



हरियाणा HARYANA

M 321678

ARBITRATION AWARD

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

In The Matter Between

GIE MILIPOL
9, Rue Notre Dame
Des Victories, F-75002
Paris
France

Complainant

Versus.

DANA
Har 9, Brasov
Romania

Respondent

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1. The Parties

The Complainant is Milipol of France represented in these proceedings by Lex Orbis of New Delhi India.

The Respondent is Dana Ivanov of Brasov Romania.

2. The Domain name, Registrar and Policy

The present Arbitration proceedings pertain to a dispute regarding the domain name <milipol.in>. The registrar for the disputed domain name is GoDaddy.com LLC of Scottsdale AZ, United States of America.

The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on June 19, 2013 and on June 19, 2013 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules,

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copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent on the same day sent an email nominating one Kadar Laszlo but did not file any formal response in these proceedings. The Arbitrator now proceeds to determine the case on its merits.

Factual Background

The Complainant is a French firm in the area of organizing trade shows and exhibitions on the subject of police equipment and civil and military security related services. Complainant uses the trademark MILIPOL in connection with its business and owns registered trademarks for MILIPOL and MP MILIPOL. It has filed copies of its registered marks in countries such as France, United Kingdom, and United States of America and has provided details of its International trademark registration No. 641805 dated August 10, 1995 and its trademark registration in the European Union that include the countries of Germany, Benelux, Spain, Italy, Portugal, Austria and Switzerland. The Complainant has filed details of its registration in various other countries such as Argentina, Brazil, China, Belarus, Malaysia, Qatar and Japan.

The Complainant owns several domain names under generic and country code TLD (Top Level Domains) that incorporate its trademark MILIPOL. The Respondent registered the disputed domain name <milipol.in> on February 14, 2013.

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The Parties Contentions

A. Complainant's Submissions

The Complainant states it is a globally reputed firm that organizes trade shows under its mark MILIPOL. It is recognized for its professionalism and quality and therefore its trademark is well known. The Complainant states it has extensively promoted the mark in many countries and has spent huge amounts on advertisements and promotional activities and the mark has consequently been identified with services of the Complainant. The Complainant states that apart from wide media promotion it also promotes its mark through its websites that are globally accessible through the Internet. The Complainant states its website launched on <milipol.com> and was created on June 17, 1997 and some of its other domain names are registered by Comexposium, which is a duly authorized licensee of the Complainant to use its mark.

The Complainant has urged that it is the sole and exclusive owner of the trademark in many countries and has several domain names comprising of its mark. The Complainant states it has been diligent in protecting its mark and has previously taken action against Milipol Zrt the owner of the disputed domain name. The Complainant states that it had filed an opposition against the trademark application of Milipol Zrt for the trademark MILIPOL before the Hungarian Trademark Office and in response Milipol Zrt initiated a cancellation action against Complainant's trademark MP MILIPOL on grounds of non-use and the said proceeding is pending in appeal. The Complainant states it filed a domain name dispute before the National

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Arbitration Forum, USA and obtained cancellation of the domain name <milipolusa.com> that was registered in the name of Milipol USA Inc.

The Complainant states that the Respondent in the MILIPOL USA case had mentioned the email of szeklyh@milipol.hu in their contact details and further, the home page of disputed domain name and the home page in domain name of the USA case are similar. The Complainant has provided evidence of the printout of the two WebPages and contends that the alleged user of disputed domain name and the Respondent in the proceedings before the National Arbitration Forum therefore ought to be one and the same.

The Complainant strongly urges that the Respondent has registered the disputed domain name in complete disregard to statutory and common law rights of the Complainant and has knowingly adopted the impugned domain name for similar goods and services. Such use is void *ab initio* as it is likely to cause confusion or deception among consumers argues the Complainant. The disputed domain name may falsely mislead customers on account of presumption that there ought to be some trade association or endorsement with the Complainant. The Complainant further argues that as its trademark is well known in many countries it deserves protection against misappropriation and dilution. That the use of its mark by the Respondent and the website that describes products related to military and law enforcement products are the same or similar to those used in trade shows organized by the Complainant. Therefore there is a direct relationship between the goods and services of the Respondent and Complainant. The disputed domain name was therefore registered to derive unlawful gains and to pass off Respondent's goods and business for those of the Complainant.

