



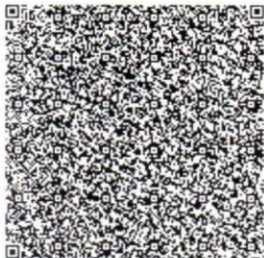
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No.	: IN-DL359468674365560
Certificate Issued Date	: 08-Apr-2016 11:28 AM
Account Reference	: IMPACC (IV)/ dl881103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL881103708833271934900
Purchased by	: LUCY RANA
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: LUCY RANA
Second Party	: NA
Stamp Duty Paid By	: LUCY RANA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry - National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <CLUBMAHINDRAHOLIDAY.CO.IN>

IN THE MATTER OF:

M/s Mahindra Holidays & Resorts India Ltd,
Registered Office:
Mahindra Towers, 2ND Floor,
17/18 Patulous Road,
Chennai-600002
Corporate Office:
Mahindra Towers, 1st Floor,
"A" Wing, Dr. G.M. Bhosle Marg,
P.K Kurne Chowk,
Worli, Mumbai-400018

Versus

Complainant

[Signature]

Statutory Alert:

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Rahul

D-27 Mangolpuri Delhi

Delhi-110083

Ph: +91 9211786185

rahulsp253@gmail.com; info@clubmahindraholiday.co.in**Respondent****1. The Parties:**

The Complainant in this arbitration proceeding is Mahindra Holidays & Resorts India Ltd., of the address Mahindra Towers, 2nd Floor, 17/18 Patulous Road, Chennai-600002 and Mahindra Towers, 1st Floor, "A" Wing, Dr. G.M. Bhosle Marg, P.K Kurne Chowk, Worli, Mumbai-400018.

The Respondent in this arbitration proceeding is Rahul of the address D-27 Mangolpuri, Delhi-110083.

2. The Domain Name, Registrar and Registrant:

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <clubmahindraholiday.co.in> with the .IN Registry. The Registrant in the present matter is Rahul and the Registrar is Webiq Domain Solutions Pvt. Ltd.

3. Procedural History:

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated March 11, 2016, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of its availability and consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure on March 15, 2016.

The Arbitrator received the Complaint dated February 01, 2016, from NIXI on March 18, 2016. Thereafter, the Arbitrator sent a notice to the Respondent vide email on the same day, informing that copy of the complaint along with annexures has already been forwarded to the Respondent by the Complainant on February 01, 2016. Therefore, a period of **14 days (Fourteen Days)** was given to the Respondent from the receipt of the notice to file its response to the Complaint in both hard as well as soft copy.

Arbitrator vide email dated April 02, 2016, requested NIXI to apprise her with the delivery status of the courier as sent to the Respondent forwarding a hard copy of the Complaint along with the Annexures.

NIXI vide email dated April 04, 2016, informed that the courier has been duly received by the Respondent on March 18, 2016.

Despite receipt of the domain complaint the Respondent has not filed any reply to the complaint as filed.

Accordingly, in view of the facts and circumstances in the matter, the Arbitrator has proceeded with the arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

1. Factual Background

The Complainant states that it is a part of the Mahindra Group which is a US \$ 16.9 billion multinational group based in Mumbai. The Complainant further states that they operate in key industries that drive economic growth, enjoying a leadership position in tractors, utility vehicles, information technology, financial services and vacation ownership. The Complainant also enjoys a strong presence in agribusiness, aerospace components, consulting services, defence energy, industrial equipment, logistics, real estate, retail, steel, commercial vehicles and two wheeler industries.

The Complainant states that it is a part of the Leisure and Hospitality Sector of the "Mahindra" Group. Its business started in the year 1996 which is well known for reliability, trust and customer satisfaction. Mahindra Group's flagship brand 'Club Mahindra Holidays', today has a fast growing customer base of over 1,90,000 members and several beautiful resorts at several exotic spots in India and abroad.

