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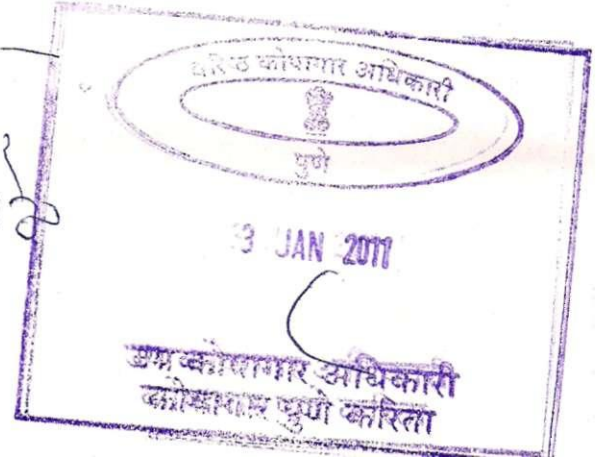
नाव शिरीष चिंतामणी उपाध्याय

पत्ता २७४ ए शनिवार पेठ, पुणे

हस्ते नरेश सुते

सौ. जयश्री बेलसरे, स्टॅम्प व्हेंडर, ला.नं. - दहोली १/३६/१११५

४२५ ब, शनिवार पेठ, पुणे-३०



AWARD

IN ARBITRATION

The Manufacturers Life Insurance Company
200 Bloor Street East, NT10
Toronto, Ontario
Canada. M4W 1E5

THE COMPLAINANT

AND

Mr. Ke Zhao
Shanghai.
China. 200001

THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: - manulife.CO.in

CASE NO. - NOT ALLOTTED BY NATIONAL INTERNET EXCHANGE OF
INDIA (NIXI)

BEFORE MR.S.C.INAMDAR, B.COM., LL.B., F.C.S.

SOLE ARBITRATOR

**DELIVERED ON THIS 5th DAY OF JANUARY TWO THOUSAND ELEVEN
AT PUNE.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Names and addresses Of the Complainant: - Through its authorized Representative	The Manufacturers Life Insurance Company. 200 Bloor Street East, NT10 Toronto, Ontario Canada M4W 1E5 Remfry & Sagar Remfry House at Millennium Plaza Sector 27, Gurgaon. 122002. India
02. Name and address of The Respondent: -	Mr.Ke Zhao Shanghai China 200001.

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case was referred to me	10/12/2010
02	Acceptance was given by me	10/12/2010
03	Hard copy of the complaint was received	18/12/2010
05	Notice of arbitration was issued	20/12/2010
05	Submission of say by the Respondent	No say submitted
06	Reminder sent to the Respondent to submit his say, if any	01/01/2011
07	Submission of say by the Complainant	No say submitted
10	Award	05/01/2011

I] PRELIMINARY: -

- 1) M/s The Manufacturers Life Insurance Company, having its office at 200 Bloor Street East, NT10, Toronto, Ontario, Canada M4W 1E5 (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name **manulife.co.in** (**the disputed domain name / domain name**).
- 2) Since the Complainant claimed to be the holder of trademark / service mark with the word **MANULIFE**, it has disputed registration of domain name '**manulife.co.in**' in the name of **Mr.Ke Zhao, Shanghai, China** (**The Respondent**).
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 20th December 2010 with the instructions to file his say latest by 30th December 2010.
02. The Respondent failed to file his reply to the Complaint by 30th December 2010.
03. Thereafter the reminder was sent to the Respondent to submit his say, if any, on the Complaint by allowing extension till 4th January 2011.
04. The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award.

