



महाराष्ट्र MAHARASHTRA

2016

RM 932101



BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR
.IN REGISTRY
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

श्री. रा. क. षोटलै

JetSmarter Inc.

...Complainant

v/s

Sandeep Sane

...Respondent

In the matter of Disputed Domain Name <JETSMART.IN>

1 The Parties

The Complainant is JetSmarter Inc., East Broward Blvd. 19th Floor, Fort Lauderdale, Florida 33394, United States, represented by Singhania and Partners LLP, India.

The Respondent is Sandeep Sane, Indjets India Pvt. Ltd., 609, Sobha Aquamarine, Green Glen Layout, Bellandur, Bangalore, Karnataka -560103.

D Parmar

2 Procedural History

- 2.1 A Complaint dated January 5, 2017 has been filed with the National Internet Exchange of India (hereinafter referred to as the 'Exchange'). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the 'INDRP') and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On February 3, 2017, the Arbitrator had emailed to the Respondent directing him to file his reply to the Complaint on or before February 18, 2017. On February 20, 2017, the Arbitrator had emailed the final reminder to the Respondent with direction to file reply on or before February 24, 2017. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed ex-parte.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

3 Factual Background

From the Complaint and its annexures, the Arbitrator has found the following facts:

- 3.1 The Complainant was incorporated as 'Smart Jets Inc.' on November 26, 2012 by entrepreneur Sergey Petrossov. On July 23, 2013, the corporate name of Complainant was changed from 'Smart Jets Inc.' to 'JetSmarter Inc.'. The Complainant operates through mobile application 'JetSmarter App' which enables the intending travelers to book tickets globally on private jets based on availability of seats. The said App was launched on March, 2013.
- 3.2 The Complainant's trademark 'JetSmarter' is registered in the US and Saudi Arabia. Trademark applications for registering the trademark 'JetSmarter' in other countries, including India, are pending. As mentioned in the U. S. Trademark registration certificate (Annexure no. 3 to the Complaint), the trademark 'JetSmarter' was first used on March 31, 2013.



- 3.3 The Complainant is the registrant of the domain name <jetsmarter.com>, which was registered on February 23, 2013.
- 3.4 The Complainant claims that it has presence in many countries, including India. The Complainant has expended a great amount of time, money and effort to promote and advertise the trademark 'JetSmarter'. Over the years, the Complainant has been recognized and awarded with many awards and ranking. It is claimed by the Complainant that due to the extensive publicity and unique style of operation 'JetSmarter' has acquired reputation of being an 'Uber of sky' and 'Uber of Jets' as referred by various news agencies.
- 3.5 The Complainant claims that the Disputed Domain Name <JETSMART.IN> was registered by Mr. Sandeep Sane on November 30, 2012 and it was transferred in the name of IndJets Indian Pvt. Ltd. on May 6, 2015. But according to whois database (Annexure no. 1 to the Complaint):
Registrant Name: Sandeep Sane
Registrant Organization: IndJets India Pvt. Ltd.
- Thus, the prior and present registrant of the Disputed Domain Name is the same person.

4 Parties' Contentions

4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical or confusingly similar to its trademark 'JetSmarter'; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered in bad faith.

4.2 Respondent

The Respondent did not file reply to the Complaint.

5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by the Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and

(iii) the Disputed Domain Name has been registered or is being used in bad faith.

5.3 Identical or Confusingly Similar

The Complainant is using the trademark 'JetSmarter' since March 31, 2013 and holds trademark registration for the same in the US and Saudi Arabia. Trademark applications for registering the trademark 'JetSmarter' in other countries, including India, are pending. The Disputed Domain Name <JETSMART.IN> incorporated the Complainant's trademark 'JetSmarter' without last two letters 'er'. The only difference between the two domain names is the subtraction of the letters 'er' from the Disputed Domain Name. This omission, known as a typo, is common as users will often mistakenly omit the letter without realization. The likelihood of confusion between <JETSMART.IN> and <JETSMARTER.COM> is considerable.¹ It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark and a disputed domain name. The '.in' suffixes should not be taken into account while comparing the Complainant's trademark and the Disputed Domain Name. Therefore, the Arbitrator finds that the Disputed Domain Name <JETSMART.IN> is confusingly similar to the Complainant's trademark 'JetSmarter'.

