



दिल्ली DELHI

M 917725

**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR**

IN

**ARBITRATION PROCEEDINGS OF DOMAIN NAME
"lockheed-martin.in"**

Between

LOCKHEED MARTIN CORPORATION ...COMPLAINANT

AND

STEELY BLACK ...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI. This Tribunal while checking the

records of the proceedings, found that there was nothing on record to show that a copy of the complaint has been supplied to the Respondents. Accordingly vide its communication dated 22/12/2010 this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier. The Respondents were given time of seven days after receipt of the complaint to send their Statement of Defense.

2. That the Tribunal in response to its communication received an email dated 27 Dec.2010 from the Complainants stating that they have sent the soft copy of the FedEx Courier receipt. However this Tribunal did not receive any Courier receipt attachment hence this Tribunal vide its email 28th Dec.2010 sent the communication of non receipt of the Courier receipt attachment. The Complainants vide their mail dated 29th Dec.2010 sent the copy of the said FedEx Courier receipt. That this Tribunal tracked the said courier and found from the tracking records that the address of the Respondent is incomplete. Accordingly this Tribunal in terms of the orders

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passed by this Tribunal on 22/12/2010 waited for the Respondent's Statement of Defense to the Complaint but to no avail and hence was constrained to pass its order dated 3rd January,2011 reserving it's Award.

3. This Tribunal finds that the Complainants had duly complied with the directions of this Tribunal and had tried level best to serve the Respondents on the address provided but to no avail. Besides, copy(s) of the order (s) passed by this Tribunal have also been emailed to the Respondent hence it cannot be said that the Respondents are unaware of the proceedings.

4. This Tribunal notes that the Respondent have been elusive *qua* this domain name and have given incorrect address even in the WHOIS and despite being aware of these proceedings through email chose not to send any communication or file any Statement of Defense to the Complaint and maintained silence on the same, hence in view of such peculiar facts and

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circumstances and in view of INDRP which makes it incumbent upon this Tribunal to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

5. This dispute concerns the domain name <lockheed-martin.in > that is registered with the .IN Registry through the sponsoring Registrar M/s A to Z Domains Solutions Pvt. Ltd. 102, Osia Friendship, 51 Gaothan Lane Off. J.P. Road, opp. Ram Mandir, Andheri (West), Mumbai-400058 Maharashtra.

CLAIM

The complainants claim a right in the said name based on the following assertions as given in their complaint which are as under:

1. The Complainant claims that it is one of the world's largest military contractors. It manufactures combat and military aircraft, weapons, satellites, etc., and provides a broad range of



management, engineering, technical, scientific, logistic and information services to the global defense industry. It is further averred that the Complainant serves both domestic and international customers with products and services that have defense, civil and commercial applications.

2. The Complainant aver that they were founded in March 1995 when Lockheed Corporation and Martin Marietta Corporation merged through a merger agreement dated March 15, 1995. The complainants assert that they are the world's largest defense contractor by revenues and are a worldwide corporation with many government and industry partnerships throughout the world and their core businesses are Aeronautics, Electronic Systems, Information Systems & Global Services, and Space Systems.
3. It is also claimed that the Complainant employ about 136,000 people in the United States and internationally and have currently about 1000 facilities in about 500 cities and 46 States

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throughout the U.S. It is also claimed that the Complainant have customers around the world and partners in more than 50 countries around the world.

4. The Complainant claims to have 22 business development offices in the USA and 27 offices in 23 countries including India, namely, Australia, Belgium, China, Egypt, England, Germany, Greece, Indonesia, Israel, Japan, Korea, Malaysia, Norway, Poland, Philippines, Romania, Saudi Arabia, Singapore, Spain, Taiwan Turkey and United Arab Emirates.

5. The Complainant's main assertion is that they are registered proprietor of the trade mark '**Lockheed Martin**' in numerous jurisdictions of the world including OHIM-CTM, United Kingdom, Hong Kong, United States of America, **India**, Philippines, Japan, Singapore and many other nations in various international classes. Therefore, the Complainant has a well-established proprietary claim over the trade mark/name '**Lockheed Martin**' and people all over the world associate the

