

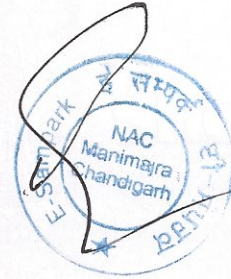
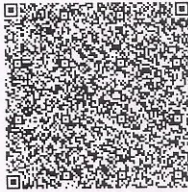


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INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH24057474999730S
Certificate Issued Date : 06-Aug-2020 10:13 AM
Certificate Issued By : chsanjkui
Account Reference : IMPACC (GV)/ chimpssp07/ E-SMP MANIMAJRA/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0748059811035673S
Purchased by : MALVIKA
Description of Document : Article 12 Award
Property Description : HOUSE NO 6/13 NAC MANIMAJRA CHANDIGARH
Consideration Price (Rs.) : 0
(Zero)
First Party : ASHWINIE KUMAR BANSAL
Second Party : KUMAR
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



-----Please write or type below this line-----

ARBITRATION AWARD

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LB 0008377482

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.

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

Infosys Limited, IL Bangalore STP Park – I, No. 45 & 46, 3rd Cross,
Electronics City, Hosur Road, Bangalore, Karnataka, India-560100.

...(Complainant)

Versus

Kumar/personal, 58 Behind Big Bazaar, Katriguppe Circle,
Bengaluru, Karnataka, India -560090.

...(Respondent)

COMPLAINT REGARDING: DISPUTED DOMAIN NAME:

<INFOSYS.IN>

1. The Parties:

Complainant: Infosys Limited, IL Bangalore STP Park – I, No. 45 &
46, 3rd Cross, Electronics City, Hosur Road, Bangalore, Karnataka,
India-560100, E-mail: udrp@cscglobal.com.

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Respondent:

Kumar/personal, 58 Behind Big Bazaar, Katriguppe Circle,
Bengaluru, Karnataka, India -560090, e-mail:
kumar@megaprivacy.com.

2. **The Domain Name and the Registrar:** The disputed domain name <INFOSYS.IN> is registered with Dynadot, LLC, P.O. Box 345, San Mateo CA 94401, United States, e-mail: info@dynadot.com (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

The Complaint has been filed with the National Internet Exchange of India (NIXI) which appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has already submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI informed the parties about appointment of arbitrator vide its E-mail dated 03.07.2020 and also sent soft copy of the Complaint along with annexures by e-mail on 03.07.2020 to the Respondent. The e-mail was duly delivered to him as per confirmation by NIXI vide e-mail dated 16.07.2020. However, NIXI informed vide its e-

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mail dated 16.07.2020 that due to non-availability of the courier services because of covid-19 problem, a hard copy of the complaint could not be sent to the Respondent. The arbitrator had requested NIXI to send hard copy of the complaint to the respondent and consequently same was sent through speed post but it was returned with a remark "addresse can not be located"

The Arbitrator vide email dated 16.07.2020 has directed the Respondent to file his reply within 10 days. The e-mail was duly delivered as there was no report of non-delivery hence respondent was duly served through email. Hence, service of the Respondent is complete by this mode. The Respondent has sent his response through an email on 02.08.2020 that he was not interested in the disputed domain name.

4. Factual Background

Complainant company was established in 1981 and is a NYSE listed global consulting and IT services company with more than 242,000 employees. Complainant pioneered the Global Delivery Model and became the first IT Company from India to be listed on NASDAQ. In addition, Complainant has also won multiple awards and honors, both international and national. Complainant maintains its strong internet presence through its primary website <www.infosys.com>.

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Complainant's "INFOSYS" brand is well recognized and respected worldwide and in their industry. Complainant has made significant investment to advertise and promote the Complainant's trademark worldwide in media and the internet over the years.

The Respondent has registered the disputed domain name <INFOSYS.IN> on 30.06.2015 wholly incorporating Trademark "INFOSYS" of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

Complainant is the owner of trademark registrations across various jurisdictions. The Complainant has produced printouts from Intellectual Property of India (IPIN), the United States Patent and Trademark Office (USPTO) etc. which demonstrate that the Complainant has spent a considerable amount of time and money protecting its intellectual property rights. The Complainant is also the registered proprietor of the trademark "INFOSYS" in various countries. From a capital of US\$250, Complainant has grown to become a US\$12.78 billion (FY20 revenues) company with a market capitalization of approximately US\$35 billion.

