



தமிழ்நாடு தமில்நாடு TAMILNADU

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D. SARAVANAN
Advocate, Arbitrator & Mediator
"Orient Chambers" No. 90 (Old No. 73),
4th & 5th Floor, Armenian Street,
Chennai - 600 001.
Phone : 044 - 4205 3051

P.S. Shanmuga Sundaram
P. S. SHANMUGA SUNDARAM
STAMP VENDOR,
L. No. 84 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI - 600 005. (EXAMIN. BUILDING)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.manulife.in

The Manufacturers Life Insurance Company
200 Bloor Street East NT10
Toronto, Ontario
Canada M4W 1E5
Elaine_Noble@manulife.com
Rep. by its Attorneys
M/s.Remfry & Sagar
Remfry-sagar@remfry.com

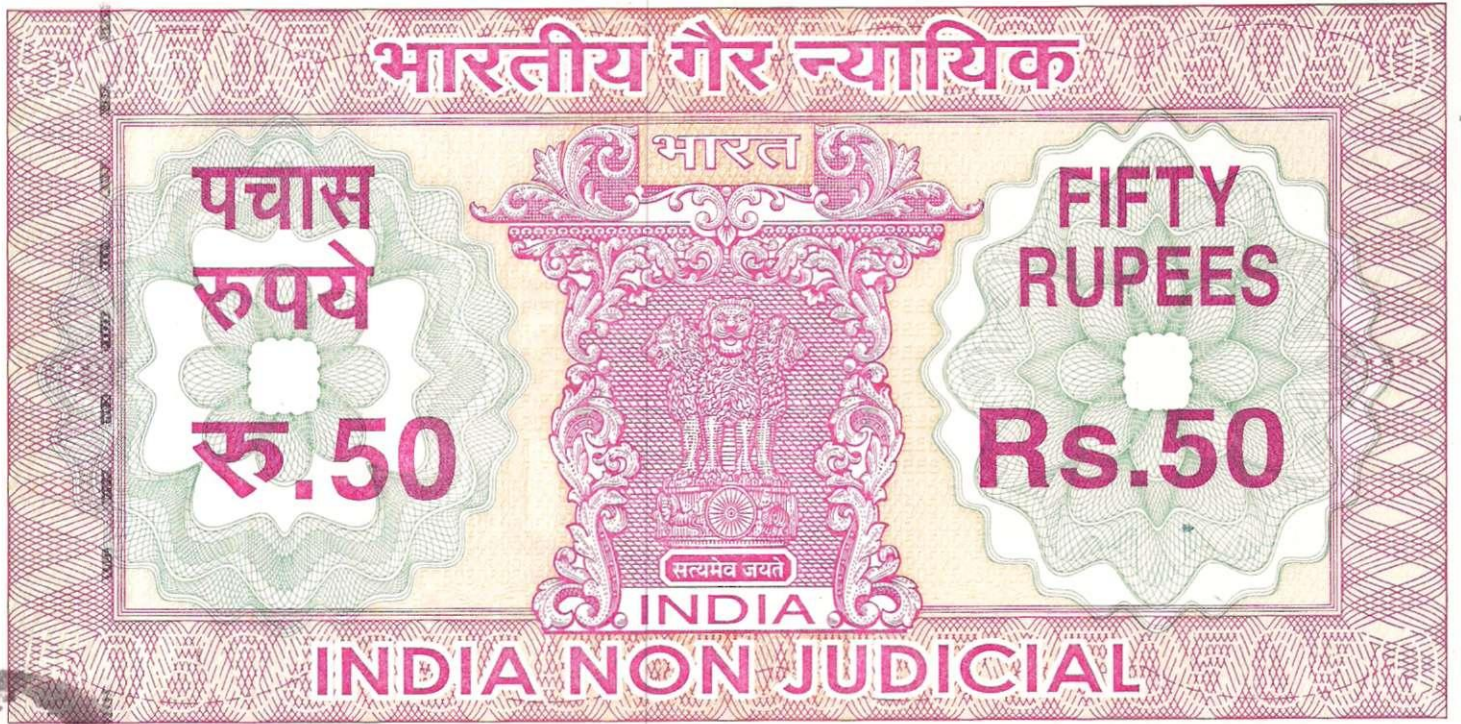
Complainant

Vs.

