

1
ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.alliancebernstein.in
between

ALLIANCE BERNSTEIN LP

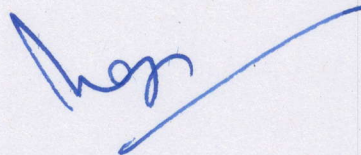
...COMPLAINANT

AND

DOUBLEFIST LIMITED

...RESPONDENT

AWARD



VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI



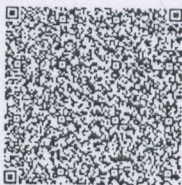
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL41332882119370S
Certificate Issued Date	: 28-Apr-2020 02:58 PM
Account Reference	: IMPACC (IV)/ dl837403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL41332882119370S
Purchased by	: V Shrivastav
Description of Document	: Article Others
Property Description	: J-22, Saket, New Delhi-110017
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V Shrivastav
Second Party	: Not Applicable
Stamp Duty Paid By	: V Shrivastav
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR
IN

www.alliancebernstein.in
between

ALLIANCE BERNSTEIN LP

DOUBLEFIST LIMITED

...COMPLAINANT

AND

...RESPONDENT

AWARD
(Dated 29/04/2020)

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal started the proceedings on 05/03/2020. It was noticed that there had been service of the hard and soft copy of the complaint on the Respondent. Hence, vide email dated 05/03/2020 this Tribunal directed the Respondents to file their Statement of Defense by 12/03/2020 and also directed the Complainant to send a copy of the complaint in word format within 5 days which was complied to by the Complainants.
2. As stated *supra* this Tribunal had granted time to the Respondent till 12/03/2020 to file their SOD which they failed to comply, hence vide its order dated 17/03/2020 this Tribunal directed the Complainants to send their Evidence by way of Affidavit by 28/03/2020. In the interest of Justice the Respondents were given **last and final** opportunity to send their SOD along with the documentary evidence if any, and their Evidence by way of affidavit in support of their SOD by

28/03/2020 failing which this Tribunal would proceed ahead in the matter as per section 25 of the Arbitration and Conciliation Act, 1996.


3. Pursuant to the order dated 17/03/2020 the Complainants vide email dated 25/03/2020 sought 4 weeks extension of time for filing their Evidence by way of Affidavit. In view of the situation of COVID 19, the request of the complainant for extension of time to file evidence by way of affidavit was granted by this Tribunal and thus they were given time till 24/04/2020 to file the same.
4. On 22/04/2020, this Tribunal vide its email enquired from the Complainants if they were having difficulty in filing their Evidence by way of Affidavit by 24/04/2020 due to the prevailing COVID-19 Pandemic. The Complainants vide their email dated 22/04/2020 notified that though they had got the affidavit signed but were finding it difficult to get the same notarized due to restrictions imposed by respective Govt.'(s) in wake of lockdowns triggered by COVID-19. Hence, this

Tribunal exercised its powers under section 19(4) of the Arbitration and Conciliation Act, 1996 and took on record the .pdf file containing the signed affidavit of the Complainants and waived the requirement of Notarization in view of the extreme conditions being faced by the World due to the Pandemic of COVID-19, and reserved the Award.

5. It was noticed that the Respondents was in receipt of the hard copy of the complaint as well as all the emails sent by this Tribunal and none of the emails had bounced back. It was clarified that incase the respondents sent their response /evidence in support thereof the same would be taken into consideration by this Tribunal at the time of making the Award. However, till the date of signing of this Award the Respondent chose to remain silent.

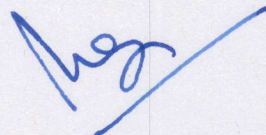
CLAIM

6. This Tribunal hastens to examine the claim as put forward by the complainant which is briefly as under:



A. It is claimed that the Complainant in these proceedings is Alliance Bernstein LP, an investment management and research firm purportedly having over 3,500 employees with offices in 51 locations, situated in 25 different jurisdictions, including the Americas, EMEA and Asia Pacific, and is represented by one Mr. Kyle DiGangi. It is claimed that the Complainant's business interest includes Research, Portfolio Management, Wealth Management and other client services which it offers to its customers through its offices across the globe.

B. By placing their reliance on **Annexure C & D** the Complainants claim to be the registered proprietor of trademark and domain name ALLIANCEBERNSTEIN /alliancebernstein.com in various countries and claims to be using it in connection with its ongoing business. It is further claimed that the Complainant have application pending in the following country:



S.No.	APPLICATION NO.	FILING DATE	COUNTRY
1.	88633519	27/09/2019	USPTO

C. Besides domain name registration as under:

DOMAIN NAME	REGISTRATION DATE
alliancebernstein.com	09/08/2001

D. The Complainant states that in and around December 2019 they became aware of the Respondent's registration and continued use of disputed domain **alliancebernstein.in** in violation of the Complainant's statutory and Common Law rights in the Trademark "ALLIANCEBERNSTEIN".

E. It is claimed that the disputed Domain Name alliancebernstein.in is identical and confusingly similar to the trade mark/service mark "ALLIANCEBERNSTEIN" in which the Complainant has rights for as per INDRP which as stated above is registered in various countries. It is also alleged that

the disputed domain name is visually and phonetically identical and confusingly similar to the trademark of the Complainant and thus is in violation of Para 3 of the INDRP.

