

ADMINISTRATIVE PANEL DECISION

**Bharti Airtel Limited v. Contact Privacy Inc. Customer 1248845749 / Contact Privacy Inc. Customer 1248744640 / Dev Dutta Anand, 4KInfotech
Case No. D2022-0184**

1. The Parties

The Complainant is Bharti Airtel Limited, India, represented by Intl Advocare, India.

The Respondent is Contact Privacy Inc. Customer 1248845749, Canada / Contact Privacy Inc. Customer 1248744640, Canada / Dev Dutta Anand, 4KInfotech, India.

2. The Domain Names and Registrar

The disputed domain names <airtelfiber.com> and <airtelfibre.com> are registered with Google LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2022. On January 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 26, 2022.

The Center verified that the Complaint together with the amended 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 February 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 24, 2022. The Respondent sent informal email communications on January 26, 2022.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on March 1, 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 is a telecom service provider engaged in telecommunication services. The Complainant is the registered owner, user, and proprietor of the mark AIRTEL in India as well as in several jurisdictions worldwide. Indian trademark registration number 648684, dated December 14, 1994, is the Complainant's earliest registration for its mark AIRTEL. The Complainant also has Indian registration number 3809860 for AIRTEL V-FIBER (figurative mark) in its favour since April 18, 2018.

The disputed domain names <airtelfibre.com> and <airtelfiber.com> were registered on December 7, 2020 and November 23, 2020 respectively. The disputed domain name <airtelfibre.com> is passively held by the Respondent, whereas, the disputed domain name <airtelfiber.com> resolves to a website on which Respondent compares the Complainant's telecom services with Complainant's competitors (see Annex 35 of the Complaint). Respondent also runs Google Ads on "www.airtelfiber.com".


5. Parties' Contentions

A. Complainant

The Complainant claims to be one of the biggest telecommunication companies in India, engaged in a variety of services including broadband and Internet services, under its mark AIRTEL which it claims to have conceived, invented, and coined in the year 1994.

The Complainant's mark AIRTEL and several AIRTEL formative marks are registered in India as well as in other jurisdictions. The Complainant's earliest Indian trademark registration in respect of the mark AIRTEL, mentioned above, dates back to December 14, 1994. The Complainant also owns Indian trademark registration numbers 3809860 and 3809861 for AIRTEL V-FIBER (figurative mark) dated April 18, 2018. The Complainant has filed copies of Indian trademark registration certificates for its mark AIRTEL and its variants along with the Complaint as Annex 7. The Complainant has registered various domain names incorporating its mark AIRTEL. Whois print outs of such registrations have been submitted as Annex 10 to the Complaint.

The Complainant has successfully protected its trademark rights in AIRTEL by way of lawsuits against third parties. The Complainant has submitted Annexes 12, 13, 14, 15, and 16 along with the Complaint which are copies of court orders in favour of the Complainant where domain names incorporating the mark AIRTEL were transferred to the Complainant. The Complainant has also relied on past UDRP panel decisions where its rights in the mark AIRTEL were recognised and its complaints were successful. Past UDRP panel decisions relied on by the Complainant have been submitted as Annexes 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

The Complainant provides broadband services under its marks  and AIRTEL V-FIBER, which have been promoted on several digital and social media channels. Web articles featuring the Complainant services under AIRTEL V-FIBER have been filed as Annex 30 to the Complaint.

The Complainant argues that the disputed domain names use its mark AIRTEL in its entirety and hence are identical and confusingly similar to the Complainant's mark AIRTEL. The Complainant argues that the Respondent has no legitimate rights in the disputed domain names and has registered them with the intent for wrongful commercial gain and to misleadingly divert consumers who are looking to visit the Complainant's website "www.airtel.in". According to the Complainant, the Respondent registered the disputed domain

names with *mala fide* intention being fully aware of Complainant's mark AIRTEL and AIRTEL V-FIBER. The fact that Respondent is using Google Ads to generate income further establishes bad faith. The ads (as seen from Annex 35 of the Complaint) include those of the Complainant's competitors in the telecom industry.

The Complainant has stated that merely because the Respondent provides information about the Complainant's services does not vitiate a finding of bad faith nor does a disclaimer. In support of this contention the Complainant has relied on *Pliva, Inc. v. Eric Kaiser*, WIPO Case No. [D2003-0316](#) and *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Center received two informal communications from the Respondent on January 26, 2022:

"Hello Team, I found the ads served were from your competitor and are not legitimate for the brand. So I am taking down the pages & ads from the domain. Further, I don't want any dispute, So kindly close this case ..."

