



दिल्ली DELHI

BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR
OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

B 093677

In the Matter of :-

Mr. Shevaldas C. Raghani
Kailash Trading Company
56, Tel Gali, Vithalwadi
Mumbai-400002
Tel: - +91-22-22091237

Claimant

VS

Mr. Stephan Koenig
Organization: I. P. Development, Inc.
Street 1: 1528 Walnut St
City: Clearwater
State/province: FL
Postal Code: 33755
Country: US
Tel: + 1.7274882222

Defendants

1. The parties:

Complainant is Shevaldas C. Raghani, Kailash Trading Company, 56, Tel Gali, Vithalwadi, Mumbai-400002

Respondent is Stephen Koenig 1528 Clearwater, Florida, 33755, United States

2. The domain name at issue is <Computer. in> (the domain name)

The registrar is NIXI at 2nd Floor, Sector 29, Noida, UP-207303

3. Brief Background

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 07.03.2006 And the respondent submitted his reply on dated 17.03.2006

Ms Deepa Gupta has been appointed as Sole Arbitrator in this matter

It is alleged in the complaint that the complainant is using this trademark from 8 years. It is also revealed from the filed documents that the complainant is in the business of sarees. This is also on record that the advocate of complainant denied filing of any complaint by the complainant. (This tribunal believe that the registry of the NIXI issued the notification to the concerned parties only after due compliance of the entire procedural requirement). This is also not out of context to mention that ample opportunity has been given to the complainant to represent their case before the tribunal.

Respondent submitted that he is running several companies and engaged in different businesses over the internet like selling toner online.

4. Parties contentions:

Complainant alleges that the respondent has registered computer. In, which is confusingly similar to his trademark and respondent is well known speculator and has registered the domain name computer.in with the intention to sell it to others for profits. As per Annexure 2(a) this is also alleged that the respondent has put up the domain name on parking, and is making money by luring customers to the website and repeated his allegation wide annexure 2(b).


Respondent denies complainants allegations and submitted that the complainant failed to establish any contention and has not adduced any document to prove use of mark, and also submitted that the word 'computer' is a highly descriptive and Generic and the complainant failed to prove that the word is at all has acquired a secondary meaning. The respondent further contends that the complaint has been filed to harass him or to browbeat it into surrendering a legitimately registers domain name and is blatant abuse of proceedings and prayed accordingly.

5. Opinion:

I. Issue:

A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :

1 Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.

 2 Why the respondent should be considered as having no rights or Legitimate interests in respect of the domain name that is the subject of the complaint.

3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in para 4 and on the basis of perusal of the records submitted by Complainant with the complaint This tribunal is of confirmed opinion that the complainant failed to prove that he is using the domain name Computer, in for any purpose and he also failed to prove that in what manner selling of sarees related to computer. In and in what manner the complainant removed this generic name from the public domain and acquired a secondary meaning. The complainant must prove secondary meaning. Relevant evidence of secondary meaning includes amount of sales in the preceding years, the amount spend by the complainant on advertising, media surveys, consumer surveys etc. The only evidence is the bald claim that the mark has been under use since last 8 years, its extremely weak and inadequate evidence to prove any enforceable right in the domain name against the respondents. On the basis of the records submitted by the complainant it's not proved that the domain name computer.in is related to the business of complainant. It's merely confined to a fact that the complainant is registered owner of the mark computer, in relation to sarees.

'Computer' is a generic word and is openly used all over the world the complainant further failed to prove that why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint. Again the complainant without substantiating his accusation with evidence merely throws bald claims. This tribunal holds that such abuse of the process of law should be checked in most efficient manner so that the process of law and its implementation machinery should not be moved in motion by such finicky complainants. Further the complainants failed to prove that the why the domain name in question should be considered as having been registered and being used in bad faith by the respondents. The annexure 2(a) (b) merely shows that the word computer is a link to other site and it's an established practice to provide information to net user all over the world. This is also amply demonstrated by the respondent that he is in the business of selling computer related items through internet. This tribunal is of confirmed opinion that the domain name, trade name and trademark is a weak mark and absent of proof of fame of widespread recognition of the services provided by the Complainant makes this complaint without any cause of action. The fact that the complainant did not participated in proceedings also demonstrates that the motive of the complainant is not to protect his alleged interests but something else and reflect that the complaint has been filed in bad faith with ulterior motives.

II. Reverse Domain name hijacking

This is establish rule that if the tribunal finds that the complaint was brought in bad faith, for example in an attempt at reverse domain name hijacking or was brought primarily to harass the domain name holder, the tribunal shall declare that the compliant was brought in bad faith and constitute an abuse of administrative proceedings.

As enumerated in para 4 the respondent ask for finding of bad faith, under this principle. In support of this prayer the respondent cites the complainant's failure to fully disclose the facts related to allegation against the respondent. Further, in support of this the respondent submitted documents marked as annexure 1,4,5,6, which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with some ulterior motive. The failure on the part of complainant to appear before the tribunal is also a fact, which this tribunal cannot ignore. Complainant's complaint is colorable and raises doubt in the mind of tribunal that the present complaint is filed with some ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complaint is a blatant attempt by the compliant to hijack the domain name of respondent and in bad faith to harass the respondent and to abuse process of law.



III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant failed to prove all the necessary conditions. Further, this tribunal bound to conclude with the certainty that the present complaint by the complaint is a blatant attempt by the complaint to hijack the domain name of respondent and in bad faith to harass the respondent and to abuse process of law. This tribunal further directs to complainants to deposit Rs10,000 INR in the registry of NIXI as a cost of this proceedings and burdening the administration to fulfill his ulterior motives. In the facts and circumstances of this case this tribunal further directs the registry of NIXI to take adequate precaution in entertain such complaints and send a copy of this decision to the Hon'ble High Court of Delhi at New Delhi to take further actions against the complainants as this tribunal cannot go beyond its jurisdiction but at the same time at pains that the scrupulous persons abusing process of law to harass others.

Given under my hand and seal on this **3rd day of May 2006.**

Deepa Gupta

Aribitratōr