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The Complainant argues that the disputed domain name is identical or confusingly similar to its trademarks MP MILIPOL and MILIPOL. The Complainant argues the Respondent has no rights or legitimate interests in the disputed domain name, as the Complainant has not authorized the Respondent to use its mark. Further the Respondent is not commonly known by the disputed domain name, and has no trademark registration for MILIPOL and the Respondent knew of the fame of the mark and uses it to mislead Internet users for unlawful gain and the Respondent is not involved in any legitimate use of the disputed domain name.

The Complainant argues that the disputed domain name was registered in bad faith, as Internet users seeking Complainant's services in trade shows and police equipment all over the world may become confused that some connection exists with the Respondent's disputed domain name. The fact that Respondent registered identical domain name for similar business itself shows bad faith and also that it has been registered several years after Complainant has established its rights in the mark. The Complainant states there is likely to be confusion as to the source, sponsorship, affiliation or endorsement by the use of an identical disputed domain name that illegally usurps and misappropriates the international goodwill associated with the Complainant's trademark.

The Complainant states that the Respondent is well aware of the Complainant's trademark as the company Milipol Zrt has earlier tried to usurp the Complainant's trademark in USA, for which the Complainant has successfully taken appropriate action against in USA. The disputed domain name is so obviously connected with the Complainant's mark that it shows

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knowledge of the mark and opportunistic bad faith. In the present world where territorial boundaries have lost their significance and in an era of instant communication and Respondent ought to have known of the mark when he registered the disputed domain name and this shows bad faith.

The Complainant submits that the Respondent uses the disputed domain name to promote many other brands and companies and is likely to generate revenue for Respondent. The Respondent is taking undue advantage of the Complainant's a well-know trademark to generate profits and the Complainant has not authorized such use of its mark by the Respondent and is intentionally attempting to attract for commercial gain Internet users to the disputed domain name due to the likelihood of confusion with the MILIOL mark. The Complainant therefore requests for transfer of disputed domain name and for costs as may be deemed fit.

Respondent's Submissions

The Respondent did not file any response in these proceedings but the Respondent's nominated representative whose identified himself as Kadar Laszlo sent emails to the Arbitrator on June 19, 2013. In those emails there is repeated use of abusive and blasphemous language and threats to the Arbitrator. No relevant submissions are made in the email communications regarding the issues in dispute, but the communications have shown complete disregard and disrespect towards the legal proceedings, the Arbitrator and the Institution.

Discussion and Findings

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A party or his authorized representatives are allowed to put forward arguments if they confine their submissions to the rules of decency and decorum required in legal proceedings. A Judge or Arbitrator is bound to consider the arguments that are adduced in proceedings that are consistent with decency and decorum. A party is allowed considerable freedom in conducting his case provided such comments are relevant to the issues in dispute and are not defamatory in character. So long as the conduct of the party does not amount to insulting of the court or arbitral tribunal he may not be held up for contempt. Just as an advocate will not be justified in using abusive language neither will a party or his representative be able to use blasphemous language in any legal proceedings. Any advocate is likely to be punished for contempt if he personally insults the court; similarly a representative nominated by a party to the dispute in an arbitration proceeding is liable to be prosecuted for contempt. Accordingly it is held that the Respondent and his representative are liable for contempt in these arbitration proceedings and necessary action is required to be taken against them for contempt against the institution National Internet Exchange of India (NIXI), who will be well within their rights to pursue a contempt case against the Respondent and the Respondent's Representative in this case. It is instructive to note what the Apex court has observed in this regard:

“The machinery for dispensation of justice according to law is operated by the Court. Proceedings inside the Courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of Contempt of Court or of unbecoming or unprofessional conduct, standing in the Court would erode the dignity of the Court and even corrode the majesty besides impairing the confidence of the public in the efficacy of the institution of the

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Courts.... The power of contempt is not exercised only because it is lawful to do so but when it becomes imperative to uphold the rule of law.”¹

Arbitration proceedings conducted under the Arbitration and Conciliation Act of 1996 (India) are treated similar to court proceedings and parties are expected to follow the norms as in court proceedings.

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent’s domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

¹ See *Bar Council Of India vs High Court Of Kerala* , Judgment of CJI, Brijesh Kumar & S.B. Sinha on 27 April, 2004.

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Trademark registration is considered *prima facie* evidence of rights in a mark. The Complainant has demonstrated its rights in the trademark MILIPOL by submitting details of its internationally registered trademarks and show its long and extensive use of its mark since 1995. The documents filed by the Complainant also show that it has used the mark extensively in numerous countries around the world. Based on all the evidence on record, the Arbitrator is satisfied that the Complainant has established its rights in the trademark MILIPOL in these proceedings.

