

சுமீர் ராஜா தமில்நாடு TAMILNADU

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9.12.15

Dr. Sudhir Raja Ravindran
Chennai

AZ 851313

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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: DECEMBER 09, 2015

Navistar, Inc.

2701 Navistar drive,

Lisle, IL 60532,

United States of America

COMPLAINANT

VERSUS

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Sun Bin

No. 9 zhujiang Road,

Pukou District, Nanjing,

Jiangsu, China – 211899

RESPONDENT

DISPUTED DOMAIN NAME: "NAVISTAR.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is Navistar, Inc., represented by Mr. Vinod Khurana, Khurana & Khurana, Advocates and IP Attorneys, Noida.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Sun Bin.

2. The Dispute: The domain name in dispute is navistar.in. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Webiq Domains Solutions Pvt. Ltd.

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	28.10.2015
2.	Date on which consent was given to act as an Arbitrator	29.10.2015
3.	Date of appointment of Arbitrator	29.10.2015
4.	Date on which the Hard copy of the complaint was received	04.11.2015
5.	Date on which notice was issued to the Respondent	04.11.2015
6.	Due date for filing of Counter Statement by the Respondent	11.11.2015

4. Procedural History

- 4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 4.4. On November 04, 2015, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within 7 days, i.e. on or before November 11, 2015.

5. Factual Background:

- 5.1. The Complainant is Navistar, Inc. The Complainant's inception dates back to 1831 which was started by McCormick and was subsequently named as McCormick Harvesting Machine Company. In the Year 1902, McCormick harvesting Machine Company was merged with Deering harvester Company and a new company was created known as International Harvester Company. In 1986 Navistar was incorporated with the primary objective of

building trucks, buses and engines. The Complainant has coined and adopted the tradename and trademark NAVISTAR since the late 1986s with respect to its goods and services and the Complainant owns a significant international trade mark portfolio for the mark NAVISTAR and the variations thereof.

5.2. The Respondent registered the disputed name <NAVISTAR.IN> on July 15, 2015.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1. The Complainant has registered its trademark NAVISTAR which is distinctive and has an established reputation in many countries in the world.

6.1.2. In India, the Complainant has applied for trademark registration with the registrar of trademarks for its trademark NAVISTAR in Class 7, 12, 35 & 37 under trademark application numbers 3035397, 3035398, 3035399 and 3035400.

6.1.3. The Complainant has also won various awards, recognitions and milestones for its products and services bearing the NAVISTAR mark.

6.1.4. The Complainant owns the domain names which incorporate the NAVISTAR mark including <navistar.com>.

6.1.5. The Complainant claims that the disputed domain name offers the domain name for sale and has displayed various sponsored links to the Complainant's competitors and their product.

6.1.6. The Complainant claims that the Respondent has no rights and legitimate interests in the disputed domain name and has not registered it as a trademark, service mark or name anywhere in the world. The Respondent is not authorised or licensed by the Complainant to use its trademark/tradename.

6.1.7. The Complainant further claims that the disputed domain name was registered and used in bad faith as the Respondent seeks to make unlawful gains out of the disputed domain name by hosting pay-per-click links on the domain name. The disputed domain name carries sponsored links which is likely to result in deception and confusion to the internet users. The Complainant claims that the Respondent has registered the disputed domain name with the sole purpose of selling the same and preventing the Complainant from reflecting the mark in its own domain name.

6.1.8. The Complainant requests for the following relief: "to order cancellation of the Registrant's domain name <NAVISTAR.IN> and/or transfer the same to the Complainant".

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name;
and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "NAVISTAR" in numerous jurisdictions including India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.

7.3.3. The disputed domain name incorporates the trademark "NAVISTAR" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bonafide offering of goods or services or (ii) the

registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

7.4.3. The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.4. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a bonafide use under the Policy.

7.4.5. The Arbitrator finds the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

7.5.2. The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "NAVISTAR", and that the Respondent seeks to

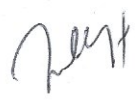


exploit its famous mark to attract Internet users for commercial purpose. The disputed domain name carries pay-per-click views and sponsored links to the products and services of the Complainant and the Complainant's competitors. The Complainant's prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.3. The Arbitrator finds the Complainant has established its prior adoption and rights in the trademark "NAVISTAR". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record show the Complainant's trademark is well known and that the Respondent was aware of the Complainant's prior rights in the trademark when he registered the disputed domain name. The choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.4. The Registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant.

7.5.5. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanation for the registration



and use of the disputed domain name by the Respondent. This indicates that the Respondent has engaged in registration of the disputed domain name in bad faith.

7.5.6. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. In a previous decision in the case *Intercontinental Hotels Corporation v. Jaswinder Singh*, Case No. INDRP/265, the Respondent in the proceeding had not filed any response or submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator. Since no formal response was received from the Respondent the learned Arbitrator proceeded with the award ex-parte and held that the Respondent has got registered and used the disputed domain name in bad faith.

7.7. In the case *Intercontinental Hotels Corporation v. Abdul Hamid*, Case No. INDRP/278, the facts of which are similar to the present case, the Respondent was using the mark of the Complainant in its entirety and further used the disputed domain name with a website containing links to other hotels that compete with the Complainant's business. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and internet users that the disputed domain name may refer to the Complainant. The Arbitrator found that the Respondent has no rights or legitimate interests in the disputed domain name and the disputed domain name has been registered or is being used in bad faith.

7.8. The abovementioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by him.

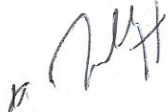
8. Decision

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name < NAVISTAR.IN> to the Complainant.

8.3. The Award is accordingly passed on this day of December 09, 2015.

Place: Chennai


Dr. Sudhir Raja Ravindran
Sole Arbitrator