



दिल्ली DELHI

ARBITRATION CASE NO.7 OF 2010

M 983301

**IN THE ARBITRATION MATTER OF:-**

AVAYA INC

COMPLAINANT

VERSUS

LI JIAOBAI

RESPONDENT

**AWARD:**

The present dispute relates to the registration of the domain name avaya.co.in in favour of the Respondent.

The Complaint has filed the instant complaint challenging the registration of the domain name <avaya.co.in> in favour of the Respondent. Pursuant to the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there-under, the Complainant has preferred this arbitration for raising this dispute for redressal of its grievances.

In its complaint, the Complainant has stated that the mark "AVAYA" is a coined term and has been registered by the complainant with the United States Patent and Trademark office for numerous goods and services related to communications hardware and software and business management. The

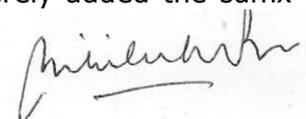
Complainant has further stated that it has also registered the rights of "AVAYA" with the Office of Trade Mark India for hardware and software applicable to e-business and e-commerce in the year 2003 and has been in extensive and continuous use by the Complainant and therefore it has the right to prevent unauthorized use of "AVAYA" mark. The complainant Has produced its trademark registration detail in India and U.S.

The complainant has stated in its complaint that the domain name is identically or confusingly similar to the mark of complainant and that the Respondent has no right or legitimate interest in the said domain name and has parked the disputed domain name for sale, and therefore the use of said domain name is not bonafide. Further it is contended that since the registration of domain name is in bad faith, therefore the said domain name be transferred to the Complainant.

I entered upon inference regarding the instant dispute on 8<sup>th</sup> December 2010 and notices were sent to the Respondent as well as Complainant calling upon for their responses to the said complaint. However, even after granting considerable time to the Respondent, there has been no response from its side. Accordingly, the Respondent is proceeded ex-parte.

I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the Respondent to the complaint, I shall deal with the complaint on the basis of its merits. Grounds have been raised by the Complainant regarding the transfer of the domain name <avaya.co.in> in its favour.

Firstly I shall deal with the ground regarding the rights of the Complainant vis-a-vis that of Respondent's over the domain name <avaya.co.in>. The mark "AVAYA" is a unique and distinct word and has acquired distinctiveness as the word has been coined by the Complainant. This mark has been used by the respondent and has merely added the suffix

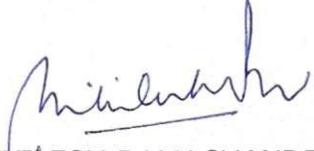


'co.in'. This itself reflects the fact that the respondent wanted to create confusion the minds of the public. Hence the Respondent's action to register the said domain name is not bonafide as he has no right over the mark "AVAYA."

Secondly the Respondent's action to register the said domain name is not bonafide as the Respondent has not made use of it in any manner. It is seen that the Respondent has parked the said domain name for sale.

Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the complainant has proprietary right over the mark "AVAYA". Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant in its favour and direct the Registry to transfer the said domain name i.e. <avaya.co.in> in favour of the complainant.

Parties to bear their costs.

  
(NIKILESH RAMACHANDRAN)  
ARBITRATOR

Dated 7<sup>th</sup> January 2011.