The disputed domain name clearly incorporates the MILIPOL mark in its entirety; this is adequate to find that the disputed domain name is identical or confusingly similar to the mark. See *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP case 148 Sept 27, 2010 <gingerhotels.co.in>. (A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.). As argued by the Complainant, the top-level domain extension such as .com, .org or .in do not affect the confusing similarity of the domain name with the trademark and can be disregarded in the analysis of confusing similarity in domain name cases. See *Emirates v. Chella Goundappan*, INDRP Case No. 372 dated August 13, 2012. (<emirates.in>)

For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy, that the disputed domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

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Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent lacks rights and legitimate interests in the disputed domain name. It is sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Paragraph 7 of the Policy, provides the circumstances that the Respondent could rely on to establish rights in the domain name. These briefly are: (i) if before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

Paragraph 7 (i) of the Policy clearly states that the Respondent's use or demonstrable preparations to the use the domain name must be in connection with a *bona fide* offering of goods or services the Respondent. The evidence filed by the Complainant shows that the Respondent's website linked to the disputed domain name is similar to the website in a previous cyber squatting case and promotes several products and services. It is observed that in the previous domain name dispute before the National Arbitration Forum, under similar circumstances, has held that the respondent in that case has no rights or legitimate interests in the domain name.

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The Respondent has not made any submissions in these proceedings and filed evidence that establishes his rights in the disputed domain name. The Respondent has not rebutted the Complainant's prior rights in the MILIPOL mark or denied the allegations that the Complainant has not authorized the Respondent to use its mark or register a domain name incorporating the mark.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

It has been asserted by the Complainant that the Respondent ought to have been aware of the Complainant's prior rights in the mark at the time of registration of the disputed domain name and therefore the Respondent has registered the disputed domain name in bad faith. The Complainant has also argued that the Respondent has intentionally registered the disputed domain name in order to exploit the fame of the MILIPOL mark.

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The Arbitrator finds there is merit in the Complainant's arguments as the evidence on record shows that the Complainant has adopted and used the mark MILIPOL extensively in several jurisdictions and its registered marks bear testimony to the fact that the Complainant's mark is well known and famous. Further, it is noted that the mark, as argued by the Complainant is a fanciful term that has no meaning other than the Complainant's mark.

It is noted that the Respondent in MILIPOL USA case had used email of szeklyh@milipol.hu in the contact details and the home page of disputed domain name, further, the home page of domain name in the USA case and the present case are similar and has shown the same email address. Such evidence clearly show a characteristic behavior pattern of the Respondent and his associates that has been found in a previous domain name dispute of having registered and used a domain name in bad faith. The Arbitrator finds there is sufficient evidence on record that shows the Respondent uses the disputed domain name to promote many other brands and companies. Therefore the Arbitrator has no hesitation in finding that the Respondent has registered and used the disputed domain name in bad faith with intention to exploit the Complainant's mark.

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that the Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy, namely to attract Internet traffic to the

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Respondent's website based on the Complainant's mark, which is considered bad faith registration and use of the disputed domain name under the Policy.

The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy, that the Respondent registered the disputed domain name in bad faith.

Decision

The Complainant has established the disputed domain name is identical or confusingly similar to a mark in which it has rights, the Respondent has no rights or legitimate interests in the disputed domain name and the disputed domain name has been registered or is being used in bad faith. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

The Arbitrator imposes costs on the Respondent. The Respondent is ordered to pay an amount of US \$ 1000 (One Thousand United States Dollars) to the Complainant and an amount of US\$ 5000 ²(Five Thousand United States Dollars) to National Internet Exchange of India (NIXI) for the disrespect shown by the Respondent's representative to the institution NIXI and the Arbitrator nominated by NIXI. The amounts are liable to be recovered from the Respondent with interest if the amount are not paid within two months of

² If the amount is paid in Rupees then the conversion rate applicable shall be as on date of the Arbitration Award 19.08.13 (1 USD = 63.43 INR)

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this order and Respondent shall be liable to pay for the further costs of recovering the amounts if said amounts are not paid within the given two months to the Complainant and to NIXI.

For the reasons discussed, it is found that the Complainant is the rightful owner of the disputed domain name. It ordered that the disputed domain name <milipol.in> be transferred to the Complainant.



Harini Narayanswamy (Arbitrator)

Date: August 19, 2013