

# INDIA NON JUDICIAL

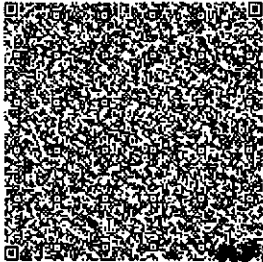


सत्यमेव जयते

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL018082433176930  
Certificate Issued Date : 28-Sep-2016 02:52 PM  
Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL018082433176930  
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)



**BEFORE THE SOLE ARBITRATOR UNDER THE  
IN DISPUTE RESOLUTION POLICY**

**IN THE MATTER OF:**

ALLIANZ SE  
Königinstrasse 28,  
D-80802, Munich,  
Federal Republic of Germany

...Complainant

Vs.

YANG NIANYONG  
134, East Minsheng 3,  
Taipei 10480  
Taiwan (TW)

...Respondent

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## **A. THE PARTIES**

The Complainant in this administrative proceeding is ALLIANZ SE, which is an European Company limited by shares, having its headquarters at Königinstraße 28, D-80802 München, Germany

The respondent in this proceeding is Yang Nianyong, 134, East Minsheng 3, Taipei 10480, Taiwan (TW).

## **THE DOMAIN NAME**

The disputed domain name is **domain ALLIANZ.IN**.

## **B. 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 **<WWW.ALLIANZ.IN>**.

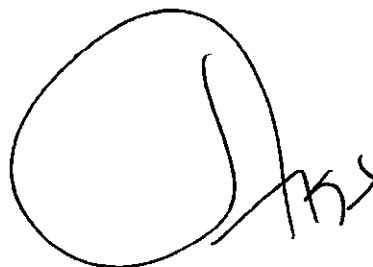
.In Registry has supplied the copy of the Complaint and annexures to me.

On 12.08.2016, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the above mentioned email itself, the Tribunal directed the complainant to supply the copy of the complaint with annexures to the Respondent and to provide the tribunal with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 12.08.2016 with the directions to file his reply within 15 days from the receipt of the above stated email or the receipt of the copy of the Complaint, whichever is later.

On 12.08.2016, Counsels/Representative of the Complainant sent the soft copy of the Complaint and the annexures to the Tribunal and the respondent.

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On 17.08.2016, NIXI informed the Tribunal that the consignment containing the complaint and the annexures could not be delivered to the respondent due to incorrect contact details.

On 20.08.2016, the Tribunal informed NIXI that there was nothing on record to show that the courier was sent to the respondent on the address provided in the WHOIS details. The Tribunal directed NIXI to confirm whether the courier was sent to the respondent on his address as provided in the WHOIS details.

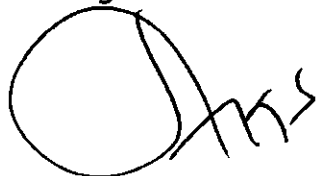
On 22.08.2016, NIXI sent the scanned copy of the courier receipt to the Tribunal and confirmed that the receipt reflects the address of the respondent as per the WHOIS details.

On 24.08.2016, the Tribunal informed NIXI and both the parties that as per rule 3(a) of .INDRP policy, the registrant has to give the complete and accurate statements in the registrant's application. The contact details given by the respondent have been reported to be incorrect. Under these circumstances, the tribunal considers that there is no need to further make efforts to get the respondent served through a courier agency on his address.

The tribunal also clarified that the soft copy of the complaint and annexures had been sent to the respondent by NIXI vide email dated 08.09.2016 and on 09.08.2016 by the claimant. Neither NIXI nor the complainant had reported that the said email has bounced back. Thus, the Tribunal considers it to be a valid service as per rule 2(a) of INDRP rules of procedure.

On 13.09.2016, the Tribunal informed the parties that no response or reply was received from the respondent and in the interest of justice, the respondent was directed to file its reply in 3 days from the receipt of this email after which the arbitrator would proceed with the matter on the basis of the pleadings and the documents already on record and will pass its award.

