



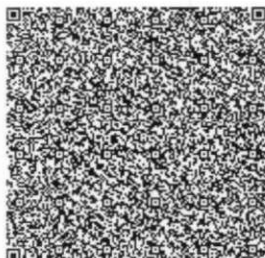
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL11191795699781K
Certificate Issued Date	: 07-Aug-2012 12:01 PM
Account Reference	: IMPACC (IV)/ dl700303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL70030322577334299013K
Purchased by	: DEEPA GUPTA
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DEEPA GUPTA
Second Party	: NA
Stamp Duty Paid By	: DEEPA GUPTA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

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"

**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: 04 August, 2012

In the matter of:

**Akshaya Pvt. Ltd.
Gandhi Aquare, No.46,
Old Mahabalipuram Road
Kandhanchavadi
Chennai 600096.**

Complainant

Vs

**Mr. Prabhakar Jeyapathy
17, Jonathan Drive,
Edison,
NJ- 08820
USA**

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is Akshaya Pvt. Ltd. with registered office at Gandhi Aquare, No.46, Old Mahabalipuram Road Kandhanchavadi, Chennai 600096.
- (b) Respondent firm is: Mr. Prabhakar Jeyapathy, 17, Jonathan Drive, Edison, NJ- 08820, USA. It has presence on internet with domain name of www.akshaya.in which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.akshaya.in registered with the .IN Registry through the Good Luck Domains.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

Complainant is involved in property and infrastructure development having annual turnover of approximately Rs. 200 Crores and known for their quality and luxury. Complainant is South India's most renowned property developer. Within a short period of 7 years they have been involved in a staggering 149 landmark projects under the brand name AKSHAYA, which is a popular brand, well known for their high standards of quality, transparency and clarity of paper work.

Complainant is the proprietor of the mark 'AKSHAYA' in respect of Building and Construction Services and has been using the same with the suffix HOMES & has obtained registration in respect of the marks AKSHAYA in November 2009 and AKSHAYA HOME in March 2004 in class 37 in respect of providing building and construction services.

The certificates are annexed as **Annexure-B1 and B2.**

Complainant obtained registration for the domain name akshayahomes.com and akshaya.com since July 2002 and April 2003 respectively enclosed as **Annexure-C.**

4. PARTIES CONTENTIONS:

A. COMPLAINANT'S CONTENTIONS:

- a. THAT THE INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE TRADE MARK OR SERVICE MARK IN WHICH AKSHAYA PRIVATE LIMITED HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS:**

That Website under the said domain name akshaya.com & akshayahomes.com explains the various services provided by the complainant and gives elaborate details of ventures of the Complainant, has thousands of visitors visiting the website each day.

The complainant extensively and continuously used mark AKSHAYA and AKSHAYAHOMES in respect of its services. Annual turnover under the mark AKSHAYA and AKSHAYA HOMES runs to several Crores of rupees. Complainant spent huge sums of money in advertisement and promotion of their business under the trademark/trading style AKSHAYA and AKSHAYA HOMES. Marks AKSHAYA and AKSHAYA HOMES are identified exclusively with the services provided by the complainant alone and none else. Trademarks AKSHAYA and AKSHAYA HOMES enjoy great reputation and goodwill amongst the trade and public.



Complainant Submits that adoption and registration of the said infringed domain name is illegal as the same infringes the exclusive rights vested with them in respect of registered mark AKSHAYA and AKSHAYA HOMES. Registration and use of the domain name 'www.akshaya.in' by the Respondent is bound to cause confusion and deception amongst the trade and public as the Complainant's trademark/domain name, AKSHAYA is wholly contained in the domain name 'akshaya.com' & 'akshayahomes.com' registered by the Complainant in April 2003 & July 2002.

b. THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF DOMAIN NAME:

Respondent has not obtained any leave or license from the Complainant for use of the mark AKSHAYA.

That the Respondent has no legitimate rights to use the mark/domain name www.akshaya.in. Complainant is associated with the mark AKSHAYA and AKSHAYA HOMES since 2002 and attained tremendous goodwill and reputation. Trade and public identify and associate the mark only with the Complainant.

c. THE IMPUNGED DOMAIN NAME 'akshaya.in' HAS BEEN REGISTERED & IS BEING USED IN BAD FAITH:

Respondent has registered the domain name www.akshaya.in containing the word AKSHAYA with sole object gaining undue advantage and to create an impression amongst the people visiting the respondent's website that they are in some way associated with the complainant when there is no such relationship whatsoever.

