



महाराष्ट्र MAHARASHTRA

LB 629074

- दस्ताचा प्रकार/अनुच्छेद क्रमांक
- दस्त नोंदणी करणार आहेत का
- नोंदणी होणार असल्यास तुक्या
- मिळकतीचे दर्शन
- मोददला रक्कम
- मुद्रांक विकत घेणार
- दुसऱ्या पक्षकाराचे
- हस्ते असल्यास
- मुद्रांक शुल्क
- मुद्रांक विक्री नोंद
- मुद्रांक विकत घेणार
- परवानाधारक मुद्रांक
- परवाना क्रमांक

आणीश्री गणेश

विशेष विनिर्णय करणार

विषय

२७/११/२०१४ माले - माले

२०००

२६/०७/२०१४ माले

२६/०७/२०१४ माले

२६/०७/२०१४ माले



AWARD
IN ARBITRATION

BRIGADE / BRIGADEBEGONIA.ORG.IN

ज्या बाबतचाही खर्च खरेदी केला त्याने त्याच्या मालकीच्या वस्तूच्या मूद्रांक खर्चा केल्याबद्दल नोंद घ्याव्यात याबाबतचे धोरण आहे.

Brigade Enterprises Limited
29th & 30th Floors, World Trade Center
Brigade Gateway Campus
26/1, Dr.Rajukumar Road, Malleswaram – Rajajinagar
Bangalore. 560055.

THE COMPLAINANT

AND

Vaneet Gupta
TG05/0A, Orchid Garden, Sector -54
Gurgaon, Haryana. HA51HR

THE RESPONDENT /
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'BRIGADE /
BRIGADEBEGONIA.ORG.IN'
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR**

**DELIVERED ON THIS 06th DAY OF JULY TWO THOUSAND FOURTEEN
AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- 01. Names and addresses**
Of the Complainant: -
- Brigade Enterprises Ltd.**
29th & 30th Floors, World Trade Center
Brigade Gateway Campus,
26/1, Dr.Rajukumar Road,
Malleswaram – Rajajinagar
Bangalore. 560055.
- Through its authorized
representative
- AZB & Partners
Advocates & Solicitors
AZB House, 67-4, 4th Cross
Lavelle Road, Bangalore 560001
- 02. Name and address of**
The Respondent: -
- Vaneet Gupta**
TG05/0A, Orchid Garden, Sector 54
Gurgaon, Haryana. HA51HR

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	10.06.2014
02	Hard copy of complaint received & Notice of Arbitration issued with the instructions to file reply latest by 27.06.2014	17.06.2014
03	Reminder Notice was sent with the instructions to file reply latest by 30.06.2014	27.06.2014
04	Notice of closure of arbitration	01.07.2014
06	Award passed	06.07.2014

I] PRELIMINARY: -

- 1) Brigade Enterprises Ltd. is a limited company registered under the provisions of the Companies Act, 1956, having its office at 29th & 30th Floors, World Trade Center, 26/1, Dr.Rajukumar Road, Malleswaram – Rajajinagar, Bangalore 560 055 (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**BRIGADE / BRIGADEBEGONIA.ORG.IN**' (**the disputed domain name / domain name**), through its authorized representative **M/s AZB & Partners, Advocates & Solicitors, Bangalore.**
- 2) The Complainant has disputed registration of domain name '**BRIGADE / BRIGADEBEGONIA.ORG.IN**' in the name of **Vaneet Gupta (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 17th June, 2014 with the instructions to file his reply / say latest by 27th June, 2014.
02. The Registrant did not file his say / reply to the Notice of Arbitration / Complaint till 27.06.2014.
03. A reminder notice was sent on 27th June 2014 to the Registrant to file his reply, if any, latest by 30th June, 2014. However the Registrant / Respondent did not file any reply / say even within the extended period.
04. On 1st July 2014 notice of closure of arbitration procedures was issued.
05. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
06. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant stated that the domain name registered by the Respondent is both similar and identical to '**BRIGADE WORD MARK & BRIGADE COMPOSITE MARK**', of which it is the registered owner. A list of such

registered trademarks is provided in Annexure 3 to the Complaint, by the Complainant.