III] SUMMARY OF THE COMPLAINT: -

- (A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -



- a) The Complainant i.e. The Manufacturers Life Insurance Company is a Canadian Life Insurance company organized and existing under the laws of Canada. It is a wholly owned subsidiary of Manulife Financial Corporation is a leading financial services company serving millions of Clients in 22 countries and territories worldwide.
- b) The Complainant is a registered proprietor of various trademarks in various countries, a list of which is provided by the Complainant. The list includes registrations in several countries including Canada, China, CTM, Indonesia, Korea, Malaysia, Philippines, Singapore, Thailand, Vietnam, UK and USA. The Complainant has mentioned that it has four trademarks registered in India. The copies of these registrations have been furnished in Annexure F and Annexure G to the Complaint.
- c) The Complainant has also furnished a list of top level domain names registrations for manulife.com, manulife-global.com, manulife.org and so on in Annexure I to the Complaint.
- d) The Complainant has its own website www.manulifc.com which allows discerning members of trade and public worldwide to contact and conduct business records significant number of hits every month.
- e) The Complainant is one of the most dynamic and progressive financial organizations in the world today with a history of financial stability that spans more than a century. Since 1887 Manulife has refined its market leading role in financial protection and wealth management. It has a workforce of over 20000 employees and thousands of distribution partners to serve customers in 22 countries around the world. The Turnover of the Complainant for last five years ranges between Canadian \$ 32689 M to Canadian \$ 40107 M.
- f) The Complainant is in the process of preparation for making entry into Indian insurance business and has therefore been formulating association with Kotak Mahindra group. While attempting to register



the domain name manulife.co.in for this purpose, it found that it was already registered in the name of the Respondent. When the Complainant visited the said website maintained by the Respondent, it was surprised to see that it contained featured links to other insurance companies like Bajaj Allianz, ICICI Prudential etc. which would be in fact the competitors of the Complainant.

g) The Complaint has been based on the following main grounds: -

1. The Registrant's domain name is identical/confusingly similar to trade/ service marks in which the Complainant has rights since the disputed domain name comprises of the Complainant's registered trade / service marks in India. Thus the Registrant has registered the disputed domain name with a mala fide to trade upon the immense goodwill and reputation of the Complainant including its parent company and affiliate companies.
2. The Complainant including its parent and affiliate companies has several domain names which include the word Manulife. These domain names have been registered since 1994 while the Registrant has registered the disputed domain name in the year 2010. In support of its contention the Complainant has furnished an illustrative list of about 15 such domain names already registered in the name of the Complainant.
3. The Registrant has no established its rights and legitimate interests in the domain name.
4. The impugned domain name is parked at www.sedo.co.uk. Sedo is a well-known site for selling domains. Thus it can be established that the ultimate interest of the Registrant is to sell the disputed domain name to the disadvantage of the Complainant.
5. The Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name. Mere listing of web-links pertaining to the websites of the competitors of the Complainant cannot come under the definition of bona fide use.
6. The Registrant is indulging in unfair use of the domain name with an intention to reap profits there from and misleading / diverting customers to the Complainant's competitors and tarnishing the goodwill and reputation enjoyed by the Complainant.
7. The registration of disputed domain name is not only in violation of INDRP / INDRP Rules of Procedures but

also contrary to Trade Marks laws as well as principles of business ethics.

- h) The Complainant has sought the remedies in the form of transfer of the disputed domain name to it and also for the costs of the proceedings.

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

In response to the contentions of the Complainant, the Respondent has failed / neglected to file any reply or say.

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.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?	Yes
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	Not known
04	Whether the Registrant / Respondent has registered domain name in bad faith?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No

VII] BASIS OF FINDINGS: -

(A) Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?

The Complainant has produced a list of various trademarks registered all over the world including India. It has also furnished a list of various domain names registered in various countries. Against this the Respondent has failed / neglected to submit his say in the arbitral proceedings.

Therefore my finding on the first issue is affirmative.

(B) Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?


The disputed domain name has been registered containing words 'manulife' which is identical to the trademarks and registered domain names including TLDs of the Complainant.

My finding on this issue is affirmative.

(C) Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?

The Respondent has not bothered to file any say / reply to the complaint.

My finding on this issue is negative.

7 

(D) Whether the Registrant / Respondent has registered domain name in bad faith?


The Respondent has not made out his case by filing his say / reply to the complaint. The domain name has been parked with www.sedo.co.uk which is a site for selling domains. There are links provided on the site to the websites of other insurance companies which actually stand as competitors of the Complainant.

My finding on this issue is therefore affirmative.

(E) Whether the Registrant has commonly been known by the domain name?

The name of the Respondent / Registrant is Mr. Ke Zhao, which has no similarity, nexus, or resemblance to the word manulife.

My finding on this issue is therefore negative.

8 

IX] AWARD: -

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

01. The Complainant is entitled to the disputed domain name - manulife.co.in and accordingly the same shall be transferred to the Complainant.
02. The Complainant is entitled to recover from the Respondent all documented expenses / costs of this proceedings.

Dated:-05.01.2011



(S.C.INAMDAR)
ARBITRATOR