



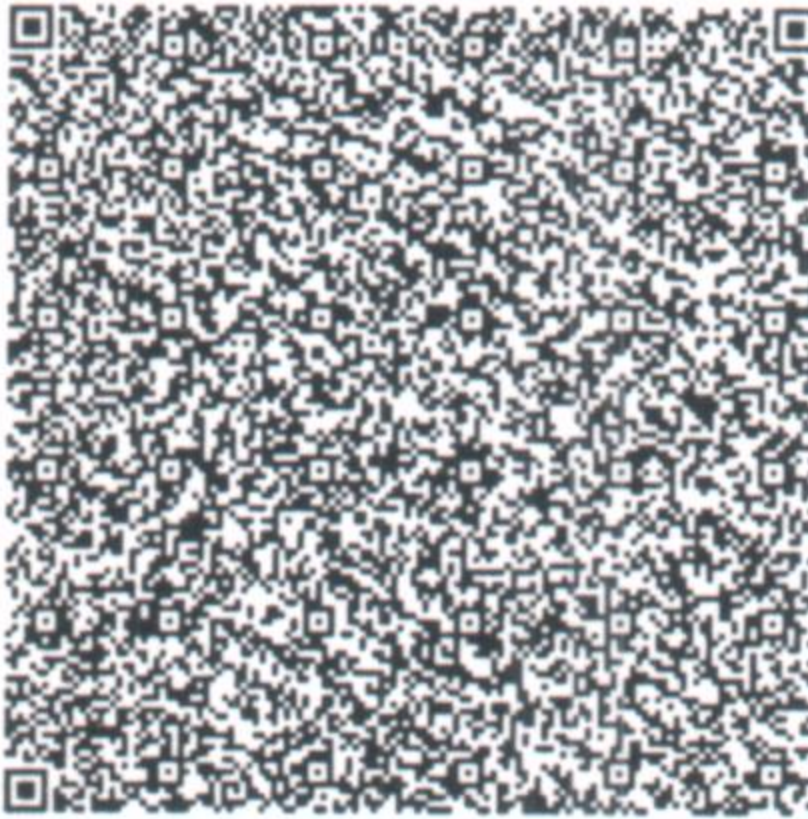
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL51040211682204O
 Certificate Issued Date : 20-May-2016 11:25 AM
 Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
 Unique Doc. Reference : SUBIN-DL92130301264557913901O
 Purchased by : SONAL KUMAR SINGH
 Description of Document : Article 12 Award
 Property Description : Not Applicable
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : SONAL KUMAR SINGH
 Second Party : Not Applicable
 Stamp Duty Paid By : SONAL KUMAR SINGH
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



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**BEFORE THE SOLE ARBITRATOR UNDER THE
 .In DOMAIN NAME DISPUTE RESOLUTION POLICY
 IN THE MATTER OF:**

Zinka Logistics Solutions Private Limited,
 #4, 2nd Floor, ST Bed Layout, 80Ft. Main Rd,
 Koramangala, Bangalore - 560034

...(Complainant)

v.

Josephine Swami,
 Microtex India Limited,
 A 46, Road no 2, MIDC,
 Andheri East, Mumbai- 400093

...(Respondent)

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
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THE PARTIES

The Complainant in this proceeding is: Zinka Logistics Solutions Private Limited, a private limited company registered under the Companies Act, 2013 and having its registered office at #4, 2nd Floor, ST Bed Layout, 80Ft. Main Rd, Koramangala, Bangalore - 560034.

Respondent in this proceeding is Josephine Swami, Microtex India Limited, a public company registered under the Companies Act, 1956 and having its registered office at A 46, Road no 2, MIDC, Andheri East, Mumbai- 400093

THE DOMAIN NAME

The disputed domain name is **www.blackbuck.in**

PROCEDURAL HISTORY

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name **www.blackbuck.in**.

.IN registry had supplied the copy of the Complaint and Annexures to me. On 12.04.2016, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 12.04.2016 with the instructions to file his reply within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 12.04.2016, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

On 18.04.2016, NIXI informed the Tribunal that the courier containing the complaint and the annexures has been delivered to the respondent's address.



