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BEFORE SMT. DEEPA GUPTA, sole ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

In the Matter of:-

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Dated: 27/12/2010

Mahindra Holidays & Resorts India Ltd.
" Mahindra Towers", II Floor, 17/18
Pattulous Road
Chennai-600002

Complainant

vs

Mr. Vijay Thappa
M/s. Olive
58, Swami Marg, Raj Road,
Chandigarh, Haryana-160022

Respondent

1. The Parties :

Complainants are Mahindra Holidays & Resorts India Ltd." Mahindra Towers", II Floor,
178 Pattulous Road Chennai-600002

Respondents are Mr. Vijay Thappa, M/s. Olive, 58 ,Swami Marg, Raj Road, Chandigarh,
Haryana-160022

2. The Dispute:

The domain name at issue is <club-mahindra.org.in> (the domain name)
The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi



3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 01.07.2010 and the respondent did not submit at all his reply.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter

4. Parties contentions :

Complainant claims that:

Complainant is a part of renowned Mahindra Group having largest business houses, leader in providing hospitality services, family holidays, resorts hotels, holiday camps & related services. It is a part of the 1996 flagship brand 'Club Mahindra', with a fast growing customer base of over 1 Lac members and 33 resorts in India and abroad wherein members having access to over 46000+ resorts over 90 countries. Certificate of Incorporation and corporate profile provided as **Annex [3]** to Complaint.

That it has Registered proprietor trademarks CLUB MAHINDRA, CLUB MAHINDRA HOLIDAYS UNLIMITED, CLUB MAHINDRA INTERNATIONAL, CLUB MAHINDRA GOURMET HOLIDAYS and has been using said marks continuously, uninterruptedly on an extensive scale for more than 15 year now. Registered trade marks are subsisting on records of the Trade Marks Registry, India. By Virtue of extensive spread of popularity of the word **Club Mahindra**, registered trademarks and the quality of services provided Complainant has considerable market share and niche class of customers. By Virtue of its excellent hospitality services, and values of reliability, trust and customer satisfaction, the Complainant has earned enormous reputation and goodwill in the market. Complainant has also been recognized with the RCI Gold Crown Award. Photocopies are marked as **Annex [4]** to the Complaint. Extensive usage and promotions of the mark CLUB MAHINDRA through various media including internet, CLUB MAHINDRA is identified, recognized and associated with the Complainant and none other. Photocopy provided **Annex [5]** to the Complaint. Complainant is the registrant of the domains clubmahindra.com, clubmahindra.org, club-mahindra.org, clubmahindra.org.in, clubmahindra.net, clubmahindra.asia, clubmahindra.ind.in, club-mahindra.in, mahindraholidays.com, clubmahindra.travel, mahindrahomestays.com and many others for its services. Complainant's corporate name, trading style, trademark, service mark and domain name is MAHINDRA.'MAHINDRA' is a family name of the Founders of the **Mahindra Group of Companies and trade identified and associated with the Complainant and other members of the Mahindra Group of Companies.** That Complainant has on the internet 25,000 number of visitors to its website- clubmahindra.com and Google revealed 3,79,000 hits predominantly belonging to the



Complaint print of the first page of the said search provided as **Annex [7]** to the Complaint. It has earned great Reputation and goodwill in the market place by use of the said mark. Therefore, the word "CLUB MAHINDRA" rightfully and legally belongs to the Complainant and hence any unauthorized usage of the same would be illegal in law amounting to infringement and passing off actions. Complainant had caused issuance of a cease and desist notice on July 3, 2010 upon the Respondent photocopy provided as **Annex [8]** to this Complaint. Notice got returned to the Advocates of the Complainant photocopy endorsement of return **Annex [9]** to this Complaint.

A. The Respondent's domain name is identical and confusingly similar to the trademarks/ service mark in which the Complainant has rights"

Complainant claims that -

Complainant is the registered proprietor of Trade marks. Complainant is also the proprietor of trademarks in India which have been advertised in the Trade Marks Journal. Complainant is the registered proprietor of "MAHINDRA HOMESTAYS" with OHIM. Photocopy registration certificate marked as **Annex [13]** to the Complaint. Respondent's domain name **CLUB-MAHINDRA.ORG.IN** is identical and closely resembling to the said trademarks CLUB MAHINDRA and domain names of the Complainant in which the Complainant has rights on account of prior adoption, use registrations. Respondent's domain name is phonetically, visually and conceptually similar to as that of the Complainant and in such a nature, which would likely lead public to believe that the Respondent and the domain name is sponsored by or affiliated to the Complainant. Respondent's domain name is an exact copy/imitation and/or arrangement/combination of the Complainant's corporate name, prior and registered said trademarks domain names for an identical and similar services likely to lead persons to believe that the services are provided or rendered by the Complainant and not by the Respondent, Respondent's domain name is taking or would take unfair advantage of and/or be detrimental to the distinctive character and repute of the Complaint's earlier said trademarks, corporate name and domain names. Respondent is not the bonafide owner, honest adopter or true/actual user of the disputed domain name and has been created as to trade and unduly benefit under the Complainant's repute and goodwill. The Respondent has created and registered the disputed domain name subsequent to the Complainant's conception, adoption and usage of the said trademarks, service marks, business and domain names. Corporate domain names of the Complainant are highly distinctive on account of their extensive use and patronages by public and customers. The Respondent is allowed to continue/proceed to operate the website under the disputed domain name, the potential customers would be induced to-



