

**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE  
(HONG KONG OFFICE)**

**PANEL DECISION**

**Sea N See Private Ltd. v. iPlanet Network**

**Case No. HK-0700113**

**1. The Parties**

The Complainant is Sea N See Private Ltd., 2<sup>nd</sup> Floor, Oakum Building, Hadheebee Magu, Galolhu, Male 20098, Maldives.

The Respondent is iPlanet Network, Kapowai, d'Urville sland, Marlborogh Sounds, New Zealand. .

**2. The Domain Name and Registrar**

The disputed domain name is <manthiri.com> and it is registered with Go Daddy Software, Inc. 14455 N. Hayden Road, Suite 219, Scottsdale, Arizona 85260, U.S.A.

**3. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) on 18 January 2007. In response to a notification by the Center dated 26 January 2007 that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on February 1, 2007. On 26 January 2007, the Centre transmitted by email to Go Daddy Software Inc. the Registrar a request for verification in connection with the domain name at issue. On 30 January 2007 the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the registered information.

The Centre verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), on February 13, 2007 the Centre formally notified the Respondent of the Complaint. In accordance with the Rules, paragraph 5(a), the due date for Response was 20 calendar days from 13 February 2007. The Respondent was informed that if his response was not received by that date, he would be considered in default. The Centre would still appoint a Panel to review the facts of the dispute and to decide the case. The Respondent did not submit any response. Accordingly, the Centre notified

the Respondent's default on 16 March 2007.

The Centre appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the Sole Panelist in this matter on 17 March 2007. The Panel finds that it was properly constituted. The Panel has submitted a Statement of Acceptance and a Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

From the Complaint and the various annexure to it, the Panel has found the following facts:

##### **Complainant's activities**

The Complainant "Sea N See Private Ltd.," is a travel and tours company incorporated in Maldives. The Complainant owns and operates a vessel by the name of "Manthiri". It is a live aboard dive safari vessel. The said vessel is used for the purposes of accommodating tourists. The Complainant registered the domain name <MANTHIRI.COM> in July 1997 and since then it has been using the said domain name. The Complainant has not furnished much information about its activities.

##### **Respondent's Identity and Activities**

The Respondent did not reply to the Complainant's contentions. Hence, the Respondent's activities are not known.

#### **5. Parties Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are applicable to this dispute. These elements are as follows:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

In relation to element (i), the Complainant contends that :

- (a) the name "Manthiri" is registered as a business name of the Complainant with the Government of Maldives vide registration No. BN – 439/2005.
- (b) that the Complainant is the owner of the trademark "MANTHIRI". It is registered with the Government of Maldives, Ministry of Economic Development and Trade vide registration No. TM/000024/2005. Using this

mark, the Complainant provides diving services to foreign tourists visiting Maldives.

- (c) the Complainant also owns and operates a live-aboard dive cruiser by name “Manthiri” for accommodating tourists since 4<sup>th</sup> February 1995. The vessel is registered with the Ministry of Tourism, Government of Maldives.
- (d) Manthiri is also the name of the trade enterprise under which the complainant imports foreign goods into Maldives.

Thus, the domain name “manthiri.com” is identical or confusingly similar to its trade and business mark in which the Complainant has rights.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the domain name <manthiri>. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Complainant further contends that the Respondent registered the domain name for the sole purpose of harming its business by posting malicious messages to shoo away their customers. Therefore, the Respondent has no rights or legitimate interests in respect of the domain name.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <manthiri.com> by the Respondent is to mislead the general public, tourists, and the customers of the Complainant and other visitors to their website. The Complainant first registered the domain name <manthiri.com> in 1997. They continued to be the Registrant/Owner of the said domain name till 5 July 2005. On 5 July 2005 a third party accessed Tucows registration account and maliciously deleted the name of the Complainant. As a result of a case filed by the Complainant before the Hong Kong office of the Asian Domain Name Dispute Resolution Centre, the said domain name was returned to them. On 25 April 2006 ‘iPlanet Network deleted their name from the domain name account and added their name. The complainant has stated that the use of a domain name that appropriates a well known trade and business mark cannot be considered a “bona fide offering of goods and services”.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. Hence, the Respondent’s contentions are not known.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel as to the principles the Panel is to use in rendering its decision. It says that, “A panelist shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The present dispute pertains to the domain name <manthiri.com>. The complainant possesses a tourist vessel by the name of “manthiri” since February 1995. The registered business name of the Complainant is also “MANTHIRI”. Further that the Complainant is the owner of the trademark “MANTHIRI”. It is registered with the Government of Maldives, Ministry of Economic Development and Trade vide registration No. TM/000024/2005. Thus, the Panel finds that the domain name is confusingly similar to the registered trademark of the Complainant.

#### **B. Rights or Legitimate Interests**

According to Paragraph 4(c) of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the default and the evidence in the Complaint, it is presumed that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. See also *Pavillion Agency Inc. Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd. And Glenn Greenhouse*, WIPO Case No. D2000-1221. “MANTHIRI” is the name and mark of the Complainant. It is evident that the Respondent can have no legitimate interest in the domain name. Further, in view of the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name and that nobody would use the word “manthiri” unless seeking to create an impression of an association with the Complainant. The Panel finds that the Respondent has no rights or legitimate interests in the domain name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the third clause. The Complainant has furnished evidence of the fact that from 1997 to 5 July 2005 the Complainant was the registrant/owner of the domain name <manthiri.com>. On 5 July 2005 a third party accessed Tucows registration account and deleted the name of the Complainant. On 25 April 2006 'iPlanet Network deleted their name from the domain name account and added their name. The said domain name is being used for posting malicious messages defaming the business of the Complainant. This and other information submitted by the Complainant leads to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. See also *Sea N See Private Ltd. v. Econotech Systems Limited*, Asian Domain Name Dispute Resolution Centre Case No. HK-0500074. The Panel agrees with the said contention of the Complainant and concludes that the registration of the domain name amounts to the registration and use of the domain name in bad faith.

### **7. Decision**

In light of the forgoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in

accordance with Paragraphs 4(i) of the Policy and Rule 15 of the Rules, the Panel orders that the domain name <manthiri.com> be transferred to the Complainant.

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Dr. V. K. Agarwal  
Sole Panelist

Dated: 30 March 2007

