

DRP 0001

**BHARTI AIRTEL LIMITED
AND
BHARTI GLOBAL LIMITED**

v.

CABLE AND WIRELESS GUERNSEY LIMITED

**DECISION OF THE
INDEPENDENT EXPERT**

1. Parties

Complainants: Bharti Airtel Limited (No 1)
 and
 Bharti Global Limited (No 2)

H5/12, Qutab Ambience
Mebrauli Road
New Delhi
110030
India

Respondent: Cable and Wireless Guernsey Limited

PO Box No 3
St Peter Port
Guernsey
Channel Islands
GY1 3AB
Great Britain

2. Subject(s) of Dispute

The following domain names are the subject of this dispute:

airtel.co.je
airtel.je
airteljsy.co.je
airteljersey.co.je
airteljersey.je
airtellive.co.je
airtellive.je
airtelworld.co.je
airtelworld.je
airteljsy.je
airtel.co.gg
airtel.gg
airtelgsy.co.gg
airteljersey.gg
airteljsy.co.gg
airteljsy.gg
airtelgsy.gg
airtelguernsey.co.gg
airtelgurnsey.gg
airteljersey.co.uk
airtellive.co.gg
airtellive.gg
airtelwprld.co.gg
airtelworld.gg

Note that some of the domain names shown above appear on examination not to exist. It seems likely that these are spelling mistakes, and in that case that the intention is to deal with, in the course of the adjudication of this complaint, the names as corrected, see list below:

airtelgurnsey.gg taken to mean airtelguernsey.gg
airtelwprld.co.gg taken to mean airtelworld.co.gg

3. Procedural Matters

The complaint was lodged with the Channel Island Internet Domain Name Registry (“the Registry”) on 23 April 2007. The complaint was validated, and the domain names in question were locked pending the outcome of the complaint.

The complaint was sent to the Respondent, via the registrar CINames.com on 15 June 2007, together with the instruction that notification needed to be given in writing to change the ownership of domain names by the current registrant. This is necessary because the Registry cannot transfer a domain name without instruction in writing from the registrant.

On 15 June 2007 the undersigned independent Expert confirmed that he know of no reason why it was not possible for him to properly act as Expert in this case, and that no matters which could call into question the independence and /or impartiality of the intended expert were extant.

The Respondent was given 14 days to respond to the complaint.

Having received no response from the Respondent, the Registry informed the parties that the dispute would be resolved under the Dispute Resolution Procedure by a nominated independent expert on the basis of documents received to date, as allowed under section 12.2 of the Terms and Conditions for Registration of Internet Domain Names (.GG & .JE) version 3.0.1 published 1 May 2007 by the Registry. The Complainants required to pay the relevant fee.

On 3 July 2007 the Registry appointed the Expert to act in accordance with the Dispute Resolution Procedure in this matter.

The dispute process administrators were then advised that the copy of the complaint for whatever reason never reached, or was not acted upon by, the Respondent. The communication was not returned as undelivered. It was re-sent on 4 July 2007. As a consequence the Expert determined that it seemed fair just and reasonable to allow a further 14 days for the Respondent to respond to the complaint. That time extension was accordingly granted.

Payment of the fee due was received in the morning on 4 July 2007.

Correspondence was received from the Respondent dated 4 July 2007 requesting the Registry to transfer domain names to the Complainant. On verification of the names supplied the following comments arise:

1. some names are included in the request are not in the above list; and
2. some names included in the request are not in the .GG and .JE namespaces administered by the Registry and not within the jurisdiction of the Expert.

4. Facts

The Complainant company No 1 provides GSM, broadband and fixed line telephone services to some 28 Million customers in India.

The Complainant company No 2 is a subsidiary of Complainant company No 1, and has held since 28 April 2006, licences to run telecommunication services including mobile telephone

services in Jersey, and shortly thereafter to run the same services in Guernsey. Both licences were awarded through competitive selection procedures.

Both Complainant companies make extensive use of the brand “Airtel”. Complainant company No 1 holds a variety of registrations of trademarks including the word Airtel, including “Airtel World” and “Airtel Live”.

Complainant Company No 1 is the undisputed owner of a variety of domain names featuring the word “airtel” and the phrase trade marks “airtelworld” and “airtellive” including those in the .COM, .CO.IN and .IN domain space.

