



Certificate No. G0L2018A1949

Stamp Duty Paid : ₹ 101
(Rs. Only)

GRN No. 32659575

Penalty : ₹ 0
(Rs. Zero Only)**Deponent**

Name: Rachna Bakhru

H.No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



Purpose : ALL PURPOSE to be submitted at Other

RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Pettigo Comercio Internacional Lda
Rua das Hortas,
1 Edificio do Carmo,
5º Andar - Sala 500,
Madeira, portugal
represented by Lexsynergy Limited.

....Complainant

Mohammed Zubei
Exec Media LTD
31 Upton Lane, London,
E7 9PA, GB

.....Respondent

Disputed Domain Name: <WWW.LYCAMOBILE.IN>

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Pettigo Comercio Internacional Lda, a company incorporated under laws of Portugal with its address based in Madeira. The Complainant is represented by its authorized representative Lexsynergy Limited.

The Respondent in this arbitration proceeding is Mohammed Zubel, of Exec Media LTD at 31 Upton Lane, London, E7 9PA, GB as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is <www.lycamobile.in>.

The Registrar is Mesh Digital Limited (R113-AFIN).

The Registrant is Mohammed Zubel of Exec Media LTD at 31 Upton Lane, London, E7 9PA, GB.

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on January 16, 2018 and the notice was issued to the Respondent on January 23, 2018 at his email address with a deadline of 10 days to submit his reply to the arbitrator.
- The Arbitrator issued another notice to the Respondent on February 02, 2018 via email granting another opportunity to the Respondent to submit its response on or before February 9, 2018.
- The Arbitrator received no response from the Respondent within the said timeline and the Arbitrator has not been informed of any settlement between the parties.



In view of the above, the complaint is being decided based on materials and evidence submitted by the Complainant and contentions put forth by them.

4) **Summary of the Complainant's contentions:**

The Complainant in support of its case has made the following submissions:

- a) The Complainant comprises two primary holding companies, WWW Holding Company Limited and Pettigo Comercio Internacional Lda, which, together, own a number of LYCA-prefixed brand names. These brand names are legally protected by registered trademark rights. These brand names are licensed to national companies across Europe, India, Australia, Africa and the USA. Each local company in each active jurisdiction registers a company name using one of the LYCA pre-fixed brand names in order to trade. As an example, Pettigo Comercio Internacional Lda licenses its **LYCAMOBILE** trademark to Lycamobile UK Ltd for telecommunications services, its LYCAMONEY trademark to Lycamoney Ltd for financial services, and its LYCAFLY and LYCAHOLIDAYS trademarks to U Can Fly Limited for travel agency services.
- b) The Complainant submits that in and around June 2001, it coined, conceived and adopted the trademarks/ trade names "LYCA" and "LYCA TEL". LYCA trademark was first registered in the United Kingdom in 2002 by LYCA Tel Limited. By extension, the Complainant coined the term "LYCAMOBILE" using the same LYCA prefix in 2005 and applied for trademark application in European Union. Since then, the LYCAMOBILE brand has been openly, continuously and extensively used as the Complainant's trade name, corporate name, business name, trading style, trademark worldwide.
- c) The Complainant submits that it is one of the world's largest telecommunication companies engaged in the business of providing wide range of telephony and mobile communication services across the globe including India for several years. The Complainant's telecommunications business has 30 million customers across 17 countries including but not limited to United States, United Kingdom, Europe, India and Pakistan. Its services are marketed online via websites including www.lycamobile.com, www.lycatalk.com, www.lycafly.com and www.lycaholidays.com.
- d) The Complainant has an extensive trademark portfolio for its well-known LYCA-formative trademarks including LYCAMOBILE, LYCATALK, LYCAFLY, LYCAHOLIDAYS, LYCAMONEY, LYCATEL and LYCA PRODUCTIONS. The Complainant is the registered proprietor of the trademark and has secured domain name registrations for LYCA and LYCAMOBILE in various countries including India and has been using them in connection with its on-going business.
- e) In India, the mark LYCA is registered under no. 2837995 in respect of classes 36 and 38 services with user claim since the year 2003. The mark LYCAMOBILE is registered under no. 2837996 in respect of class 38 services with user claim since the year 2006.
- f) The Complainant has registered numerous domain names incorporating LYCA mark/s. These domains include www.lycamobile.com, www.lycatel.com, www.lycatalk.com, www.lycamobile.co.uk, www.lycamobile.eu and others.

g) The Complainant's websites generate a large volume of visitors per year. The Complainant has generated substantial amounts of press and media coverage since 2006.

