

ఆంధ్ర ప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

K. Rama Chandravathi
R 664171

9/5/2011

Sold To..... *Ami*

No./W/o/D/o..... *B. Narayana swamy*

Whom..... *Sely. 12 to Plot No 545, 4th Road No 86*

K. RAMA CHANDRAVATHI
Licenced Stamp Vendor
LIC No.18-11-27/1999
REN.No.18-11-5/2011
H.No.6-3-387 Near Himalaya Book World
Beside Petrol Pump Punjagutta
HYDERABAD (SOUTH) DISTRICT
Phone No. 33351799 939249025

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD

In The Matter Between

Six Continental Hotels, Inc.

Complainant

Versus,

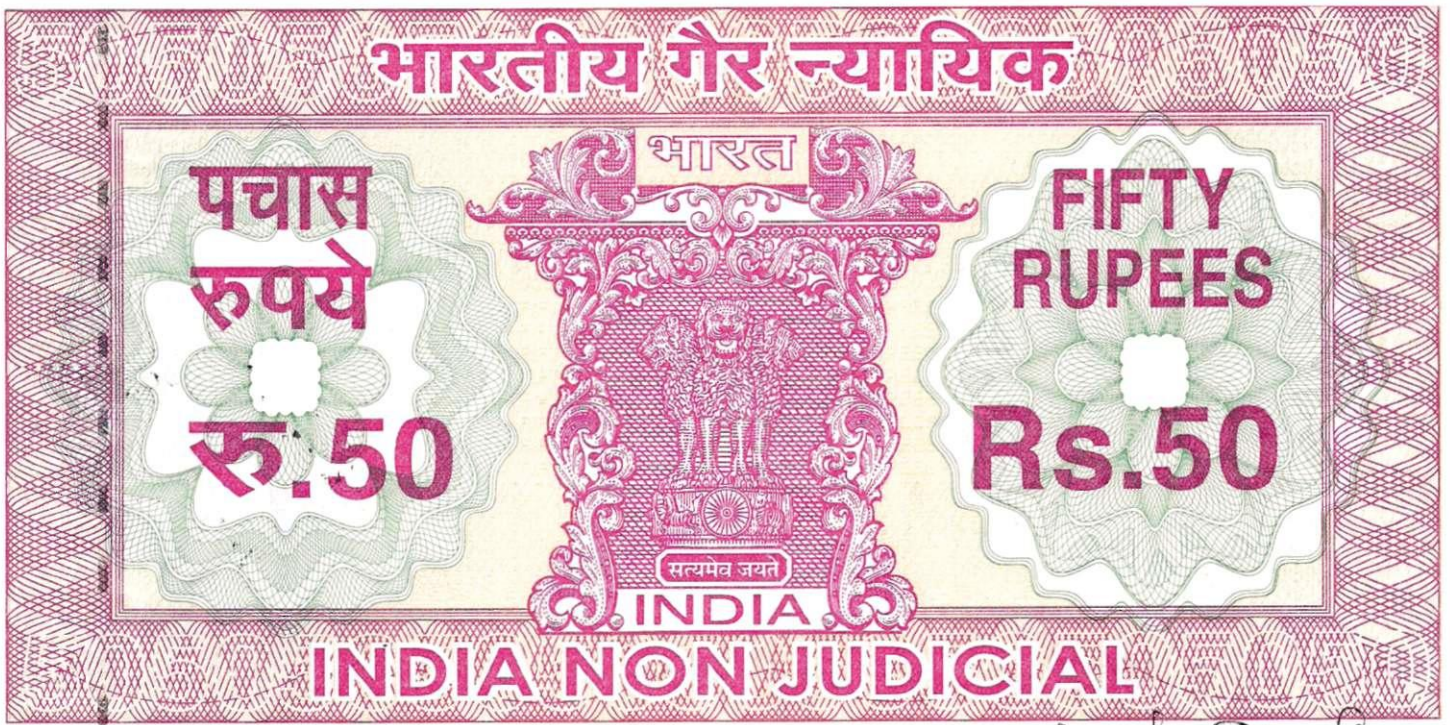
The Hotel Crown

Respondent

The Complainant is Six Continental Hotels Inc. of Atlanta. State of Georgia. USA represented in those proceedings by Mr.Sanjay Chhabra of Archer and Angel. New Delhi

The Respondent is The Hotel Crown, of Ahmedabad in the State of Gujarat, India.