The Respondent company partook in the same competitive selection process in applying for, but not being successful in being granted licences to operate telecommunications services in Guernsey and Jersey as did the Complainant company No 2.

5. Contentions of the Parties

The Complainant companies have contended that the domain names registered by the Respondent are identical and / or deceptively similar to the registered and reputed trademark “Airtel” and the derivative marks “Airtel World” and “Airtel Live”.

The Complainant companies claim that they are the lawful owner and proprietor of the trade mark and brand “Airtel” and the various derivatives thereof as above.

The Complainant companies further contend that to allow the names as listed under *Subject(s) of Dispute* (above) could lead to confusion on the part of their legitimate customers, and sponsoring and affiliated associations. Consumers not currently customers of the Complainant companies were likely to be misled and unable to make accurate contact with them in respect of legitimate business opportunity.

And the Complainant companies claim they have legitimate claim to the names as listed under *Subject(s) of Dispute* (above), and that the acts of the Respondent in registering these names constitute an infringement of the claimants legitimate rights to the use of the names under which they trade, and hold brands and trade mark interests.

By virtue of the fact that the Respondent took part in, and failed to win, the competitions for Jersey and Guernsey based licences which were won by the claimant companies, the Complainant companies contend that the registrations of the names listed under *Subject(s) of Dispute* (above) was an act committed in bad faith.

No explanations for registration of the domain names was received from the Respondent.

6. Discussion

The Complainant companies have based their complaint on their registration of trade marks in respect of the “Airtel” mark and its derivatives as documented. Substantial evidence to this effect has been submitted annexed to the complaint. On the basis of this evidence, the Expert is satisfied that the Complainant companies hold legitimate rights in these trade marks because, but not limited to the fact that, they have made extensive legitimate use of the brands and trade marks in both their pure and derivative forms.

An “Abusive Registration” is defined as a domain name which was either registered or otherwise acquired in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to a Complainant’s rights; or has been used in a manner which took unfair advantage of or was unfairly detrimental to that Complainants rights; or both¹. Any registration activity that is abusive is considered to be in bad faith.

The Respondent has not made substantive use of the domain names listed under *Subject(s) of Dispute* (above). However, in registering these names, the unique nature of domain names means that the Complainant companies were denied the right to register these names for their own legitimate use, commonly known as a blocking registration.

The Expert is satisfied that the effect of the respondent’s registration of the names listed under *Subject(s) of Dispute* (above) was to deprive the Complainant companies, as legitimate holders of brand and trade mark interests, of rights in the names in question. There is no explanation of the background or registration or the intentions or motives of the respondent in respect of the registrations. Consequently the Expert is satisfied, on the balance of probabilities, that a prima-facie case exists that their activities could be viewed as being consistent with the above abusive registration definition; however this is mitigated by the immediate request on receiving the complaint to transfer the domains to the Complainant.

The Expert is further satisfied that customers, associates, sponsoring organisations and members of the general public not currently customers could be confused or misled by and website facility that the Respondent may in the future make available at one or more of the domain names listed under *Subject(s) of Dispute* (above). Furthermore, the Expert can see no legitimate purpose for which the Respondent could legitimately claim rights or interests to the names so listed.

7. Decision

Legitimate rights and interests in the names listed under *Subject(s) of Dispute* (above) are, by virtue of the above findings held by the Complainant companies. The Expert considers registration of the names after the failure of the Respondent to win the rights to licences subsequently awarded to the Complainant companies, could potentially be construed as an abusive (or blocking) registration; however, as a result of the prompt actions of the Respondent

¹ Adapted from the Nominet Policies – see <http://www.nominet.org.uk/policy/> for more information

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company in requesting transfer of the listed names, for which they are to be commended, the Expert has no need to rule on the bad faith aspect of the complaint.

The Expert does not comment on registrations outside the .GG and .JE namespaces.

The Expert directs therefore that the .GG and .JE names listed under *Subject(s) of Dispute* (above) be transferred to the Complainant company either in accordance with the request of the Respondent in the letter to the Registry of 4 July 2007, by way of procedures detailed in sections 12.2 and 12.3 of the Terms and Conditions for Registration of Internet Domain Names (.GG & .JE) version 3.0.1 published 1 May 2007 by the Registry.

16 July 2007

Eur Ing Andrew R Lane MSc CEng FBCS MIEE CITP
CHARTERED ENGINEER