

ADMINISTRATIVE PANEL DECISION

Eicher Motors Limited v. Raj Singh

Case No. D2022-0111

1. The Parties

The Complainant is Eicher Motors Limited, India, represented by Fidus Law Chambers, India.

The Respondent is Raj Singh, India.

2. The Domain Name and Registrar

The disputed domain name <royalenfielddealership.org> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2022.

The Center appointed Vinod K. Agarwal as the sole panelist in this matter on February 22, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant Eicher Motors Limited is a public limited company incorporated in the year 1982 under the provisions of the Indian Companies Act, 1956. According to the Complaint, The Complainant has been a pioneer of powerful four stroke engine technology since 1995 in India. With its manufacturing base in Chennai, India, the Complainant offers a variety of models, under its flagship brand, ROYAL ENFIELD, catering to the needs of the traditional segments, the enthusiasts, and urban youth. The Complainant's ROYAL ENFIELD motorcycle made its first entry in the market in 1901. The Complainant's ROYAL ENFIELD motorcycles enjoy an extensive and committed customer base and the same is evident from the Complainant's outreach on various social media websites such as Facebook and Twitter. The Complainant has protected its trademark ROYAL ENFIELD through various trademark registrations including but not limited to Indian trademark No. 657316 for ROYAL ENFIELD (word mark), filed on March 1, 1995 and certified on May 14, 2003.

Further that, the Complainant exports to more than 70 countries including but not limited to United States of America, Japan, United Arab Emirates, France, and United Kingdom. The Complainant operates through a chain of authorized dealers and service centers set up across various cities and towns in India and abroad. The Complainant is also engaged in the business of sale of accessories, bike care products, apparels, and other related products.

The disputed domain name was registered on August 16, 2021. The Complainant provided evidence that the disputed domain name resolved to a website incorporating the Complainant's ROYAL ENFIELD trademark, pictures of the Complainant's products, claims to be a vehicle dealership, and an application form seeking personal details from Internet users.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are applicable to the present dispute.

In relation to element (i), the Complainant contends that the disputed domain name wholly contains the Complainant's trademark ROYAL ENFIELD and is therefore identical to the Complainant's trademark/trade name ROYAL ENFIELD.

The Complainant contends that due to the fame and reputation associated with the trademark ROYAL ENFIELD, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant. The contents of the website hosted on the disputed domain name makes it evident that the Respondent is impersonating the Complainant's ROYAL ENFIELD company and are offering ROYAL ENFIELD dealership franchises. This offer is fake and without any permission and/or authorization of the Complainant.

Further, the Respondent is also using images of the Complainant's bikes on the website and giving an impression to the public that the Respondents deals is the said bikes, gear, etc. The Respondent is also *mala fide*ly offering dealership franchises for ROYAL ENFIELD motorcycles to the public at large and directs the public to apply for the said dealership franchises through the impugned website. It clearly indicates the Respondent's intention to pass off the Respondent's business, goods, and services as that of the Complainant. In the instant case, the disputed domain name is identical to the Complainant's well-known ROYAL ENFIELD trademark. The services offered by the Respondent are identical to the Complainant. In fact, the Respondent is impersonating the Complainant.

Further, addition of the word “dealership” in the disputed domain name does not negate the fact that the disputed domain name is identical and confusingly similar to the Complainant’s trademarks. The content of the website hosted on the disputed domain name clearly gives an indication that the Respondent is impersonating the Complainant and thus, there is a strong likelihood of confusion.

In view of the above, the requirements of paragraph 4(a)(i) of the Policy are satisfied. The disputed domain name is identical and confusingly similar to the trademark in which the Complainant has rights.

In relation to element (ii), the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not used, nor made, demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent (as an individual, business, or other organization) is not commonly known by the disputed domain name and the Respondent has acquired no trademark rights.

The Respondent has failed to establish the criteria mentioned in paragraph 4(a)(ii). The contents of the website hosted on the disputed domain name makes it evident that the Respondent is impersonating the Complainant’s ROYAL ENFIELD company. This offer is fake and without any permission and/or authorization of the Complainant. The Respondent is clearly gaining commercial benefits and unjust enrichment by misappropriating the Complainant’s ROYAL ENFIELD trademark.

None of the exemptions provided under paragraph 4(c) of the Uniform Domain Name Dispute Resolution Policy apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain Name. The Complainant has prior rights in the ROYAL ENFIELD trademark which precedes the registration of the disputed domain name by the Respondent.

