



दिल्ली DELHI

**NATIONAL INTERNET EXCHANGE OF INDIA
121-123, ANSAL TOWER, NEHRU PLACE
NEW DELHI – 110 019**

F 922192

Endemol India (P) Limited v. Mr. Hetal Shah

AWARP

The Parties

The Complainant is Endemol India (P) Limited, 501, Samartha Vaibhav, Oshiwara, Andheri West, Mumbai 400 053.

The Respondent/Registrant is Mr. Hetal Shah, 14 George Street, St. Albans, AL3 4ER, United Kingdom of Great Britain.

2. The Domain Name and Registrar

The disputed domain name <www.biggboss.in> is registered with Direct Information Pvt. Ltd. dba PublicDomainRegistry.com, Houston, Texas 77079, USA..

Procedural History

1-

(a) The Complaint was filed with the National Internet Exchange of India on September 12, 2007. The Complainant has made the registrar verification

111

in connection with the domain name at issue. The print out of e mail reply so received is attached with the Complaint. It is confirmed that the Respondent is listed as the registrant and the contact details for the administrative, billing, and technical contact for the disputed domain name are that of the Respondent. The Exchange verified that the Complaint satisfied the formal requirements of the .IN Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

(b) In accordance with the Rules, on August 9, 2008 the Sole Arbitrator formally notified the Respondent of the Complaint along with all its annexures. The Respondent was required to submit his defence within 15 days from the date of receipt of the letter, that is, by August 31, 2008. The Respondent was informed that if his response was not received by that date, he would be considered in default and the matter will proceed ex parte. The Respondent did not submit any response. Accordingly, the Respondent's default was notified.

(c) The National Internet Exchange of India appointed Dr. Vinod K. Agarwal, Advocate and Solicitor, Former Law Secretary to the Government of India, 812 Surya Kiran Building, Kasturba Gandhi Marg, New Delhi - 110 001 as the Sole Arbitrator to decide the domain name dispute. 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.

4. Factual Background

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

Complainant's activities

The Complainant was formed in 1994 by a merger of television production companies. The Complainant has presence in 25 countries including the United States, the United Kingdom, Spain, Italy, Germany, Poland, Latin America, South Africa, India, etc. Further that Endemol is a format company being big Brother one of its top formats. This "reality television" show is being broadcast in many countries with various local versions. The other Endemol programmes include Changing Rooms, Ready Steady Cook, Deal or no Deal, Ground Force, Space Cadets, Fear Factor, etc. A large number of Indian versions of these programmes have been shown in Indi9a also.

Respondent's Identity and Activities

ll

The Registrant did not reply to the Complainant's contentions. Hence, the Registrant's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in Article 4 of the Policy are applicable to this dispute.

In relation to element (i) that is, the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, the Complainant contends that it is known amongst television viewers' as BIGG BOSS. The BIGG BOSS mark is registered in many other countries. The Complainant has placed reliance on two decisions. The first case is *Montari Overseas v. Montari Industries Limited* (1996 PTC 142). In this case it has been held that "when a defendant does business under a name which is sufficiently close to the name under which the plaintiff is trading and that name has acquired a reputation and the public at large is likely to be misled that the defendant's business is the business of the plaintiff or the branch or department of the plaintiff, the defendant is liable for an action in passing off."

The Complainant trademark is also BIGGBOSS. The disputed domain name is <www.biggboss.in>. Therefore, it is likely to be confusing with Complainant's distinctive mark. .

In relation to element (ii), that is, the Respondent has no rights and legitimate interests in respect of the domain name, the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark BIGGBOSS. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant.

Regarding the element at (iii), that is, The Registrant's domain name has been registered or is being used in bad faith, the Complainant contends that the main object of registering the domain name <www.biggboss.in> by the Registrant is to earn profit by offering it for sale and to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

B. Registrant

The Registrant did not reply to the Complainant's contentions.

6. Discussion and Findings

The Rules instructs this Arbitrator as to the principles to be used in rendering its decision. It says that, "an arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable".

According to the .In Domain Name Dispute Resolution Policy, the Complainant must prove that:

- (i) the Registrant's domain name is identical or confusingly similar to a name, 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; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith;

A. Identical or Confusingly Similar

BIGGBOSS is the registered trademark of the Complainant. It is registered in many countries. The Complainant brings out television shows with this name in many countries and also in different languages. Further that, the disputed domain name is very much similar to the trade mark of the Complainant.

The Complainant has business interests in many countries and it uses the trade name BIGG BOSS in these countries. As such, consumers looking for BIGG BOSS may instead reach the Respondent's website. Therefore, I hold that the domain name <www.BIGGBOSS.in> is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

According to the Policy, the Respondent may demonstrate its rights to or

legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant'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;
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant 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 has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed name 'biggboss' anywhere in the world. Biggboss is the name and mark of the Complainant. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Registrant to use its name or trademark or to apply for or use the domain name incorporating said name. Based on the default and 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. I, therefore, find that the 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, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or 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 the Respondent has engaged in a pattern of such conduct; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract internet users to the Respondent'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 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. There are circumstances indicating that the Respondent has intentionally attempted to attract, internet users to its web sites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its web sites. Further, the domain name apparently has been registered for sale to the Complainant.

The Complainant has also stated that the Registrant offered to sell the disputed domain name back to the Complainant at an exorbitant price.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Registrant in bad faith. As the Registrant has failed to rebut this presumption, I conclude that the domain name was registered and used in bad faith.

Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark 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, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.biggboss.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

November 3, 2008