



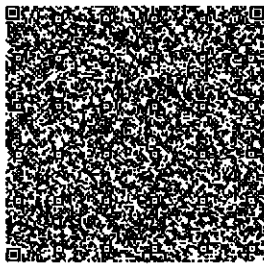
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL79161596187694N
Certificate Issued Date	: 04-Nov-2015 03:21 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130356416511854649N
Purchased by	: ASHOK KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOK KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: ASHOK KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Shell Brands International AG
Baarematte, 6340 Baar,
Switzerland

...(Complainant)

v.

Pankaj Kumar Shrivastava
Through Gagan Mahotra
Dreamworth Solutions Pvt. Ltd.
2nd Floor Ansec House Porwal Park
Tank Road Vishrantwadi
Pune, Maharashtra, 411006

...(Respondent)

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

The Parties

The Complainant in this proceeding is: Shell Brands International AG, a company organized and existing under the laws of Switzerland, located at Baarematte, 6340 Baar, Switzerland.

Respondent in this proceeding is Pankaj Kumar Shrivastava, Managing Trustee, Shell Foundation.

The Domain Name & Registrant

The disputed domain name is shellfoundation.in is registered with Wild West Domains, LLC (R102-AFIN), 14455 North Hayden Road, Suite 226, Scottsdale, AZ 85260, USA.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name shellfoundation.in

.IN registry had supplied the copy of the Complaint and Annexures to me.

On 10.10.2015, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 10.10.2015 with the instructions to file his reply within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 12.10.2015, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

NIXI through an email dated 12.10.2015 provided the proof of sending the copy of the complaint to the Respondent by DTDC courier and also



stated in the same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 12.10.2015, NIXI informed the tribunal that DTDC has provided a revised consignment slip and also stated in the same email that the Tribunal will be informed about the status of the courier once they receive it from the courier agency.

On 12.10.2015 the respondent informed NIXI that he is unaware as to why he has been kept in the loop of the mails regarding the proceedings and as to his involvement in the matter as he is just a service provider for Mr. Pankaj Kumar Shrivastava.

On 13.10.2015 NIXI informed the Tribunal that the courier has been delivered to the respondent.

On 13.10.2015, the respondent informed NIXI that he has received the courier and has forwarded the same to Mr. Pankaj Kumar Shrivastava. He further provided the personal email Id. of Mr. Pankaj Kumar Shrivastava for any further communication.

On 13.10.2015, NIXI informed Mr. Gagan Mahotra that the arbitration proceedings have already commenced and that he should direct his queries directly to the arbitrator.

On 13.10.2015, the arbitrator informed the complainant about the query of the respondent and further directed the complainant to inform as to why he has been involved in the matter.

The complainant failed to reply and inform the arbitrator as to the involvement of Mr. Gagan Mahotra.

On 20.10.2015, the Arbitrator informed that the complainant failed to place on record the correct email address of Mr. Pankaj Kumar Srivastava nor has he made any effort to send the copy of the complaint to him. The Arbitrator directed the complainant to send the complaint and documents to Mr. Pankaj Kumar Shrivastava at his personal email address. In the same email, the arbitrator directed Mr. Gagan Mahotra to give the correct email address of the respondent within 2 days from the receipt of the email. The arbitrator further directed the complainant that on the receipt

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of correct postal address of the respondent, the complainant will serve the copy of the complaint and documents to the respondent through courier within 3 days thereafter.

On 21.10.2015, the Complainant clarified that the Whois details of the disputed domain provides the contact details of Mr. Gagan Mahotra of Dreamworth Solutions who is shown as the Registrant. The Complainant further confirmed that the complainant will forward the copy of the complaint and documents to Mr. Pankaj Kumar Shrivastava through courier.

On 23.10.2015, the Complainant served the complaint on the respondent on the email address provided by Mr. Gagan Mahotra.

On 23.10.2015, Mr. Pankaj Kumar Shrivastava informed the arbitrator that he does not have any organization under the name of Shell Foundation but however he had created a website shellfoundation.in. The said website was created for the purpose of demo only and he has not started any work in relation to the said website. He further informed the Arbitrator that he is willing to transfer the said domain name by providing the EPP code or authorization code to the complainant. He also stated that the name of the shell group and that of the domain name is similar by pure coincidence. He further assured that he will not use the "SHELL" mark in any of their work in the future.