Taking the above into consideration, Internet users are clearly misled regarding the relationship between the disputed domain name and the Complainant and will falsely believe that the website connected to the disputed domain name is owned by the Complainant. Such use of the disputed domain name cannot be considered a *bona fide* offering of services and does not establish rights or legitimate interests on behalf of the Respondent.

As the Respondent has no rights or legitimate interests in relation to the disputed domain name, the second element as referred to in article 4(a)(ii) of the Policy has been satisfied.

Regarding element (iii), the Complainant contends that the disputed domain name was registered in bad faith and with an ill-motive to gain unfair commercial advantage, at the expense of the Complainant. The Respondent is only trying to usurp the reputation and goodwill of the Complainant’s trade/service mark ROYAL ENFIELD through the disputed domain name. The Respondent has not made any legitimate offering of goods or services under the Complainant’s trade/service mark ROYAL ENFIELD through the disputed domain name.

Further that, the main object of registering the disputed domain name by the Respondent is to attract Internet users, for commercial gain to its website, by creating a likelihood of confusion with the Complainant’s trade/service mark ROYAL ENFIELD as to the source, sponsorship, affiliation or endorsement of the website. Therefore, the Respondent is using the disputed domain name in bad faith.

Given the above and the general background of the matter, it is clear that the disputed domain name is registered and is being used in bad faith. The third element as referred to in article 4(a)(iii) of the Policy has been satisfied.

Accordingly, the Complainant requests that the disputed domain name be cancelled.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel as to the principles the Panel is to use in rendering its decision. It says that, "A panelist shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the information submitted by the Complainant, the Complainant is the owner and proprietor of the trademark ROYAL ENFIELD. Said trademark was registered by the Complainant in the year 1995. The trademark ROYAL ENFIELD and its different variations are registered in countries around the world for many years.

In the present dispute, the disputed domain name wholly incorporates the Complainant's trademark ROYAL ENFIELD, with the addition of the term "dealership". The Complainant's trademark is clearly recognizable in the disputed domain name, and the addition of the term "dealership" does not prevent a finding of confusing similarity.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

According to Paragraph 4(c) of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the disputed domain name by proving any of the following circumstances:

(i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the dispute domain name, and 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 domain name anywhere in the world. The Respondent is known by the name of "Raj Singh". The Complainant has not authorized the Respondent to use the name and their trademark ROYAL ENFIELD. Furthermore, there is no information available whether the Respondent has filed any application for the registration of any mark associated with the disputed domain name, anywhere in the world.

Further, the Respondent's display of the webpage when considered in its entirety does not constitute *bona fide* offering of goods and services. In particular, the Panel notes that the Respondent's webpage falsely suggests an affiliation with the Complainant by using the Complainant's trademark and product images without any clear explanation regarding the lack of relationship between the Respondent and the Complainant. Also, it is unclear from the evidence if the Respondent is actually offering the goods of the Complainant, or rather using the website to merely collect sensitive personal information from Internet users. Lastly, the Panel notes the nature of the disputed domain name, incorporating the Complainant's widely-known trade mark and a term related to Complainant's services, carries a risk of implied affiliation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1).

Based on the default and the evidence in the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that 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 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 it has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's 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 Complainant contends that the domain name was registered or acquired primarily for the purpose of misleading the customers of the Complainant. The Respondent is not making a noncommercial or fair use of the disputed domain name. The disputed domain name is being used with the intent of wrongful commercial gains. This and other information submitted by the Complainant leads the Panel to find that the disputed domain name was most likely registered and used by the Respondent in bad faith to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's webpage by creating a likelihood of confusion with the Complainant's trademark. Furthermore, the Respondent's failure to submit a response or provide any evidence of actual or contemplated good faith use, further supports a finding of bad faith in these circumstances.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(a)(iii) of the Policy is satisfied.

7. Decision

For the foregoing reasons, namely, that the disputed domain name is confusingly similar to the mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered in bad faith and is being used in bad faith, in accordance with Paragraphs 4(i) of the Policy and Rule 15 of the Rules, the Panel orders that the disputed domain name <royalenfielddealership.org> be cancelled.

/Vinod K. Agarwal/

Vinod K. Agarwal

Sole Panelist

Date: March 7, 2022