

Bond



**Indian-Non Judicial Stamp  
Haryana Government**



Date :13/06/2018

Certificate No. G0M2018F178



Stamp Duty Paid : ₹ 101  
(Rs. Only)

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Penalty : ₹ 0  
(Rs. Zero Only)

**Deponent**

Name: Rna Ip Attorneys

H.No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



Purpose : ALL PURPOSE to be submitted at Other

RANJAN NARULA

ARBITRATOR

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

In the matter of:

**Accor**

82 rue Henri Farman  
CS 20077  
92445 Issy-Les-Moulineaux  
France

....Complainant

**Vyacheslav Chistovich**

Vyacheslav Chistovich  
A-812a, Main Building, Leninskie Gory  
Leningradskaya oblast  
119992 Moscow  
Russian Federation

..... Respondent

Disputed Domain Name: [www.ibishotels.in](http://www.ibishotels.in)

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Accor, 82 rue Henri Farman, CS 20077, 92445 Issy-Les-Moulineaux, France The Complainant is represented by its authorized representative Dreyfus & Associates, 78, Avenue Raymond Poincare, 75116, Paris-France.

The Respondent in this arbitration proceeding is **Vyacheslav Chistovich**, Vyacheslav Chistovich, A-812a, Main Building, Leninskie Gory, Leningradskaya oblast, 119992 Moscow, Russian Federation 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 is [www.ibishotels.in](http://www.ibishotels.in). The Registrar is Endurance Domains Technology LLP, c/o Public Domain Registry, 501, IT Building No. 3, NESCO IT Park NESCO Complex, Western Express Highway, Goregaon(East), Mumbai- 400063, Maharashtra, India

The Registrant is **Vyacheslav Chistovich**, Vyacheslav Chistovich, A-812a, Main Building, Leninskie Gory, Leningradskaya oblast, 119992 Moscow, Russian Federation.

### **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 28<sup>th</sup> 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 Ranjan Narula 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 May 7, 2018 and the notice was issued to the Respondent on May 9, 2018 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. There was no delivery failure message received from the Respondent's email address. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

On May 9, 2018 NIXI informed that the hard copy of complaint and annexures could not be delivered on the Respondent and the courier agency has asked for an alternate address. Arbitrator asked the Respondent to provide details within one week otherwise it will be treated as deemed service. As no response was received from the Respondent, the consignment was eventually destroyed and the Respondent was treated as served in the absence of no response from him.

The complaint is therefore being decided based on the submissions made by the complainant and documents placed on record.

**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:**

1. The Complainant submits that ACCORHOTELS is a French multinational hotel group. ACCORHOTELS is the world leader in economic and mid-scale hotels, and a major player in upscale hospitality services. For more than 45 years, it has provided customers with expertise acquired in this core business.
2. The Complainant submits that Accor operates more than 4000 hotels in 95 countries worldwide and around 570000 rooms, from economy to upscale. The group includes notable hotel chains such as PULLMAN, NOVOTEL, MERCURE and IBIS. Accor's brands offer hotel stays tailored to the specific needs of each business and leisure customer and are recognized and appreciated around the world for their service quality.
3. The Complainant submits that the IBIS brands consist of hotels, which are generally close to city centers, airports or railways stations, and offer low rates compared to many global hotel groups of comparable size. The brands comprise of IBIS HOTELS with 1079 hotels worldwide in 65 countries.



4. The Complainant owns and operates several hotels under the trademarks IBIS and IBIS HOTELS, which are well-known trademarks, protected worldwide particularly in relation to hotels and restaurants services.
5. The Complainant submits that ACCORHOTELS is also present in India and counts up to 45 hotels with 8552 rooms among which there 13 IBIS HOTELS.
6. The Complainant submits that according to an article of Business Standard dated January 2016, it was published that there would be 19 IBIS HOTELS with a total room inventory of 3500 by 2017 in India.
7. The Complainant noticed that the domain name <ibishotels.in> has been registered. Whois Database searches revealed that this domain name was registered by Respondent.
8. The Complainant owns and operates several hotels under the trademarks IBIS and IBIS HOTELS, which are well known trademarks, protected worldwide particularly in relation to hotels and restaurants services.
9. The Complainants are notably the owner of the following trademark registrations-
  - Indian trademarks "IBIS" registered on July 21, 2004 duly renewed and covering services in class 42
  - Indian trademarks "IBIS" registered on September 12, 1994 duly renewed and covering goods in class 16
  - International trademark "IBIS HOTELS" registered on September 12, 2011 and covering services in classes 35 and 43

In addition, Complainant operates, among others, domain names reflecting its trademarks

- <ibis.in> registered on February 26, 2005
  - <ibishotel.in> registered on February 26, 2005
10. The Complainant submits that the domain name <ibishotels.in> reproduces Complainant's trademark IBIS HOTELS in its entirety. It also associates Complainant's trademark IBIS to the generic term "hotels" to Complainant's trademark IBIS is insufficient to avoid any likelihood of confusion. On the contrary, thus generic term "hotels" enhances the risk of confusion as it corresponds to Complainant's field of activities and trademarks.
  11. The Complainant submits that numerous WIPO decisions have established that adding a generic and descriptive term to the Complainant's trademarks does not influence the similarity between a trademark and a domain name.
  12. The Complainant submits that the domain name <ibishotels.in> has been registered in the TLD<.in>. The presence of the suffix <.in> is not to be taken into account. Indeed, it is well established in domain name cases that the suffix to indicate the top level of the domain name has to be disregarded for the purpose of determining whether the domain name is identical or confusingly similar to Complainant's trademark.
  13. The Complainant submits that with the registration of the disputed domain name, Respondent created a likelihood of confusion with Complainant's



trademarks. It is likely that this domain name could mislead Internet users into thinking that this is, in some ways, associated with Complainant and thus may heighten the risk of confusion.

