

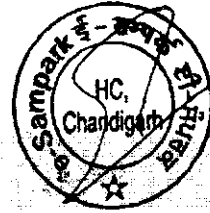
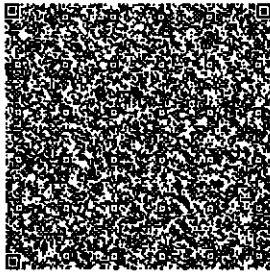


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

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Ashwinie Bansal

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ARBITRATION AWARD

(On Stamp Paper)

**INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:
DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.
Advocate, Punjab & Haryana High Court,
Chandigarh**

In the matter of:

Girnar Software Pvt. Ltd.
Registered office: 'Girnar', 21 Govind Marg, Moti Doongari Road,
Dharma Singh Circle, Jaipur-302004.

...Complainant

VERSUS

Mr. Albert Ross,
12, Austin Apartment,
NH Road,
Dhaka-4545456

...Respondent

**REGARDING: DISPUTE DOMAIN NAME:
WWW.PRICEDEKHO.CO.IN**

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1. The Parties:

Complainant:

The Complainant in this arbitration proceedings is: Girnar Software Pvt. Ltd. having registered office at: 'Girnar', 21 Govind Marg, Moti Doongari Road, Dharma Singh Circle, Jaipur-302004, email: charu@garinarsoft.com.

Respondent:

The Respondent in this arbitration proceeding is Mr. Albert Ross, 12, Austin Apartment, NH Road, Dhaka-4545456, email: dgfggrgr@yahoo.com

2. The Domain Name and the Registrar:

The disputed domain name <www.pricedekho.co.in> is registered with Name.com LLC (R65-AFIN) (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the disputed domain name <pricedekho.co.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI sent the hard copy of the complaint and annexures by DTDC courier vide consignment No. N95910744 to the respondent on

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15.06.2015 which has been duly delivered to the Respondent as per information received from NIXI vide its email dated 03.07.2015.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator notified the Respondent officially through email address given in the complaint as well as in the Whois-lookup. The arbitrator had sent notice on 20.6.2015 to the Respondent, with copy to Complainant and NIXI, through the email address to give his response within 15 days. There after one more opportunity was given by email dated 13.07.2015 to the Respondent to give his response within 7 days. Sending letter to the last known address is a deemed communication under section 3 of the Arbitration and Conciliation Act, 1996. The Respondent has not filed any response to the said Complaint inspite two opportunities, hence the case is being decided on merits.

4. Factual Background

The Complainant is a company incorporated under the Companies Act, 1956 and it has website www.pricedekho.com since 2011 to provide services relating to collection of shopping categories like mobile phones, tablets, electronics, cameras, etc., search and comparison of products, providing information about product specifications, features, reviews, ratings, etc.

The Respondent has registered the disputed domain name <pricedekho.co.in> on 10.10.2014. Hence, present Complaint has been filed.

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5. Parties Contentions

A. Complainant

The Complainant submits that the trademark PRICEDEKHO has been widely and consistently recognized and its website has won prestigious awards over the years including 'Website of the Year India' in the category 'comparison' in 2013 and are also in 2014. Its website has 106 million visitors over its lifetime and it has 8,00,000 registered users till date of filing of the complaint. The Complainant had also launched Android and iOS applications for mobile phone users. The trademark has been in continuous use therefore public across the country associates it with the Complainant. The Complainant has filed the applications for registration of its trademarks which are under process with the Trade Marks Registry.

The disputed domain name <pricedekho.co.in> is identical and/or confusingly similar to the trademark of the Complainant PRICEDEKHO in which the Complainant has rights. Respondent's use of the disputed domain name is not in connection with a bona fide offering of goods and services. The disputed domain name has not been used by the Respondent until filing of the complaint. The Respondent has no intention to use the disputed domain and there is possibility that it may be used in a manner to tarnish the reputation and goodwill of the Complainant and to adversely impact its trademark.

The Complainant submits that the disputed domain name <pricedekho.co.in> is identical or deceptively similar to its trademark and that the Respondent has no rights and legitimate

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interests in the disputed domain name. The Respondent's registration of the disputed domain name <pricedekho.co.in> violates the Complainant's rights in its trademarks. As the Respondent is not connected to the trademark, the Respondent's registration of disputed domain name <pricedekho.co.in> constitutes infringement of the trademark.

The Complainant further submits that the disputed domain name <pricedekho.co.in> was registered in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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(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 Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant has established that it has made applications for registration of the trademark across various classes of the Fourth Schedule to the Trade Marks Rules, 2002, with the Trade Marks Registry, Mumbai. The Complainant has also produced list of trademarks applied by it with the complaint.

The trademark PRICEDEKHO has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration as well as website incorporating the trademark PRICEDEKHO.

The Respondent has registered the disputed domain name <pricedekho.co.in> wholly incorporating the trademark PRICEDEKHO of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The generic Top-Level Domain (gTLD) is typically not an element of

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distinctiveness that is taken into consideration when evaluating the identity or confusing similarity between a complainant's trademark and a disputed domain name¹. The Arbitrator finds that the registration of the trademark PRICEDEKHO is *prima facie* evidence of the Complainant's trademark rights for the purposes of the Policy². Internet users who enter the domain name <pricedekho.co.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <pricedekho.co.in> is confusingly similar to the website and trademark PRICEDEKHO of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name³. The Complainant has registered the disputed domain name consisting of the trademark PRICEDEKHO. The Complainant has

¹ See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Phenomedia AG V. Meta Verzeichnis Com*, WIPO Case No. D2001-0374.

² See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."; see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

³ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

been using the trademark for about four years. The Complainant has not authorized or permitted the Respondent to use the trademark PRICEDEKHO. The Arbitrator finds that the Complainant has made out a *prima facie* case.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <pricedekho.co.in> as per Paragraph 7 of the Policy.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <pricedekho.co.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who

bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has 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, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy, if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <pricedekho.co.in> but till date he has not used the same. The Complainant has not granted the Respondent permission, or, a

license of any kind to use its trademark PRICEDEKHO and register the disputed domain name <pricedekho.co.in>. Such unauthorized registration of the trademark by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <pricedekho.co.in> which incorporates the trademark of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the trademark PRICEDEKHO.

The Arbitrator therefore finds that the disputed domain name <pricedekho.co.in> has been registered by the Respondent in bad faith.

The trademark PRICEDEKHO has been a well-known name. The domain disputed name <pricedekho.co.in> is confusingly similar to the Complainant's trademark PRICEDEKHO, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <pricedekho.co.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <pricedekho.co.in> from the Respondent. The Arbitrator allows the Complaint and directs that the Respondent's domain name <pricedekho.co.in> be transferred in favour of the Complainant.

7. **Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <pricedekho.co.in> is similar to the trademark PRICEDEKHO in which the Complainant has rights.

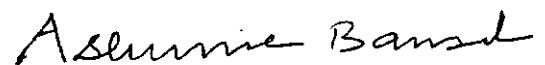
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The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.pricedekho.co.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 22.07.2015



Dr. Ashwinie Kumar Bansal

Sole Arbitrator

Advocate, Punjab and Haryana High Court

#187, Advocates Society, Sector 49-A

Chandigarh, India