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

P 055566

In the Matter of:
23/04/2011

Dated:

Six Continents Hotels, Inc
Three Ravinia Drive
Suite 100
Atlanta, Georgia 30346
USA

Complainant

VS

Jack Sun
1600 Amphitheatre Parkway
Mountain View
California 94043
United States

Respondent

I. The Parties :

Complainants in this proceeding is Six Continents Hotels, Inc. place of business at Three Ravinia Drive, Suite 100 Atlanta, Georgia 30346, USA.

According to the Whois database access via the IN.Registry's website, the Respondent (Registrant) in this administrative proceeding is Jack Sun, 1600 Amphitheatre Parkway Mountain View, California 94043, United States.

II. The Dispute :

This dispute concerns the domain name crownplaza.co.in (the "Disputed Domain Name")

The Registrar of the Disputed Domain Name is A to Z Domains Solutions Pvt.



III. 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 February 18, 2011 and the respondent did not submit his reply at all.

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

It is alleged in the complaint that the complainant is using his name for the past more than 27 years since 1983 .It is also revealed from the field document that the complainant is in the business of Hotel Services of owning, managing, leasing or franchising, through various subsidiaries, more than 4500 hotels and 650000 guest rooms in nearly 100 counties and around the world and that IHG (Inter Continental Hotels) owns a portfolio of hotel brands including Crowns Plaza Hotels & Resorts, Holiday Inn Hotels and Resorts, Holiday Inn Express, Inter Continental Hotels & Resorts, Hotel Indigo, Staybridge Suites and Cahdlewood Suites, and also manages the world's largest hotel loyalty program, priority club Rewards. It is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

Respondent has not submitted any answer in the matter.

IV. PARTIES CONTENTIONS :-

A. Complainant's Contentions about himself :

1. Complainant is one of a number of companies collectively known as Inter Continental Hotels Group ("IHG"), IHG own, manage, lease or franchise, through various subsidiaries, more than 4500 hotels and 650000 guest rooms in nearly 100 counties and around the world. IHG owns a portfolio of hotel brands including Crowns Plaza Hotels & Resorts, Holiday Inn Hotels and Resorts, Holiday Inn Express, Inter Continental Hotels & Resorts, Hotel Indigo, Staybridge Suites and Candlewood Suites, and also manages the world's largest hotel loyalty program, priority club Rewards.
2. Complainant has prevailed in various proceedings under .IN Domain Name Dispute Resolution Policy (INDRP) and has also prevailed in numerous proceedings under the Uniform Domain- Name Dispute- Resolution Policy, which resulted in a decision ordering transferring of 1,519 domain names to Complainant including 120 domain names containing Complainant's CROWNE PLAZA Trademark { Case: Inter- Continental Hotels Corporation, Six Continents Hotels, Inc. v. Daniel Kirchhof, WIPO case No. D2009-1661}.



B. Complainant's allegations about Respondent:

Respondent registered Disputed Domain Name of September,2010 & is using the Name in connection with a website that contains links for hotel services that compete with services offered by complainant under its CROWN PLAZA trademark including links labeled " Burj Al Arab Hotel Dubai", "Orbit Hotel and Hostel", Hotels in Munchen Germany", Hotel Walsum Rotterdam" and "Bermuda Guest Houses".

C. Complainants Contention about cause of Action :

That December 2010 Complainant became aware of Disputed Domain being wrongfully registered by the Respondent and pursuant to which the complainant hereby submits this complaints in accordance with the Rules,

D. Complainants alleges that the Registrant's domain name is identical or confusingly similar to a name trademark or service mark in which the complainant has rights;

1. Complainant submits that " Crown Plaza" hotel brand was founded in 1983 and today is used in connection with 376 hotels worldwide, which collectively offer 103876 hotel rooms.

Complainant submit that complainant (or its affiliates) owns at least 275 registrations in at least 95 countries or geographic regions worldwide for trademarks that consist of or contain the mark CROWNE PLAZA .

3. Complainant submits that it has registered the patent & trademark crown plaza in various countries like US, India, Europe etc (Details Attached)

Complainant submits that the Complainant is the prior adopter of the mark CROWNE PLAZA & the complainant has both common law and statutory rights in respect of its trademark CROWNE PLAZA & previous Panels under the Uniform Domain Name Dispute Resolution Policy have found that Complainant has strong rights in and to the CROWNE PLAZA Trademark & as a result of the complainant's exclusive use of CROWNE PLAZA mark, it has developed significant goodwill for consumers throughout the world.

Complainant also submits that Disputed Domain Name contains Complainants CROWNE PLAZA Trademark in its entirety except for omitting the silent letter "e". Phonetically, the disputed domain name sounds identical-to the Complainant's trademark and the absence of the letter 'e' does not alter the pronunciation of the trademark".