2. The Complainant is one of the renowned and leading property developers in India and is engaged in real estate services, building construction, food and drink etc. The Complainant and its subsidiaries / affiliate companies include Brigade Hospitality Services Ltd. WTC Trades & Projects Pvt. Ltd., Orion Mall Management Company Limited, Brigade Tetrarch Pvt. Ltd., Brigade Estates and Projects Pvt. Ltd., Brigade Properties Pvt. Ltd. etc.
3. The group has been spending considerable amounts on advertising expenses every year. It also owns various domain names like www.BRIGADE / BRIGADEBEGONIA.co.in, www.BRIGADE / BRIGADEBEGONIA.in and BRIGADE / BRIGADEBEGONIA.co.in.

(B) GROUNDS OF COMPLAINT ACCORDING TO INDRP RULES: -

1. The Registrant's domain name contains the word BRIGADE / BRIGADEBEGONIA which is an integral part of the brand and trade / service mark of the Complainant and also identical to that of the Complainant's name in which the Complainant has right and it would confuse the customers in India due to this similarity. The Trademark 'BRIGADE' has acquired tremendous fame, recognition and goodwill worldwide and is exclusively associated with the Complainant only. Brigade Begonia is a prominent and well-known project of the Complainant which is identified solely and exclusively with the Complainant only and none else.
2. The Registrant has no rights or legitimate interests in respect of the domain name. The Registrant is not using the site in connection with a bonafide offering of goods and services. Hence it constitutes trademark infringement, dilution, passing off, unfair competition and cybersquatting, apart from Disputed domain name.
3. The Registrant is not known as BRIGADE / BRIGADEBEGONIA or any combination thereof.
4. The Registrant is not making any legitimate non-commercial or fair use of the domain name. The Registrant has no right or legitimate interests in respect of disputed domain name.
5. The Registrant has nothing to do with the Complainant or its business including BRIGADE / BRIGADEBEGONIA brand.
6. The Registrant has registered the said domain to unjustly enrich himself and / or squat and / or hoard the same, without any permission from the Complainant. The disputed domain name was registered and is being used in bad faith.
7. The Registrant has violated the policy adopted by INDRP and the Rules framed thereunder.

8. The Registrant is likely to use the said domain in bad faith.
9. The Registrant has attempted to attract, for commercial gain or otherwise, internet users to his website, by creating a likelihood of confusion with the Complainant's brand.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the Registrant's domain name and also the costs and fees for this arbitration proceedings. .

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

The Registrant has failed / neglected to file his reply even within the extended period. As such, all the issues raised by the Complainant amount to have been accepted by the Registrant.

VI] REJOINDERS OF THE PARTIES: -

In view non-filing of any reply by the Registrant no rejoinders were called for.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

S. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed	No

	domain name?	
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes

IX] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant has stated that it owns the brand BRIGADE / BRIGADEBEGONIA and its subsidiary / affiliate companies. It has attached Annexure 3 detailing all such trade / service marks registered in its name.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'BRIGADE / BRIGADEBEGONIA' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its national presence as also its strong presence on the internet it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'BRIGADE / BRIGADEBEGONIA'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Vaneet Gupta. As such he has not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'BRIGADE / BRIGADEBEGONIA'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He is not authorised / permitted by the Complainant to use the said name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain name is registered but website is not yet built. However if and when it will be built and ready for use, any internet user when searches for this domain name, he would get confused about the Complainant, its business and present domain name. It has expired on 14.06.2014 and is parked as FREE on GoDaddy.com.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. Therefore it is established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website is not yet built. Internet user is directed to a webpage of GoDaddy.com where it is stated that the domain name is parked for FREE and has also expired on 14.06.2014. Such a situation may lead to confuse internet users about the domain name.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

There is no express demand of money made by the Registrant to the Complainant, nor there is any communication indicating intentions of the Registrant of selling or otherwise transferring the disputed domain name. However if any Registrant is not using the registered domain name for a fairly long period for his own purposes, it become obvious case of cybersquatting and intentions are to sell or gain monetarily out of transfer of domain name.

Therefore my finding on this issue is Negative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name includes the registered marks and registered domain names of the Complainant It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
2. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'BRIGADE / BRIGADEBEGONIA' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
3. The Registrant has not been commonly known by the disputed domain name.
4. The Registrant is not making bona fide and fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
5. The Respondent / Registrant has failed to establish his nexus, rights or interests in or with the disputed domain name in any way.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name without any legitimate interests in it.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. **The Complainant is entitled to the disputed domain name – 'BRIGADEBEGONIA.ORG.IN' and hence the same be transferred to the Complainant.**
02. The Registrant shall pay to the Complainant, the costs of these arbitration proceedings.

Dated: - 07.07.2014
Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR