



उत्तर प्रदेश UTTAR PRADESH

Z 690549

Bodhisatva Acharya
LL.M.

ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. of 2009

ARBITRATION AWARD: DISPUTED DOMAIN NAME-

www.myspace.co.in

In the matter of:
My Space, inc.
407, North Maple Drive,
Beverly Hills,
California 90210
U.S.A.

Through its authorized representative
Ms. Mehak Sethi,
Lall & Sethi,
South Extension-II,
New Delhi -110049
Email- msethi@indiaip.com

.Complainant.

Vs.

Joe Joe,
Beijing,
China -100000
CN.
Email - gsj@mvspace.co.in
Present email - cnhistroy@xinhuanet.com

.. Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is **My Space, Inc. 407, North Maple Drive, Beverly Hills, California 90210, U.S.A.** and the email address is rlederman@contorcoiburn.com through its authorized representative **Ms. Mehak Sethi, South Extension-II, Lall & Sethi, New Delhi - 110049, Email-msethi@indiaip.com** .

The respondent in this arbitration proceeding is **Joe Joe, Beijing, China - 100000, CN.** Email address of the respondent as provided by the complainant is gsi@myspace.co.in , and present email address as provided by NIXI is cnhistry@xinhuanet.com .

2. The Domain Name, Registrar & Registrant :

The disputed domain name is **MY SPACE.CO.IN** and the registrar is Direct Internet Solutions Pvt. Ltd. aka publicdomainregistry.com and the registrant is Joe Joe with an ID -DI 8823991.

3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name MY SPACE.CO.IN following the clause 4 of the policy of **.IN Registry** and **.IN Registry** appointed **Mr. Bodhisatva Acharya (The Arbitrator)** as sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on March 12th 2009. The complaint was produced before the Arbitrator on March 14th 2009 and the Arbitrator sent a notice, to the Respondent on his email id gsi@hvspace.com , for the Arbitration Proceeding on March 14th 2009 , with a 10 days deadline to submit his reply but the email ID was found wrong then the Arbitrator said to the complainant's representative as well as NIXI to provide the correct email address and NIXI provided the correct email address of Respondent on March 17th 2009. On March 17th 2009, the notice, for Arbitration Proceeding dated March 14th 2009, was again sent to the Respondent on his new email id i.e. cnhistory@xinhuanet.com . The Respondent sent 4 emails on March 17th 2009 to the Arbitrator in which Respondent said that although he had received neither a hard copy nor a soft copy of the Complaint regarding the disputed domain name however he is sending his reply regarding the complaint as per his knowledge and belief. At last the Arbitrator sent the last notice on April 2nd 2009 to the Respondent to send any other reply and Arbitrator mentioned in the same notice that if he will not send any other reply then the Arbitrator will consider his reply sent on March 17th 2009. Lastly from April 2nd 2009 to April 9th 2009 nothing was submitted by the Respondent. Hence the AWARD is being declared on the April 9th 2009.



4. Factual Background:

MY SPACE is the main component and main mark of the Complainant and it is being used by the Complainant, vide its registration no. 2911041 dated December 14th 2004 under International class 45 issued by the United States Patent & Trademark Office, without any interruption. The Complainant has also obtained the other registration for the mark MY SPACE. From the same above mentioned office under the international class 9,35, 38 and 42 vide its registration no.3183151 dated December 12th 2006. The Complainant mark MY SPACE is a well known mark amongst the internet user worldwide because it provides chatting social networking, audio recording, video recording, advertising and information distribution services. As per the Complainant its world wide website www.myspace.com is ranked 7th in overall World Wide Web traffic and due to its services it is well known and earned goodwill amongst the internet users and because of that the Complainant has registered his mark MY SPACE through out the world and it is being used by the Complainant in his various websites worldwide. It has also been registered here in India as www.myspace.co.in on November 21st 2005.

The Respondent registered his domain name MYSPACE.CO.IN on September 4th 2007 which was lastly updated on November 3rd 2008 with registrant id - DI 8823991 and when this fact came into the knowledge of Complainant he filed complaint on February 24th 2009 for the arbitration proceeding.

