor, M.K Bhushan Marg, Colaba, Mumbai – 400 039 who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. Piyush, Jaipur – 302023, Rajasthan as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name www.bikedekho.co.in. The Registrar is Business Solutions (R54-AFIN).

The Registrant is Mr. Piyush, Jaipur – 302023, Rajasthan

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. 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.

As per the information received from NIXI, the history of the proceedings is as follows.

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

The complaint was produced before the Arbitrator on June 17, 2015 and the notice was issued to the Respondent on June 18, 2015 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. The Arbitrator also directed the Complainant to provide by email copy of complaint to the Respondent which was duly complied.

On June 29, 2015 the Arbitrator granted further opportunity to the Respondent to submit its response on or before July 6, 2015. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

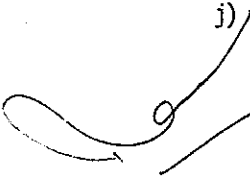
Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

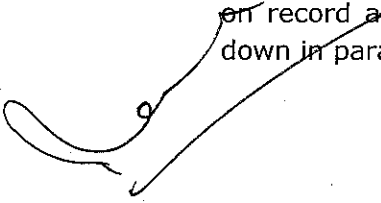
- a) The Complainant submits that the domain name registered by the Respondent is both similar and identical to www.bikedekho.com (BikeDekho) which is one of the India's most leading search and comparison website and one of the several similar ventures of the Complainant including PriceDekho, CarDekho, MobileDekho amongst others.
- b) The Complainant submits that they have established the reputation through its 'BikeDekho' brand and has extensive coverage of its products and services. Since September 2009, the Complainant's website BikeDekho has provided the following services:
 - i) It offers a database of bikes in categories, ranging from new launches to upcoming models, from brand names to body types, from price ranges to popular choices etc.
 - ii) It provides its visitors with bike reviews and e-commerce services to help them reach out to the automobile dealers and
 - iii) It is a platform for used bikes, with over 15,000 used bike listings
- c) The Complainant further submits that as per the analytical data, BikeDekho has served over 35 million visitors over its lifetime. Moreover, BikeDekho has over 7,00,000 registered users, till date.
- d) The Complainant has launched an Android application for growing mobile phone users. The BikeDekho Apps offer a complete experience to customers for making informed choices while buying or selling bikes. The apps are free for download and fully utilize BikeDekho's expertise to make it easy for customers to find bikes as per their requirement.

- e) The Complainant has also filed diverse applications for registration of its trade/service marks (falling within the 'BikeDekho' brand) across various classes for the 4th schedule of the Trade Marks Rules, 2002, with the Trade Marks Registry, Mumbai. The Trade Marks Registry, recognizing and accepting the distinctiveness of the get-up, column schemes and style of the BikeDekho trade/service marks as well as its continued and pan-Indian popularity, has permitted the registration and/or advertisement of about 5 marks in the Complainant's favour.
- f) The Complainant, in addition to being the registered proprietor of the 'BikeDekho' trade/service marks, is also the absolute owner of domains in respect of its 'BikeDekho' brand with the .com extension including the www.bikedekho.com domain. The www.bikedekho.com domain is accessible across the globe to any person with an internet connection.
- g) The Complainant further submits that the trade/service mark "BikeDekho" is now acknowledged as a 'well known' mark, and is as such exclusively associated with Complainant's services. The "BikeDekho" brand has created substantial brand value and generated immense goodwill for the Complainant, and the Complainant has taken adequate steps to protect its right title and interest thereto.
- h) It is further submitted that the Respondent's use of the said domain name is not in connection with a bona fide offering of goods and services. This is evident by the fact that the said domain name is completely unused by the Respondent up until the filing of the present Complaint. In fact, it appears from the noting on the said domain page is a parking page. Clearly:
- The Respondent has no intention to use the said domain name
 - The Respondent's misuse of the said domain name reveals a clear case of domain squatting and
 - There exists a definite possibility that the domain name may be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade/service marks.
- i) The Complainant further submits that the purpose behind creation of the .IN domain name was to establish it as a globally 'recognized symbol of India's growth in the field of information Technology'. The Respondent has attempted to use the popularity of the Complainant's well-known 'BikeDekho' brand for his own personal benefits. This action of the Respondent clearly constitutes an attempt to free ride on the Complainant's goodwill and reputation.
- j) The Complainant's counsel sent a cease and desist letter dated April 17, 2015 via email of April 18, 2015 to the Respondent calling upon to :
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- cease and desist from, in any manner, using the said domain name
 - apply for cancellation of the impugned domain and
 - remove the contents of the website of the said domain name
- k) The cease & desist notice dated April 17, 2015 was delivered to the Respondent, which confirms by the delivery notification received by the Complainant's Advocates dated April 18, 2015. However, no response received from Respondent. As no address was mentioned by the Respondent at the time of registering the said domain name, the cease & desist letter could not be forwarded to the Respondent in hard copy.
- l) The Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against the .IN Registry, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute.
- m) The Respondent, as mentioned hereinbefore, has no legitimate right to use the www.bikedekho.co.in domain since the Complainant is the proprietor of the trade/service marks. Admittedly the Respondent,
- has nothing to do with the Complainant and/or its business including the 'BikeDekho' brand;
 - has registered the said domain name to unjustly enrich himself and/or squat and/or hoard the same
 - has blatantly violated the Policy adopted by ICANN and the Rules framed thereunder, in that he has violated and breached the representations to be made by an applicant.
 - has registered the said domain name which is identical and/or confusingly similar to the Complainant's 'BikeDekho' mark.
 - has no legitimate interests/rights in respect of the Policy
 - is likely to use the said domain name in bad faith; and
 - has intentionally attempted to attract, for commercial gain or otherwise, Internet users to his website, by creating a likelihood of confusion with the Complainant's 'BikeDekho' brand as to the source, sponsorship, affiliation, or endorsement of the said domain name.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.



6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'BikeDekho' leads to the conclusion that the Complainant has superior and prior rights in the mark 'BikeDekho'. Thus it can be said a) the web users associate the word 'BikeDekho' with the goods and services of the Complainant b) the web users would reasonably expect to find the Complainant's products and services at the www.bikedekho.co.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'BikeDekho'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to the Complainant's 'BikeDekho' mark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'BikeDekho' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services.

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 rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.BikeDekho.co.in'.




(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'BikeDekho' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name 'www.BikeDekho.co.in' is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name 'www.BikeDekho.co.in' be transferred from the Respondent to the Complainant.



**RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA**

July 14, 2015