

भारतीय गैर न्यायिक



INDIA NON JUDICIAL

दिल्ली DELHI

BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR

H 856385

OF
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

In the Matter of:-

Mir Internet Marketing, Inc.,
818, Harrison Street, Suite 205,
Oak Park, Illinois 60304
United States of America
Tel: - + 708 445-9800

Complainant

VS

Value IT Solutions
11262/4, Doriwallan,
New Rohtak Raod
New Delhi-110005
Tel: + 91. 9818450155

Respondent

1. The parties:

Complainant is Mr. Mark Powers, the counsel on behalf of Mir Internet Marketing, Inc., 818, Harrison Street, Suite 205, Oak Park, Illinois 60304, United States of America

Respondent is Mr Ujjwal on behalf of Value IT Solutions, 11262/4, Doriwallan, New Rohtak Raod New Delhi-110005

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

The registrar is NIXI at Nehru Place

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पचास
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FIFTY
RUPEES
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2. 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 05.08.2007 and the respondent submitted his reply to Arbitrator in the matter on 5th Dec 2007.

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

It is alleged in the complaint that the respondent registered the domain name in bad faith and is illegitimately using this domain name thereby infringing the domain name and using 'Seologic' as trade name on the infringing domain's website since June 9th 2006(Exhibit E submitted with complaint).

The Complainant had registered the Mark 'SEO LOGIC' with USA Trade Mark Authorities on 8th June 2003 and also pending registration with Trade Mark Authority in India vide application filed on 12 June 2007.

Complainant claims to have rights in the Mark as a result arising out of continuous use of it in commerce since 25th Jan 2002 and protective registrations of the Mark in various Top Level Domain registrations(As per Exhibit D attached in the Complaint submitted). Complainant claims to have maintained webpage seologic.com for a similar period of time. This tribunal believes that the registry of the NIXI issued the notification to the concerned parties only after due compliance of the entire procedural requirement. Respondent submitted that he booked the domain name Seologic.com on 9th June 2006 unaware of registration of domain name 'Seologic.com'. Respondent's also submitted that he has born expenditure for the site and with his efforts site is Top Ranking in search engines.

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Parties contentions:

Complainant alleges that Respondent registered the infringing domain name in bad faith and that infringement has been done after Complainant registered the Trade Mark with USA Trade Mark Office and widely promoted the mark as a popular search term on the internet for complainants own search engine optimization business and built goodwill in the Mark and the associated domain name particularly in a specialized, niche market in which Complainant was active and very successful. It is also claimed that the domain name received average of 33000 visitors every month and that 'Seologic' is a search term that produces Complainant as the top ranked search return on commercial search engines for which Complainant spent huge money and skill. It is also submitted that the respondent has not registered or legally protected the use of the Mark 'Seologic / seologic.in'. Neither does the Respondents website use any trademark identifiers evidencing a legal claim nor a disclaimer of the use of Mark in USA where the Complainant has registered his Mark, even though Respondents website identifies USA as one of its markets.

Complainant further submits that Respondent's use of word 'Seologic' is not by accident but on purpose. Complainant submits that Respondent's website claims expertise in the mechanism of search engines and website search returns resulting from putting search terms into those search engines therefore respondent surely performed the basic internet search engine searches of 'seologic' and 'seologic' top level domain names prior to adopting that trade name and infringing the .in domain name. Complainant further claims that since the Complainant's website appears as the Top ranked search result in common search engines such as Google and Yahoo Respondent was aware of Complainants presence in the search engine optimization services field when respondent selected its infringing .in domain name and identical trade name. Therefore respondents decision to use the infringing domain name and trade name was a known act of taking on Complainant's online business identity by adopting an unprotected similar .in domain name.

Complainant submitted that Google search conducted produced Complainant as top ranked return and respondent as second ranked return. This was the respondent's intent and goal of respondent's selection of the domain name 'seologic.in' and adopting Complainant's registered Mark as trade name Complainant alleges that Respondent's adoption of identical trade name and domain name as that of Complainant is bad faith. He further alleges that the intention of respondent is to attract for commercial gain internet users to respondents website at the infringing domain name by creating a likelihood of confusion with complainants Mark as to the source, sponsorship and affiliation of respondents website. (Attachment E filed with Complaint).

Respondent denies complainants allegations and submits that when he booked the domain he was unaware of the domain name 'Seologic.com' and that the domain was booked on June 9th 2006. Respondent further claimed that he spent money greater than INR50000/- for hosting, registering, renewing, designing and the promotion of the website and also claims that efforts made by them made site rank in top searches of search engines and should be compensated for the same.


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4. Opinion:

- I. Issue: 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 which the domain name in question is identical or confusingly similar to a trademark or service 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.

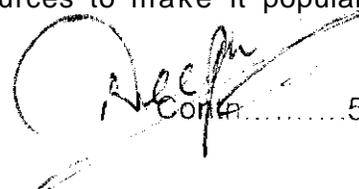
Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint this tribunal is of confirmed opinion that the complainant is rightful in claiming to be the rightful owner of the domain name 'Seologic' and related names which belong to the family of 'seologic'.

That the word 'seologic.in' is seemingly similar and near to seologic.com and bound to create confusion among the users as to its relatedness with seologic.com. Further the Complainant amply proved that respondent had no legitimate interest in Seologic .in since registration of Seologic.in is made more than four years later than registration of Seologic.com and that too after seologic.com gaining much popularity with internet search engines and after its registration with the USPTO(United States Patent and trademark Office) .

It is surprising that domain name of the level of top ranking remains unregistered and legally unprotected at the respondents end. Moreover Respondents submission of ignorance of knowledge of existence of Seologic.com at the time of registration of domain name Seologic.in is unacceptable that too when registrant site is a Top Ranking site in search engine optimization services. Even with minimum prudence this Tribunal expects performance of basic internet searchengine search of 'Seologic' name prior to adopting the trade and domain name of seologic.in.

This tribunal holds that such use as infringement of the names should be checked in most efficient manner and complainant's trial to prove good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has aptly demarcated that he is in the business of computer programming services for increasing Internet traffic to websites, including search engine optimization services and has spent valuable resources to make it popular successful and legally protected.

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The tribunal is of confirmed opinion that the domain name trade name and trade are facially and correctly conjoint to each other and is proof of the widespread confirmation of the service provided by the complainant make this complaint a plausible case of action.

II. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the established law, this tribunal is of considered opinion that the complainant amply proved all the necessary conditions. Further, this tribunal is bound to conclude with the certainty that the present complaint by the complainant is a genuine attempt by the complainant to take shelter under law and legitimately protect domain name from illegitimate infringement and hijacking. Therefore complainant is the rightful owner of name and mark Seologic and the respondent barred and denied the use of the domain name Seolcgoic.in in any manner whatsoever. Tribunal further concludes that the domain name Seologic.in be transferred to the complainant.

Given under my hand and seal on this **day of 14th** January 2008,



Handwritten signature of Deepa Gupta in black ink, written over a horizontal line.

Arbitrator