

ADMINISTRATIVE PANEL DECISION

Bharti Airtel Limited v. David Czinczenheim

Case No. D2023-3565

1. The Parties

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

The Respondent is David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <airtelfinance.com> is registered with SNAPNAMES 49, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 August 29, 2023.

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 September 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2023. The Respondent did not submit any formal response, however sent an informal communication email on August 25, 2023. Accordingly, the Center notified the commencement of panel appointment process on October 3, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on October 6, 2023. 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 an international telecommunications company based in India and with a network across five continents and over 529 million customers. It provides telecommunication services, including broadband and Internet services, satellite, carrier, international services, calling card, e-business services, and also offers various sorts of financial services through different subsidiaries or platforms including "Airtel Finance" which currently offers consumers two products namely, "Airtel Flexi Credit" and "Airtel Axis Bank Credit Card".

The Complainant owns numerous trade mark registrations for its AIRTEL word mark including Indian trade mark registration number 648684 registered from December 14, 1994, and French trade mark registration 4830042 registered on December 30, 2021. It also owns numerous domain name registrations that incorporate its AIRTEL mark including in particular <airtel.com> and <airtelfinance.in>.

The disputed domain name was registered on August 17, 2023, and resolves to a GoDaddy placeholder page.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights for its AIRTEL mark as set out above and that the disputed domain name wholly incorporates its AIRTEL trade mark. The Complainant submits that the disputed domain name is therefore identical or confusingly similar to its registered trade mark rights and that the addition of the common English term "finance" does not prevent a finding of confusing similarity.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name because the AIRTEL trade mark is a distinctive, unique and an invented mark and has been used by the Complainant since the year 1994. A mere mention of the trade mark AIRTEL establishes an identity and connection with Complainant and no one else. It says that due to the continued usage of the AIRTEL mark for more than two decades amongst the members of the public in India as well as globally, the trade mark has acquired secondary meaning as people connect all of the Complainant's services with the AIRTEL mark.

The Complainant submits that the Respondent has no business connection, approval or consent from the Complainant in any manner to use the AIRTEL trade mark as part of the disputed domain name. It says that the Respondent has registered the disputed domain name to block the Complainant from asserting its lawful rights and to extort money from the Complainant. In fact, says the Complainant, the disputed domain name has been expressly put on sale, as is evident from the domain parking page to which the disputed domain name resolves.

The Complainant submits that it has owned registered trade mark rights and that it has used the AIRTEL mark long before the Respondent's registration of the disputed domain name. It says that it enjoys a substantial goodwill resulting from the use of its AIRTEL mark both in India and internationally and that the Respondent must have been aware of its business and registered trade mark rights when it registered the disputed domain name. The Complainant notes that the disputed domain name is identical to its "Airtel Finance" brand and domain name <airtelfinance.in> and submits that this is a further indication of the Respondent's deliberate registration of the disputed domain name in bad faith.

As far as use in bad faith is concerned, the Respondent says that the mere use of its very well-reputed AIRTEL mark in the disputed domain name without permission amounts to passing off and prevents it from registering its trade mark in a domain name and is therefore *prima facie* evidence of use in bad faith. It also notes that the disputed domain name resolves to a registrar's holding page and is therefore being held passively which it says is a further indication of bad faith. The Complainant submits in short that the Respondent has registered the disputed domain name to try to extort money from it on the basis that the Respondent could otherwise sell it to some competing interest of the Complainant who could damage or tarnish the Complainant's AIRTEL mark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns registered trade mark rights in its AIRTEL trade mark as set out in section 4. The disputed domain name wholly incorporates the Complainant's AIRTEL mark and is therefore confusingly similar to it. The addition of the common English term "finance" does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name because the AIRTEL trade mark is a distinctive, unique and an invented mark which has been used by the Complainant since the year 1994 and for which the Complainant owns trade mark registrations in numerous jurisdictions. The Complainant has submitted that the Respondent has no business connection, approval or consent from the Complainant, in any manner, to use the AIRTEL trade mark as part of the disputed domain name. It says that the Respondent has registered the disputed domain name to block the Complainant from asserting its lawful rights and to extort money from the Complainant and that the disputed domain name has been put on sale, as is evident from the domain parking page to which the disputed domain name resolves.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to, or to rebut the Complainant's case, or to explain its conduct in registering the disputed domain name and using it passively to divert to a Go Daddy place keeper page. This conduct is not consistent with the Respondent acting in a *bona fide* manner or having rights or legitimate interests in the disputed domain name and the Panel therefore finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was only registered in August 2023, many years after the Complainant first registered its AIRTEL mark in 1994. The AIRTEL mark is a coined inventive term that is highly distinctive and has been very widely used in India and internationally, including online and the Panel notes that the Complainant also owns registered trade mark rights in France, as set out above, since 2021. In these circumstances it is more than likely that the Respondent, who is reportedly based in France, was well aware of the Complainant's mark and business when it registered the disputed domain name which notably reflects one of the Complainant's recently launched brands and domain names – "Airtel Finance".

The disputed domain name currently resolves to a GoDaddy parking page which when the Panel checked does not appear to contain any express offer of sale as submitted by the Complainant (Annex 1), even if one might be implied. Previous panels have found that factors that have been considered relevant in applying the passive holding in bad faith doctrine, where there is no apparent use of the disputed domain name, include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The Complainant's AIRTEL mark is highly distinctive and extremely well reputed internationally and enjoys a significant goodwill and reputation resulting from use by hundreds of millions of customers. It is also registered as a trade mark in France where the Respondent appears to be based. The Respondent has failed to respond to these proceedings to explain its conduct in registering the disputed domain name. The Respondent also used a privacy service to conceal his true identity. In the absence of explanation from the Respondent, it appears to the Panel that there is no plausible good faith reason why the Respondent would choose to register the disputed domain name incorporating the Complainant's highly distinctive and very well reputed AIRTEL mark and this is all the more so in circumstances that the Complainant also operates one of its businesses under the brand name "Airtel Finance". The Panel therefore finds that the Complainant's case that the Respondent has made a passive holding of the disputed domain name in bad faith has been made out.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this element of the 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 name, <airtelfinance.com>, be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: October 16, 2023