On 27.10.2015, the parties had been informed that the Tribunal was in receipt of the email of the Respondent dated October 23, 2015 whereby the Respondent had made submissions in respect of the Complaint of the Complainant. The arbitrator also informed the parties that he will pass an award in due course of time based on the submissions on record

Also, the arbitrator had been thereby informed that the Respondent had already written to NIXI vide its email dated October 8, 2015 his willingness to transfer the domain name shellfoundation.in.

Apropos of the submissions of both the parties this award is passed.

I have perused the entire record and all the annexures / documents.



Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:


The case of the Complainant is that:

1. The Complainant is a company organized and existing under the laws of Switzerland, located at Baarematte, 6340 Baar, Switzerland. The Complainant is a member of the Shell group of companies of which Royal Dutch Shell Plc is the parent company. Royal Dutch Shell Plc was incorporated in England and Wales and its headquarters are located in Hague, Netherlands. Shell group of companies comprises of a number of subsidiary and joint venture companies that are well-known for a host of activities including, inter alia, exploring and producing oil and gas on land and at sea; providing energy solutions and petrochemicals; transporting, marketing and trading in oil and gas; producing and selling fuel for ships and planes; generating electricity and providing energy efficiency solutions.
2. The Complainant submits that it is best known for their service stations and for exploring and producing oil and gas on land and at sea, it also delivers a much wider range of energy solutions and petrochemicals to customers. In connection with all their worldwide business and products, the Complainant uses the trademark SHELL. It also forms an integral part of the corporate name and trade mark of the Complainant and features prominently as a distinctive prefix in the names of all Shell group companies and it directly and indirectly contributes to its popularity and global reputation.
3. It is submitted that Shell was established in 1907 and that the Complainant is a diverse international group with operations in over 70 countries and employs around 94,000 people. The Complainant



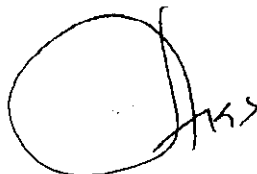
further submits that it provides fuel to around 10¹ million customers each day through its 44,000 service stations worldwide. It is also submitted that based on the Annual Report for the Shell group for the year 2013, its revenue was US \$ 451.2 billion with an annual income of US\$ 16.5 billion.

4. The Complainant further submits that it also owns and operates a number of domain names comprising of SHELL mark referring to its business activities in various jurisdictions including the domain name www.shell.in in India that contains information on business activities in India. The domain www.shell.in was registered by the Complainant on May 06, 2009.
5. The Complainant submits that its presence in India goes back about 80 years, when it operated in the country as the pioneering oil distribution company, Burmah Shell. The complainant further submits that set up in 1928, the Burmah-Shell Oil Storage and Distributing Company of India Limited began operations with import and marketing of Kerosene. It pioneered rural marketing by reaching out to people even in remote villages to ensure supply of kerosene. With motor cars, came canned petrol, followed by service stations which were built in the 1930s.
6. It is submitted that SHELL has been named as one of the 'Top 100 Global Brands' in a study released by Business Week in conjunction with Interbrand. It is further submitted that the complainant has also been ranked amongst top 10 in the Fortune Global 500 (largest corporations) since the year 2001 and amongst the top 10 companies in Forbes Global 2000 corporations in the world for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014.
7. The Complainant submits that it has invested and continues to invest substantial amounts of money and effort in advertising and promoting the SHELL mark. It is further submits that by virtue of prior adoption, prior use, and registrations as well as extensive publicity and promotion, the trade mark SHELL has earned



immense goodwill and reputation among members of the trade and public who associate the mark/name SHELL with the Complainant and no one else. The Complainant also submits that approximate annual revenue for the last five years (2009-2013) is USD 2,034,803 million and approximate annual global advertising expenditure is USD 300 million.

8. The Complainant submits that it owns numerous trade mark registrations world-wide consisting of or incorporating the word SHELL including in India, Singapore, U.S.A, United Kingdom, Turkey, Thailand, Taiwan, Syria, Switzerland and number of countries around the world.
9. It is submitted that SHELL FOUNDATION was established by the Complainant Group in 2000 as an independent, UK registered charity operating with a global mandate. Envisioned in 1997, it is a worldwide social investment initiative to concentrate on working with external partners to promote sustainable development. It is also submitted that Shell Foundation was formally incorporated on May 31, 2000 and registered as charity on June 02, 2000.
10. It is further submitted that Shell Foundation's mission is to develop, scale-up and promote enterprise-based solutions to the challenges arising from the impact of energy and globalization on poverty and the environment. The complainant also states that since its launch in 2000, Shell Foundation has invested in many sustainable solutions to poverty and environment-related challenges.
11. The complainant submits that the Shell Foundation initiatives are also extended to Indian Territory. It is further submitted that Shell Foundation has four main programmes in India that focus on key development challenges - reducing Indoor Air Pollution (IAP), helping poor rural farmers through promoting ethical trading, providing energy access for the poor and developing sustainable urban transport solutions to reduce urban congestion.



