



दिल्ली DELHI BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

E 505769

In the Matter of:-

Hindustan Petroleum Corporation Limited
17, Jamshedji Tata Road,
Churchgate,
Mumbai 400020.
India.

Complainant

VS

Mr. RAM SWAMY
29 Kottupuram
Venkatesan Salai
CHENNAI 600 028, India

Respondent

1. The parties:

Complainant is Hindustan Petroleum Corporation Limited, 17, Jamshedji Tata Road, Churchgate, Mumbai 400020, India

Complainants authorized representative is Mr. Iyer Narayanan H., Chief Legal Advisor, Hindustan Petroleum Corporation Limited and authorized attorney is Mr. Nair M Ramakrishnan, Advocate, R.K Dewan & Co, Trademark and Patent Attorneys, Podar Chambers, S. A. Brevli road, Fort, Mumbai 400001, India.

Respondent is Mr. RAM SWAMY, 29 Kottupuram, Venkatesan Salai, CHENNAI 600 028, India

2. The domain name at issue is <hindustanpetroleum.co.in> (the domain name)

The registrar is NIXI at Nehru Place

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2. **Brief Background**

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

Complainant submitted his complaint in the registry of the NIXI on dated 02.01.2008 and the respondent did not answer to the letter and email sent to him in the matter on 6th Feb 2008

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

It is alleged in the complaint that the respondent registered the domain name in bad faith and is illegitimately using this domain name thereby infringing and using the domain name 'hindustanpetroleum' as a trade name on the domain's website since February 17th 2005 (Annexure 1 submitted with complaint).

The Complainant had registered the Mark 'hindustanpetroleum' with Good Luck Domains Pty Ltd, No-8, 2nd Floor, 3rd Cross Street, Kasturibai Nagar, Chennai-600020, India

Complainant claims to have rights in the Mark as a result arising out of continuous use of it in commerce since 1974 when Hindustan Petroleum Corporation Ltd was incorporated and protective registrations of the Mark in various Top Level Domain registrations (As per Exhibit 8 attached in the Complaint submitted) and are registered or pending for registration, under the Trade Marks Act 1999. Complainant claims to have maintained websites using the name "Hindustan Petroleum" for a similar period of time. This tribunal believes that the registry of the NIXI issued the notification to the concerned parties only after due compliance of the entire procedural requirement.

Respondent failed to submit any satisfactory reply as the letter sent to him was returned with the remarks "addressee not available" and the email written to him was not replied back.

3. **Parties contentions:**

Complainant alleges that the name <HINDUSTAN PETROLEUM> was originally coined and adopted by the Complainant in the year 1974 and the said name is in continuous usage by the Complainant since its incorporation in the year 1974. The Complainant has rights, both by virtue of statutory registration as well as long, continuous and extensive use. Complainant Corporation has been in the business of refining and marketing of Petroleum Products as a Government Company. The Complainant alleges that it is the fourth largest refining and marketing oil company in India and one of the Oil majors that dominate India's energy market with an annual turnover of Rs.91,448 Crores during the financial year 2006-07. It has a large network of more than 7909 Retail Outlets (petrol pumps) and 1648 Kerosene distributors and 2238 LPG dealerships all over the country. It has been using the name "HINDUSTANPETROLEUM" as its trademark and trade name, in various forms, right since its inception. The Complainant is a Fortune 500 company and one of the biggest companies in India having pan presence.



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By virtue of long, continuous and extensive usage and wide publicity, the trade mark and trade name HINDUSTANPETROLEUM has become distinctive of and exclusively identified with the Complainant. An enviable goodwill and reputation have been accrued to this trademark/trade name and the goods sold and services provided by the Complainant.

The Complainant claims to be the proprietor of several domain names, such as HINDUSTANPETROLEUM.COM, HINDUSTAN PETROLEUM.biz, HINDUSTAN PETROLEUM.in, HINDUSTAN PETROLEUM.info, HINDUSTAN PETROLEUM.net, HINDUSTAN PETROLEUM.org., and the like. He also claims that the words HINDUSTAN PETROLEUM also forms the essential and prominent feature of the Complainant's several trademarks that are registered or pending for registration, in different classes, under the Trade Marks Act 1999.

The Complainant claims to enjoy unassailable common law and statutory rights to the exclusive use of the term HINDUSTANPETROLEUM, as a trademark, trade name and domain name and therefore claims that its unlawful for any other person to use or cause to be used any trademark, trade name or domain name that is identical with or deceptively similar to the Complainant's well-known trademark/trade name/domain name <HINDUSTANPETROLEUM> on and/or in relation to any goods or services within or outside India.

Complainant alleges that the Respondent has falsely registered the domain name HINDUSTANPETROLEUM.CO.IN which is, for all practical purposes, identical with the Complainant's trademark/trade name/domain name HINDUSTANPETROLEUM and is offering products and services in the fields of CNG, Diesel, Fuel Prices, Gas Stations, Jobs, LPG Cylinders, Petrol, all related to the Complainant's business, on the infringed website with a malafide and calculated intention to pass-off Complainant's goods and/or services as and for their goods and services. That the Respondent has been deceiving and cheating the unwary visitors to his site by misrepresenting his spurious goods and/or services as goods/services originating from the Complainant. Also that Domain name has been notarized by the Notary Public to attract innocent people unscrupulously, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark and trade name.