Jack Sun
Domain Jet, Inc.
1600 Amphitheatre Parkway
Mountain View
California 94043, USA
domainjet@foxmail.com

Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

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7.1.2011

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The Parties:

The complainant is the Manufacturers Life Insurance Company, having their office at 200 Bloor Street East NT10, Toronto, Ontario, Canada M4W 1E5, Rep. by its Attorneys /s.Remfry & Sagar.

The respondent is Jack Sun, Domain Jet, Inc., 1600 Amphitheatre Parkway, Mountain View, California 94043,USA.

2 The Domain Name and Registrar:

The disputed domain name:
www.manulife.in

The domain name registered with .IN REGISTRY



3. Procedural History:

- December 10,2010 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- December 18, 2010 : Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorized representative and .IN REGISTRY.
- December 18, 2010 : Respondent sent a reply email stating that *"I'm sorry about it. but we are very willing to settle it with a friendly way."*
- December 22, 2010 : Complainant's representative sent a reply email stating that *"We have been instructed to submit that since the matter is sub-judice, the Complainant would not like to enter into any discussions with the Respondent. In case, the Respondent is willing to transfer the domain 'manulife.in' in Complainant's favour unconditionally, the Complainant would waive its claim for legal costs. We humbly request the learned Arbitrator to proceed in the matter in accordance with law"*.
- December 29, 2010 : Due date for filing Response by Respondent.
- January 03,2011 : Arbitrator sent an e-mail to Respondent notifying his default, a copy of which marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

4. **Factual Background:**

4.1 **The Complainant:**

The complainant is the Manufacturers Life Insurance Company, having their office at 200 Bloor Street East NT10, Toronto, Ontario, Canada M4W 1E5, Rep. by its Attorneys M/s.Remfry & Sagar.

4.2 **Complainant's Activities:**

The Complainant is a Canadian Life Insurance Company and existing under the laws of Canada since June 23, 1887, as per **Annexure - A**. The complainant is wholly owned subsidiary of Manulife Financial Corporation which is a leading financial service company



servicing millions of clients in 22 countries and territories worldwide providing a wide range of financial products and services, including individual life insurance, group life, and health insurance, pension products, annuities and Mutual funds, to individual and group customers in US, Canada, Asia and Japan for more than several decades since 1887. Manulife has refined its Market-Leading role in financial protection and wealth management having work force of over 20,000 employees and thousands of distribution partners to serve customers through out the world. The complainant operates in Canada and Asia through the brand name "Manulife Financial" and in the United States primarily through the brand name "John Hancock". For more than 120 years, members of public have looked to Manulife for their most significant financial decision. The Complainant provides Asset Management Services to institutional customers worldwide and offers re-insurance solutions, specializing in life and property and casualty retrocession by which Manulife has become a market leader in both financial protection and wealth management businesses and provides a full suite of products and services to meet the current and future needs of individual and group customers. Manulife has over the years, received numerous awards and recognition for its customer service, products, innovation and people and has gained significant market share owing to strong sale success. Manulife ranks as North America's largest Life Insurance Company and 5th largest in the World measured by market capitalization. The total revenue generated by Manulife from 2004 - 2009 has been filed as **Annexure B** being Annual Reports. Manulife is preparing for its foray into India's Insurance Business and is in search for a partner and a copy of the news article dated May 04, 2010 appeared in the Economic Times has been marked as **Annexure C**. Recently in August 2010, Manulife through its subsidiary i.e., Manulife Asset Management (Hong Kong) Limited and M/s.Kotak Mahindra, a leading **banking** and financial services group Headquartered in Mumbai through its affiliate, M/s.Kotak Mahindra Bank (UK) Limited have agreed to collaborate with respect to fund management and distribution opportunities in Asia.

