

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

रु. 100



ONE
HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA
INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA

१८३ अ/२, कसबा पेठ, पुणे ११. 10 JAN 2008

AW 220084

र. नं.: 308/2008 स्टैम्प रूपये: 908 दिनांक:

नांव: शिरीष चिंताभणी इनामदार

पता: धानवार पेठ पुणे हस्ते: माने

स्टैम्प वेंडर: सौ. एस. एस. देशपांडे
LIC No.: HVL/8/10



10 JAN 2008

एच कोषागार अधिकारी
कोषागार, पुणे कर्मिणा

AWARD

IN ARBITRATION

IN DISPUTE

BETWEEN

ALLIANZ SE

THE COMPLAINANT

REPRESENTED BY: -

SEN - OBEROI, ATTORNEY AT LAW

A-18, CHITTARANJAN PARK

NEW DELHI. 110019.

AND

WEBMASTER SKYPE NETWORK LIMITED - THE RESPONDENT

204, WOODWICH ROAD

LONDON.

ENGLAND. SE 7 7QY

IN THE MATTER OF DISPUTED DOMAIN NAME: - allianz.co.in

CASE NO. - NOT ALLOTTED BY NIXI

BEFORE MR.S.C.INAMDAR, B.COM., LL.B., F.C.S.

SOLE ARBITRATOR

DELIVERED ON THIS 11th DAY OF JANUARY TWO THOUSAND EIGHT.



I] SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Name and address

of the Complainant:-

Allianz SE
Koniginstralte 28
D-80802 Miinchen
GERMANY.

02. Name of the Authorised

Representative of complainant:

Mrs.Dahlia Sen Oberoi
M/s Sen - Oberoi
Attorneys-at-Law
A-18, Chittaranjan Park
New Delhi. 100019.
dahlia@sen-oberoi.com

03. Name and address of

The Respondent: -

Webmaster
Skype Network Limited
204, Woodwich Road
London.
England. SE7 7QY
GREAT BRITAIN (GB)
skype@iemail.com

04. Date on which case was

Referred to me for

Arbitration

05.12.2007.

05. Date on which notice of

Arbitration was sent: -

11.12.2007.

06. Date on which first

reminder was sent

to the Respondent

26.12.2007.



07. Date on which second
Reminder was sent to the
Respondent 04.01.2008
08. Date on which notice of closure
of evidence was sent: 10.01.2008
09. Date of arbitral award 11.01.2008

PRELIMINARY: -

- 1) Allianz SE is a corporation under the laws of Germany. It has principal place of business in Germany and it does business at many places of the world. **(The Complainant)**
- 2) Since the Complainant is holder of various trademarks / service marks and also the word "ALLIANZ" is a part of its corporate name, it has disputed registration of domain name **allianz.co.in (the disputed / domain name)** in the name of M/s Webmaster Skype Network Limited. **(The Respondent).**
- 3) Upon Complainant's filing complaint under .IN Domain Disputes Resolution Policy (INDRP), National Internet Exchange of India (NIXI) has referred the dispute for arbitration to me.

II] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. National Internet Exchange of India, a regulatory authority in respect of .in domain names allotment, dispute resolution etc., (NIXI) vide its communication dated 5th December 2007 appointed me as sole Arbitrator in the dispute.
02. After my sending statement of acceptance and furnishing Statement of Impartiality and Independence, I received a copy of complaint on 10.12.2007.

03. On 11 December 2007 I issued Notice of Arbitration to the Respondent under copies to the Complainant and NIXI.
04. The Respondent failed / neglected to submit its say on the Complaint within the period of 14 days as was required under Notice of Arbitration.
05. I therefore sent reminder on 26th December 2007 to the Respondent along with a copy of the previous mail and Notice of Arbitration allowing the Respondent further period of 7 days to submit its say.
06. Due to continued failure / negligence on the part of the Respondent I sent second reminder to it on 4th January 2008 asking it to submit, its say latest by 9th January 2008. The Respondent was also warned that if it fails / **th** continues to neglect to submit its say by 9 January 2008, the Complaint will be dealt with ex-parte.
07. The Respondent has failed / neglected to submit its say on the Complaint or to respond in any manner till 10th January 2008.
08. I am therefore constrained to deal with the Complaint ex-parte and on the basis of documents furnished along with the Complaint by the Complainant.

ni] SUMMARY OF THE COMPLAINT. -

(A) The Complainant has raised, *inter-alia*, following important objections in its

Complaint: -

- a) The Complainant is a corporation under the laws of Germany engaged in providing services in insurance, banking and asset management globally. It has existence of more than 100 years. The earlier name of the Complainant has been changed from Allianz Aktiengesellschaft

and necessary entries have been made in the commercial register in Munich. Due to its long standing in terms of years as also wide spread area of its business operations, members of the public associate the mark ALLIANZ exclusively to the Complainant.

