



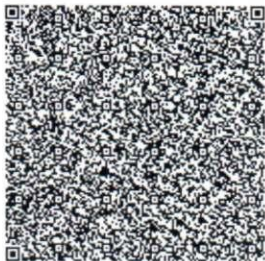
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL11955841583777K
Certificate Issued Date	: 09-Aug-2012 04:57 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SHCIL24092942182022K
Purchased by	: MR NIKILESH RAMACHANDRAN
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: MR NIKILESH RAMACHANDRAN
Second Party	: NA
Stamp Duty Paid By	: MR NIKILESH RAMACHANDRAN
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



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ARBITRATION CASE NO.13 OF 2011

IN THE ARBITRATION MATTER OF:-

ABEBOOKS INC.

COMPLAINANT

VERSUS

ANKIT GULATI

RESPONDENT

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

AWARD:

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

The Complainant has filed the instant complaint challenging the registration of the domain name <AbeBooks.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 reprisal of its grievances.

In its complaint, the complainant has stated that it is an online books selling pioneer, having its headquarters in Canada and a European office in Germany. The complainant is in the business of selling books and has adopted name AbeBooks since 1995 which was coined from "Advanced Book Exchange". The complainant has further stated that the website of the complainant is an online market place where several new, used, rare and out of print books are offered for sale and the readers can find books which are best sellers, and also that the collectors can find rare books and students can find text books. The complainant in support of their contention, regarding the exclusive use and long standing goodwill enjoyed by it worldwide, has placed on record copies of incorporation certificates of Advanced Books Exchanged Inc. and AbeBooks Inc. issued to it. The complainant further stated that it has filed application for registration of mark **ABEBOOKS** in India, which are pending registration.

In the complaint, the complainant has stated that it has registered the domain name www.abebbooks.com in the year 1995 and the said website is accessible to anyone across the world. Further to this domain, the complainant has registered country specific domain names, namely abebbooks.co.uk, abebbooks.de, abebbooks.fr, abebbooks.it and abebbooks.ca, for which the complainant has placed on record the result of WHOIS.



The complainant has further stated that from its websites over 45 million books and that the books of independent booksellers are distributed in about 44 countries worldwide and that it has transformed the business of used books by making it easy to locate and purchase, and that a unique inventory of books for sale a various booksellers dating back from 15th century has been placed on the website. The complainant has listed out various collections on topic ranging from architecture, business, children, drama, education, mathematics, literature, science, sports, true crime etc, which are some of the topics from the elaborate list is mentioned in the complaint. The complainant also has listed out the recognition and contribution with regard to the services rendered by various magazines and has also placed on record the details of various award received by it. It has also listed several independent booksellers in India for using the complainant's website to sell books. The complainant has also stated that world over the book lovers and the customers have connected with it to stay updated about latest books and new arrivals at AbeBooks. The complainant has also stated that it has made every effort to protect its straight mark ABEBOOKS and ABEBOOKS.COM. It has placed on record the decision of WIPO in case No. DAU 2003-2004 in respect of domain name abebooks.com.au.

The complainant's grievance in the complaint has been stated to be that disputed domain <AbeBooks.co.in > has been registered by the respondent which has caused confusion and deception, and that the Respondent is not making legitimate or fair use of the said domain name. On learning about the registration of the disputed domain name by the Complainant, it sent demand letter through its attorney to the Respondent requesting into transfer the domain name to it. However, there was no response from the Respondent. Hence, the Complainant has filed the present complaint.



I entered upon reference regarding the instant dispute on 17th December 2011 and notices were sent to the Respondent calling for its response and to the Complainant for its rejoinder.

The Respondent entered its reply/written statement on 16th January 2012 and also tendered its evidence along with documents relied upon by him. In its reply, the Respondent has contended that he is a young entrepreneur who had a well established family business in the field of clothing and accessory in Chandigarh, Punjab, India. That after completing his studies, the Respondent ventured into the business of distributed ship of books, by procuring books from various publishers in New Delhi in 2005 under the name style of "ALL BOOKS EVERY WHERE" . That due to vigorous efforts the business of distributorship, the sales increased from few thousand rupees to 24 lakhs in 2008 and that noticing the great potential in online trading, the Respondent applied for registration of domain name ABEBOOKS.IN and ABEBOOKS.CO.IN on 8th February 2008.

The respondent has further stated that thereafter it has been operating its business under the domain name "AbeBooks.co.in" and got the domain name "AbeBooks.co.in" also registered in his name in order to ensure effective protection in the Indian territory. It has been urged by the respondent that he found it completely appropriate to hold the registration for the domain name "AbeBooks.co.in" which by the virtue of being a ccSLD is merely an extension of "abebooks.in"

The respondent has given a parawise reply of the averments made by the complainant in its complaint denying the submissions made by the complainant. The respondent has stated that the contentions raised by the complainant are baseless and hold no ground. It was averred by the respondent that the complainant has failed to adduce any evidence in order to prove that respondent has acquired the domain name abebooks.co.in and abebooks.in for purpose of selling, renting or otherwise transferring to the complainant or his competitor.