43 Complainant's Trading Name:

The complainant states that "Manulife" forms part of the corporate name of several affiliates of complainant including its parent company and serves as the principal trade / service and domain name and with a view to protect the Trade / Service Mark, Trade Name, Domain Name "MANULIFE" / "MANULIFE FINANCIAL". The complainant has obtained trade / Service mark registration for the same in numerous countries of the world including



in India. The complainant has filed a list of such Worldwide Registration and Certificate of Registration of their Trade / Service Mark / Labels from various jurisdictions under Annexure D & E respectively. The complainant further states that they are the proprietor of Registered Trade / Service Mark "MANULIFE FINANCIAL" in India under the clauses 9, 16 & 36 and certified copy of the entry in respect of such Registration is filed under **Annexure F, Annexure G and Annexure H** respectively. Further, the complainant states that they have obtained top level domain name registrations and numerous countries level domain names as per the list attached and **Annexure I**. The complainant further states that the websites of Manulife are very popular amongst the users and disseminate valuable information, and are source of knowledge of their business. The website www.manulife.com allows discerning members of trade and public worldwide to contact and conduct business records significant number of hits every month and therefore it is apparent the goodwill and reputation of Manulife as regards their Trades / Service Marks pervades both the real world as well as cyber space.

4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <manulife.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as Jack Sun, Domain Jet, Inc., 1600 Amphitheatre Parkway, Mountain View, California 94043, USA. Neither the Respondent represented himself nor represented by any one.

5. Parties contentions:

A. Complainant:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has rights:

(b) Respondent has no rights or legitimate interests in the domain name:

The complainant states that they were desirous of extending its rights on the Internet by registering the domain name in India however when they sought to register the domain name <manulife.in> they were shocked to learn that the said domain was already registered in the name of the Respondent on March 8, 2010 and extract from the WHOIS records evidence such registration details has been filed and **Annexure J**. The complainant further



states that the impugned Domain Name is "PARKED" at www.sedo.co.uk for sale and such printout from the said website is filed and Annexure K. The complainant further states that Sedo is well-known site for selling Domains which allows registrants to simply park the registered domain names without having to develop any website, and Sedo provides targeted ad links which give a "FLAVOUR" to the interested buyer as to kind of domain name that is on offer. The complainant further states the impugned websites www.manulife.in featured links to websites offering information on other insurance companies e.g., M/s.Bajaj Alliance which may be its competitor. It is obvious that no bonafide goods / service are on offer on the impugned websites and the same has been tactically designed and linked to other sites so as to gain mileage from the complainant's well-known Trade / Service Marks and the goodwill and reputation vesting therein. The relevant printouts from impugned websites are filed under **Annexure L**. The complainant further states that there is no iota of doubt that the impugned the domain name is identical to the complainant / its parent company / affiliate's Trade / Service Mark / Trade Names / Domain Names comprising "MANULIFE" / "MANULIFE FINANCIAL". The complainant states that the impugned domain name is identical / confusing similar to Trade / Service Marks in which the complainant has rights as the impugned domain name manulife.in comprises the complainants' registered Trade / Service Marks in India and that the respondent has registered the impugned domain name with a malafide intention to trade upon the immense goodwill and reputation enjoyed by the complainant and thereby gained undue mileage out of it and the registration of impugned domain name is a clear case of trademark infringement and passing off which is violating the rights enjoyed by the complainant in its famous Trade / Service Mark / Domain Name / Trades. The complainant further states that the impugned domain name manulife.in is identical to the various domain names registered in the name of complainant / its parent company / affiliates. The complainant further states the respondent registered / adopted the impugned domain name only on March 8, 2010 however, the Domain <manulife.com> comprising "MANULIFE" was created on February 14, 1994. The complainant obtained the first Trade Mark Registration on December 8, 1989 in UK; on May 31, 1991 in Canada. In India the complainant first Trade Mark Registration dates back to March 2, 1998. The complainant further states that their adoption of domain Names / Trade / Service Marks is much prior to the respondent's registration of the impugned domain name and it is crystal clear that the complainant has prior rights in the Trade / Service Marks / Name / Domain



