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N 187317

**BEFORE THE SOLE ARBITRATOR UNDER THE  
.IN DISPUTE RESOLUTION POLICY**

**IN THE MATTER OF**

NSTBC, Inc.

3411 Silverside Road, Concord Plaza

Bancroft Building, Suite 205 B

Wilmington, Delaware 19810

USA

(Complainant)

Adnan Qurashi

68 Ronaldsway

Preston

Lancashire PRI 6EQ

(Respondent)

*Adnan Qurashi*  
3/1/11

## **The Parties**

The Complainant in this proceeding is NSTBC, INC having its address at 3411 Siverside Road; Concord Plaza, Bancord Building, Suite 205B. Wilmington, Delaware 19810.

The Respondent in this proceeding is Adnan Qurashi, having his address at 68 Ronaldsway Preston , Lancashire PR1 6EQ, GB as per the WhoIS database.

## **The Domain Name, Registrar & Registrant**

The disputed domain name is DIAMONIQUE.IN. The Registrar is GoDaddy.com Inc. The Registrant is Adnan Qurashi.

## **Procedural History**

That I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name DIAMONIQUE.IN.

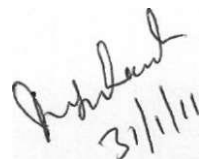
That .In Registry has supplied the copy of the Complaint and Annexures to me.

That on 16/12/2010, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 18/12/2010 I sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record. On the same date i.e 18/12/2010, I sent an email to the Respondent to file the reply of the Complaint within 15 days of receipt of the copy of the Complaint.

On 22/12/2010, I received an email from the Counsels of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail the copy of the complaint was served upon the respondent on 22/12/2010. The respondent was required to file the reply by 07/01/2011.

pn 10/1/2011, I sent an email to the parties informing them that the 15 days time granted to respondent has elapsed on 07/01/2011. But in the interest of justice and fairness, further



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extension of 7 day's was granted to Respondent to file the reply. Again no response was received from the Respondent and as such the proceedings were conducted exparte.

That I have perused the record and Annexures / document.

### **Factual Background**

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

NSTBC, Inc. is the owner of the DIAMONIQUE mark all over the world, including in the United States, the United Kingdom and India.

NSTBC, Inc. has granted a license to a company named QVC, Inc. to use the DIAMONIQUE mark worldwide.

Complainant and its predecessor-in-interest (Diamonique Corporation) is using DIAMONIQUE mark since 1970 and has worldwide public recognition and goodwill. The Complainant and its predecessor-in-interest have extensively and continuously used the DIAMONIQUE mark in connection with jewelry, precious stones and home shopping services.

Complainant is recorded owner of the DIAMONIQUE mark and marks that incorporate the DIAMONIQUE mark, in number of countries, including U.S, U.K and the E.U. The US registrations include Registration Nos. 1,538,103, 1,523,950, 2,662,984, 2,662,984, 2,662,986 and 2,873,798.

In U.K Registration No. is 1,460,756 and in E.U, Complainant is the record owner of CTM Registration No. 167,270.

In India, Diamonique Corporation, Complainant's predecessors-in-interest, filed an application to register the DIAMONIQUE mark on December 12, 1998. It was allotted application No. 791239.

Application 791239 was published on October 14. 2003.



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On May 20, 2008, a request was filed at the Indian Trade Mark Registry to assign application no. 791239 to Complainant. However, as of the date of this complaint this request remains pending.

The Complainant is the owner of the domain name DIAMONIQUE.COM. This domain name resolves to the web site located at the www.qvc.com.

Respondent in this proceeding is an individual name Adnan Qurashi. As per the WhoIS record of the disputed domain, the Respondent is located in United Kingdom.

### **Parties Contentions**

#### **(a) Complainant**

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondent has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

#### **(b) Respondent**

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

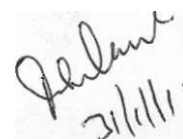
### **Discussions and Findings:**

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

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"*.

As mentioned above fair opportunity has been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted ex parte.

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*



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*the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and. any law that the Arbitrator deems to be applicable "*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

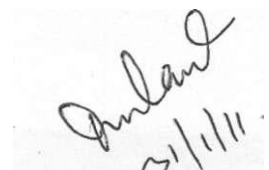
Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "DIAMONIQUE".

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.

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

The Complainant has stated in his complaint that domain name of respondent i.e DIAMONIQUE.IN is confusingly similar and identical to his trade mark DIAMONIQUE. It is also stated by the complainant in his complaint that his mark is very well known and he has statutory and common law rights in it. The Complainant has submitted that his mark DIAMONIQUE is registered and used in many countries including United Kingdom where Respondent is located. Even in INDIA its application for registration is pending. Thus the Complainant has the right over the name DIAMONIQUE and Respondents domain is also confusingly similar to it. In support of his submissions the complainant has relied upon the



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judgment of Monster.com (India) Pvt. Ltd. v. Domain Leasing Company, JNDRP/002 (May 20, 2006).

The Complainant has further relied upon the judgment of Lego juris A/S v. Robin Martin, INDRP/118 (February 14, 2010) in support of his submissions that the addition of country code ("ccTLD") in domain name is insufficient to distinguish it from the mark in which Complainant has right.

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

Even otherwise the above facts and annexure's establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

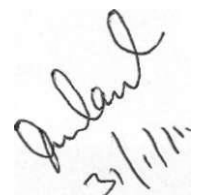
**The Registrant has no rights or legitimate interests in the respect of the domain name**

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrant's rights or legitimate interest in the domain 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;*

The Complainant has contended that the website around which the disputed domain name resolves, features link to third party sites that offer goods that compete with Complainant's good bearing DIAMONIQUE mark. The Complainant has relied upon the judgment of *Accor v. Tang Wei, INDRP/127 (February 24, 2010)* to prove this.

- (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*



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The Complainant has contended that Respondent is neither commonly known by the disputed name, nor it is his personal name. The Complainant has further contended that Respondent is not engaged in any business or commerce under the domain name. The Complainant has relied upon the judgment of *Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007)*. It has been held in the said judgment that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor it is his personal name.

*(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.*

The Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name. According to Complainant, disputed domain name currently resolves to page that features link to competing third party web sites and Respondent has only adopted the domain name for commercial gain. The sole purpose of the Respondent is to divert Internet users to its web site. Complainant has relied upon the judgment of *Accor v. Tang Wei, INDRP/127 (February 24, 2010)* to prove his contention.

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

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

The Complainant has contended that Respondent has intentionally attempted to attract user to its website by creating likelihood of confusion with Complainant's DIAMONIQUE mark. The Complainant has further stated that Respondent has no connection with the disputed domain name, the whole purpose of registering the domain name is to create confusion and deception among the consumers, who would assume a connection or association between the Complainant and Respondents website.

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The Complainant has relied upon the judgment of *Luxottica Holding Corp. V. Lokesh Morade, INDRP/139 (April 28, 2010)* to prove his contentions.

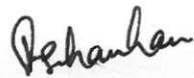
The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the facts and annexure establish that the disputed domain name has been registered and is being used in bad faith under INDRP paragraph 4(ii).

### **Decision**

In view of the above facts and circumstances, it is clear that complainant has succeeded in his complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. DIAMONIQUE.IN to 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 31<sup>st</sup> day of January, 2011.



Rajeev Singh Chauhan

Sole Arbitrator

Date : 31<sup>st</sup> January, 2011