The Respondent has failed to file his say/ reply to the Complaint of the Complainant. The Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a

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part of this proceeding. Since he has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and .IN Registry.

On perusal of the entire pleadings and the documents placed on record, the Arbitrator's finding is as under:-

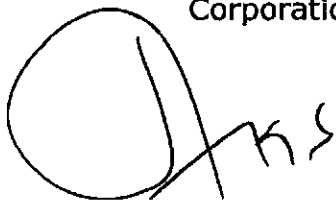
**C. FACTUAL BACKGROUND:**

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

**D. COMPLAINANT:**


The case of the Complainant is that:

1. The Complainant submits that it is one of the world's largest and leading insurance companies, which carries on by itself and through its affiliates, subsidiaries and joint ventures, the operation of investment, insurance, re-insurance, financial services, banking, asset management, underwriting business and assistance services, especially in the fields of travel, roadside assistance and health since the year 1889. The Complainant further submits that the trade name and trade mark ALLIANZ is being used continuously, extensively and uninterruptedly for over 125 years by the Complainant itself and / or through its affiliates and subsidiaries in more than 70 countries and employ over 1, 42, 000 employees as of December 31, 2015. The Complainant serves approximately 85.4 million customers worldwide.
2. The Complainant submits that the trademark ALLIANZ is being used by the Complainant (which shall mean to include its predecessors) atleast since February 5, 1890 when they were established as Allianz Versicherungs-Aktien-Gesellschaft (Allianz Insurance Stock Corporation) and entered into the corporate trade registry of the



First District Royal Court of Prussia in Berlin to carry on the business, inter alia, of accident and transportation insurance policies as well as reinsurance policies for accident, transportation, fire and life insurance policies. The Complainant also submits that due to restructuring, Allianz Versicherungs-AG was converted into a financial holding company with effect from June 28, 1985 and now did business as Allianz Aktiengesellschaft Holding. Thereafter, on October 7, 1996, the name of the Complainant was changed to Allianz Aktiengesellschaft. In 2006-07, the Complainant adopted the current legal form of a Societas Europaea / European Company.

3. The Complainant submits that it has had presence outside Germany since the year 1893 and had been active in its operations, inter alia, in Luxembourg, France, Belgium, Holland, Norway, Switzerland, Austria, Turkey, Argentina, South Africa and Philippines. As early as in the year 1913, approximately one-fifth of the total income of the Complainant was being earned outside Germany and its accounts were being maintained in 52 different currencies. The Complainant also submits that it has a worldwide presence with companies in all the continents across the globe and regions including Western and Southern Europe, New Europe, North and South America, Asia-Pacific and Africa, through its various Group Companies, Affiliates, Joint-Ventures and Associates. With specific reference to Asia, the Complainant is present in the following countries: Brunei, China, Indonesia, Japan, Laos, Malaysia, Pakistan, Russia, Singapore, South Korea, Sri Lanka, Taiwan, Thailand as well as India.
4. The Complainant submits that as a result of such long, continuous and uninterrupted use, members of the public associate the mark ALLIANZ exclusively with the Complainant. The famous mark ALLIANZ not only makes an immediate association with the services of the Complainant but also assures the consumer that each service bearing this mark is of the utmost quality and would guarantee complete consumer satisfaction.