In Complainant's 38-year journey, it has catalyzed some of the major changes that have led to India's emergence as the global

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destination for software services talent. Complainant pioneered the Global Delivery Model and became the first IT Company from India to be listed on NASDAQ. In addition, Complainant has also won multiple awards and honors, both international and national. Complainant maintains its strong internet presence through its primary website <www.infosys.com>. Complainant's "INFOSYS" brand is well recognized and respected worldwide and in their industry. Complainant has made significant investment to advertise and promote the Complainant's trademark worldwide in media and the internet over the years.

By virtue of its trademark registrations, Complainant is the owner of "INFOSYS" trademark. The country code top level domain (ccTLD) ".in" can be disregarded for purposes of assessing similarity of the domain names to the trade marks.

The Second Level Domain of the Disputed Domain Name consists solely of Complainant's "INFOSYS" trademark, resulting in a domain name that is identical to the Complainant's "INFOSYS" trademark. Thus, the Disputed Domain Name is clearly identical to Complainant's "INFOSYS" trademark.

The granting of registrations by various authorities to Complainant for the "INFOSYS" trademark is prima facie evidence of the validity of the term "INFOSYS" as a trademark, of Complainant's ownership of this trademark, and of Complainant's exclusive right to use the

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"INFOSYS" trademark in commerce on or in connection with the goods and/or services.

Respondent is not sponsored by or affiliated with Complainant in any way and Complainant has not given Respondent license, authorization or permission to use Complainant's trademark in any manner, including in domain names. In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed.

Respondent is not commonly known by the Disputed Domain Name, which evidences a lack of rights or legitimate interests. In the instant case, the pertinent Who is information identifies the Registrant as "Kumar/personal", which does not resemble the Disputed Domain Name in any manner. Thus, where no evidence, including the Who is record for the Disputed Domain Name, suggests that Respondent is commonly known by the Disputed Domain Name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the Disputed Domain Name.

The Respondent is using the Disputed Domain Name to redirect internet users to a website featuring links to third-party websites, some of which directly compete with Complainant's business. For instance, the website at which the Disputed Domain Name resolves

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features multiple third-party links for "Business Process Management Software", "Management Software", and "Job Management Software". Respondent receives pay-per-click fees from the linked websites that are listed at the Disputed Domain Name's website. It has been submitted that Respondents that monetize domain names using pay-per-click links have not made a bona fide offering of goods or services that would give rise to rights or legitimate interests in a disputed domain name. As such, the Respondent is not using the Disputed Domain Name to provide a bona fide offering of goods or services, nor has a legitimate noncommercial or fair use.

Further, Respondent has posted the "Click here to inquire about this domain" link at the top of the Disputed Domain Name's website. Clicking on this link takes an internet user to another website where the user is able to submit information to the Respondent, including an "Offer Price" for the Disputed Domain Name. The Disputed Domain Name is also being offered for sale at various websites. Thus, by posting a "Click here to inquire about this domain" link on the Respondent's website, listing the Disputed Domain Name for sale and exhibiting a willingness to accept solicitations to purchase the Disputed Domain Name strongly suggests that Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

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The Disputed Domain Name was registered on 30.06.2015. To the best of Complainant's knowledge the Disputed Domain Name only transitioned to the current registrant (Respondent), between 10.06.2020 and 20.06.2020, an inference based on the Disputed Domain Name's historical Who is. This date range falls after Complainant filed for registrations for its "INFOSYS" trademark with various authorities and significantly after Complainant's first use in commerce of its trademark in 1981. The Disputed Domain Name was also registered by Respondent significantly after the date when Complainant registered its <infosys.com> domain name on 17.07.1992.

The Complainant and its INFOSYS trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark since 1981, which is well before Respondent's acquisition (registration) of the Disputed Domain Name. Thus, Respondent's bad faith should be assessed from the period Respondent acquired (registered) the Disputed Domain Name between June 10, 2020 and June 20, 2020.

By acquiring (registering) a domain name that consists solely of Complainant's "INFOSYS" trademark, Respondent has created a domain name that is identical to Complainant's trademark, as well

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as its <infosys.com> domain. As such, Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business. In light of the facts set forth within this Complaint, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brands at the time the Disputed Domain Name was acquired (registered). Stated differently, "INFOSYS" is so closely linked and associated with Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith.

In addition to the trademarks filed in connection with Complainant's business prior to Respondent's acquisition (registration) of the Disputed Domain Name, Complainant is one of the largest and highly reputed companies in India, where Respondent is located. At times, Complainant is considered synonymous with India's technological ascendancy. Further, performing searches across a number of internet search engines for "INFOSYS" returns multiple links referencing Complainant and its business.

