



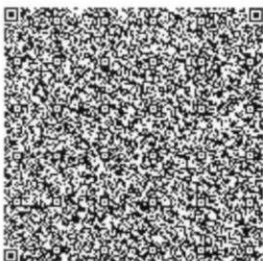
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

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Certificate Issued Date	: 15-Jul-2013 12:13 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SHCIL72697701533050L
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: V SHRIVASTAV
Second Party	: NA
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

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"amplifon.co.in"

between

AMPLIFON S.p.A.

...COMPLAINANT

ANNIE PARRIS

AND

...RESPONDENT

**AWARD**

1

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilstamp.com". Any discrepancy in the details of this Certificate should be reported to the ShCIL.

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 issued notice to the parties on 14/06/2013. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents . Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That compliance of the order was done by the Complainants vide their email dated 17/06/2013 showing that they have sent the hard copy by courier on 15/06/2013 which had a courier receipt of M/s FedEx waybill No.796009759276. On tracking it showed "Incorrect Address" by the courier company. Hence, this Tribunal vide order dated 25/06/2013 directed the Respondent to send their correct and complete postal address

for which the complainants had already requested the Respondents and also directed the Respondents to send their Statement of Defense by 02/07/2013 as they were in receipt of the emails and were aware of the Arbitration proceedings.

3. That this Tribunal noticed that the Respondents have not sent any email / communication notifying their new address or their Statement of Defense hence on 04/07/2013 vide its order the Tribunal reserved the order.
4. In view of this, this Tribunal holds that the Respondents are fully aware of the present proceedings and are deliberately not joining the same.
5. In view of these peculiar facts and circumstances of the present matter and also in view of INDRP this Tribunal accordingly proceeds in the matter as per the material available before it.

## CLAIM

6. The claim as put forward by the complainant is briefly as under:

A. It is claimed that M/s **Amplifon S.p.A**, is a Join Stock Company duly organized and existing under the Laws of ITALY having its office at Via Ripamonti, 131/133, MILANO, ITALY. (herein after referred to as "the Complainant" . It is also claimed that the Complainant is the world leader in the distribution of hearing systems (hearing aids) and their fitting which are personalized to the needs of persons with hearing impairment. It is further claimed that the Complainant annual revenue is to the tune of Rs. 63,948,768.00.

B. It is stated that the Complainant company was founded in the year 1948.

C. The Complainant claims that they are operating in many parts of the world including India, since a very long time. Reliance is placed on **Annexure A.**

D. It is claimed that the Complainant entered India on or about 1<sup>st</sup> April 2010 as NHC Hearing Care (India) Pvt. Ltd. and subsequently, changed its name to Amplifon (India) Pvt. Ltd. Reliance is placed on **Annexure B.**

E. It is submitted by the Complainant that since entering in the markets of INDIA, it has acquired 38 outlets from Beltone India and at present it holds altogether 75 shops / outlets in India. It is also stated that the complainant has tied up with major hospitals, like Max, Columbia Asia etc. and that its products under the trade mark AMPLIFON are widely sold through large number of dealers located at various strategic points across the length and breadth of the country. Further, the Complainant has carried on extensive promotional and marketing activities all over India thus, making its trademark immensely popular amongst the trade and purchasing public. It is claimed that the overall marketing expense for the last two years is Rs. 30,637,665.00. Reliance is placed on **Annexure C.**

F. It is claimed that the Complainant obtained first trade mark registration in 06 December 1948 in ITALY under Registration No. 1324781 and the said registration is still valid and subsisting. Reliance is placed on **Annexure D**.

G. It is also stated that in India the Complainant's Application bearing no. 2492317 in class 9, 10 and 42 for the mark **AMPLIFON (Label)** is pending registration, and that **the Complainant is the registered proprietor** of the mark **AMPLIFON** under the Registration No. **1338487** in class 9, 10 and 42. Reliance is placed on **Annexure E**. It is also claimed that the complainant also owns and operate its website [www.amplifon.com](http://www.amplifon.com) since the year 1997 and that it's website has over millions of hits in a year and is a very popular website amongst the users of the goods manufactured by the Complainant.

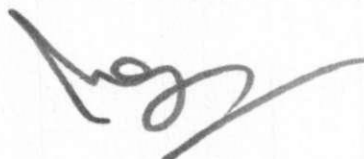
H. The Complainant has stated that recently it came across a registered Domain Name [www.amplifon.co.in](http://www.amplifon.co.in) having a Domain ID D6730018-AFIN. Reliance is placed on **Annexure F**.

- I. It is alleged that the impugned domain name is not only identical and/or confusingly similar to the trade mark in which the Complainant has rights on the basis of its worldwide registration but also because of its extensive, continuous and uninterrupted usage of the same which includes prior registration of website [www.amplifon.com](http://www.amplifon.com).
- J. It is alleged that the Respondent has no registered trademark in India which would entitle her to the disputed domain name and has registered the domain name with malafide intentions to trade upon the impeccable reputation and goodwill of the Complainant.
- K. It is alleged that the Respondent is trying to misappropriate the reputation of complainants well known trade mark / brand and that the creation and registration of the domain name is aimed at confusing the internet traffic and deceptively divert them to the Respondent's website. The Complainant submit that they are providing post sale services of hearing aids for the people with hearing problems and hence it becomes all the more relevant to

avert even the slightest possibilities of confusion or deception as it could lead to severe implications and dangerous consequences. Besides the complainants have common law rights *qua* the **AMPLIFON** mark in India as well as globally.

### ORDER

7. This Tribunal has considered the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give their correct and complete postal address and take further steps in the present proceedings chose not to give any and hence the allegations of the complainants remain un rebutted/ admitted.
8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <amplifon.co.in>, hence this Tribunal directs the Registry to transfer the domain name <amplifon.co.in> to



the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceeding to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 16<sup>th</sup> day of July, 2013.

NEW DELHI  
16/07/2013



V. SHRIVASTAV  
ARBITRATOR