Havini Narayany



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH
1. No. 2297... 9/5/2011

Sold To: A.M.

No. W/O / D/O: B. Narayana Swamy

To Whom: 2. The Domain name, Registrar and Policy
Selly, 110 Plot No 515, A, Road No 86

K. Rama Chandravathi
R 664170
K. RAMA CHANDRAVATHI
Licenced Stamp Vendor
LIC No.18-11-27/1999
REN.No.18-11-2/2011
H.No.6-3-387 Near Himataya Book World
Beside Petrol Pump Punjagutta
HYDERABAD (SOUTH) DISTRICT
Phone No 23351799 9392496025

This Arbitration pertains to a dispute regarding the domain name <hotelcrownplaza.in>.
The registrar for the disputed domain name is Directi Internet Solutions Pvt. Ltd.

The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on February 26, 2011 and on February 28, 2011 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply to the notification or file any response in these proceedings. Based on the material on record the Arbitrator now proceeds to determine the case on its merits.

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i actual Background

The Complainant is in the hotel business and its group of companies is collectively known as the Intercontinental Hotel Group (IHG). The Complainant's portfolio of brands include CROWNE PLAZA HOTELS & RESORTS, HOLIDAY INN HOTELS AND RESORTS. HOLIDAY INN EXPRESS, INTERCONTINENTAL HOTELS AND RESORTS. HOTEL INDIGO. STAY BRIDGE SUITES. CANDLEWOOD SUITES and PRIORITY CLUB REWARDS (hotel loyalty program).

The Complainant and its affiliates own several registered trademarks for the CROWNE PLAZA marks Some of the Complainant's United States trademark registrations for the CROWNE PLAZA mark are:

Mark	Registration No.	Date of First Use	Date of Registration
CROWNE PLAZA	1.297.211	June 21,1983	September 18, 1984
CROWNE PLAZA	2,329,872	November 1. 1994	March 14, 2000
CROWNE PLAZA HOTELS & RESORTS	2,895,328	September 1,2002	October 19, 2004

The Complainant's Indian trademark registrations for the CROWNE PLAZA mark are: registration No. 755207 registered on 21 March 1997 in class 16 and Crown Plaza Device mark bearing No 627707 registered on March 15. 2008, and its Community Trademark registration No. 001017946 was registered on December 17, 2002.

The Complainant's Six Continental Hotels Inc. is the registrant of the domain name <crowneplaza.com>. which was registered on March 31, 1995. The Respondent registered the disputed domain name <hotelcrownpk</a.in> on March 3. 2005.

4. Parties contentions
A. Complainant's Submissions

The Complainant states it is the world's largest hotel group by the number of rooms. The Complainant owns, manages, leases or franchises through various subsidiaries about 4500 hotels and 650,000 guest rooms in about 100 countries. The Complainant has provided a copy of the annual report for year 2009 pertaining to its group of companies.

The Complainant states its CROWNE PLAZA hotel brand was founded in 1983 and is presently used in connection with 376 hotels worldwide that collectively offer 103.876 hotel rooms. The Complainant or its affiliates owns at least 275 trademark registrations in at least 95 countries or geographic regions worldwide for trademarks that consist of the CROWNE PLAZA mark. The Complainant states it has prevailed in several domain name cases including a case under the INDRP Policy. The Complainant has prevailed in a suit filed against the Respondent for infringement of its trademark CROWNE PLAZA .