On 02.05.2016, the Tribunal informed the parties that sufficient opportunity was given to the respondent to file its reply to the complaint but the respondent however, failed to file their reply and therefore, the Tribunal will pass its award on the basis of the documents on record.

Apropos of the material on record before the Tribunal, this award is passed.

I have perused the entire record and all the annexures / documents.

FACTUAL BACKGROUND

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:

The submissions of the complainant are briefly summarized as under:

1. The Complainant submits that it was incorporated on April 20, 2015 and has been engaged in the business of providing technology based logistics products and services including transport aggregation for providing customers with a platform, in the physical and/or electronic form, through the means of facsimile, electronic-mail, internet, intranet, e-commerce, m-commerce, mobile applications and/or any other means, to enable transactions of hiring all types of trucks, lorries, containers, cold storage vehicles, cars, fleet taxis, or any other motor vehicles for consideration, commission, service fee, insertion fee and to act as a platform, consultant, agent and service provider for businesses.
2. The Complainant submits that it has been carrying on commercial activities under the name Blackbuck and with regard to the same has acquired the domain name www.blackbuck.com from GoDaddy LLC, who was the original owner of the abovementioned domain name.



3. The Complainant submits that it had applied for the registration of the trademark "Blackbuck" on June 4, 2015 under the provisions of the India Trademark Act, 1999.
4. The Complainant submits that in numerous cases including *Pantaloons Retail (India) Limited vs. Online Directory Services [INDRP/86]* and *Pantaloons Retail (India) Limited vs. Mr. K. Ramesh*, the action of applying for registration of a trademark by the Complainant which formed a part of or the whole of the disputed domain name was found to highlight the bona fide intention of the Complainant with respect to the disputed domain name and was given due importance. The Complainant affirms that to the best of its knowledge, the Respondent has not applied for registration of the mark "Blackbuck" under the Indian Trademark Act, 1999 which indicates that the Respondent does not have any use of the aforesaid mark and hence, any objection raised by the Respondent with regard to its use is redundant and is *mala fide* and with the objective of causing harm to the name and goodwill of the Complainant.
5. The Complainant submits that the domain name www.blackbuck.com is widely used by the Complainant for commercial purposes and is accessible and known to the general public. The Complainant's website generates sufficient traffic through the www.blackbuck.com domain name to generate a ranking of 34,218 on Alexa.
6. The Complainant submits that it relies strongly on the name 'Blackbuck' in commerce and uses name 'Blackbuck' and the website www.blackbuck.com as an identifier of the Complainant's services. The Complainant's business activities as well as the Complainant's use of the word 'Blackbuck' has been noted and recognized often in the media, specifically through coverage in various articles of renowned national newspapers. On account of the extensive publicity and use, the Complainant's trademark is

identified by the consumers solely with the Complainant, who has acquired enormous goodwill in its trademarks in India.

7. The Complainant submits that there is a prima facie similarity between the domain name registered by the Respondent and the trademark which has been applied for by the Complainant. The Supreme Court has upheld in *Cadila Health Care Limited vs. Cadila Pharmaceuticals Limited* [2001 (5) SCC 73] that the following criteria is required to be looked at while determining the similarity between marks: (a) the degree of resemblance between the marks; (b) the nature of goods for which they are used as trademarks; (c) similarities in the nature, character and performance of rival goods; (d) class of purchasers. The Court considered it immaterial as to whether the plaintiff and the defendant trade in the same field or in the same or similar products. In light of the same, the Complainant submits that the ownership of the domain name www.blackbuck.in by the Respondent is similar to the mark for which an application for registration has already been made and may lead to undue confusion in the minds of the consumers who identify the business of the Complainant from the name "Blackbuck".
8. The Complainant submits that the Respondent has no legitimate rights in the domain name www.blackbuck.in. The complainant relies on the decision by the WIPO panel in *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, [WIPO Case No. D2001-0784] that "once a complainant establishes a prima facie evidence showing that none of the three circumstances establishing legitimate interests or rights applies, the burden of proof on this factor shifts to respondent to rebut the showing".
9. The Complainant submits that the Respondent did not engage in any commercial activities under the name "Blackbuck", either prior to or subsequent to the application for registration of the mark "Blackbuck" by the Complainant. The complainant submits that there is insufficient traffic data to even generate a report on the website on Alexa, a website providing analytical services. Further,



the Respondent is neither commonly/popularly known in the public nor has applied for registration of the trademark "Blackbuck" or any similar mark nor has the Respondent registered its business under the said name with the Ministry of Corporate Affairs, India.