"Hello,
Greetings,
Regarding the WIPO Case No. [D2022-0184](#), The intention was never for domain squatting or making harm to any brand names. I respect Airtel & its owners. I just Followed some websites and created this. Even the domain is driving traffic to the official website of the complainant. Furthermore, I am taking down the domain completely."

6. Discussion and Findings

As per paragraph 5(e) of the Rules where a Respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the panel may draw such inferences as it considers appropriate. The Panel does note the two informal communications received from the Respondent and takes them into account in rendering its decision. It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has produced trademark registration certificates in India, and other jurisdictions, in respect of the mark AIRTEL. The disputed domain names incorporate the Complainant's mark AIRTEL in its entirety, together with the term "fiber" and "fibre". Referring to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8, this Panel notes that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. In the present case, the Complainant's mark AIRTEL is clearly recognizable in the disputed domain names and therefore the addition of "fibre" or "fiber" does not prevent a finding of confusing similarity. (See *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#)).

The [WIPO Overview 3.0](#), section 1.7, provides the consensus view of UDRP panels: "While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The generic Top-Level Domain ("gTLD") ".com" is generally disregarded for the purposes of comparison under this element.

In view of the above-mentioned findings, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's trademarks and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

B. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel notes that the Complainant has already submitted evidence that it holds exclusive rights in the trademark AIRTEL by virtue of statutory registrations and by common law use, which rights have accrued in the Complainant's favour. Furthermore, the use of the disputed domain name <airtelfiber.com> to resolve into a website displaying Google Ads constitutes neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use in the present circumstances.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: "While the overall burden of proof in UDRP proceedings is on the complainant, [...] where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence to demonstrate its rights or legitimate interest in the domain name."

The Respondent has failed to file a response to rebut the Complainant's *prima facie* case or to advance any claim as to rights or legitimate interests in the disputed domain names (particularly, in accordance with paragraph 4(c) of the Policy). The informal communication sent by the Respondent makes it clear that they adopted the domain names knowing that the rights over the marks belonged to the Complainant.

Accordingly, the Panel finds the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Bad faith is understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see section 3.1 of the [WIPO Overview 3.0](#)).

The website on the disputed domain name <airtelfiber.com> purports to provide information about the Complainant's broadband services but also provides ads and information on other third party businesses. The Respondent has opted to run Google Ads on its website thus directly profiting from the traffic it attracts. As is the nature of Google Ads, Complainant's competitors too can advertise and indeed have as seen from Annex 35 of the Complaint. Here, such conduct falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The Panel notes that the Complainant has extensively used its AIRTEL trademark for a long time before the registration of the disputed domain name, including using it on the Internet. The Respondent's probable purpose in registering the disputed domain name which incorporates the entire mark of the Complainant is, in the Panel's view, to capitalize on the reputation of the Complainant's mark.

The disputed domain name <airtelfibre.com> is passively held by the Respondent. However, this does not prevent a finding of bad faith under the doctrine of passive holding. (see section 3.3 of the [WIPO Overview 3.0](#)).

As set out in the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Here, there is no doubt that the Complainant's mark AIRTEL is a recognised and popular mark, in particular in India where the Parties are located. In fact, in a lawsuit filed by the Complainant in 2013 regarding its trademark rights in AIRTEL, the Delhi High Court held AIRTEL as a well-known mark. The Complainant has filed a copy of the court's order as Annex 16 to the Complaint. Hence, the Panel is satisfied that the Respondent knew, or in any event ought to have known, of the mark's existence.

The Panel therefore concludes that the disputed domain names were registered and are being used in bad faith.

Absent any formal response from the Respondent, little is known about the Respondent. The Respondent has not availed himself of the opportunity to present any case of good faith that it might have had, and, in view of the circumstances, the Panel cannot conceive of any. Rather, the Respondent has effectively said it will give up the registration to the disputed domain names by taking them down. The Panel finds that on the balance of probabilities, the Respondent's conduct in registering and using the disputed domain name constitutes opportunistic bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <airtelfiber.com> and <airtelfibre.com> be transferred to the Complainant.

Shwetasree Majumder

Sole Panelist

Date: March 15, 2022