Further the respondent has vehemently denied that the registration of the domain name "abebooks.co.in" is malafide and has been registered in bad faith or the main object of using the said domain name to enrich himself and earn illegal profit or to prevent the complainant from using it.

The respondent in his reply to the prayer of the complainant has sought dismissal of the complaint relying on the grounds mentioned in para 25 of his reply/ written statement.

The complainant thereafter filed a rejoinder along with documents supporting the claim and its averments. The complainant has denied the contents of the undated written statement filed by the respondent. It was averred by the complainant therein that admittedly the respondent was trading under the name of "ALL BOOKS EVERY WHERE" or "ABEbooks" however the respondent did not chose to register the domain names allbookseverywhere.co.in or allbookseverywhere.com which should have been the first step for selling books online as alleged by the respondent. The complainant has further averred that the contentions of the respondent that he is young entrepreneur and who has noticed the great potential in online trading and sale of books online through internet has failed to notice the availability of the domain names chosen by it. The complainant has also stated that it is hard to believe that while registering a trade name, style the respondent did not come across the complainant's domain name and website Abebooks.com or business and services provided by the complainant.

The complainant has also contended that respondent has failed to provide any cogent evidence to prove its sale of books by using internet domain name "ABE BOOKS.CO.IN" exclusively. The complainant has further submitted that it is prior adopter of and user of the trademark and domain name and adoption of the identical domain name by the respondent is in bad faith.



The complainant has averred that the respondent has registered the domain names with malafide intention to encash upon the goodwill and reputation of the complainant since the complainant is registered proprietor of the trademark and various domain names with the prominent word ABEBOOKS in various countries since 1995, the public as well as trade including potential customers are bound to believe that the disputed domain name is an extension of the complainant's domain names. The complainant submitted in its rejoinder that the respondent has no legitimate right over the disputed domain name.

The complainant has also averred that the respondent has not placed any documents with the details of the his Central Sales Tax/ State Sales Tax number, bank account in the name of Abebooks.in. Exhibits A, B and D were therefore denied by the complainant.

The complainant therefore concluded that the respondent's written statement is based on the merit less pleas and that the respondent has no legitimate rights over the disputed domain name. The complainant reiterated the prayer made by it in the complaint and submitted that it is a fit case where the disputed domain name is liable to be cancelled and transferred to the complainant i.e. www.abebbooks.co.in.

I have perused the records filed by both the parties and have gone through the contents of the complaint and rejoinder filed by the complainant as well as the written statement filed by the respondent. I shall deal with the complaint and the reply on the basis of its merits.

Firstly I shall deal with the ground regarding the rights of the Complainant vis-à-vis that of Respondent's over the domain name < AbeBooks.co.in >. The mark "AbeBooks" 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 "AbeBooks.co.in."

Secondly the Respondent's action to register the said domain name is not bonafide as the Respondent has shown any evidence in support of its claim for prior use of the disputed domain name. I have perused the records and the documents filed by the respondent, and hold that the mere filing of invoices of purchase of books from certain vendors does not establish trading of books. There is no credible evidence shown by the Respondent that such books were sold online or by any mode which establishes that the books were used for selling online through the disputed domain name. Also the financial statements supporting the Income Tax Returns does not in any way disclose that the income was through selling of books through disputed domain name, online or otherwise. The Respondent has not produced any details of the Central Sales Tax/ State Sales Tax number, bank account of the respondent in the name of Abebooks.in for carrying on trade. The respondent has simplicitor denied the averments made by the complainant supported with documents. Hence I do not believe the claims made by the respondent in his written statement.

Thirdly, the respondent admittedly provided the links proving the existence of the complainant in the internet. The same substantiates the fact that the respondent had complete knowledge of the complainant's domain name and its use worldwide. On the other hand the complainant has submitted that the complainant is registered proprietor of the trademark and various domain names with the prominent word ABEBOOKS in various countries since 1995, which has been supported by the trade mark registrations filed by the Complainant on record. Therefore the public as well as people in the trade including potential customers are bound to believe that the disputed domain name is an extension of the complainant's domain names. I agree with the submissions of the complainant herein that the



registration of the disputed domain name by the Respondent is not bonafide.

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 "AbeBooks". 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 cancel the disputed domain name registered in the name of respondent transfer the said domain name i.e. <Abebooks.co.in> in favour of the complainant.

Parties to bear their costs.


(NIKILESH RAMACHANDRAN)
ARBITRATOR

Dated 10th August 2012.