- (a) Subscribe to the services of the impugned website believing it to be licensed or authorized by the Complainant;
- (b) Believe that the Respondent is carrying on activities endorsed by Complainant and services/goods offered by the Respondent have the same level of quality and reliability synonymous with the Complainant

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

Complainant complains that:

Disputed domain name was registered by the Respondent on December 1, 2009. At this time, the Complainant already enormous repute mark CLUB MAHINDRA and had been actively using the domain names mentioned earlier. There is no reason whatsoever for the Respondent to adopt and/or register in his name a similar domain for doing similar kind of business as that of the Complaint is in absolute malafide with an intention to benefit from the Complainant's goodwill and repute. The contents in Respondent's domain convey the similar purpose for which the Complaint has launched their domain names. Membership details and access to resorts mentioned in domain pertain to the Complainant. Respondent has lavishly utilized the Complainant's name, trademarks with links/tags to the Complainant's domains to purport to a viewer as though the Respondent domain is that of the Complainant's for hospitality, travel and leisure services. Respondent's registration and use of the disputed domain name is a clear case of cyber squatting, intention is to take advantage of the Complainant's substantial reputation and goodwill in order to confuse the public and the viewer by offering similar services, divert business, tarnish the repute and goodwill of the Complainant and the said marks and unduly gain. Moreover it has also

- (a) Along with all the information and material pertaining to the Complainant, the column "CONTACT US" in the disputed domain name has that of the Respondent, which is ol.whois@gmail.com;
- (b) A click on 'HOLIDAYS' Respondent's site "<http://www.clubmahindra.org.in>" links/diverts to and opens up the Complainant's competitor "Yatra.com" website "<http://www.yatra.com/holiday-packages/>".

Respondent has a certain instances misspelt "MAHINDRA" as "MAHENNDRA", which are deceptive and the Respondent has conveniently absolved itself/himself from warranties or representations or any endorsement about the services of the products listed on the disputed website and has stated he would neither be liable nor responsible for any claim, loss, damage or law suit resulting from any non services issues whether purchased on their website or any other website with which the disputed domain name may associate.



c. The domain name(s) was/were registered and is/are being used in bad faith

Complainant complains that:

- (i) At the time of creation and registration of the disputed domain name by the Respondent, the Complainant had already a well established presence internationally as well as India.

Started in 1996 under the flagship brand club Mahindra the compliant today has a fast growing customer base of over 1 Lac members and 30 resorts. Respondent has not been authorized, Licensed or otherwise consumed by the Complainant to use the mark CLUB MAHINDRA. Being in the similar and identical area of business, it is obvious Respondent was aware of the Complainant, their said mark, their said domain name and the reputation, recognition, patronage and goodwill that the Complainant has achieved and subsequently adopted the domain name. Registration of the domain name and its subsequent use is for the purpose of defrauding the public, a deliberate attempt by the respondent to attract, for commercial gain internet users to the disputed website by creating a likelihood of confusion with Complainants mark and domain name CLUB MAHINDRA such that the public would in all likelihood falsely believe that the disputed domain name is sponsored, endorsed or authorized by or in association with the complainant. This has been for fraudulent purposes. Respondent has no registered mark or name CLUB MAHINDRA or any variation there off with the Trade Marks Registry prior to the date upon which the disputed Domain was registered.

Respondent

Not responded to the Complaint

Opinion:

Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint-

This tribunal is of confirmed opinion that the Complainant has been using the name club Mahindra for many years i.e. since 1996 in one form or the other and has made sincere efforts to promote the brand name club mahindra by consuming various resources available at his end and word Mahindra and club mahindra has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the country and abroad, prominent in print and electronic media. That mark club Mahindra has been registered effectively in India mentioned in the application.

On the basis of the records submitted by the complainant it's proved that the domain name **club-mahindra.org.in** is related to the age old business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name **club-mahindra.org.in**

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly legitimately using the name for business purposes. It profusely empowers Complainant with the First right to the domain name **club-mahindra.org.in** and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and as being used is in bad faith by the respondent.

Complainant has amply demonstrated that he has been in the business of hospitality, travel, leisure, guest services, under the brand of **club-mahindra.org.in** much before the respondent.



The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misrepresentation of the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is un colourable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name club-mahindra.org.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 10000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of **27 Day of December 2010.**