Name "MANULIFE" / "MANULIFE FINANCIAL" *vis-a-vis* the respondent. The complainant further states the respondent is not offering any goods / services of its own under the domain name <manulife.in>, however the website simply lists out web links of entices that are in the same line of the business as that of the complainant i.e., companies providing insurance services. Therefore, by no stretch of imagination can the registrant demonstrate any use relating to bonafide offering of goods or services before any notice of this dispute or at any point in time whatsoever. Further, the complainant states that the respondent has no association with the domain name for any cogent reason whatsoever. The complainant further states that, the aim of the respondent is to gain mileage from the immense goodwill and reputation of the complainants Trade / Service Mark thereby creating a dent in its business. Also, by narrating the business profile of the complainant and parking the impugned the domain name on "Sedo, the respondent is actually attempting to sell the impugned domain name at a higher price indulging himself unfair use of the domain name with an intention to reap profits there from; misleading / diverting customers to the competitors' websites of the complainant's; and tarnishing the goodwill and reputation enjoyed by the complainant's well-known Trade / Service Marks "MANULIFE / "MANULIFE FINANCIAL", therefore the respondent cannot justify any interest in the domain name <manulife.in>.

(c) Respondent has registered and is using the domain name in bad faith:

The complainant states that the respondent has registered the impugned domain name <manulife.in> with the sole purpose of selling / transferring the same for excessive consideration and that the objective is evident from the fact the impugned domain name has been parked in a well-known website for selling domain names to the interested parties which act by itself establishes the respondents' intention to gain illegal benefits. The complainant further states that the registration of the disputed domain name <manulife.in> by the respondent has resulted in the complainant being prevented from reflecting their Trade / Service Marks / Names / Domain Names in a corresponding domain name with the .IN Registry which is presently in the name of the respondent. The complainant further states that the disputed website has been constructed in a manner so as to portray an association / affiliation with the complainant and such confusion is further enhanced by the presence of links to the websites of complainant's competitors e.g., M/s.Bajaj Alliance and



thus the conduct of the respondent amply proves its malafide to attract internet users to its website by creating a likelihood of confusion with the name or marks of the complainant / its parent company / affiliates as to the source, sponsorship, affiliation, endorsement of the respondents websites and / or of a product / service on the respondents websites. Further, internet users desirous of accessing the complainant / its parent company / affiliate's websites may get diverted to the impugned websites thereby creating confusion in the minds of internet users. By stating so, the complainant prays that the impugned domain name <manulife.in> be transferred in favour of the complainant.

B. Respondent:

The Respondent did not submit any response excepting his statement that he is willing to settle the issue with the Complainant.

6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response excepting an email stating that he is willing to the settle the issue with the Complainant, and that non-submission of the Response by the Respondent had also been notified to the Respondent on January 03, 2011.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

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



(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered Trade / Service Marks "MANULIFE / "MANULIFE FINANCIAL". The Respondent's domain name, <manulife.in>, consists of entirely Complainant's trademark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <manulife.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) **Respondent's Rights or Legitimate Interests:**

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name, excepting his email communication stating that he is willing to settle the issue with the Complainant. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) On going through Annexure K it is exhibited that the impugned Domain Name is "PARKED" at www.sedo.co.uk for sale and that, according to the Complainant, Sedo is Well-known site for selling Domains which allows registrants to simply park the registered Domain Names without having to develop any website, and Sedo provides



targeted ad links which give a "FLAVOUR" to the interested buyer as to kind of domain name that is on offer. Further, the impugned website www.manulife.in featured links to websites offering information on other insurance companies e.g., M/s.Bajaj Alliance which itself is a competitor to the Complainant. Considering the above, and based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. As held above, the impugned Domain Name is "PARKED" at www.sedo.co.uk for sale and that, the impugned website www.manulife.in featured links to websites offering information on other insurance companies e.g., M/s.Bajaj Alliance which itself is a competitor to the Complainant. In the context of the fact that the Respondent has engaged in a similar pattern attempting for commercial gain, it is also pertinent to observe that in the case of complaint in another dispute and dispute over www.lazard.in, the under signed arbitrator held against the very same registrant/respondent and ordered to transfer the domain name www.lazard.in to the Complainant therein, which case also squarely applies to the present dispute.



ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose and or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <manulife.in> be transferred to the Complainant.

Dated at Chennai (India) on this 10th day of January, 2011.


(D.SARAVANAN)
Sole Arbitrator