5. The Complainant submits that given the quality of services and the extensive worldwide use backed by wide-spread advertising, ALLIANZ has become one of the leading and most well-known brands in the integrated financial services industry. The Complainant also submits that it has also registered tremendous global sales for its services under the trademark ALLIANZ, right from the year of its adoption. Encouraged by the ever increasing quantum of sales, the Complainant has been consistently expanding its operations under the said trademark throughout the world.
6. The Complainant submits that it has spent considerable time, money and resources to heighten and maintain the popularity of the trademark ALLIANZ around the world. The Complainant also submits that it has extensively advertised its mark ALLIANZ throughout the world and in India.
7. The Complainant submits that the international marketing agency "Interbrand" ranked the Complainant's brand "ALLIANZ" at the position of 54 in the Best Global Brands 2015 Study with a brand value of USD\$ 8,498 million. Interbrand has also ranked the Complainant's brand "ALLIANZ" at the position of 10 with a brand value of 5,706 million Euros in the Best German Brands 2015 Study. Further, the Complainant submits that it has consolidated its position as the most valuable insurance brand in Brand Finance Global 500 ranking 2015. As a result of the Complainant's strong premium growth, the Complainant's brand value increased to 18.6 billion Euros, putting them at number 43 among the top 500 global brands.
8. The Complainant submits that <sup>Inc</sup> ~~it has~~ with specific reference to India, the Complainant has been using the mark ALLIANZ with respect to insurance and advisory services since at least 1928 and to date has garnered enormous reputation with respect to insurance and advisory services. It also submits that at present, the presence of the Complainant in India is through joint ventures with its Indian partner - Bajaj Finserv Limited namely Bajaj Allianz Life Insurance



Company Limited ("Bajaj Allianz Life") and Bajaj Allianz General Insurance Company Limited ("Bajaj Allianz General Insurance"). Through its Indian partner also, the Complainant has garnered huge reputation in India as well and the Complainant is well-known amongst the members of trade and public alike, in India, through its Indian partner.

9. The Complainant submits that there are various trade/service mark applications that have been filed and most of them registered under Allianz SE for the trade/service marks ALLIANZ GROUP, ALLIANZ and ALLIANZ+EAGLE device. The Complainant also provides the details of registrations as well as pending applications in India. It also submits that from the registrations in name of the Complainant, it is evident that the exclusive right to use the famous brand ALLIANZ persists in the Complainant and none else. It further submits that appropriate application for effecting the change in name of the Complainant has already been filed with the Indian Trademarks Office in few of the matters, which is still pending.
10. The Complainant submits that Several German courts and also the Office for Harmonization in the Internal Market ("OHIM") have held that ALLIANZ is a well-known trade/service mark with a high reputation along with its English translation.
11. The Complainant submits that besides it's main domain name registration for [www.allianz.com](http://www.allianz.com), it has also registered numerous domain names worldwide containing the ALLIANZ trade/service marks, for example, [www.allianz.co.uk](http://www.allianz.co.uk), [www.allianzlife.com](http://www.allianzlife.com), [www.allianz.ie](http://www.allianz.ie), [www.bajajallianz.com](http://www.bajajallianz.com), [www.allianzre.com](http://www.allianzre.com), etc.
12. The complainant submits that considering the huge number of domain name registrations infringing the Complainant's prior rights, since all of them include the trade/service mark ALLIANZ, the Complainant had to file many complaints before the WIPO so as to obtain the transfer of the litigious domain names and till date all the decisions rendered by WIPO in respect with the trade/service mark



ALLIANZ, have ordered the transfer of the contentious domain names to the Complainant.

13. The complainant submits that in the matter relating to the disputed domain name [www.allianz.co.in](http://www.allianz.co.in) titled Allianz SE vs. Webmaster Skype Network Limited, the arbitrator appointed by NIXI in the arbitration award passed on January 11, 2008 transferred the domain name to the Complainant noting on paragraph 2 page 9 that "the Complainant has established beyond any doubt its global stature, fields of its services and quantum of annual turnover.

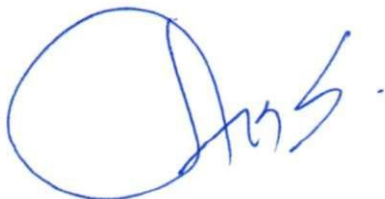
**E. RESPONDENT:**

1. The respondent in this proceeding is Yang Nianyong, 134, East Minsheng 3, Taipei 10480, Taiwan (TW).
2. The respondent has failed to file his say/ reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

**F. PARTIES CONTENTIONS:**

1. Complainant

From the factual background given above, it is evident that in nutshell the contentions of the Complainant are 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.

