



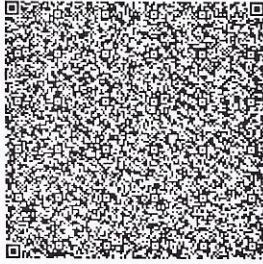
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL562214419725940
Certificate Issued Date : 04-Jun-2016 10:08 AM
Account Reference : IMPACC (IV)/ dl889403/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL889403117923447391890
Purchased by : V K AGARWAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V K AGARWAL
Second Party : Not Applicable
Stamp Duty Paid By : V K AGARWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



NATIONAL INTERNET EXCHANGE OF INDIA

Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

World Wrestling Entertainment Inc. v. WWE T Shirt

V K Agarwal

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

AWARD

1. The Parties

The Complainant is M/s World Wrestling Entertainment Inc. 1241, East Main Street, Stanford CT 06902, United States of America

The Respondent is WWE T Shirt, Step Up T Shirt Store, Itwari Station Road, Misal Layout, Patankar Chowk, Sidharth Nagar, Nagpur – 440014, Maharashtra.

2. The Domain Name and Registrar

The disputed domain name is <www.wwetshirt.in>. The said domain name is registered with Webiq Domains Solutions Pvt. Ltd.

The details of the disputed domain name are as follows:

- | | |
|----------------------|---------------------------------|
| (a) Domain ID | : D8080791 -AFIN |
| (b) Date of creation | : 27 th January 2014 |
| (c) Expiry date | : 27 th January 2017 |

3. Procedural History

- (a) A Complaint dated 18th April 2016 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure L. It is confirmed that 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 (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter in May, 2016. 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.

Vinod K. Agarwal

- (c) In accordance with the Indian Domain Name Dispute Resolution Rules, on 20th May 2016 the Sole Arbitrator notified the Respondent along with a copy of the Complaint through a postal letter on the address mentioned in the Complaint and the WHOIS record. The Respondent was required to convey his response to the Complaint within 15 days from the date of receipt of the said letter and in any case latest by 05th June 2016. The Respondent was informed that if his response was not received by the Arbitrator by that date, the Respondent would be considered in default and the Arbitrator would still proceed to decide the dispute. No response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company incorporated under the laws of the State of Delaware, United States of America with headquarter in Stamford, Connecticut. The Complainant, World Wrestling Entertainment Inc. commenced its operations as the Capitol Wrestling Corporation in 1952. The Company subsequently promoted its activities under the name of World Wide Wrestling Federation and World Wrestling Federation. The Complainant was acquired by the Titan Sports Company in 1982 which changed its name to the World Wrestling Federation Entertainment and eventually to World Wrestling Entertainment in the year 2002. On April 07, 2012 the Complainant formally renamed itself to WWE. The Complainant has offices in major cities of the world including New York, Los Angeles, London, Istanbul, Tokyo, Shanghai, Singapore, Mumbai, etc.

The Complainant is an integrated media organization. The Complainant is engaged in the development, production and marketing of television programmes, pay-per-view programmes, live events and the licensing and sale of branded consumer products. Since 1985 the Complainant has an annual wrestling and entertainment event, broadcast live on pay-per-view worldwide called WRESTLEMANIA. It is the highest wrestling event and very popular worldwide.

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According to Complaint, the Complainant offers to its clientele apparel (e.g. t-shirts, sweatshirts, masks, hats, caps, jerseys, belts, etc.), posters, calendars, fact books, sunglasses, water bottles, key rings, action figures, DVDs, video tapes, etc. through 200 licensees in 86 countries.

Respondent's Identity and Activities

The Respondent has not submitted his response. Hence, his activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the element specified in the Policy is applicable to this dispute.

In relation to element (i), the Complainant contends that it is one of the leading companies providing various services and products to various customers.

According to the Complaint, The Complainant had filed its application for registration of the WWE trademark for the first time in 2002 in the United States of America. The trademark of the Complainant "WWE" is registered in about 63 regions including China, Hong Kong, European Union and India. Further that, the applications of the Complainant for the registration of WWE as trademarks are pending in several countries. The list of such countries is available in Annexure C.

It is further stated in the Complaint that so far as India is concerned, many trademarks are registered incorporating the expression WWE. Only to illustrate;

Trade Mark	Registration No.	Class	Status
WWE	1110997	09	registered
WWE	1111000	16	registered
WWE	1111004	25	registered
WWE	1111008	28	registered

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WWE	131064	41	registered
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According to the aforesaid information, the said trademarks are already registered in India in Classes 09, 16, 25, 28, 41.