h) The Complainant's rapid growth has resulted in the addition of new products and service offerings to the UK, Indian and international markets. Each new products and/or service is branded according to Complainant's naming convention, which is the distinctive mark LYCA, allied to a descriptor such as "MOBILE" and "TALK" to form LYCAMOBILE and LYCATALK. The consistency of the naming convention allows clients to identify each new product and/or service as originating or controlled by Complainant.

i) The Complainant started its LYCAMOBILE business in the UK, targeting the local and international marks with the result that it registered www.lycamobile.com and www.lycamobile.co.uk. The .com extension is not assigned to a specific country but regarded as an international domain name extension making it the most popular generic Top Level Domain (gTLD) with close to 100 million registrations. It is for this reason that the Complainant has taken proactive steps to localize its services in-line with online trends resulting in the registration of country code Top Level Domains (ccTLDs) such as www.lycamobile.pk (Pakistan), www.lycamobile.rs (Serbia), www.lycamobile.me (Montenegro) and www.lycamobile.co.in (India).

j) The Complainant since the launch of its website www.lycamobile.com offered calling services to India. The Complainant registered the domain name www.lycamobile.com on April 4, 2005 and www.lycamobile.co.uk on January 24, 2006.

k) The Complainant noted that disputed domain <lycamobile.in> was registered by the Respondent and the said domain name redirected to the website <http://platinumcaterers.co.uk/>, a catering and event management website, which had a physical store within the UK. The domain name <platinumcaterers.co.uk> has been suspended by Nominet (.uk Registry).

l) The Complainant contends that disputed domain name contains the Complainant's trademark LYCAMOBILE in which it has registered and common law rights in India, UK and other jurisdictions around the world. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to violation of Paragraph 3 of the INDRP.

m) The Complainant contends that the disputed domain name was subsequently registered by the Respondent on Feb 2010 whereas the Complainant registered the domains names www.lycamobile.com and www.lycamobile.co.uk in the year 2005 and 2006 respectively. The Respondent has no right or legitimate interest in the disputed domain name. The Respondent is neither commonly nor popularly known in the public nor has applied for any registration of the mark LYCAMOBILE. The Complainant has no relationship with the Respondent and has not authorised or licensed the Respondent to use the disputed domain name.

n) The Complainant contends that the disputed domain name was intentionally registered by the Respondent for commercial gain to misleadingly divert the consumers of the Complainant thereby causing irreparable loss, harm and damage to the goodwill

and business of the Complainant. The Complainant's registered trademark rights pre-date the disputed domain name by at least 5 years. The proximity of Respondent's listed address to the Complainant's LYCAMOBILE branded retail store makes it inconceivable that the Respondent could not have known about the Complainant.

o) The Complainant contends that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant from reflecting the said trademark in its domain name in India.

5) **Respondent:**

The Respondent has not filed any official response dealing with the contents of the Complaint despite two opportunities. The complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.

6) **Discussion and Findings:**

The Complainant has produced evidence in form of Indian registration certificates marked as **Annexure 3** to substantiate its rights in the marks LYCA and LYCAMOBILE in India. The online database maintained by Trademark Registry, India shows that the trademark LYCAMOBILE was applied by the Complainant with user claim since June 1, 2006. **Annexure 4** constitutes online extracts from EUIPO database showing the trademark registration details of LYCA and LYCAMOBILE in favour of the Complainant. Specifically, LYCAMOBILE trademark was filed on September 27, 2005 and registered on September 20, 2006. Most importantly, the Complainant secured the registration of the domain name www.lycamobile.com on April 4, 2005 which has been substantiated by the Complainant with whois extract filed as part of **Annexure 5**. The documents filed by the Complainant is in consonance with its claims that the trademark LYCAMOBILE was conceived or adopted in the year 2005 (para 8A(vi)).

The domain www.lycamobile.com is registered in the name of Complainant's licensee Lycamobile UK Ltd., the said website is accessible to customers all across the world including India. **Annexure 8** shows that the Complainant's website at www.lycamobile.com was active in the year 2005 which is way prior to registration of the disputed domain name. The documents filed as **Annexures 12 and 13** show the media coverage and press releases as early as September 2008 of the Complainant in respect of its LYCAMOBILE goods and services.

Based on the submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

The Complainant has substantiated its rights in the marks LYCA and LYCAMOBILE in various jurisdictions including European Union, USA and India. The earliest registration of

LYCAMOBILE trademark dates back to the year 2005 via EUTM. The Complainant secured the registration of the domain name www.lycamobile.com as early as April 2005. User rights/claims of the trademark LYCAMOBILE in India dates back to the year 2006 in respect of class 38 services which remains un-rebutted. Therefore, the Complainant has successfully established its statutory and common law rights in the mark LYCAMOBILE worldwide including in India.