## 2. Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

### **G. 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"*.

A fair opportunity had been given to the Respondent to file the reply but no response has been received from him. The Arbitration proceedings thus, have been conducted on the basis of the records made available to the Arbitrator.

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 there under and any law that the Arbitrator deems to be applicable."*

After examining the complaint and the documents placed on record by the complainant and INDRP Rules of Procedure and policy, the Arbitrator's finding on the contentions of the claimant is as follows:

- (i) The Registrant's Domain Name is identical or confusingly similar to a trademark in which the Complaint has rights:**



**The complainant's submissions as per the complaint in this regard are:**

- a. The Respondent's registration of the domain name 'allianz.in' is identical to the Complainant's well-known and registered trade/service mark ALLIANZ, the high quality insurance, advisory, asset management and banking services provided by the Complainant.
- b. The Domain Name of the Respondent is visually, conceptually and phonetically identical to the Complainant's well known and highly distinctive trade mark ALLIANZ.
- c. The registration of the Domain Name is likely to falsely lead the public into believing that the Respondent and the website to which the Domain Name directs is sponsored by or affiliated to or associated with the Complainant, and will lead to confusion and deception. This is further substantiated by the fact that the website clearly shows links which are owned and operated by the Complainant.
- d. The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to deceive the public into believing that there is a trade connection between the Complainant and Respondent.

Since the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the complaint establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant and as such this issue is decided in favour of the complainant.

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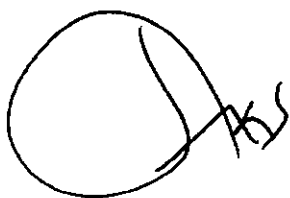
**(ii) The Registrant has no rights or legitimate interests in respect of the domain name:**

**The complainant's submissions as per the complaint in this regard are:**

- a. The Complainant has prior rights in the ALLIANZ trade/service marks, which precede the Respondent's registration of the disputed domain name. Moreover, the Complainant's trade/service marks are present in many countries around the globe for ALLIANZ including Taiwan, where the Respondent is located and are well-known throughout the world.
- b. The disputed domain name used by the Respondent leads to a web site, on which it appears to be a parked page. The said page contains the name of the Complainant as well as links to their various websites.
- c. The Respondent has intentionally registered the domain name in an attempt to attract for commercial gain, Internet users, to Respondent's website by creating confusion with the Complainant's ALLIANZ trade/service mark, as to the source, sponsorship, affiliation, or endorsement of Respondent's website, products and services in bad faith. Furthermore, the Respondent's site *did nothing to disclaim any relationship with the trade mark owner. It did nothing to dispel any possible suggestion that it might be the trade mark owner, or that the website might be the official site of, or authorized by, the Complainant.* The Complainant places reliance upon WIPO case No D2005-0769 (sanofi-aventis v. ClickStream Marketing LLC). Therefore, the Respondent's use of the impugned trade/service mark as its domain name does not satisfy the test for *bona fide* use established in prior WIPO decisions.
- d. The Complainant relies upon WIPO decision *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, where it was held that to be *bona fide* within paragraph 4(c)(i), the offering must meet several minimum requirements, being that:
  - i. the Respondent must actually be offering the goods or



