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

In the Matter of:-

Volkswagen AG
Berliner Ring 2
38436 Wolfsburg
Germany

Complainant

VS

Satya Bagla
Exclusive Motors Pvt Ltd.
Ashoka Hotel, 50B
New Delhi-110021
India

Defendants

I. The parties:

Complainant is Volkswagen Aktiengesellschaft (corporation), incorporated in Wolfsburg / Germany with its principal place in Wolfsburg/Germany.

Respondent is Satya Bagla, Exclusive Motors Pvt. Ltd. Ashoka Hotel, 50B, New Delhi-110021, INDIA

2. The Dispute:

The domain name at issue is <volkswagen.in> (the domain name)
The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi

Deepa
DEEPA GUPTA
NIXI
ARBITRATOR

3. 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 NIXI on and the respondent did not submit any reply.

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

It is alleged in the complaint that the complainant is using this trademark since last 50 years. It is also revealed from the filed documents that the complainant is in the business of producing, distributing, and marketing of vehicles and maintenance services for vehicles, financial services, spare parts business, sponsoring Premier League Soccer Club VfL Wolfsburg, "Volkswagen Arena".

Respondent has not responded at all.

4. Parties contentions:

The domain name is identical to a trademark or service mark in which the Complainant has rights;

Complainant is world leading car-manufacturers Volkswagen AG owner of trademarks "Volkswagen" registered under various countries.

Complainant is also owner of numerous trademarks comprising the term "VOLKSWAGEN", e. g. CTM "Volkswagen Service" (No. 001543040), CTM "Volkswagen Original Teile" (No. 001683747), CTM "Volkswagen Group Fleet International" (No. 005153432), CTM "Volkswagen Group Fleet Solutions" (No. 004397428).

The trademarks "Volkswagen" are used for a broad range of products and services in Complainants core business, car manufacturing and sale, but also (inter alia) car maintenance services "Volkswagen Service" financial services, spare parts business, sponsoring. Premier League Soccer Club VfL Wolfsburg, "Volkswagen Arena".

The trademarks "Volkswagen" of the Complainant are of strong reputation. Since decades, the Complainant is one of the biggest car-producing companies

Volkswagen builds vehicles all over the world. Volkswagen Group sold over 6,000,000 vehicles in 2008 and employs approximately 370,000 employees. Volkswagen Group sales revenue.

Complainant or affiliated companies run websites under domain names comprising the trademark "Volkswagen",

Complainant built important goodwill and worldwide reputation for Volkswagen Trademarks.

Domain name is identical to the trademarks of the Complainant



The Respondent has no rights or legitimate interests as per .in Policy, para. 4 (ii), Rules. Respondent himself does not claim any rights or legitimate interest in the domain name <volkswagen.in>.

There is no indication of 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. Complainant's use of its marks predates the registration of the disputed domain name by more than 50 years. Domain name at issue is used to exploit it by sponsored links.

July 14, 2009, similar links were presented on the website, inter alia (on the right hand navigation) a link advertising BMW cars, BMW being a competitor of the Complainant or (within the sponsored links) to a website www.autolease.dk.

Address diverts the user over the ad-servers of google, before redirecting him to the target website.

On this data basis pay-per-click-revenues are calculated and distributed. The use of the domain name as Volkswagen.in infringes the Complainant's trademarks "Volkswagen" that are inter alia registered for vehicles and maintenance services for vehicles.

The Respondent is not a licensee of the Complainant and no consent has been granted by Complainant to Respondent to use its trademarks "Volkswagen".

Respondent is not commonly known by the names comprised in the disputed domain (Para. 7 (ii) INDRP)

Neither Respondent nor its business are commonly known by Volkswagen.

There are no other rights of the Respondent in a trademark "Volkswagen" which are cognizable.

Non-commercial or fair use of the Respondent is not cognizable (Para. 7 (iii) INDRP)

Respondent uses name in connection with sponsored links, which constitutes commercial use and therefore precludes non-commercial or fair use. The domain name at issue cannot constitute fair use, because it is obviously confusing and diverting (compare Volvo Trademark Holding AB v. e-motordealer Ltd, WIPO Case-No. D2002-0036 - volvoinsurance.com).

The domain name was registered with malafide intentions and is being used in bad faith. INDRP Policy, paras. 4 (iii), 6; Rules, para.

Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).




Due to the strong reputation of the trademarks Volkswagen, Internet users will apparently and reasonably expect an offer of the Complainant or authorized or affiliated enterprises only under 'Volkswagen.in'.

The disputed domain name is used for displaying sponsored links by means of behavioural targeting. Respondent draws profit from Complainant's famous trademark by exploiting the attention of users which are looking for Complainant's products.