The Complainant states that it has established itself as a leading player in the Vacation Ownership Company and is ISO27001 certified. The Complainant states it has on an average around 8000 to 9000 visitors on its website www.clubmahindra.com and that Google has revealed that there is around 110,000 average monthly searches for "Club Mahindra" and around 9900 average monthly searches for "Mahindra Holidays". The Complainant states that "Club Mahindra" memberships provided by the Complainant are affiliates to RCI which gives a Club Mahindra member access to over 4600 resorts globally. The Complainant further states that its resorts in Thekkady, Ashtamudi and Cherai are certified by Nation Accreditation Board for certification Bodies. The Complainant also states that he has been selected as a Business Super brand for the year 2014-2015 by the Super brand Council of India. The Complainant states that its resorts in Goa, Munnar and Coorg have also been accredited with a "5 Star" rating by the Department of Tourism, Government of India.

The Complainant states that it has also registered a number of domains consisting of the mark CLUB MAHINDRA and its variants and has also attached a list containing the domain name registrations of the Complainant for the mark 'CLUB MAHINDRA'. The Complainant has also put on record a list of domain names registered in its name including but not limited to <clubmahindraholidays.co.in>, <clubmahindraholidays.in> and <clubmahindraholidays.net.in>.

The Complainant further states that it has also received various accolades and awards such as "The Creativity Gold Award", "Best Innovation Practice in Marketing and

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Operations for Visual Grammar”, “Best use of Customer and Data Analytics in a Loyalty Program” etc and have also attached a non exhaustive list of the same.

Further the Complainant Company has been listed both in the National Stock Exchange and Bombay Stock Exchange with an increasing share value.

The Complainant states that it is the registered proprietor of the mark CLUB MAHINDRA with several suffixes in India as well as before the Community Trade Marks and United Kingdom. The Complainant has also attached certificates of registrations and applications for registrations.

The Complainant submits that its mark CLUB MAHINDRA is being used for hospitality services since the year 1996 and has attained tremendous reputation and goodwill with respect to its services. The mark CLUB MAHINDRA has become distinctive and acquired secondary meaning to connote and denote the trade source and origin of the Complainant company's hotels, resorts, clubs and entertainment activities provided thereof.

The Complainant has further submitted that its marks CLUB MAHINDRA, MAHINDRA HOLIDAYS, HAPPY FAMILIES and such other marks including their distinctive colour scheme, logos and other artistic features have all earned sufficient goodwill and reputation in the market and are associated with the Complainant only.

The Complainant states that they have openly, extensively and continuously used the mark CLUB MAHINDRA in respect of various goods and services including hotels, holiday resorts, camping services, transport, travel arrangement, accommodation etc. The Complainant further states that they have also spent huge sums of money in advertisement and promotion of their business under the trade mark/trading style CLUB MAHINDRA. The Complainant has stated that they have continuously used the trade mark CLUB MAHINDRA since the year 1996. Documents to prove use of the mark MAHINDRA HOLIDAYS since 1996 have also been attached alongwith the Complaint.

2. Parties Contentions

A. Complainant

i. The disputed domain names are identical and confusingly similar to the marks of the Complainant.

The Complainant states that the domain www.clubmahindraholiday.co.in as held by the Respondent capitalizes on the trade mark, trade name, corporate name and domain name of the Complainant per se.

The Complainant states that it is well recognized in India as well as globally and use of such misleading term will add to the confusion in the minds of the internet users that the domain name is associated with the Complainant.

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The Complainant submits that the disputed domain name misrepresents or has the potential to misrepresent to the trade and public that such website is related to the Complainant and offers services for and on behalf of the Complainant. Such use of the domain in dispute will lead customers to believe that the domain name <clubmahindraholiday.co.in> is operated by the Complainant.

The Complainant further states that they have earned an enviable goodwill and reputation over the years. The Complainant also states that the Respondent has deliberately used the domain name www.clubmahindraholiday.co.in thereby blatantly misrepresenting the Respondent's services as that of the Complainant's with a view to deceive the public.