Complainant Submits that a domain name wholly incorporating complainant's registered mark should be sufficient to establish identity or confusing similarity for purposes of the Policy".

Complainant Submits that the omission of the isilent letter "e" from the Disputed Domain Name does nothing to diminish its confusing similarity with Complainant's CROWNE PLAZA trademark & the Disputed Domain Name immediately evokes the thought of CROWNE PLAZA hotels, suggesting a relation which does not exist with the Complainant. Accordingly, the Disputed Domain Name is identical or confusingly similar to Complainant's CROWNE PLAZA Trademark.



Complainant's contention that the Registrant has no rights or legitimate interests in respect of the domain name

1. That Complainant has not assigned, granted, licensed, sold , transferred or in any way authorized the Respondent to register or use the CROWNE PLAZA Trademark. Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark.
2. That Respondent has never used Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. Respondent is using the Disputed Domain Name in connection with a website that contains links for hotel services that complete with the hotel services offered by Complainant under its CROWNE PLAZA Trademark. Such use is clearly not bona fide under the Rules and, therefore, does not confer upon Respondent any rights or legitimate interests in the Disputed Domain Name.
3. That Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, Respondent has no rights or legitimate interests in the Disputed Domain Name .
4. That Because Complainant's established use of the CROWNE PLAZA Trademark for more than 26 years, it is exceedingly unlikely that the Respondent is commonly known by this trademark.
5. Respondent has made an illegitimate, commercial, unfair use of the Disputed Domain Name, with an intent for commercial gain misleadingly to divert consumers or tarnish Complainant's CROWNE PLAZA Trademark.. Respondent is using the Disputed Domain Names in connection with a website that contains links for hotels services that complete with the hotel services offered by Complainant under its CROWNE PLAZA Trademark. Such use is clearly for commercial gain and obviously misleads consumers into believing that Respondent's website using the Disputed Domain Name is somehow associated with Complainant.
6. Therefore Respondent should have no rights or legitimate interests in respect of the Disputed Domain Name.

Complainants contention that the Registrant's domain name has been registered or is being used in bad faith :

1. That Respondent has acted in bad faith under the INDRP because the Respondent 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.
2. There can be no doubt that Respondent knew of Complainant's CROWNE PLAZA Trademark when it registered the Disputed Domain Name, leading to evidence of bad faith. CROWNE PLAZA Trademark is a WELL-KNOWN, internationally recognized mark registered in numerous countries or geojajaghic regions worldwide.



3. A further indication of bad faith under the Rules is the fact that Complainant's rights in the CROWNE PLAZA Trademark pre dates Respondent's registration of the Disputed Domain Names by approximately 27 years.
4. Given Complainant's established rights in the CROWNE PLAZA Trademark in numerous countries or geographic regions worldwide and Disputed Domain Name is "so obviously with " Complainant, Respondent's actions suggest " opportunistic bad faith " in violation of the Rules. Therefore the Disputed Domain Name should be considered as bad faith,

V. Respondents Contentions :

Respondent has not responded at all.

VI, 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 :

- a. Manner in which the domain name in quest on is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
- b. 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.
- c. 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 IV and on the basis of perusal of the records submitted by Complainant with the complaint -

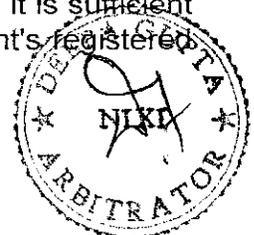
This tribunal is of confirmed opinion that the Complainant has been using the name ginger since many years i.e. YEAR 1983 in one form or the other and has made sincere efforts to promote the brand name 'CROWNE PLAZA' by consuming various resources available at his end and word 'Crowne Plaza' has certainly acquired a popular Brand name in the process and is a popular brand across the length and 'breadth of the country Nationally and Internationally. That mark 'Crowne Plaza' has been registered effectively in India and other countries mentioned in the application.

On the basis of the records submitted by the complainant it's proved that the domain name crownplaza.co.in is related to the age old business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name 'Crowne Plaza'.

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web narnes lead to confusion among web surfers cannot be denied.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.



It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbrogio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly legitimately using the name for business purposes. It profusely empowers Complainant with the First right to the domain name crownplaza.co.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and as being used is in bad faith by the respondent.

Complainant has amply demonstrated that he has been is in the business of hotel services, hospitality ,personalized guest services, under the brand of Crowne Plaza hotels much before the respondent.

The tribunal is of confirmed opinion that the domain name, trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

2. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para IV the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misrepresentation of the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is un colourable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.



3. 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 succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name crownplaza.co.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 10000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 23rd April 2011




Deepa Gupta
Arbitrator