



ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

AM 432074

K. Rama Chandravathi

Sl. No. 8022 Date.:08/05/2010. Rs.:100/-

Sold To : Harani NarayanSwamy

W/o. : B. NarayanSwamy R/o.Hyd

To Whom : Self.

K. RAMA CHANDRAVATHI

STAMP VENDOR (L. No:27/99, RL.No. 16/2008),
6-3-387, Beside Banjara Durbar Hotel, Panjagutta
HYDERABAD - 500 082. Phone. No. 23351799

4

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

In The Matter Between

MARUT1 SUZUKI INDIA LIMITED

Complainant

Versus.

NITIN BHAMRI

Respondent

i

Harani NarayanSwamy

1. The Parties

The Complainant, Maruti Suzuki India Limited is an Indian company, represented in these proceedings by L.S. Davar & Co. of India.

The Respondent is Nitin Bhamri of Ghaziabad, Uttar Pradesh, India.

2. The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name: <marutisuzukieeco.co.in>.

The registrar for the disputed domain name is GoDaddy.com Inc.

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"), 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 hard copy of the Complaint from the .IN Registry on April 1, 2010. On April 4, 2010 the Arbitrator transmitted by email a notification of commencement of the arbitration proceedings to the Respondent under paragraph 5 (c) of the INDRP Rules, and copies by email 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 did not file a formal response in these proceedings, but sent an email dated April 5, 2010. The Arbitrator proceeds to determine the case on its merits based on the submissions made by the parties to the dispute and the documents on record.

Factual Back ground

The Complainant is a leading Indian car manufacturer that markets and uses the trademark MARUTI from the year 1972 in connection with its products. It owns about thirty-eight trademark registrations in several countries including India, sixteen of which are only the MARUTI mark. Its registered Indian trademarks are:

TRADEMARK	REGISTRATION NUMBER	CLASS	GOODS	DATE OF REGISTRATION
MARUTI	319710B	12	Vehicles, bus bodies	25 October 1976

Harini Narayanswamy

			automobile parts and fittings	
MARUTI	561721	12	Motor Vehicles and parts thereof	8 November 1991

The Complainant owns about one hundred and fourteen domain names that include and incorporate its MARUTI or its MARUTI SUZUKI marks.

4. Parties contentions

A. Complainant

The Complainant is a subsidiary of the Suzuki Motor Corporation of Japan, which owns 54.2% of Maruti Suzuki; public and financial institutions own the rest. It is listed on the Bombay Stock Exchange and the National Stock Exchange in India. The Complainant states that on September 17, 2007, its name "Maruti Udyog Limited" was renamed "Maruti Suzuki India Limited". It contends it is a market leader in the car segment; both in terms of volume of vehicles sold and the revenue earned and is largely credited for bringing about the automobile revolution in India. It offers thirteen main brands and about one hundred and fifty variants of cars. These include Maruti 800, Alto, Ritz, A star, Swift, Wagon R, Estilo, DZire, SX4, Grand Vitara. and it has recently launch the E eco and for which, it has filed for trademark registration.

The Complainant has provided figures of its international worldwide sales of goods, where the indicated sales turnover for the year 2005- 06 was Rupees (INR) 11891 million, and for the year 2008 -09 it was Rupees (INR) 203583 million. Its trademark "Maruti " and "Maruti Suzuki " therefore indicates the source of its goods, states the Complainant, and it has acquired goodwill and reputation due to the quality of its goods. The Complainant states that all these facts show its prior adoption of "Maruti" and "Maruti Suzuki" throughout the world including India.

Its famous trademarks "Maruti" and "Maruti Suzuki", states the Complainant is the prominent component of the disputed domain name and is therefore identical to its marks. The Complainant further argues that the Respondent is an individual who resides in Ghaziabad, in the state of Uttar Pradesh (U.P) and has no rights and legitimate interest in the domain name as it does not reflect his personal name, trade name or any trade or service mark held by him and therefore has no reason to adopt the trademark of the Complainant in his domain name.

The Respondent, according to the Complainant, adopted the disputed domain name with dishonest and bad faith intentions of earning undue profits. The Respondent has linked the disputed domain name to the Complainant's site. The Complainant further argues that

Havini Narayana

the disputed domain name was registered with the intention to sell, rent or transfer the disputed domain name to the Complainant, who is the proprietor of the trademark or to a competitor of the Complainant for valuable consideration and to prevent the Complainant from reflecting the mark in a corresponding domain name.