- services at issue;
- ii. the Respondent must use the site to sell only the trade/service marked goods; otherwise, it could be using the trade/service mark to bait Internet users and then switch them to other goods;
  - iii. the site must accurately disclose the registrant's relationship with the trade/service mark owner; it may not, for example, falsely suggest that it is the trade/service mark owner, or that the website is the official site; and
    - iv. the Respondent must not try to corner the market in all domain names, thus depriving the trade/service mark owner of reflecting its own mark in a domain name.
  - e. There is no license, consent or other right by which the Respondent would have been entitled to register or use identical domain name as that of the Complainant's trade/service mark ALLIANZ.
  - f. The use of the impugned domain name 'ALLIANZ.IN' by the Respondent is solely with *mala fide* intentions in order to deceive the potential consumers of the Complainant's ALLIANZ product, browsing on the Internet, into believing that the domain name belongs to the Complainant. The Complainant has presence in many countries of the world and is the proprietor of various domain names. The .IN ccTLD primarily and prominently signify that the domain name has a presence in India, indirectly relating the domain name to the Complainant, when no such association exists. There is no doubt that the Respondent is aware that ALLIANZ corresponds to excellent quality insurance, advisory and financial services and therefore to a trade/service mark. Thus, there is no doubt that the Respondent does not use the domain name in connection with the *bona fide* offering of goods or services.
  - g. The Respondent has not entered into any sort of business activity till date, under the website bearing the disputed domain name. Moreover, the link bearing the impugned domain name leads to parked website of the Respondent and shows links to Complainant's



various websites. As a result, it seems that the Respondent, who has no legitimate interest in respect of the domain name "allianz.in" has registered this domain name with the intention to divert consumers and to prevent the Complainant from reflecting the mark in a corresponding domain name and also to establish an association with the Complainant where in fact none exists.

- h. The Respondent has made no *bona fide* use of the disputed domain name because of its lack of authorization to use the ALLIANZ trade/service marks. Furthermore, using domain names in order to divert consumers cannot be characterized as a fair use.

According to the paragraph 7 of the .INDRP, the following circumstances show Registrants rights or legitimate interest in the domain 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 Respondent has neither responded nor has put forth or provided any evidence to show that the circumstances as required under paragraph 7 of the INDRP exists in his favour. The Respondent is also not engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.



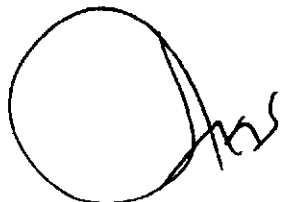
Even otherwise also the above facts establish that the Respondent has no right or legitimate interest in the domain name < **ALLIANZ.IN** > as the Respondent is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii). Therefore this issue is also decided in favour of the complainant.

**iii. The Respondent has registered and is using his domain name in bad faith:**

**The complainant in support of the above contention has stated as under in the complaint:**

- a. The Respondent has no prior right and no authorization given by the Complainant concerning the ALLIANZ trade/service marks and that the Respondent was aware that ALLIANZ trade/service mark is popular and famous for insurance, advisory and financial services
- b. The respondent's use of domain name with .IN identical to the ALLIANZ trade/service mark of the Complainant, misleading the Internet users since it makes them believe it is the official web site of the Complainant in India
- c. The Respondent has provided links to various websites owned and operated by the Complainant on the website, which clearly shows their bad faith. The fact that the Disputed Domain Name is currently suspended and therefore does not show any active content does not preclude a finding of bad faith. The Complainant relies upon Telstra Corporation Limited vs. Nuclear Marshmallows WIPO Case No. D2000-0003.
- d. The Respondent sent an email on June 17, 2016 to the Complainant offering to sell the domain name www.allianz.in to them clearly establishing the bad faith as well as awareness on part of the Respondent.

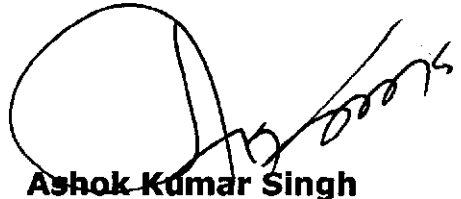
All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. The



conduct of the respondent offering to sell the domain name to the complainant is evidence of bad faith. The unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name < ALLIANZ.IN > in bad faith. This issue is decided accordingly.

**H. DECISION:**

In view of the above facts and circumstances and finding of the Arbitrator, the Complainant has succeeded in his complaint. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <**ALLIANZ.IN**> to the Complainant. The parties are left to bear their own cost. The Award is accordingly passed on this day of 29<sup>th</sup> September, 2016.



**Ashok Kumar Singh**

**Sole Arbitrator**

**Date: 29<sup>th</sup> September, 2016**