5. Parties Contentions:

(a) Complainant contends that

(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

(iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

(i) it has not registered and used the domain name in bad faith,

(ii) the gsi@myspace.co.in is my personal fortune and any nation should respect and protect my personal fortune,

(iii) the domain name myspace.co.in is used as a personal privet email account to communicate with people around the world,

(iv) the Respondent mentioned and highlighted ' **I was a judge in a court, I know law and I obey law.** ',

(v)the respondent domain name is registered for his personal usage, he gave a reason for his myspace.co.in and in his view my space means a space of my



own , a space that I control and he has a respect to India so he has registered the domain name as myspace.co.in.

6. Discussion & Findings:

Under the paragraph 4 of the policy (INDRP) it is stated that:-

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

After having gone through the records, documents, produced by the Complainant as well as Respondent, the Arbitrator's findings are as follows:-

(a) The Complainant is the owner of the trademark and the service mark MYSPACE since December 14th 2004 and he has produced the trademark certificate whose no. is registration no. 2911041 dated December 14th 2004 under International class 45 issued by the United States Patent & Trademark Office. The Complainant has also produced the other registration for the mark MY SPACE under the international class 9,35, 38 and 42 vide its registration no.3183151 dated December 12th 2006. On the other hand the Respondent has produced no document in this regard. Complainant satisfies the Arbitrator and the finding of the Arbitrator is that Complainant has rights in mark MY SPACE and he has rights in MY SPACE.CO.IN.

(b) The disputed domain name is identical and confusingly similar to the Complainant mark and to establish his opinion the Complainant submitted a case **yahoo, Inc. Vs. Akash Arora & Anr. (1999 PTC (19) 210 Delhi)** and in the judgment of this case Hon'ble Delhi High Court granted the relief to yahoo, Inc. because the defendant were using the domain name **yahooindia.com** for internet services. Hon'ble High Court established that the disputed domain name was identical or confusingly similar to the Plaintiffs domain name. Here in same manner the disputed domain name is identical and confusingly similar to the Complainant's domain name and Arbitrator is satisfied on this point.

(c) On the point of legitimate interest, the Arbitrator's finding is that there is no relationship between Complainant and Respondent by which Respondent could use disputed domain name and it is also clear that Respondent neither affiliated nor authorized by the Complainant to the trademark MY SPACE and the Arbitrator is satisfied by the records produced by the Complainant.



(d) Lastly the Arbitrator's finding is that the Complainant trademark MYSPACE is not only well known but it has a good respect and reputation amongst the internet users worldwide. The Respondent registered the disputed domain name MYSPACE.CO.IN maliciously and he has not submitted any authenticated proof in his support. As the Respondent said in his reply '**HE WAS A JUDGE IN A COURT AND HE KNOW THE LAW AND HE OBEY THE LAW**', The Arbitrator's opinion is firstly there is no use of such type of statement that he was a judge Does he make a influence on the Arbitrator and he want to compel the Arbitration Proceeding because if a person has worked as a judge then the highest morals will be expected by the society from such type of a person. The respondent only wanted to drag the matter by so many emails to create the confusion because he is not a man of clean hand. It's the further view of the Arbitrator that the disputed domain name has been registered is being used in bad faith and to the satisfaction of the Arbitrator the Complainant has produced many documentary evidence and he has strongly established this point in his favour by the judgment of some decided cases.

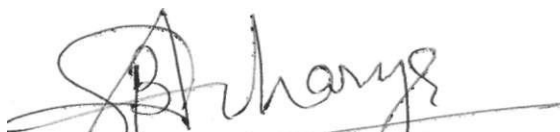
Therefore by the discussion and findings as mentioned above it is the view of the Arbitrator the Complainant established all the points of paragraph 4 of the policy in his favour.

7. Decision:

Hence the Arbitrator decides, 'The disputed domain name MYSPACE.CO.IN is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith'

The Arbitrator further decides and orders that the domain name MYSPACE.CO.IN shall be transferred to the Complainant with immediate effect.

Complaint hence is allowed with no costs.


BODHISATVA ACHARYA
09/04/2009
SOLE ARBITRATOR
NIXI

DATED: April 9th 2009,

PLACE: NEW DELHI,

INDIA.