10. The complainant submits that the domain name www.blackbuck.in is not in use whereas the ranking of the domain name www.blackbuck.com owned by the Complainant indicates that the activities of the Company has gained recognition through the name of Blackbuck and is accessed by users who wish to avail services, in the present or future of the Complainant.
11. The complainant submits that the varied nature of business activities carried out through the Respondent and the Complainant, the registration of the domain name www.blackbuck.in in the name of the Respondent may lead to undue confusion or unnecessary deception in the minds of the public with the domain name www.blackbuck.com which may raise queries or confusion about the commercial relationship between the Parties or may lead to confusion about the nature of their activities.
12. The complainant submits that it has never assigned, licensed or in any way authorised the Respondent to register or use the term "Blackbuck" in any manner whatsoever including using it as a domain name in direct conflict with that of its own.
13. The Complainant submits that the registration of the disputed domain name by the Respondent has been done in bad faith since the domain name www.blackbuck.in is not currently in use by the Respondent for any purpose including commercial purpose. The continuation of ownership of the disputed domain name will render irreparable harm to the Complainant who has made a name in the market under the word "Blackbuck". Further, the Complainant contends that the Respondent has continued with the registration of the disputed domain name purely for the purpose of exploitation and gaining undue advantage of the goodwill of the Complainant.



RESPONDENT

1. Respondent in this proceeding is Josephine Swami, Microtex India Limited, a public company registered under the Companies Act, 1956 and having its registered office at A 46, Road no 2, MIDC, Andheri East, Mumbai- 400093
2. The respondent has failed to file his say /reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

PARTIES CONTENTIONS

i) Complainant

The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the act.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation*



Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"

In these circumstances, the decision of the Arbitrator is based upon the statements and documents submitted before the Tribunal.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "blackbuck.in".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

- a) The Complainant submits that there is a prima facie similarity between the domain name registered by the Respondent and the trademark which has been applied for by the Complainant.
- b) The complainant places reliance on *Cadila Health Care Limited vs. Cadila Pharmaceuticals Limited* [2001 (5) SCC 73] where in the Supreme Court has upheld that the following criteria is required to be looked at while determining the similarity between marks: (a) the degree of resemblance between the marks; (b) the nature of goods for which they are used as trademarks; (c) similarities in the nature, character and performance of rival goods; (d) class of purchasers. The Court considered it immaterial as to whether the

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plaintiff and the defendant trade in the same field or in the same or similar products.

- c) The Complainant submits that the ownership of the domain name www.blackbuck.in by the Respondent is similar to the mark for which an application for registration has already been made and may lead to undue confusion in the minds of the consumers who identify the business of the Complainant from the name "Blackbuck".

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him.

Thus, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant. Even otherwise the above facts and the perusal of the domain name of the respondent clearly establish that the domain name of the respondent is similar and identical to the mark of the complainant.

ii. The Registrant has no rights or legitimate interests in respect of the domain name.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i. *before any notice to the Registrant of the dispute, the Registrant'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;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant 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.