Complainant states that he had sent a regd. legal notice through its Trademarks Attorney, M/s. R. K. Dewan & Co., Mumbai, at the address of the Respondent. The notice was returned undelivered with the remark " No Such Person in this address" as detailed in **Annexure-4 submitted**. The Complainant also states having sent notice to the Respondent through Respondent's e-mail address ramswamy_ks@yahoo.com, but the said message too returned undelivered.

Complainant claims that Respondent's domain name in question is identical with the name of the Complainant, its Trade name, trademark and domain name. The use and/or registration of the said domain name by the Respondent is clearly in bad faith. Also that the mark "HINDUSTANPETROLEUM" has been in extensive, continuous and uninterrupted use by the Complainant since the year 1974 in relation to its business particularly refining and marketing of petroleum products.



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More specifically, the mark "HINDUSTANPETROLEUM" has been used by the Complainant in relation to all its stationery articles including sales promotional materials. The mark has also been used in relation to advertisements and related business/commercial information disseminated in several print media such as newspapers, magazines etc. both in India as well as abroad. Thus, mark "HINDUSTAN PETROLEUM" having been extensively used in relation to field of petroleum and consumer related petroleum products has therefore acquired distinctiveness and is understood as mark of the Complainant by consumers in India.

He further submits that on account of the high degree of inherent and acquired distinctiveness which the mark "HINDUSTANPETROLEUM" is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off.

The Complainant submits that he extensively uses the trademark "HINDUSTAN PETROLEUM" for its business activities and industry related promotional activities. The complainant has advertised extensively in the print media having circulation in several other countries. The Complainant has also, since the year 1997-98, advertised extensively on satellite television such as CNBC, the footprint of which covers various countries.

The registered domain name <HINDUSTANPETROLEUM.CO.IN> of the Respondent is identical with the Complainant's corporate name, trade name, trademark and service mark "HINDUSTAN PETROLEUM" in which the Complainant has rights;

The Respondent has no right or legitimate interests in respect of the domain name in question and, the Respondent's domain name has been registered and is being used in bad faith. Respondent, however, has failed to reply to any of the allegations made by the complainant.

4. Opinion:

I. Issue:

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.

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Complainant's principal contention as enumerated in earlier paragraphs and on the basis of perusal of the records submitted by Complainant with the complaint this tribunal is of confirmed opinion that the complainant is rightful in claiming to be the rightful owner of the domain name 'hindustanpetroleum' and related names which belong to the family of 'Hindustan petroleum'.

That the domain name 'hindustanpetroleum.co.in' is seemingly similar and near to the domain name 'hindustanpetroleum.com' and bound to create confusion among users as to its relatedness with hindustanpetroleum.com. Further the Complainant amply proved that respondent had no legitimate interest in hindustanpetroleum.co.in since registration of hindustanpetroleum.co.in is made 31 years later than registration of Hindustan Petroleum Corporation Ltd and that too after hindustanpetroleum.com gaining much popularity with internet search engines.

It is surprising that domain name of the level of top ranking remains unregistered and legally unprotected at the respondents end. Moreover Respondents evading to reply on the existence of hindustanpetroleum.com at the time of registration of domain name hindustanpetroleum.co.in is unacceptable that too when registrant site is a Top Ranking site in search engine optimization services. Even with minimum prudence this Tribunal expects performance of basic internet search engine search of 'hindustan petroleum' name prior to adopting the trade and domain name of hindustanpetroleum.co.in.

This tribunal holds that such use as infringement of the names should be checked in most efficient manner and complainant's trial to prove good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has aptly demarcated that he is in the business of refining and marketing of petroleum products as a Government company and the fourth largest refining and marketing oil company in India dominating India's energy market with a turnover of Rs 91,448 Crores and has a large network of retail outlets and kerosene distributors and LPG dealerships all over the country and has spent valuable resources to make it popular successful and legally protected. The Complainant has rights, both by virtue of statutory registration as well as long, continuous and extensive use.

The tribunal is of confirmed opinion that the domain name trade name and trade are facially and correctly conjoint to each other and is proof of the widespread confirmation of the service provided by the complainant make this complaint a plausible case of action.

II. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the established law, this tribunal is of considered opinion that the Complainant amply proved all the necessary conditions.


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Further, this tribunal is bound to conclude with the certainty that the present complaint by the Complainant is a genuine attempt by the Complainant to take shelter under law and legitimately protect domain name from illegitimate infringement and hijacking. Complainant is the rightful owner of name and mark 'Hindustan Petroleum 'and the respondent barred and denied the use of the domain name hindustanpetroleum.co.in in any manner whatsoever.

III. Decision

The Tribunal hereby directs that

- a) Respondent's registered domain name 'HINDUSTANPETROLEUM.CO.IN' be cancelled with immediate effect and
- b) Registered domain name 'HINDUSTANPETROLEUM.CO.IN' be transferred to the Complainant without delay and
- c) Respondent to deposit 20000 INR in the registry of NIXI as a cost of this proceedings and burdening the administration fulfill his ulterior motives.

Given under my hand and seal on this **31 day of March 2008.**



Deepa Gupta

Arbitrator