



हरियाणा HARYANA

NAMRATA AGRAWAL

626731

Arbitrator appointed by the (.IN Registry)  
National Internet Exchange of India  
New Delhi

## ARBITRATION AWARD

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

In the matter of:

**Monster.com (India) Private Limited**  
FC – 23, Sector 16 A,  
C/o BAG Film Complex,  
Film City Noida,  
Uttar Pradesh,  
India

.....Complainant

Vs.

**Smt. Usha Rani**  
Flat No. 201,  
Hyderabad 500072,  
India

.....Respondent

**1. The Parties**

The Complainant in this Arbitration proceeding is Monster.com (India) Private Limited, (A wholly owned subsidiary of Monster Worldwide Inc.) ("the Complainant") company incorporated and existing under the Indian Companies Act, 1956 having a place of business in FC-23, Sector 16A, Film City, Noida, Uttar Pradesh, India.

The Respondent / Registrant in this Arbitration proceeding is Smt. Usha Rani with the following details obtained from the .IN Registry WHOIS database :

Registrant ID: N4IR-2botl7hsw1t  
Registrant Name: usharani  
Registrant Streetl: Flat No-201,  
Registrant City: Hyderabad  
Registrant Postal Code: 500072  
Registrant Country: IN  
Registrant Phone:+91.9885226853  
Registrant Email:[ushavalavala@yahoo.com](mailto:ushavalavala@yahoo.com)

#### **Details of the disputed Domain Name**

The disputed domain name [www.monsterjobs.in](http://www.monsterjobs.in) has the following details:

The particulars of the said domain name are as follows :

- |    |                      |                            |
|----|----------------------|----------------------------|
| a) | Name of Registrant   | usharani                   |
| b) | Domain Id            | : Domain ID:D619290-AFIN   |
| c) | Created on           | 23-Feb-2005 08:15:05 UTC   |
| d) | Expiration Date      | : 23-Feb-2010 08:15:05 UTC |
| e) | Sponsoring Registrar | Net4India (R7-AFIN)        |
| f) | Registrant Id        | N4IR-2botl7hswlt           |

#### **About procedures adopted in the Complaint**

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian



Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under.

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.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed me as a the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. I had submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

The arbitration proceedings commenced on 22nd September , 2006, when notice of proceeding was issued by me.

The Respondent in reply to the notice, sent only a short email and a copy of her passport as proof of her address. Nothing else was submitted by the respondent thereafter and thus the said email is being considered as her reply to the complaint.

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## **Parties' Contentions**

### **(a) Complaint**

The Complainant in his Complaint, inter alia, contends as follows:

The Complainant has contended that the Respondent has registered and is using the impugned domain name in bad faith.

The mark "Monster", having been extensively used in the relation to the business of the Complainant, has acquired distinctiveness and is understood and associated by consumers in India as well as abroad as the mark of the Complainant denoting its services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith.

The Respondent in the present dispute has registered the domain name [www.monsterjobs.in](http://www.monsterjobs.in) ; thereby misappropriating illegally and without authority the trademark " Monster" which is the exclusive property of the Complainant.

The Complainant contends that the Respondent is not either as an individual, businesses or other organization, commonly known as the name "monster". Secondly the Complainant has not licensed or otherwise permitted the Respondent to use its service Mark "Monster" or to apply for any domain name incorporating this mark.

In support of his contentions the Complainant has annexed enough material to prove his rights on the impugned domain name. The material submitted along with the complaint include :

- (a) The Certificate of Incorporation issued by the Registrar of Companies, Hyderabad as a proof of its incorporation as Monster. Com (India) Pvt. Limited in the year 2000.



- (b) Proofs of registration of "Monster" and other trademarks in various classes in India and other countries.
- (c) Copies of advertising promotional campaigns undertaken by the complainant company.
- (d) Copies of the annual reports of the company
- (e) Copies of the website [www.monster.com](http://www.monster.com) and [www.monsterindia.com](http://www.monsterindia.com)

**(b) Respondent**

As previously indicated, the Respondent has not filed a detailed reply to the contentions of the Complainant. She has just sent an email acknowledging the receipt of the complaint. The respondent has further submitted that she has registered the impugned domain name "[www.monsterjobs.in](http://www.monsterjobs.in)" because the dictionary meaning of "monster" is "huge", "big" and monsterjobs sounds as huge jobs in the sense jobs with big pays.

**3. Discussion and Findings**

The Respondent / Registrant has not given any connection with the word "monster", other than citing the meaning of the word "monster". Further, the Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name.



Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

**(a) The Respondent's Default**

The Rules paragraph 8(b) requires that the Arbitrator ensure that each party is given a fair opportunity to present its case. Paragraph 11 (a) of the Rules reads as follows:

*"11. Default*

*(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."*

The Respondent was given notice of this proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated, the Respondent failed to file any detailed reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case, and the Arbitrator will proceed to a decision on the Complaint.

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The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

#### **The issues involved in the dispute**

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads

#### ***"Types of Disputes***

*Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:*

*(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;*

*(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and*

*(Hi) the Registrant's domain name has been registered or is being used in bad faith.*

*The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."*



Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

- (i) ***the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;***

The Complainant has given substantial documents to prove that he has Intellectual property and other rights in the mark "MONSTER". The name of the Complainant is Monster.com India Private Limited. The mark is being used by the Complainant since 1994 in relation to its business. The mark has been highly publicized and advertised by the complainant in both the electronic and print media both in India and globally. The INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violates the rights of any body. Since the Complainant's mark "MONSTER" is a famous and well-known mark specially on the Internet, it is unlikely that the Respondent does not know about the Complainant's rights in the mark or the domain name.

Paragraph 3 of the INDRP is reproduced below:

*" The Registrant's Representations*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:*

*(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;*

*(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*





*(c) the Registrant is not registering the domain name for an unlawful purpose; and*

*(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.*

*It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."*

The Respondent has failed in his responsibility discussed above and in the presence of the pleadings and documents filed by the Complainant, I have come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainants' "MONSTER" mark. Accordingly, I conclude that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

**(ii) *the Registrant has no rights or legitimate interests in respect of the domain name;***

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

The burden of proof on a complainant regarding this element is light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

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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 right and interest in the domain name. Further the Respondent has not used the domain name even after the passage of more than 1 year after it was registered. This clearly leads to the conclusion that the Respondent does not have any legitimate interest in the domain name.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

**(iii) *the Registrant's domain name has been registered or is being used in bad faith.***

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

(i) *"Circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or*

(ii) *the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark*



*in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or*

*(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

From the circumstances of the case and from the evidences put before me by the Complainant, I am of the opinion that the Respondent has registered the domain name www.monsterjobs.in with the intention of either selling the domain name to the complaint or its competitors at a higher price. Further she has prevented the Complainant who is the owner of the service mark "MONSTER" from reflecting in the domain name and also that the domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark "MONSTER" as to the source, sponsorship, affiliation or endorsement of the Respondent's website or service. Thus all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent / Registrant is a registration in bad faith.

### **Decision**

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name.

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Further the actions of the Respondent show that she merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.

As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

Considering the infringement of the Complainant's trademark by the Respondent,

(a) I order the Respondent to immediately stop using the mark "MONSTER" in any manner whatsoever.

- (b) I also direct that the registration of the disputed domain name be **transferred** from the Respondent to the Complainant immediately with a request to NIXI to monitor.
- (c) The Respondent shall pay to the Complainant the legal costs upon production of supporting documents.



(Namrata Agrawal)  
Sole Arbitrator

Dated: 20<sup>th</sup> November, 2006.