RESPONDENT

1. The Respondent in the present proceeding is Mr. Pankaj Kumar Shrivastava, Managing Trustee, Shell Foundation.
2. The Respondent stated that they have not established any organization named "Shell Foundation". Although, they have created the domain name "shellfoundation.in" which was prepared for the purpose of demo only and that they have not started any work related to the said domain.
3. The Respondent also stated that they have already scraped the domain and no content exists on the said domain. They further stated that they are willing to transfer the said domain name to the Shell group by providing the EPP code or authorization code and therefore, transfer the control of the domain to the Shell group.
4. The respondent stated that they neither have any office for the organization named Shell Foundation nor any bank account by the said name.
5. The respondent further stated that they are not carrying out any operation in the name of Shell Foundation.
6. The respondent stated that it was a mere coincidence that the name of the foundation of Shell group and that of the domain name of the respondent is similar. Respondent also stated they were unaware of the existence of the trade name "Shell". The respondent further stated that they have no intention to misuse the trade name of the complainant.

Parties Contentions

i) Complainant

The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).



- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent contends that they have no intention to misuse the trade name of the complainant. The respondent shows willingness to transfer the disputed domain name to the Complainant.

Discussions and Findings:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the act.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the submissions of both the parties.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "shellfoundation.in".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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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.

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The complainant submits that the disputed domain name incorporates the Complainant's well-known, prior used marks 'SHELL FOUNDATION' in totality and identity and is identical to prior registered domain www.shellfoundation.org.

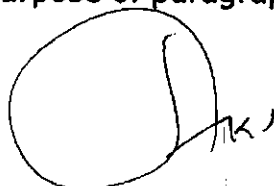
The complainant stated that domain name is "nearly identical or confusingly similar" to Complainant's mark when it "fully incorporates said mark."

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him.

Thus, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii. The Registrant has no rights or legitimate interests in respect of the domain name.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)



- i. *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The complainant submitted that the Respondent registered the Domain Name in the year 2015; more than decade after the Complainant had invested many resources in establishing and popularizing SHELL FOUNDATION trade name, mark and domain name www.shellfoundation.org. The complainant further submitted that by the time the Respondent registered the Domain Name, the Complainant had generated hundreds of millions of dollars in revenue under the SHELL mark/name, and the SHELL mark had already attained the status of well-known/famous mark.

The complainant further submitted that the respondent created a likelihood of confusion with the Complainant's trademark SHELL FOUNDATION as to the sponsorship, affiliation, or endorsement of the website. It is therefore submitted that such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name.

The complainant stated that the Respondent is not commonly known by the name or nickname of the Domain Name, or any name containing Complainant's SHELL mark. The complainant further stated that the adoption of the Domain Name www.shellfoundation.in by the Respondent is plainly designed to assist it in impersonating the Complainant.



The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts annexures attached with the Complaint establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

iii. The Registrant domain name has been registered or is being used in bad faith

The complainant stated that the fame and prior use of the Complainant's SHELL FOUNDATION mark makes it extremely unlikely that the Respondent created the Domain Name independently.


The complainant also submitted that the Respondent's choice of the Domain Name www.shellfoundation.in is allegedly based on their business of similar services as those of Complainant's SHELL FOUNDATION. The complainant submits that this proves their bad faith.

The complainant further states that given the prominence and well known stature of Complainant's SHELL FOUNDATION services and also prior domain name registrations of SHELL FOUNDATION mark, SHELL mark and also other marks comprising SHELL mark, it is incomprehensible that the Respondent would have been unaware of Complainant's SHELL FOUNDATION mark at the time the Domain Name was registered in June 2015.

The complainant submitted that the Respondent's choice of Domain Name is not accidental and has clearly been made to derive unfair monetary advantage.

The Respondent in his email dated 23.10.2015 has stated that they were unaware of the existence of the trademark of the Complainant.

The Tribunal is of the view that it was the duty of the Respondent to do an internet search before registering the said domain name and therefore, looking into the pleadings of the parties and documents placed, it cannot be denied at this stage that the domain name was registered by the respondent in bad faith.



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. <shellfoundation.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 4th day of November 2015.



Ashok Kumar Singh

Sole Arbitrator

Date: 04.11.2015