Likelihood of confusion is created by the domain name itself, by the links providing access to products to third party products at the same site - especially to competitors - and the fact that all links relate to products or services related to cars.

Domain Name has been registered primarily for the purpose of selling, or otherwise transferring the domain name registration to the Complainant for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name (Para 6 (i) INDRP)

In its letter dated March 19, 2007 Respondent claims that he had only registered the domain name in order to protect it from cyber squatters. In view of the negotiations with the Complainant it is a mere pretext: he was willing to transfer the domain name for a considerable payment.

No progress could be achieved since the letter of the Respondent even though an employee of the Respondent personally talked to Mr. Bagla the respondent in July 2008. A last attempt was launched to find an amicable solution with the Respondent, by offering him a reimbursement of his documented out of pocket costs (limited to a maximum of US\$ 300,00). This Mail was addressed to sbalga@vsnl.com but was returned.

E-mail sent on the second email address was delivered. Respondent did not answer very clearly indicating that he was expecting a reward considerably above his factual expenses.

Further indications of bad faith:

The following circumstances additionally indicate bad faith of the Respondent:

Prior Knowledge of Complainant's trademarks. Respondent had prior knowledge of Complainant's trademark. Registration of a domain name that is identical to a famous trademark without authorization is in itself evidence of bad faith.

Lack of any conceivable, plausible actual or contemplated use ever since the hijacking of the domain name has evidence of very early bad faith under INDRP for good reason. A Respondent lacking conceivable interests is acting in bad faith. Respondent himself has stated in his letter to have no own interest in the matter.



The image shows a handwritten signature in blue ink, which appears to be 'Deeppa'. Below the signature is a circular stamp with a scalloped edge. The text inside the stamp reads 'DEEPA GUPTA' at the top, 'NIXI' in the center, and 'ARBITRATOR' at the bottom, flanked by two stars on either side.

He has declared that he reserved the domain name Volkswagen .in in the Complainant's interest in order to "prevent scruple less entrepreneurs from hijacking" it.

Incomplete or incorrect who is-data is a further indication of bad faith. The e-mail address provided in the who is-data of the .in-registry is not existing and incorrect; the e-mail sent to that email address was returned.

Failure to Respond is considered an indication of bad faith. Respondent failed to answer to the letter of the Complainant although it appears to have been delivered to the Respondent.

Complainant alleges that the respondent has registered volkswagen.in, which is visually conceptually and confusingly similar to his trademark and also phonetically similar and that the respondent has done it with a malafide intention well knowing the Worldwide fame and Goodwill of the name volkswagen and to en-cash upon it commercially and registered the same as a registrant with an intention to prevent the real owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and is a bad faith registration plus bad use of the domain name. The Respondent has registered the domain name Volkswagen.in with the intention to sell it to others for profits & misleading the public.

Respondent: Not responded to the Complaint

5. 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 :

1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in 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 has been using the name Volkswagen.in since last 50 years in one form or the other and has made sincere efforts to promote the brand name Volkswagen by consuming various resources available at his end and word Volkswagen has certainly acquired a popular Brand name in the process.

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

It is confirmed that Complainant is user of name Volkswagen & operates worldwide.

Deepa



A circular stamp with the text "DEEPA GUPTA" at the top, "NIXI" in the center, and "ARBITRATOR" at the bottom, flanked by two stars.

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names 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 imbroilgo or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have honourable intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration and has not bothered to do the verification of pre existence of the domain name wishing to be registered or understanding whether he has rights to register such a name or not. Volkswagen.com and similar domain names were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes profusely empowers them with the First right to the domain name Volkswagen.in and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner the complainant has tried to prove his 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 amply demonstrated that he is in the business of manufacturing, selling, distributing, financing, sponsoring and spare parts etc of the vehicles under the brand of Volkswagen presently.

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.

II. Domain name hijacking

This is establish 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 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's failure to fully disclose 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 uncolourable 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.

III **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 Volkswagen.in be and is hereby transferred to Complainant with immediate effect.

This tribunal also directs the Respondent to pay an amount of Rs 10,000/- to the Complainant for costs and damages undergone by the Complainant and another Rs 10,000/- to NIXI for cyber squatting and as cost of this proceedings for burdening the administration to full fill his dirty ulterior motives. In the facts and circumstances of this case this tribunal further directs the registry of NIXI to take adequate precaution in entertaining such complaints and send a copy of this decision to the Hon'ble High Court of Delhi at New Delhi to take further actions against the miscreants as this tribunal cannot go beyond its jurisdiction.

Given under my hand and seal on this day of 18th day of November 2009.


Deepa Gupta
Arbitrator

