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

M 040301

In the Matter of:-

Dated: 27/09/10

The Indian Hotels Company Limited
Mandlik House, Mandlik Road
Mumbai-400001

Complainant

Mr. Sanjay Jha
Express Tower, Kadam Marg
Mumbai-400021

Respondent

1. The Parties :

Complainants are The Indian Hotels Company Limited, Mandlik House, Mandlik Road, Mumbai-400001

Respondent are Mr. Sanjay Jha, Express Tower, Kadam Marg, Mumbai-400021

2. The Dispute:

The domain name at issue is <gingerhotels.co.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 :

Dispute concerns the domain name <gingerhotels.co.in >

Complainant claims that:

- a.) is a Limited company incorporated under Indian Companies Act, 1882. claimant owns and manages one of the most well chain of hotels in India and abroad referred to as the Taj Hotels . Since its inception 1903 , complainant has had a significant innings spanning both India as well as abroad and premier hospitality body in the country. Complainant has a dominant position providing world class personalized services while reproducing the traditions and heritage of India made the TAJ brand a symbol of luxury and service, the world over. Complainant is proprietor of the reputed trademark "GINGER".

Trademark "GINGER" adopted by Complainant on 21st March, 2006 when the Complainant's wholly owned subsidiary, Roots Corporation Limited, opened its 2nd hotel in Haridwar and on the same day 1st Hotel in Bangalore was rebranded under the brand name GINGER trademark. GINGER has been developed and successfully used by the complainant since March 2006 throughout India and that in Annexure B attached with the application are documents evidencing the adoption of the trademark GINGER since March 2006.

Complainant has expended a great amount of time, money and efforts to promote and advertise the trademark GINGER in all and every manner possible. Complainant's GINGER Hotels signify simplicity, convenience, informality, style, warmth, modernity and affordability and have been indigenously designed and developed by the Complainant . Complainant's continuous and extensive use of trademark GINGER spans across India and today customers and members of trade associate the trademark GINGER only with the Complainant and no one else.



Document reaching use of the trademark GINGER are enclosed herewith collectively marked as **Annexure C**.

Complainant also states trademark GINGER has been used very openly and widely across the length and breadth of India and it is prominently featured in printed and electronic media.

Documents in support of the above are also enclosed with the application and collectively marked as **Annexure D**.

COMPLAINANT'S INTERNET PRESENCE

Complainant is owner of the top level domain name GINGERHOTELS.COM domain name active website. Printouts of the Complainant's website located at www.gingerhotels.com are annexed collectively marked **Annexure E** along with the application.

STATUTORY RIGHTS

Complainants, on 19th December 2005, had filed trademark Application No. 1407317 Class 42 for the mark "**GINGER**" Documents enclosed herewith marked as **Annexure F**.

Complainant has also taken steps to secure statutory rights in the trademark "GINGER" in other countries like Bangladesh, Bhutan, China, Indonesia, Malaysia, Maldives, Nepal, Pakistan, South Africa, Sri Lanka and Thailand. Documents evidencing enclosed herewith marked as **Annexure G**.

In respect of **RESPONDENT** Complainant submits that

Respondent registered the domain name GINGERHOTELS.CO.IN (referred to as the "**impugned domain**") registration of which expires on 30th October 2010. The impugned domain incorporates in entirety Complainant's well-known trademark "**GINGER**"

The Respondent's domain name is identical or confusingly similar to a Name, trademark or service mark in which the Complainant has rights

The domain incorporates in its entirety the Complainant's well-known trademark GINGER in which the Complainant has insurmountable rights.



Further domain name <gingerhotels.co.in> attempts to associate itself to the Complainant's business under the trademark **GINGER**, by incorporating the Complainant's trademark in full. Its blatant misappropriation of the Complainant's trademark **GINGER** for a domain name which used to resolve to a website giving information regarding the Complainant's GINGER Hotels. Respondent deliberately misleading the public into falsely believing that the Respondent has some commercial nexus with the Complainant. Any Indian user searching for the Complainant's business online as **GINGERHOTELS** will be taken to the Respondent's domain name, which enhances the possibility of confusion and/or deception. Printout screenshot enclosed as **Annexure H in the application**

That Complainant sent a cease and desist letter to the Respondent following which the respondent removed the entire contents from the impugned domain name. Recent printout enclosed herewith as **Annexure I** in the application.

Responded has dishonestly removed the content from the impugned domain name while the impugned domain name has not yet been transferred to the Complainant.

The domain name should be considered as having been registered and used in bad faith. Domain name GINGERHOTEL.CO.IN incorporates the complainant's well-known mark GINEGER. Respondent can have no right or legitimate interest in the domain name. Sole purpose of the adoption of the Complainant of the trademark in its entirety by Respondent is in bad faith in the use and registration of the impugned domain name.

Respondent has registered the impugned domain name < gingerhotels.co.in> in order to disrupt the business of the Complainant and to derive undue advantage.

There is a great likelihood that an actual or potential visitor to the Respondents present web page or any future web page that the subject domain name resolves to will be induced to:

Believe Complainant has licensed the trademark GINGERHOTELS to the Respondent or has authorized Respondent to register the disputed domain name.

Believe that Respondent has some connection in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant and that disputed domain name has been registered and is being used in bad faith.



Respondent

Not responded to the Complaint

Opinion:

I. 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 ginger since many years i.e. March 2006 in one form or the other and has made sincere efforts to promote the brand name ginger by consuming various resources available at his end and word 'Ginger and Ginger Hotel' has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the country and prominent in print and electronic media. That mark ginger has been registered effectively in India and other countries mentioned in the application.

On the basis of the records submitted by the complainant it's proved that the domain name gingerhotels.co.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 Ginger.

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 gingerhotels.co.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 is in the business of hospitality ,personalized guest services, reproducing traditions and heritage of India, under the brand of Ginger as ginger hotels 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 gingerhotels.co.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 **27th day of September 2010.**


Deepa Gupta
Arbitrator