Respondent has created a likelihood of confusion with Complainant and its trademarks by acquiring (registering) a domain that is identical to Complainant's INFOSYS trademark, which demonstrates that Respondent is using the Disputed Domain Name to confuse unsuspecting internet users looking for Complainant's services, and to mislead internet users as to the source of the domain name and

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website. By creating this likelihood of confusion between the Complainant's trademark and the Disputed Domain Name, leading to misperceptions as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name, the Respondent has demonstrated a malafide intent to capitalize on the fame and goodwill of the Complainant's trademark in order to increase traffic to the Disputed Domain Name's website for Respondent's own pecuniary gain.

The Disputed Domain Name can only be taken as intending to cause confusion among internet users as to the source of the Disputed Domain Name, and thus, the Disputed Domain Name must be considered as having been registered and used in bad faith, with no good faith use possible. More specifically, where the Disputed Domain Name incorporates Complainant's INFOSYS trademark in its entirety, there is no plausible good-faith reason or logic for Respondent to have acquired (registered) the Disputed Domain Name. Rather, it is indicative of an intention to hold the disputed domain name "for some future active use in a way which would be competitive with or otherwise detrimental to Complainant". Further, considering the attendant circumstances of this case, any use of the Disputed Domain Name whatsoever, whether actual or theoretical, would have to be in bad faith. Moreover, Respondent is currently offering to sell the Disputed Domain Name, which constitutes bad

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faith because Respondent has demonstrated an intent to sell, rent, or otherwise transfer the Disputed Domain Name for valuable consideration in excess of his out-of-pocket expenses. It is well established that seeking to profit from the sale of a confusingly similar domain name that incorporates a third party's trademark demonstrates bad faith.

Finally, the Complainant has submitted that on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted Complainant's trademark, and Respondent should be found to have acquired (registered) and used the Disputed Domain Name in bad faith.

Respondent

The Respondent has sent his response through an email on 02.08.2020 that he was not interested in the disputed domain name. The email dated 02.08.2020 reads as under:

"sorry i am not interested in the domain infosys.in".

6. Discussion and Findings:-

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:

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"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:

- (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 has examined the Complaint and documents filed by the Complainant and he will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant has produced trademark certificates for registration of its Trademark "INFOSYS" issued by various authorities along with the Complaint which demonstrates its trademark rights in the Trademark "INFOSYS". The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration <infosys.com> incorporating its Trademark

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"INFOSYS" which leads to website containing information on the various products of "INFOSYS".

The disputed domain name was registered by the Respondent on 30.06.2015, which wholly incorporates Trademark "INFOSYS" of the Complainant.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <INFOSYS.IN> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <INFOSYS.IN> incorporating the Trademark "INFOSYS" of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <INFOSYS.IN> is confusingly similar to the website and Trademark "INFOSYS" of the Complainant.

¹ 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)).



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 name². The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark "INFOSYS" since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark "INFOSYS".

The Respondent has failed to rebut the Complainant's *prima facie* case. Further, the Respondent has sent his response that he was not interested in the disputed domain name. The Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <INFOSYS.IN> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark "INFOSYS" of the Complainant with the

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made out a prima facie case. 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 <INFOSYS.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

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(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 (which are non-exclusive), 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 domain name <INFOSYS.IN> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark "INFOSYS". The domain name is also identical to the prior registered domain of the Complainant i.e. <infosys.com>. There can be no plausible explanation for the registration and use of the impugned domain name <INFOSYS.IN> by the Respondent. The Respondent has deliberately acquired an identical name in which the Complainant has substantial interest being its registered Trademark. The Respondent is presumed to

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have constructive notice of the commercial value and significance of the Trademark "INFOSYS" which forms a conspicuous part of the disputed domain name.

The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark "INFOSYS" in any manner. The disputed domain name clearly incorporates the Complainant's Trademark "INFOSYS" in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <INFOSYS.IN> which incorporates the Trademark "INFOSYS" of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

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

The Trademark "INFOSYS" has been a well-known name. The domain disputed name <INFOSYS.IN> is confusingly similar to the Complainant's Trademark "INFOSYS", and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <INFOSYS.IN> in bad

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faith. These facts entitle the Complainant to an award transferring the domain name <INFOSYS.IN> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <INFOSYS.IN> be transferred in favour of the Complainant.

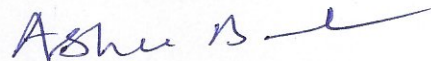
7. Decision

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <INFOSYS.IN> is similar to the Trademark "INFOSYS" in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <INFOSYS.IN> be transferred to the Complainant.

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

Place: Chandigarh

Dated: 06.08.2020



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

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