- a) The Complainant submits that it relies strongly on the name 'Blackbuck' in commerce and uses name 'Blackbuck' and the website www.blackbuck.com as an identifier of the Complainant's services. The Complainant's business activities as well as the Complainant's use of the word 'Blackbuck' has been noted and recognized often in the media, specifically through coverage in various articles of renowned national newspapers. On account of the extensive publicity and use, the Complainant's trademark is identified by the consumers solely with the Complainant, who has acquired enormous goodwill in its trademarks in India.
- b) The Complainant submits that the Respondent has no legitimate rights in the domain name www.blackbuck.in. The complainant relies on the decision by the WIPO panel in *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, [WIPO Case No. D2001-0784] that "once a complainant establishes a prima facie evidence showing that none of the three circumstances establishing legitimate interests or rights applies, the burden of proof on this factor shifts to respondent to rebut the showing".
- c) The Complainant submits that the Respondent did not engage in any commercial activities under the name "Blackbuck", either prior to or subsequent to the application for registration of the mark "Blackbuck" by the Complainant. The complainant submits that there is insufficient traffic data to even generate a report on the websiteon Alexa, a website providing analytical services. Further, the Respondent is neither commonly/popularly known in the public nor has applied for registration of the trademark "Blackbuck" or any similar mark nor has the Respondent registered its business under the said name with the Ministry of Corporate Affairs, India.
- d) The complainant submits that the domain name www.blackbuck.in is not in use whereas the ranking of the domain name www.blackbuck.com owned by the Complainant indicates that the



activities of the Company has gained recognition through the name of Blackbuck and is accessed by users who wish to avail services, in the present or future of the Complainant.

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the Complaint establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

iii. The Registrant domain name has been registered or is being used in bad faith

- a) The Complainant submits that it relies strongly on the name 'Blackbuck' in commerce and uses name 'Blackbuck' and the website www.blackbuck.com as an identifier of the Complainant's services. The Complainant's business activities as well as the Complainant's use of the word 'Blackbuck' has been noted and recognized often in the media, specifically through coverage in various articles of renowned national newspapers. On account of the extensive publicity and use, the Complainant's trademark is identified by the consumers solely with the Complainant, who has acquired enormous goodwill in its trademarks in India.
- b) The Complainant submits that the registration of the disputed domain name by the Respondent has been done in bad faith since the domain name www.blackbuck.in is not currently in use by the Respondent for any purpose including commercial purpose.
- c) The complainant also contends that the Respondent has continued with the registration of the disputed domain name purely for the purpose of exploitation and gaining undue advantage of the goodwill of the Complainant.

All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even

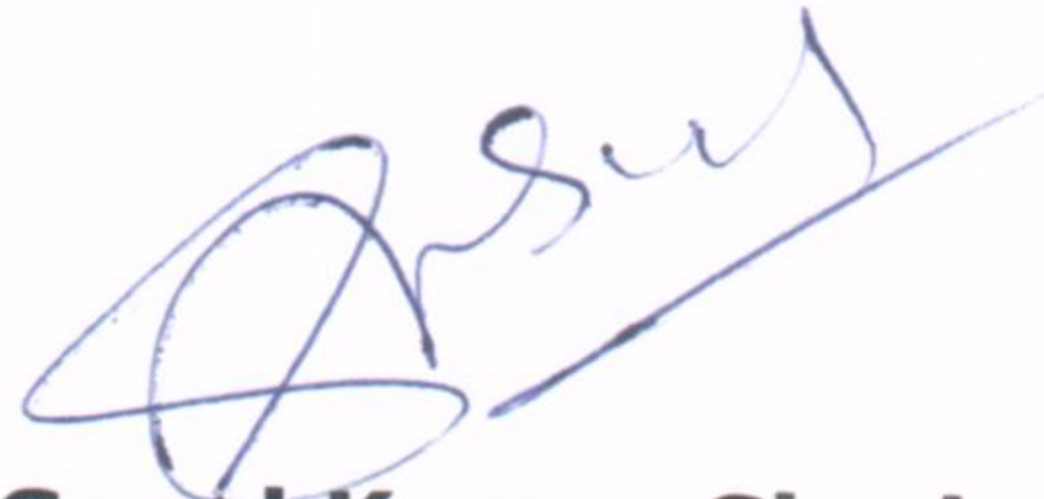


otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name www.blackbuck.in in bad faith. This issue is decided accordingly.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.blackbuck.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 20th day of May, 2016.



Sonal Kumar Singh

Sole Arbitrator

Date: 20th May, 2016