
Raffles Hotel prevail in domain infringement complaint

In an interesting domain dispute before National Internet Exchange of India (NIXI) that administers .IN Domain Name Dispute Resolution Policy (INDRP), modeled on the same lines as UDRP, the International Raffles hotel chain sought transfer of domain www.theraffles.co.in from an Indian hotelier (Mr. Mahavir Kushawaha) based in Kota, Rajasthan. Mr. Kushawaha, was running a hotel under the name 'The Raffles' in Kota, Rajasthan and had also set up a website www.theraffles.co.in. Further, the hotel was listed on many travel portals including www.tripadvisor.in, www.makemytrip.com, www.holidayiq.com, www.booking.com, www.trivago.com, www.travelguru.com, www.cleartrip.com, www.yatra.com, www.goibibo.com.

Raffles International Limited (RIL) in its complaint submitted:

- RIL is one of the largest luxury management companies in the world, with over 104 hotels worldwide in operation under the RAFFLES, Fairmont and Swissotel trademarks.
- RIL's RAFFLES mark/name spans across the globe from the exotic destinations to vibrant cities with 11 hotels and resort properties in existence and 5 properties under development all over the world.
- RIL's flagship property, the Raffles Hotel Singapore, was established in the year 1887 and since its inception in 1887 has become well known, not only in Singapore, but also internationally.
- The brand RAFFLES is a premier hospitality brand synonymous with excellence in the hospitality business. RIL and its affiliates have invested much time, effort and monies in the promotion and marketing of the RAFFLES trade mark worldwide which includes the Complainant's corporate website at www.affles.com which is available and accessible to the public all over the world.
- RIL and their affiliates are the owners and inventors of the distinctive trade mark "RAFFLES" and the right to any variations thereof vests in the Complainant only.

- RIL's RAFFLES mark is statutorily protected in several jurisdictions of the world and filed documents evidencing the huge amounts expended on advertisements in promoting the Raffles name.
- The Respondent, Mr. Mahavir Kushawaha (MK) has registered an identical domain name www.theraffles.co.in with the .in Registry on November 19, 2012, and the domain name incorporates the Complainant's well-known, prior used mark RAFFLES and prior registered domain
- The Respondent, Mr. Mahavir Kushawaha (MK) was operating a hotel under an identical name "The Raffles" in Kota, Rajasthan, and their adoption of an identical name in relation to an identical industry, i.e., the hotel business, is clearly in bad faith.
- MK's website www.theraffles.co.in is misleading the general public who may get confused into thinking that their business is in some manner associated with RIL in India or approved, owned or licensed by the Complainant, which is not true.

Respondent (MK) contested the matter and filed a detailed response in support of his case:

- Respondent is actively involved in the business of management and running of its hotel in India by the name of "The Raffles" since the year 2012 in Kota, Rajasthan.
- The Respondent's business is well established and has earned immense goodwill and reputation in the trade circles and among the general public and they are the prior user of the mark/name 'Raffles' in India.
- The hotel business of the Respondent under the name "The Raffles" is registered with all the relevant government authorities and has obtained all necessary approvals/ licenses required to operate the said business.
- The adoption of the name "The Raffles" by the Respondent is bonafide and in complete good faith and the word "Raffle" has a dictionary meaning which means a gambling competition in which people obtain numbered tickets, each ticket having the chance of winning a prize.

- The Respondent has spent considerable amount of money on the advertisement and promotion of its hotel under the name “The Raffles”.
- The adoption of '.in' domain clearly shows that the business is localized in India and is operating only in India where the Complainant has no presence.
- The Respondent is the prior adopter/ user of the mark in India and has been using the same continuously and uninterruptedly since 2012, whereas, the Complainant has no presence whatsoever in India, neither does it have any goodwill or reputation qua the mark 'Raffles' in India.

Both side filed voluminous documents in support of their case. After considering the contentions of both the parties, the Arbitrator/Panelist ordered the domain name to be transferred to RIL.

Decision

- a) The domain name www.theraffles.co.in was registered by the Respondent on November 19, 2012, whereas, RIL was using the domain name prior to 2012.
- b) RIL has been operating a property under the name RAFFLES Hotel in Singapore since 1887; hence, the prior use of the name is established by them.
- c) RIL had registered the domain name www.affles.com on December 06, 1995, i.e., 17 years prior to the Respondent's registration of the domain www.theraffles.co.in. Complainant has also filed sufficient evidence to show its prior adoption and use of the Raffles mark/name.
- d) The statutory registrations with various Govt/ Civic / Tax Bodies will not help the case of the Respondent as none of the aforesaid bodies have any powers qua Registry for registration of trade name & mark.

Our Comment

The decision reinforces that reputation is no longer localized and copying a well known brand without any valid justification will be considered as bad faith adoption.

Vatika Towers
10th Floor Block-B
Sector-54
Gurgaon-122002
National Capital Region (Haryana)
India

Tel. +91 124 4655999
Fax. +91 124 4045047
Email info@rnaip.com

Copyright © RNA, IP Attorneys