The Complainant states that the Respondent in registering a domain name comprising of Complainant's well known trade mark/corporate name in its entirety and in a manner clearly intended to cause confusion /deception as to the source/origin of such domain name creates an irrefutable impression of an association/sponsorship/relationship between the Complainant and the Respondent which is however not the case.

ii. Respondent has no rights or legitimate interest in the domain names

The Complainant states that the mark CLUB MAHINDRA is a coined term and that the said trade mark has attained widespread goodwill and reputation not only in India but in several other countries as well. The Complainant further states that in the disputed domain name, the Respondent had used the word "Club Mahindra Holiday" to falsely indicate that they have a trade nexus with the Complainant but no such relationship exists with the Respondent.

The Complainant states that the Respondent had no legitimate right to use the name "Club Mahindra Holiday". The Complainant further states that they have not permitted or licensed the Respondent to use the terms "Club Mahindra Holiday".

The Complainant further states that the domain name is an exact copy /imitation and/or arrangement/combination of the Complainant's corporate name, prior and registered trade marks, domain names for an identical and similar service which is likely to lead persons to believe that the services are rendered or provided by the Complainant.

The Complainant states that their trade mark is unique to them and that they have not authorized or licensed its use by the Respondent. The Complainant further states that through the disputed domain name the Respondent is offering services under the Complainant's name, which potentially could cause considerable commercial loss to the Complainant herein and cause irreparable dilution to its brand value.

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The Complainant states that the Respondent cannot be said to have legitimately chosen to use the domain names unless it was seeking to create an impression of an association with the Complainant. The Complainant further states that since there is no authorized association, the Respondent's use of the domain names cannot be said to be legitimate. Further the Complainant in this regard has referred to Telstra Corporation Limited v. Nuclear Marshmallows D2000-003 (WIPO Decision) and Rediff.com India Ltd v. Abhishek Verma and Anr (INDRP/001).

The Complainant has also referred to ACCOR v. Tigertail Partners, D2002-0625 (WIPO Decision) and Microsoft Corporation v. Yan Wei INDRP/145 wherein it has been held that grounds for such registration made with the intention to illegally capture on the Complainant's hard earned reputation and goodwill is to be treated as done in bad faith and without any legitimate interest in the same.

iii. The domain names were registered in bad faith

The Complainant states that the disputed domain name leads the user to a page that offers information relating to online travel services. The Complainant further states that the intention of the Respondent is to capitalize on the Complainant's well known mark, and to mislead internet users searching for the same.

As per the Complainant the Respondent is seeking to take undue advantage of the fame and goodwill of the Complainant. Further the Complainant also states that the term "Club Mahindra Holiday" by the Respondent prevents the Complainant, who is the rightful owner of the trade mark, from reflecting the trade marks in corresponding domain names.

B. Respondent

Despite receipt of the complaint and adequate notification from the Arbitrator, the Respondent has not filed any response and submissions to the complaint. Therefore, the Arbitrator has proceeded with the arbitration proceedings on the basis of the material submitted and put on record by the Complainant.

3. Discussion and Findings:

In the present circumstances, the decision of the Arbitrator is based on the documents as filed by the Complainant.

After perusing the Complaint and annexures as filed, the Arbitrator is of the view that the Complainant has satisfied all the three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.,:-

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- i. The Registrant's domain name is identical and confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - ii. The Registrant has no rights and legitimate interests in respect of the domain name;
 - iii. The Registrant's domain name has been registered or is being used in bad faith.
- i. **The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (paragraph 4 (i) of .IN Domain Name Dispute Resolution Policy)**

The Complainant is the registered proprietor of the trade/service mark "CLUB MAHINDRA" per se along with various prefixes and suffixes in various classes in India as well as other countries..

The disputed domain name <clubmahindraholiday.co.in> completely incorporates the trade/service mark CLUB MAHINDRA of the Complainant. It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Therefore, it is observed that the domain name <clubmahindraholiday.co.in> is similar to the Complainant's trade/service mark CLUB MAHINDRA.