The intention of the Respondent is to capitalize on the complainant's well known mark, and to mislead internet users searching for the same, clearly indicates that the true intent of the respondent is to merely cyber squat and later sell the disputed domain to the complainant or the complainant's competitor, or any other interested party. Format of Respondents website is the preferred format of cybersquatters globally, consisting merely of



sponsored listings, with no independent content, made with an intention to cash in on the Complainant's well known mark by misleading internet users and later capitalize on the same by seeking to sell such domain name to the Complainant itself. Copy of WHOIS enclosed as **Annexure-D** and Respondent's web page of www.akshaya.in as **Annexure-E**.

On 16th Feb, 2005 the Respondent registered the domain name www.akshaya.in. The Registration is in bad faith as respondent's intention is to unduly capitalize on the goodwill and reputation of the complainant.

Respondent is seeking to take undue advantage of the complainant by diverting the potential customers of the complainant thus resulting in financial gain to the Respondent and would cause monetary loss to the Complainant in the form of missed revenues and further cause warranted dilution of their internationally reputed brand.

The respondent has registered the impugned domain name in bad faith with no intention to carry on any business or provide any services in his sites but with a view to make profit by obtaining money from the Complainant.

Complainant hereby requests the tribunal to direct, domain name "www.akshaya.in", currently registered in the name of the respondent, be cancelled and be transferred to the complainant plus award costs of the case to the respondent.

B. Respondents Contentions

Not responded at all.

5. OPINION:

I. Issue:

- A) To obtain relief under the dispute, resolution, policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has its origination in the domain akshaya.com since April 2003 and akshayahomes.com since Year 2002. That Complainant is using the mark 'AKSHAYA' since then and has made massive efforts to promote the brand name 'AKSHAYA' by consuming various resources available at his end. That word 'AKSHAYA' is well known, has acquired a Brand name.

On the basis of the records submitted by the complainant it's proved that the domain name ' akshaya' is related to the business of Complainant and is being used for purposes related to his work.

It is confirmed that Complainant is user of name 'AKSHAYA'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark 'AKSHAYA ' alone and with other symbol or Figure or other injunctions has been effectively registered in India by the Complainant(as attached in the Annexures submitted.) Respondent's registration of the infringed Domain name 'akshaya.in' in Feb 2005 post the registration of domain name 'akshayahomes.com' in July 2002, 'akshaya.com' in April 2003 and Trade Mark Registration in India of Akshayahomes in March 2004 and Akshaya in Nov 2009, by the Complainant, establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using it as a domain name of the complainant. It is also clear that 'Akshaya' name already had public recognition, knowledge & popularity by the time Respondent registered domain name 'akshaya.in'.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.



It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at various registries of the internet by the Complainant much before the respondent started the process of registration, still the respondent went in for the registration of the domain name in question, and was purportedly using the name for business purposes though indirectly and illegitimately having intention to trade on the goodwill and reputation of AKSHAYA PVT. LTD.

Respondent registration and use of the Infringed Domain Name to direct Internet users familiar with the reputation and services of 'AKSHAYA' to third party links so as to divert clients of complainant constitutes bad faith use under the policy. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'akshayahomes' is a registered and protected trademark of the Complainant at the time Respondent registered the domains name akshaya.in

Respondent intentionally attempted to attract Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademark AKSHAYA, Internet users will apparently and reasonably expect only the Complainant or its authorized / affiliated enterprises under the domain akshaya.in



The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name being Feb 2005.

The Trademark logo 'AKSHAYA' and similar domain names. i.e., akshaya.com and akshayahomes.com were legally registered at the registries of internet by the Complainant before the respondent started the process of registration, and was legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'akshaya.in' and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that



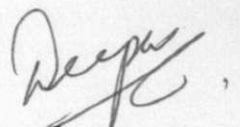
the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties, their conduct in the proceedings and the established law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the Complainant is an attempt by the Complainant to save the domain name of Complainant from hijacking by the respondent and in good faith with no intention to harass the Respondent or abuse process of law and the name www. akshaya.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 5,000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 4th day of August, 2012.


Deepa Gupta
Arbitrator