- b) The Complainant is the registered owner and/or proprietor of various trademarks including "ALLIANZ", ALLIANZ GROUP, ALLIANZ+EAGLE device. In support of its contention the Complainant has furnished copies of several trade marks registration certificates.
- c) The Respondent has no prior right in respect of the trade / service mark Allianz and no authorization to use these trade / service marks in any form granted by the Complainant.
- d) The Respondent does not use the domain name in connection with the *bona fide* offering of goods or services.
- e) The use of the impugned domain name allianz.co.in by the Respondent is solely with *mala fide* intentions in order to deceive the potential consumers of the Complainant's product.
- f) The Respondent has not entered into any sort of business activity till date under the website bearing the disputed domain name.
- g) The link bearing the impugned domain name leads to parked website of the Respondent. The use of impugned domain name is intended to divert consumers by misrepresenting it to be owned by the Complainant.
- h) In general the domain name should be considered as having been registered and used in bad faith for the following reasons: -



- a. The Respondent has no prior right and no authorization given by the Complainant concerning the Allianz trade / service marks.
- b. The Respondent's awareness that Allianz trade/service mark is popular and famous for insurance, advisory and financial services.
- c. The use of domain name with .in identical to Allianz trade/service mark of the Complainant misleading the internet users since it makes them believe it is the official website of the Complainant in India.
- d. Operating on a parked website containing the link to the Indian partner of the Complainant - Bajaj Allianz Life Insurance, without any prior permission from the Complainant.

(B) DOCUMENTS PRODUCED BY THE COMPLAINANT: - In support of its contentions the Complainant has furnished, *inter-alia*, copies of the following important documents: -

- a. Copy of English translation of an excerpt of the commercial register in Munich, depicting the change in legal entity of the Complainant
- b. Annual report of the Complainant
- c. Annual report of Bajaj Allianz Life Insurance Co. Ltd.
- d. Worldwide income figures of Complainant's business
- e. List and copies of details of Complainant's trade/service marks registrations/applications around the world and in India
- f. Copy of the decision of Office for Harmonization in the Internal Market that held that Allianz is a well-known trade/service mark with a high reputation along with its English translation
- g. Copies of decisions rendered by WIPO in respect with the trade/service mark Allianz



IV] STATEMENT OF DEFENSE: -

Despite two reminders the Respondent has failed / neglected to respond to the Notice of Arbitration and has not submitted any say or documents in support of its case. A visit to website of the Respondent reveals hopping links to Bajaj Allianz Insurance Co. Ltd., other insurance links as also unrelated links under the categories like work from home, entertainment, lifestyle etc. which are not services offered by the Complainant.

V] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant is holder of any registered trademark or service mark?	Yes
02	Whether the Respondent is holder of any registered trademark or service mark?	Not known
03	Whether the Respondent / Registrant has registered domain name in bad faith?	Yes
04	Whether the Registrant is using the domain name before notice to him?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No
06	Whether the Registrant has registered the disputed domain name to intentionally attempt to attract internet users to the website by creating confusion with the Complainant's name?	Yes
07	Whether, on the basis of the registered trademarks, the Respondent is entitled to continue to use the disputed domain name?	No



BASIS OF FINDINGS: -

1. The Complainant has furnished copies of its registered trademarks / service marks and applications for few more registrations.
2. The Complainant has established beyond any doubt its global stature, fields of its services and quantum of annual turnover.
3. The Complainant has also established that it has its official partner in the form of Bajaj Allianz Insurance Co. Ltd. operating in India in insurance services sector.
4. As confirmed by the Complainant, it has not authorized / granted permission to the Respondent to use the word and / or trade / service mark ' ALLIANZ'.
5. The Complainant has also produced a copy of Office for Harmonization in the Internal Market (OHIM) that held that Allianz is a well known trade / service mark with a high reputation.
6. The Complainant has clearly established according to INDRP that: -
 - a) The Registrant has no rights or legitimate interests in respect of the domain name and
 - b) The Registrant's domain name has been registered or is being used in bad faith.
 - c) The Registrant has registered domain name for intentionally attempting to attract internet users to the website by creating confusion with the Complainant's name
07. As against the Respondent has failed / neglected to submit its say despite two reminders and sufficient opportunities given to it. The established principle of law is 'silence tantamount to acceptance'. Thus I am constrained



to draw a conclusion that the Respondent has nothing to submit or say and has therefore kept calculated silence.

XI] AWARD: -

01. The Complainant is entitled to the disputed domain name - **allianz.co.in** and therefore the same shall be transferred in the name of the Complainant.

02. No order as to the costs.

Pune.

Dated: 11th January 2008



(S.C. INAMDAR)
ARBITRATOR