F. By relying on **Annexure F** the Complainant submits that it has its head office at 1345 Avenue of the Americas New York 10105, USA and further submits that the erstwhile Alliance Capital had acquired the entity "Sanford C. Bernstein" in October 2000 and subsequently the domain **alliancebernsetin.com** was registered on August 9, 2001 and is being used along with the trade mark ALLIANCEBERNSTEIN and its variants exclusively, continuously and uninterruptedly by them.

G. By again relying on **Annexure F** it is claimed that the Complainant is highly ranked amidst various ratings and has gained widespread recognition worldwide for its services and thus enjoys a loyal customer-base which is growing at a rapid pace and has also received extensive media coverage.

H. It is again reiterated that the Complainant has been openly, continuously and extensively using the mark "ALLIANCEBERNSTEIN" trade mark worldwide, since the year 2000 and its services under the trademark "ALLIANCEBERNSTEIN" are well known and available worldwide, including India, through the Complainant's website <https://www.alliancebernstein.com> which is highly popular among its users and has acquired distinctiveness, reputation and enormous goodwill in India and the same not only depicts the products and services of the Complainant, but also elaborates their functionalities and other characteristics and is undeniably a great source of advertisement for the Complainant.

I. To buttress its position the Complainant relies on the case of **OSRAM GmbH v. Yuri A Ivanov**; (CaseNo. D2009-0692); marked as Annexure G.

J. It is also alleged that the Respondent has no rights or legitimate interest in respect of the disputed domain name and it is the Complainant which has legitimate interest in the

"ALLIANCEBERNSTEIN" trademark and has been openly, continuously and extensively using it for more than 19 years and hence by virtue of long and extensive use and advertising, the "ALLIANCEBERNSTEIN" trademark the complainant has acquired distinctiveness, reputation and goodwill on the trade mark "ALLIANCEBERNSTEIN".

K. Further the Complainant submits that it has got registered the domain name on 09/08/2001 whereas, the disputed domain name **alliancebernstein.in** was registered by the Respondent on 11/04/2012 which displays that the Respondent has no right or legitimate interest in the domain name **alliancebernstein.in**.

L. It is alleged that the Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark "ALLIANCEBERNSTEIN" or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India. It is alleged that the disputed domain name was intentionally created by the Respondent for commercial gain to misleadingly divert the

consumers or traders of the Complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.

M. The Complainant refers to the case **SOCIETE DES PRODUITS NESTLE SA, SWITZERLAND v. NESCAFE Limited**, United Kingdom decided on May 24, 2009; and **Monster.com (India) Pvt. Ltd. v. Domain Leasing Company** to fortify its contentions. [Annexure H & I].

N. By relying on Annexure J & K it is shown that the homepage of the Disputed Domain Name clearly shows that the Registrant/Respondent has offered the Disputed Domain Name for sale. {reliance placed on **Reese v. Morgan, FA 917029 (Nat. Arb. Forum Apr. 5, 2007)**}.

O. The Complainant has also submitted that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement

of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP. Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark "ALLIANCEBERNSTEIN" from reflecting the said trademark in its domain name in India and across the world.

P. By relying on INDRP orders against the Respondent on previous accounts which are annexed as **Annexure E** the Complainant finally alleges that the Respondent appears to be a habitual cybersquatter and has repetitively registered domain names, with the illegitimate intention to reap illicit profits by later selling off the same to the authentic proprietor of the trademark bearing domain names, as in the case of Mozilla.co.in, goldmansachs.in, deloitte.in, bunge.in among others.

Q. Further the Complainant relies on **Netgear Inc. v. Chen Shenglu** decided on 15th September 2006 marked as

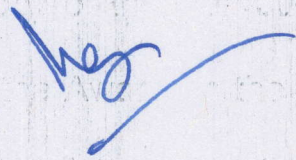
Annexure L.

- R. The complainant seeks the following reliefs from this Tribunal which includes transfer of the disputed domain name **alliancebernstein.in** to the Complainant besides the costs of the proceedings be awarded to them.

ORDER

7. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been rebutted or challenged by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.alliancebernstein.in, and this Tribunal directs the Registry to transfer the domain name www.alliancebernstein.in to the complainants.

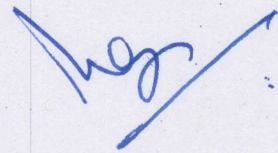
8. The Complainants too are free to approach the Registry and get the same transferred in their name.
9. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint.
10. Since, due to COVID Pandemic, the Courts are not functioning and stamp vendors are not coming to the Courts, this Tribunal had applied online for the requisite Non Judicial Stamp Paper valuing Rs.100/- . The agency post receipt of payment has sent a scanned (.pdf) copy of the Non Judicial Stamp paper. This Tribunal is making the Award on the scanned copy of the Non Judicial Stamp Paper. As soon as the delivery of hard copy of Non Judicial Stamp Paper is effected [on opening of Lockdown] the same shall be sent to NIXI with the original record of the present proceedings. This is again due to the fact that the office of NIXI has informed that it is not functioning due to COVID Lockdown.



11. This Tribunal is annexing the scanned copy of the Award is being sent to both the parties for their records and post opening of the Lockdown the hard copies shall be dispatched to them.

Signed this 29th day of April, 2020.

NEW DELHI
29/04/2020



V. SHRIVASTAV
ARBITRATOR