The Complainant contends that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to the Respondent's website or other online location by creating a like hood of confusion with the Complainant's trade name or trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or online location. The Complainant therefore requests for the cancellation and for transfer of the disputed domain name and for costs.

B. Respondent

The Respondent did not file a formal response in the proceedings, but however sent a email dated April 5. 2010. In the email the Respondent states:

" I have not used the Domain for any purpose and also do not intend to use the Domain name for any use.

Also I am perfectly willing to surrender/transfer the domain name to the complainant."

5. Discussion and Findings

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 and 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 it has rights.

The Arbitrator finds the Complainant has provided sufficient evidence demonstrating its registered rights in the MARUTI and MARUTI SUZUKI trademarks. The Complainant

Havini Narayany

has furnished evidence of its prior adoption, use and registration of the "EECO" trademark. The Complainant has therefore undoubtedly established its rights in the MARUTI, MARUTI SUZUKI and EECO trademarks.

The Arbitrator finds the disputed domain name incorporates the Complainant's trademarks MARUTI SUZUKI and EECO in its entirety. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is a well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. See for instance *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No.D2005-0556. Given the recent launch of the EEco car by the Complainant, the use of the term EECO in the disputed domain name renders it confusingly similar to the trademarks associated with the Complainant.

For the reasons discussed, the Arbitrator finds that the disputed domain name <marutisuzukieeco.co.in> is confusingly similar to the Complainant's trademarks.

Rights and Legitimate Interests

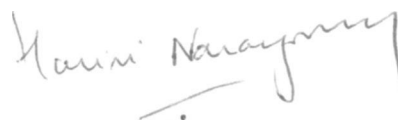
The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that it has not authorized the Respondent to use its marks in any manner and has no relationship with the Complainant's business. Under paragraph 7 of the Policy, the registrant's rights can be found from the material on record, if (i) 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.

The Arbitrator finds there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a *bona fide* offering of goods. The Arbitrator notes that the Respondent holds no name, title or any permissible rights to the mark "•MARUTI" or "MARUTI SUZUKI" to adopt the marks in the disputed domain name.

Admittedly, the Respondent does not use the domain name but links it to the Complainant's official website. The use of the disputed domain name by the Respondent to link to the Complainant's site does not show *bona-fide* use or show any rights or legitimate interests; See *Factory Mutual Insurance Company v. Rhianna Leatherwood* WIPO Case No.D2009- 0144. The Arbitrator finds such use is not recognized as *bona fide* use under the Policy.

The Arbitrator accordingly finds the Respondent has no rights or legitimate interests in the disputed domain name.



Bad Faith

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

Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks, which constitutes bad faith registration; See for instance *Ferrari S.p.A v. American Entertainment Group, Inc.*, WIPO Case No.D2004-0673.

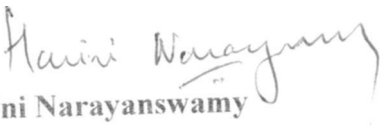
The Arbitrator therefore finds by registering the disputed domain name the Respondent has intentionally attempted to attract Internet users to the Respondent's website or other online location by creating a like hood of confusion with the Complainant's trade name or trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or online location.

The Respondent has consented to transfer and surrender the dispute domain name to the Complainant. Where a Respondent agrees to transfer the domain name, the requirements under paragraph 4(a) of the UDRP Policy is considered as fulfilled. See *Nasdaq Stock Market v. Domain Finance Inc.*, WIPO Case No. D2006-1256 and *Lonely Planet Publication Pty Ltd v. Hoang Anh Minh and cievn.com*, WIPO Case No. D2003-0355. Similarly, under the INDRP Policy, if a Respondent agrees for the transfer of the disputed domain name, pending the dispute, the requirements under the Policy is considered as having been fulfilled.

6. Decision

The Complainant has requested for the remedy of cancellation and transfer of the disputed domain name. It is possible to grant either one of the remedies requested, and for the reasons discussed above, the Arbitrator orders that the domain name <marutisuzukieeco.co.in> be transferred to the Complainant.

No costs are awarded, as the Complainant has not demonstrated any actual loss due to the registration or use of the disputed domain name.


Harini Narayanswamy
Arbitrator
Date: May 2, 2010