5.4 Rights or Legitimate Interests

The Complainant contends that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name. The Complainant relied upon Deutsche Bank Aktiengesellschaft v New Your TV Tickets Inc., WIPO case no. D2001-1314, wherein it was established that any use of such a trademark in a domain name by someone who has no right in it would violate the rights of trademark owner. The Complainant asserts that it is the frame of the trademark and the domain name of the Complainant <JETSMARTER.COM> that has motivated the Respondent to register the Domain Name in the first place. But as per the Whois records (Annexure no. 1 to the Complaint), the Disputed Domain Name was registered on November 30, 2012 whereas <JETSMARTER.COM> was registered on February 23, 2013. Hence, the Respondent is the prior adopter and registrant of the Disputed Domain Name. The Complainant further asserts that the Respondent cannot claim to be using the Disputed Domain Name with bona fide offering of goods or services. The Complainant claims that the website through Disputed Domain Name has been operational only after May 2015 and relied upon a report obtained from Wayback

¹ See 1.10 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0)



Machine². Thus, the Respondent, before any notice of the Complaint filed by the Complainant, has used the Disputed Domain Name in connection with a *bona fide* offering of private jet booking services, which demonstrates the Respondent's rights or legitimate interests in respect of the Disputed Domain Name.³ It is submitted by the Complainant that legitimate use of a domain name under the Policy must be non-infringing use. It is pertinent to note that the Respondent is providing private jet booking services through the prior registered domain name. Hence, it is not infringing use. In light of the above, the Complainant failed to prove that the Respondent does not have rights or legitimate interests in the Disputed Domain Name.

5.5 Registered or Used in Bad Faith

In view of the above finding regarding the Respondent's legitimate interest in respect of the Disputed Domain Name, the resolution of this case does not require reaching the third element of the Complainant's case, namely proof of bad faith on the part of the Respondent. Still, the Arbitrator examine the third element of bad-faith. The Arbitrator finds that the evidence in this complaint is insufficient to support a finding that the Disputed Domain Name has been registered or is being used in bad-faith for the following reasons:

- (i) The Respondent is the prior adopter and registrant of the Disputed Domain Name.
- (ii) Both the Complainant and the Respondent are providing the private Jet booking services and both have a legitimate right to register trademarks and domain names containing word 'jet' or 'air'. Although, the Respondent had registered 'uberjet.in' and 'uberair.in'. But 'uberjet' and 'uberair' are neither trademark of the Complainant nor being used as a trademark by the Complainant. It does not prove that the Respondent has engaged in a pattern of conduct mentioned in paragraph 6 (ii) of the INDRP.
- (iii) There is no allegation, much less evidence, that the Respondent has manifested any desire to sell the Disputed Domain Name for profit.
- (iv) Non-use may constitute evidence of bad faith in line with the much-cited authority *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, but in that case the domain name was registered long after the trade mark in question had acquired fame and the trade mark was very well-known.⁴

² However, as per the said report, for a period starting from July 19, 2013 till December 17, 2014, the Respondent had the user login page.

³ See *Adakim - Eurl v. Linea Networks* WIPO Case No. D2008-0945

⁴ *M. Coentien Benoit Thiercelin v. CyberDeal, Inc.* WIPO Case No. D2010-0941



(v) The Complainant claims that the Respondent has intentionally attempted to attract Internet users to the Disputed Domain Name, by creating confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site. While this was not supported by any evidence.

6. Decision

In sum, the Arbitrator concludes that even if the Complainant has satisfied the first element of its case but has not satisfied the second and third elements. Hence, the Complaint is denied.



Dipak G. Parmar
Sole Arbitrator

Date: March 9, 2017