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in C.S No 1299 Of 1999 in the City Civil Court of Ahmedabad. The Complainant has also succeeded under the UDRP, for numerous domain names (WIPO Case No. D2009-1661).

The Complainant states the disputed domain name contains its trademark CROWNE PLAZA in its entirety except for the silent letter 'e'. The Complainant alleges that the disputed domain name is confusingly similar to its mark.

The Complainant argues the Respondent has no rights or legitimate interest in the disputed domain name as the Respondent has no relationship with the Complainant and is not authorized or licensed to use the Complainant's mark. Further, the Respondent is not known by the disputed domain name and the disputed domain name is not used in a *bona fide* manner but is used by a competitor in a deceptively similar manner to suggest a false affiliation with the Complainant. Such use does not constitute legitimate use or non-commercial fair use, as it misleads customers by creating a likelihood of confusion.

The Complainant asserts the disputed domain name was registered and is used in bad faith, as the Respondent has intentionally attempted to attract users by creating a likelihood of confusion with the Complainant's mark and deceives the public. The Respondent ought to have known of the Complainant's prior rights in the trademark, as the mark is internationally recognized and predates the Respondent's domain name registration by about twenty-two years. Given the Complainant's established rights in the mark in several jurisdictions the use of the disputed domain name suggests "opportunistic bad faith". The Respondent's previous attempts for using the Complainant's trademark were successfully defended by the Complainant in the City Court of Ahmedabad. For all these reasons the Complainant requests for transfer of the disputed domain name.

Discussion and Findings

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

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

Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

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The Arbitrator finds that the Complainant has submitted documents showing registered rights in the trademark C R O W N E P L A Z A . In particular, the Complainant has submitted the documents of its US trademark registrations for the marks, bearing number 1,297,211, for hotel services filed on October 7, 1983, trademark registration number 2329,872 filed on June 9, 1999 and trademark registration 2,895,328 filed on March 26, 2003. Indian trademark registrations No. 755207 dated 21 March 1997 and No. 627707 dated March 15, 2008, and its European Community Trademark registration No. 001017946, registered on December 17, 2002. These documents establish the Complainant's statutory rights in the CROWNE PLAZA marks and demonstrate that the Complainant has adopted and used the mark extensively for a considerable period and show the mark is distinctive of the Complainant and its services.

The disputed domain name incorporates the Complainant's trademark C R O W N E P L A Z A , except for omitting the letter "c". As argued by the Complainant the letter "e" is silent, and omitting the letter appears to be a deliberate attempt to make the disputed domain name confusingly similar to the mark. The deliberate exclusion of a letter in a domain name that incorporates a well-known trademark is recognized as typo squatting. See *Grundfos A/S v. Telecom Tech Corp./ Private Registration*, WIPO Case No. D2010-0735, where the domain name <grunfospumps.com> was found confusingly similar to the trademark GRUNDFOS despite the exclusion of the letter 'd'. The Arbitrator finds that in the present case, omission of the letter 'e' is a subtle adaptation of the mark that makes no impact on the confusing similarity of disputed domain name with the mark.

The disputed domain name consists of the trademark preceded by the generic term "hotel". Generic terms used in conjunction with the trademark does not decrease the confusing similarity with the trademark and in some instances are found to heighten the confusing similarity, particularly if the generic word is connected with the business of the complainant. Confusing similarity can be found where an average consumer would expect the complainant to use a term in connection with the mark for identifying their goods or services. See for instance *Accor v. Maixueying Jokemine* WIPO Case No. D2010-2233 (<accorhotel.net>). February 24, 2011 where the domain names <accorhotel.net> was found confusingly similar to the complainant's trademark A C C O R . as an average consumer would perceive or expect the complainant to use the terms "hotel" with the trademark to identify the goods and services offered by the complainant.