For adjudicating the fulfilment of mandatory ground under paragraph 4(i) of the INDRP, it has to be ascertained if the domain name <lycamobile.in> is identical to or confusingly similar with the Complainant's mark.

In the present case, the second level domain name of the disputed domain name is identical to the Complainant's trademark. A side-by-side comparison of the domain name and the textual components of the relevant trademark can be done to assess whether the mark is recognizable within the disputed domain name. It is explicitly clear that the Respondent's disputed domain name is identical to LYCAMOBILE name, trademark and service mark of the Complainant.

Owing to identical domain name, there is enhanced risk of association and affiliation of the disputed domain name with the Complainant's goods and services. Any use of identical domain name will make Internet user/s to believe that such domain hosts/displays the actual website of the Complainant dedicated to Indian customers/visitors. Since the disputed domain name <lycamobile.in> is identical to the Complainant's mark LYCAMOBILE and applicable ccTLD in a domain name is viewed as a standard registration requirement and is to be disregarded, I find that the requirement of the INDRP Policy paragraph 4(i) is satisfied.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name;

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such prima facie case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.

At the outset, the Arbitrator notes that no response was received to the Arbitrator's emails dated January 23, 2018 and February 02, 2018. Such inaction on part of the Respondent suggests that he does not have any legitimate rights in the disputed domain name. However, Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Name and the present case will also be adjudged based on the criteria covered under the subject paragraph.

- As on current date, the disputed domain name resolves to webpage with no relevant contents. Therefore, it cannot be assumed that the disputed domain name is being used with a bona fide offering of goods or services.
- The Registrant name is Mr. Mohammed Zubel of the Organization Exec Media LTD with email address zubelhussain@hotmail.com as per whois details. Hence, it

cannot be presumed that the Registrant is being commonly known by the disputed domain name.

- As per **Annexure 15** filed by the Complainant, it is shown that the disputed domain name redirected to <http://platinumcaterers.co.uk> which is a catering and event management website, a commercial venture. Therefore, it cannot be said that the Respondent is making a legitimate non-commercial or fair use of the domain name without intent for commercial gain. This assumption is bolstered in absence of any explanation or justification from the Registrant.

The Complainant has contended that it has no relationship with the Respondent and has not authorized or licensed the Respondent to register or use the disputed domain name. In this case, I find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Paragraph 6 of the INDRP policy contains the inclusive instances which are "evidence of registration and use of domain name in bad faith". It states that:

"For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

.....(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

It is observed that as on current date, the disputed domain name does not show any relevant content on resolved webpage and weblink is <http://81.21.76.62/index.html?domain=lycamobile.in>. The fact that the Respondent failed to submit a response or to provide any evidence of good-faith use, it is construed that the Respondent has registered the domain name in order to prevent the Complainant from reflecting the LYCAMOBILE mark in a corresponding domain name in India.

I took the liberty of visiting the archived webpages of the disputed domain name at WayBackMachine portal at <https://web.archive.org/web/20170410080319/http://platinumcaterers.co.uk:80/> and note that the most recent screenshot dated January 05, 2018 states:

" Loading...

<http://lycamobile.in/> |



02:03:45 January 05, 2018

Got an HTTP 301 response at crawl time

Redirecting to...

<http://platinumcaterers.co.uk> "

Therefore, the Complainant's claims are rightfully substantiated (para 7(15)). Further, it seems that redirection of the domain name was deactivated by the Respondent subsequent to receipt of second notice from the Arbitrator on February 02, 2018.

In my view, bad faith is evident by the fact that the Respondent had registered the identical domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. Redirecting the disputed domain name to an entirely different website- <http://platinumcaterers.co.uk>, suggests that the Respondent had no interest in the said domain name.

The Respondent was seemingly well aware of the Complainant's business related to LYCAMOBILE products since the Complainant was the prior adopter, user and registered proprietor and domain owner of LYCAMOBILE trademarks in UK as well as in India. The disputed domain name was registered almost 5 years subsequent to adoption and registration of the domain name www.lycamobile.com. Hence, subsequent adoption of an identical domain name indicates bad faith registration.

Therefore, based on aforementioned observations it can be concluded that the disputed domain name was registered in bad faith.

7) **Decision:**

In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.LYCAMOBILE.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
March 13, 2018