'CO.IN' is an essential part of any top level Indian domain name, therefore, it does not distinguish the Respondent's domain name <clubmahindraholiday.co.in> from the Complainant's trade/service mark CLUB MAHINDRA. This has also been held in prior panels such as *Lego Juris A/S v. Robert Martin INDRP/125* and *AB Electrolux v. GaoGou of Yerec, INDRP/630*.

Therefore, the disputed domain name <clubmahindraholiday.co.in> is confusingly similar/identical to the trade mark of the Complainant and the Complainant has satisfied the requirement paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy.

- ii. **The Registrant has no rights and legitimate interests in respect of the domain name (Paragraph 4 (ii); paragraph 7 of .IN Domain Name Dispute Resolution Policy)**

The Complainant states that "CLUB MAHINDRA" the term by which the Complainant is popularly known is a coined term. In the disputed domain name the Respondent has used the word "CLUB MAHINDRA HOLIDAY" to falsely indicate that are associated/affiliated with the Complainant, whereas there is no such connection whatsoever.

The Complainant has no relationship with the Respondent and has not permitted or licensed the Respondent to use the terms "CLUB MAHINDRA HOLIDAY". The disputed domain name is phonetically, deceptively, visually and confusingly similar/identical to the Complainant's trade mark and this would mislead public to

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believe that the Respondent and the domain name is associated/affiliated with the Complainant when it is not so. Further in *Consorzio del Prosciutto di Parma of Via Marco dell' Arpa v. Jim Muller*, INDRP/218, it was held that "misleading users by incorporating other's trademarks in a domain name gives a false impression to users and does not constitute a *bonafide* offering of goods and services."

Respondent's websites are not bona fide as the Respondent is using the disputed domain name to divert/redirect internet users seeking Complainant's goods to its own websites.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent is not authorized, licensed or permitted to use the trade mark CLUB MAHINDRA per se or any mark similar/identical to the said mark and therefore, the Respondent has no rights or legitimate interests in the domain name <clubmahindraholiday.co.in> and the conditions under paragraph 4 (ii) and paragraph 7 of the .IN Domain Name Dispute Resolution Policy, have been satisfied.

iii. The Domain Name was registered or is being used in bad faith (Paragraph 4 (iii) and paragraph 6 of the .IN Policy)

The disputed domain name leads user to a page that offers information relating to online travel services. The Respondent intends to benefit by creating an impression that the Respondent is in some manner related to the Complainant.

Further the use of the term "CLUB MAHINDRA HOLIDAY" by the Respondent prevents the Complainant who is the rightful owner of the trade mark from reflecting the same in a corresponding domain.

In view thereof, the Arbitrator concludes the Complainant has proved the requirements under Paragraph 4 (iii) and paragraph 6 of the .IN Dispute Resolution Policy).

Despite being given adequate notification the Respondent has not filed any reply till date hence, the facts are deemed to be admitted by them. Therefore, in absence of any response received from the Respondent, the Arbitrator has proceeded with the award ex parte. (As held in *Intercontinental Corporation v. Jaswinder Singh*, INDRP/265 and *Park Hospitality Worldwide LLC v Kristin Frakfurter*, INDRP/659).

4. Decision

Based upon the facts and circumstances and further relying on the documents as annexed with the complaint, the Arbitrator is of the view that Complainant has statutory and proprietary rights over the trade mark CLUB MAHINDRA per se and along with prefixes and suffixes. The disputed domain name <clubmahindraholiday.co.in> is

Arbitrator

similar/identical to the trade mark of the Complainant. The Complainant has proved to the satisfaction of the Arbitrator that the Respondent has no right or legitimate interest to use the aforesaid domain name and the said domain name has been registered and is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <clubmahindraholiday.co.in > to the Complainant. The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana
Sole Arbitrator

Date: April 12, 2016
Place: New Delhi, India