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same exclusively with the Complainant. Reliance is placed on copies of extracts taken from the data base of the respective Trade Marks Offices of the concerned countries annexed as **Annexure - 3** with the complaint. They claim that their profile and popularity under the trade/service name/mark '**Lockheed Martin**' has been continuously increasing and at present, the Complainant's trade name/mark is a formidable brand and has acquired an enormous goodwill not only in U.S.A. or India but in many countries across the globe. The complainants claim that the '**Lockheed Martin**' mark/name, due to its extensive use, advertisements, publicity and awareness throughout the world, has acquired the status of a well-known trade mark under **Section 2(1) (zg) of the Trade Marks Act, 1999**. Further the said mark/name qualifies all tests for the well-known status of a mark under **Section 11 (6) of the Trade Marks Act, 1999**, which includes considerations like knowledge or recognition among relevant section of public, duration, extent and geographical area of use, promotion and publicity of mark etc. It is further submitted that the mark/name '**Lockheed Martin**'

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also falls under the category of a famous mark as provided by **Article 6 bis of the Paris Convention.**

6. The Complainants considers their trade/service name/mark an important and an extremely valuable asset and thus in order to protect the same, have obtained trade mark registration for the mark '**Lockheed Martin**' in India. Reliance is placed on the copies of extracts from the data base of the Indian Trade Marks Registry **Annexure - 4.**

7. The Complainants allege name/mark '**Lockheed Martin**' has acquired unique importance and is associated with the Complainant and a mere mention of the said name/mark establishes an identity and connection with the Complainant and none else. They allege that the use of the said name either as a mark, name and domain name, or in any other form whatsoever constitutes infringement and passing off and is a violation of the Complainant's rights in the said mark. Further, the use of the disputed domain name by the Respondent

amounts to misrepresentation and the Respondent by doing so is indulging in unfair competition.

8. That they further assert that the domain name extension in question **www.lockheed-martin.in** is a natural extension of its corporate name. The Complainant reiterate that they have spent a considerable amount of money and skill to develop the mark/brand/name '**Lockheed Martin**' and that the website **www.lockheedmartin.com** is a comprehensive, unique and acclaimed site of the Complainant.

9. That the Complainant have alleged that they came to know that someone has obtained a domain name registration for **www.lockheed-martin.in** thus they immediately searched the WHOIS database for the disputed domain name and found that the impugned domain name is registered in the name of Steely Black of China. It is alleged that malafide and devious intention of the Respondent is evident from the glaring fact that the



disputed domain name registration is the verbatim duplication of the Complainant's domain name.

10. Further the Complainant have registered a number of domain names containing the word(s) "Lockheed Martin" such as www.lockheedmartin.com, www.lockheedmartin.co.in etc. in order to prevent others from using variations of its famous marks.

11. *The* complainants assert that they are aggrieved by the registration of the disputed domain name i.e., www.lockheed-martin.in, and thus they have filed the present complaint. The complainants allege that the Respondent has no rights or legitimate interests in respect of the domain name and in fact they are in the business of holding domain names and selling them.

12. Further the Respondent has no proprietary or contractual rights in any registered or common law trade mark



corresponding in whole or in part to the disputed domain name. Further, the Respondent is not authorized or licensed by the Complainant to use its trade/service mark/name or to use the disputed domain name. In fact the Respondent is misusing the domain name by hosting an Lockheed zed website.

13. Further the domain name is registered and is being used in bad faith.

14. The fact that the Respondent registered the disputed domain name years after the registration of the Complainant's domain name www.lockheedmartin.com is prima facie evidence of malafide intentions and bad faith. To buttress their claim the complainants allege that they had sent a Cease & Desist notice to the Respondent on or about 26.10.2010 and in it's response the Respondent offered the Complainant to buy the disputed domain name. The first offer was made via an email dated 02.11.2010 for USD 3000. The second offer was made via an email dated 10.11.2010 for USD 2500. The Respondent made



the last offer to the Complainant to purchase the disputed domain name www.lockheed-martin.in for USD 2000 via an email dated 07.12.2010. The complainants have placed reliance on **Annexure - 6**.

The complainants allege that through the impugned domain name, by activating a website, the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some third party by entering into transactions or contracts with them under the garb of being associated with the Complainant which can be extremely dangerous and prejudicial to public interest as well. Further the Respondent can transfer or sell the domain name to some entity with malafide interest who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in the said website leading to a complete tarnishment of the Complainant's image.

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ORDER

This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give its Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.

In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name "**Lockheed-martin.in**" hence this Tribunal directs the Registry to transfer the domain name "**Lockheed-martin.in**" to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name.

The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI)

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for their record and a copy of the Award is being sent to both the parties for their records

Signed this 5th day of January, 2011

NEW DELHI
05/01/2011

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V. SHRIVASTAV
ARBITRATOR