Similarly in the present case, the word "hotel" when used with the trademark is deceptively similar to the mark, particularly for users trying to locate the Complainant online and who are aware of the Complainant's reputation in the hotel business. The Complainant in the present case has established that it has extensive worldwide business in the hotel industry. Further, the Arbitrator notes that the Complainant's adoption of the mark has been for a considerable time and used widely in numerous jurisdictions. Based on these undisputed submissions by the Complainant, the Panel finds the disputed domain name is confusingly similar to the Complainant's mark. The country code top level domain (cc TLD) ".in" suffix, does not lessen the confusing similarity of the domain name with the trademark. See for instance *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010.

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For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent has not been given any authorization to use the Complainant's mark. Paragraph 7 of the Policy states a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The material on record does not show that the Respondent is commonly known by the disputed domain name or is making any legitimate noncommercial fair use of the disputed domain name.

in the Arbitrator's view, the use of the Complainant's mark in the disputed domain name is likely to mislead the public and internet users that the disputed domain name may refer to the Complainant and its hotels. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* offering of goods and services under the Policy. This view has been upheld in several prior decisions including UDRP cases. See for instance, *Zurich American Insurance Company v. Administrator, Domain*, WIPO Case No.D2007-048! (Use of a confusingly similar or identical domain name to divert Internet users to competitor sites *per se* is not use that can be termed a *bona fide* offering of goods and services).

The Arbitrator finds the Complainant has made *a prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has put forward the following submissions that the Respondent has registered the disputed domain name in bad faith and uses it in bad faith. First, the Complainant has prior rights in the well-known trademark C R O W N E P L A Z A . Second, the Respondent has intentionally attempted to attract users by creating a likelihood of

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confusion with the Complainant's mark as to source of endorsement and affiliation; Third, the Complainant's prior adoption of the mark that predates the Respondent's domain name registration by about twenty-two years. Four, Complainant's established rights in the mark in several jurisdictions suggests "opportunistic bad faith" by the Respondent.

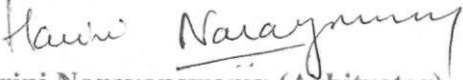
Based on the documents on record and the facts and circumstance in the present case, the Arbitrator finds the arguments of the Complainant are persuasive. The Complainant has filed documents that establish its prior adoption and use of the CROWNE PLAZA mark. The Complainant's trademark applications were made much before the disputed domain name registration. The Complainant's trademark is undoubtedly well known in the hotel business and it is unlikely that the Respondent did not know of the Complainant's prior rights in the mark when he registered the disputed domain name. The most persuasive evidence of the Respondent's knowledge of the Complainant's mark is that the Respondent is also in the hotel business. Therefore being in the same area of business the choice of the domain name is not a mere coincidence but is likely to be a deliberate use of a well-recognized mark in the hotel industry to attract unsuspecting users. Registration of a domain name, based on awareness of a complainant's trademark rights is recognized as bad faith registration under the Policy, *Lego Juris v. Robert Martin*. INDRP / 125, February 14, 2010.

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Panel finds the circumstances here suggest that there is no reasonable explanation for the registration and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark to attract Internet traffic to the Respondent's website and to mislead customers to believe that the Complainant is in some way associated with the Respondent's website. The registration and use of a domain name that exploits the goodwill of another's trademark is considered bad faith under the INDRP Policy. See *Eli Lilly unci Company v Andrew Yan*, INDRP Case 195, dated February 16, 2011. The registration of a well-known mark itself is evidence of bad faith registration. See *Genpact Limited v. Manish Gupta*, INDRP/056, *ox Advance Magazines Publishers Inc. v. JF Limited England*. (<vogue.co.in>), INDRP Case 184, January 27, 2011.

For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

Decision

For all the reasons discussed, the Arbitrator orders that the disputed domain name <hotelcrownplaza.in> be transferred to the Complainant.


Harini Narayanswamy (Arbitrator)
Date: April 24, 2011