14. The Complainant submits that it clearly appears that the disputed domain name is identical to the trademarks IBIS and IBIS HOTELS in which the Complainant has rights.
15. Respondent is neither affiliated with Complainant in any way nor has been authorized or licensed by Complainant to use and register its trademarks, or to seek registration of any domain name incorporating the previously mentioned trademarks. In addition, respondent is neither known by the name of IBIS nor IBIS HOTELS.
16. Respondent has no prior rights or legitimate interests in the disputed domain name. The registration of the IBIS and IBIS HOTELS trademarks preceded the registration of the disputed name for years.
17. The domain name in dispute is identical to the famous IBIS and IBIS HOTELS trademarks of Complainant. Therefore, Respondent cannot reasonably pretend that the registration of the disputed domain name aimed to develop a legitimate activity.
18. The domain name in dispute directs Internet users to a parking page with pay-per clicks which are likely to generate revenues. Hence, as a matter of fact, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of disputed domain name. A legitimate non-commercial or fair use of the domain name cannot be inferred due to Respondent's clear intention for commercial gain. Indeed, considering the exchanges with Respondent, it appears that the only reason why Respondent has registered the disputed domain name is for the purpose of selling it to Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name. If Respondent had a real interest in the domain name, he would have done his maximum to justify his rights or interests in the domain name in his reply. Subsequently, Respondent appears to be a cyber-squatter as he is associated with more than 100 domain names, where some replicate international trademarks such as vimeo.in, lagardere.tw and suiez-environment.me, in which he has no interest. This is an additional proof that Respondent lacks rights and legitimate interest in the disputed domain name.
19. The Complainant is well-known throughout the world. Secondly, in many WIPO decisions, Panels considered that Complainant's IBIS trademark is also widely known. Thirdly, the disputed domain name reproduces two of Complainant's trademarks namely, IBIS and IBIS HOTELS. Therefore, it is impossible that Respondent was not aware of Complainant's trademarks and activities at the time of the registration of the disputed domain name.
20. The complainant claims bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its use by someone with no connection to the trademark suggests opportunistic bad faith. Thus, given the reputation of the IBIS and IBIS HOTELS trademarks, registration in bad faith can be inferred. Moreover, a quick IBIS trademark search would have revealed to Respondent the existence of Complainant and



its trademarks. Respondent's failure to do so is a contributory factor to its bad faith.

21. In this day and age of the Internet and advancement in information technology, the reputation of brands and trademarks transcends national borders. Taking into account the worldwide reputation of Complainant and its trademarks, it is hard to believe that Respondent was unaware of the existence of Complainant and its trademarks at the time of registration of the disputed domain name.
22. Previous panels have established that knowledge of Complainant's intellectual property rights, including trademark, at the time of registration of a disputed domain name proves bad faith registration.
23. If there are circumstances which indicate that the Registrant has registered or acquired the domain name for the purpose of selling, renting, or otherwise, transferring the domain name to Complainant or to a competitor, such registration can be considered as bad faith registration and use of the domain name. In the present case, the disputed domain name was offered for sale by Respondent, it demonstrates that Respondent was aware of the disputed domain name's value and that he planned to make a profit via the offer for sale addressed to Complainant. This kind of behavior is certainly not an evidence of good faith registration.
24. The Complainant submits that the domain name presently directs towards a parking website, which is a method to derive commercial gains through the pay-per-click links present on the parking website. This does not constitute good faith use of the domain name.
25. The domain name is also offered for sale. This clearly lack of interest in the domain name and Respondent's intention to derive undue advantage of Complainant's trademarks to generate profits. The use of these well-known trademarks to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the policy. The clear inference to be drawn from the Respondent's operations is that he is trying to benefit from fame of the Complainant's trademarks

## **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 marks IBIS and IBIS HOTELS leads to the conclusion that the Complainant has superior and prior rights in the marks IBIS and IBIS HOTELS. Thus it can be said a) the web users associate the words IBIS and IBIS HOTELS 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.ibishotels.in](http://www.ibishotels.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 statutory rights, common law rights, and rights on account of prior and longstanding use of the marks IBIS and IBIS HOTELS. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to the Complainant's IBIS and IBIS HOTELS marks in its entirety. The mark IBIS is being used by the Complainant to identify its business. The mark IBIS has been highly publicized by the Complainant and has earned a considerable reputation in the market. Thus the Respondent appears to have no plausible reason for adoption of an identical mark.

- (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 IBIS and IBIS HOTELS domain name. Further, the Respondent has never used the disputed domain name for legitimate business services. The adoption of an identical domain name is clearly to diver internet traffic.

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.ibishotels.in](http://www.ibishotels.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. Further the Respondent deliberately provided an incomplete address to hide its identity and with an intention to monetize the domain name by parking the domain to operate pay-per-click links.

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

**Decision**

In view of the above, it is hereby directed that the disputed domain name [www.ibishotels.in](http://www.ibishotels.in) be transferred to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**June 20, 2018**