According to the Complaint, the Complainant owns, either directly or beneficially, over 300 domain names incorporating WWE trademark. Some of these domain names are as follows: <www.wwe.in>; <www.wwe.asia>; <www.wwe.cn>; <www.wwe-ecw.cn>; <www.wwe-france.net>; <www.wwe.ae>; <www.wwe.co>; <www.wwe.co.il>; <www.wwe.co.kr>; <www.wwe.co.ve>; <www.wwe.com.ar>; <www.wwe.com.br>; <www.wwe.me>; <www.wwe.eu>; etc. A comprehensive list of domain names owned by the Complainant comprising WWE trademark is attached to the Complaint as Annexure E.

Therefore, the Complaint states that the Respondent's domain name incorporates the entire trademark WWE of the Complainant and is therefore, identical and similar to the trading style and trademark in which the Complainant has prior rights.

In support of its contentions, the Claimants have relied on the decisions in the cases of *KFC Corporation v. Webmaster Casinos Ltd.*, (L-2/6/R4); *Microsoft Corporation v. Chun Mun Kam* (INDRP/119, January 11, 2010); *M/s Pantaloon India Ltd., v. K. Ramesh* (INDRP/088, March 11, 2009); *SAS Institute Inc. v. Farzad Bahreini*, (FAO07000115038, National Arbitration Forum, August 26, 2110).

In relation to element (ii), the Complainant contends that the Respondent has not been commonly known by the mark "WWE". The name of the Registrant/Respondent organization is not known. Further that the Respondent does not have any right or legitimate interest in respect of the disputed domain name <www.wwetshirt.in>. Further, the Respondent registered the domain name for the sole purpose of misappropriating the reputation associated with the Complainant's famous trademark WWE and to create confusion and mislead the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.wwetshirt.in> by the Respondent/Registrant is to mislead the general public and the customers of

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the Complainant. The Respondent is solely motivated by *mala fide* intentions of capitalizing upon the goodwill and reputation vested in the Complainant's WWE trademark and the Respondent has accordingly registered the disputed domain name only for the purpose of trafficking.

The Complainant contends that there is a great likelihood that an actual or potential visitor to the Respondent's present web page will be induced to believe that the Complainant has licensed the trademark WWE to the Respondent or has authorized the Respondent to register the disputed domain name or that the Respondent has some connection with the complainant in terms of a direct nexus or affiliation with the Complainant or has been authorized by the Complainant

The Complainant has stated that the use of a domain name that appropriates a trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Respondent

The Respondent could not be contacted. Hence, the Respondent's contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Domain Name Dispute Resolution Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith;

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A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <www.wwetshirt.in> on 27th January 2014. According to the information submitted, the Complainant is the owner of the trademark WWE. The trademark WWE is registered in a large number countries mentioned above.

The trademark of the Complainant is "WWE". The present dispute pertains to the domain name <www.wwetshirt.in>. The word "wwetshirt" appearing in the domain name is capable of many formations with different meanings, such as "w wet shirt", "w we t shirt" and "wwe t shirt". "T shirt" is a commonly used word and they are specific kind of shirts used by gents. However, in this case the response of the Respondents has not been received. Therefore, it can be concluded that the domain name includes the registered trademark "WWE" of the Complainant.

The Complainant is the owner of trademark "WWE". In addition, the Complainant has also registered various other trademarks for various WWE talent and Talent Slogans, such as, "JOHN CENA", "BATISTA", "TRIPLE H", "UNDERTAKER", "RANDY ORTON", "YOU CAN'T SEE ME", etc. Since they are not connected, related or associated with the disputed domain name. Therefore, they are not relevant for deciding the Complaint.

The Complainant possesses a large number of other domain names with the word "WWE" as indicated above. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant.

Further that, the disputed domain name is bound to be understood as a reference to the Complainant thus, engendering confusion among the customers and members of the trade. The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <www.wwetshirtin> is confusingly similar or identical to the Complainant's trademarks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

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- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The name of the Complainant is M/s World Wrestling Entertainment Inc. The name of the Respondent is not known. The Respondent is not operating any active website under the disputed domain "wwetshirt.in". It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling,

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renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has registered the disputed domain name with the sole purpose of monetizing the same. Further that, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark.

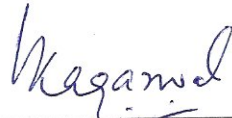
As has been stated above, the Respondent has given incomplete address. Hence, the copy of the complaint sent by post could not be served on the Respondent. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

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7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.wwetshirt.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 06th June, 2016