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**ARBITRATION AWARD**

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE  
OF INDIA (NIXI)**

**.IN Domain Name Dispute Resolution Policy  
INDRP Rules of Procedure**

**Case : L - 2 / 2 / R3**

M/s.ApnaLoan.com Services Pvt. Ltd.  
(A company incorporated and existing under  
the Laws of India, having its office at)  
A-14, 1<sup>st</sup> Floor, Shri Ram Industrial Estate,  
G.D. Ambedkar Road, Wadala,  
Mumbai - 400 031 (India)

**.....Complainant**

**Versus**

Mr. Raj Malhotra  
A-504, Dheeraj Residency  
Mumbai - 400 102 (India)

**.....Respondent**

**1. The Parties**

The Complainant is Apnaloan.com Services Pvt. Ltd, represented by Mr. Sunil B. Krishna of Krishna & Saurastri, KK Chambers, 1st Floor, Sir P.T. Marg, Off. D.N. Road, Fort, Mumbai - 400 001, India.

The Respondent is Raj Malhotra, Mumbai

**2. The Domain Names and Registrar**

The disputed domain name www.apnaloan.co.in is registered with .IN Registry, National Internet Exchange of India with Domain ID:D2295048 - AFIN through Domain Services Limited, Victoria House, 26, Main Street, Gibraltar.

**3. Procedural History**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI) on August 20, 2007, against Mr. Raj Malhotra, A-504, Dheeraj Residency, Mumbai - 400102, India on the basis of the .IN WHOIS Domain Name Registry data base of NIXI showing the said Respondent as registrant of the disputed domain name. The NIXI verified that the Complaint together with the annexures to the Complaint satisfied the formal requirements of the .In Domain Name Dispute Resolution Policy (the "Policy") and the Rules of Procedure (the "Rules").

In accordance with the Rules, NIXI formally notified the Respondent of the Complaint on August 28, 2007, and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed thereunder and .In Dispute Resolution Policy and Rules framed thereunder.



The parties were notified about the appointment of Arbitrator.

The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules.

The arbitration proceedings commenced on September 7, 2007. In accordance with the Rules, the Respondent was notified by me about the commencement of Arbitration proceedings and the due date for Response was September 17, 2007.

The Respondent did not file his response. On October 6, 2007, the respondent was intimated about his failure, neglect and omission to file the response within stipulated time and/ or to make any request for the extension of time. The respondent still omitted to file any response.

Copies of all communications were forwarded to parties and .IN Registry by e-mail for their records and for maintaining transparency in the proceedings.

The Panel considers that according to the Rules, the language of the proceedings be English.

In the facts and circumstances, in-person hearing was not considered necessary for deciding the complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

The award is required to be passed within 60 days from the date of



commencement of arbitration proceedings. The present Award is passed within the prescribed period of sixty days from the date of commencement of Arbitration proceedings.

#### 4. Factual Background

- 4.1 The Complainant in this administrative proceeding is **M/S. Apnaloan.com Services Private Limited**, a company incorporated and existing under the laws of India, whose address is A-14, 1th Floor, Shri Ram Industrial Estate, G.D. Ambedkar Road, Wadala, Mumbai - 400 031.
- 4.2 The complaint is based on the ground of infringement of the registered trade mark/name 'APNALOAN.COM' and registered domain name "www.apnaloan.com". The Complainant owns the trademark/trade name and domain name/website www.apnaloan.com, in relation to services inter alia of providing online loans including home loans, personal loans and credit cards. The complaint is based on the Complainant's legitimate rights, business and commercial interest in the trade mark/trade name/ domain name "APNALOAN.COM".
- 4.3 The Complainant is the registered proprietor of the trademark "APNALOAN.COM" in India under Number 917704 in Class 9 in respect of computer software relating to banking activities. The said mark and name is also registered as a domain name www.apnaloan.com and stand assigned to the Complainant.



4.4 The Complainant operates a website using the domain name www.apnaloan.com in relation to services of inter alia providing online loans.

4.5 The Respondent in the present dispute has registered the domain name <www.apnaloan.co.in>.

## 5. Parties' Contentions

### A. Complainant

5A.1 The Complainant (which expression shall mean and include its predecessors in business, title and interest, wherever applicable) is a leading and well-established company engaged in the business of providing information, negotiation and assisting individuals, firms, companies or associations or any other body of persons to obtain financial assistance by way of loans, mortgages, lease, hire purchase, cash credit, overdraft and other such facilities from banks, financial institutions, government, semi-government bodies and other financial entities through internet or otherwise. It is one of the largest consumer services companies in the financial sector in India today.

5A.2 The Complainant's predecessors, i.e. M/S. Apnaloan.com India Private Limited (now known as M/S. ALC India Pvt. Ltd.) pioneered the concept of an online marketplace for home loans, personal loans and credit cards in India. The said company was originally incorporated on December 27, 1999 in the name and style M/S. Loansearch India.com Private Limited. The essential feature of the said company name is 'APNALOAN" which is a fanciful name derived from combination of a Hindi



and English word. Since its incorporation over 3,00,000 consumers have benefited from their services. Today, consumers all across India consider APNALOAN.COM synonymous with an easy and a hassle-free loan process as they make banks compete for loans.

5A.3 In or about the year 2000, the Complainant's predecessors conceived and adopted the distinctive trade mark/trade name APNALOAN.COM to market their services inter alia of providing online loans. The said trade mark/name APNALOAN.COM has been in open, exclusive, continuous and extensive use by the complaint and/or their predecessors since its adoption. The said trade mark/trade name APNALOAN.COM is a valid and subsisting registered trade mark under The Trade Marks Act of 1999 bearing registration No.917704 in class 9 since April 12, 2000 in respect of computer software relating to banking activities. The said name and mark is also registered as a domain name www.apnaloan.com as of February 23, 2000 and the same is valid subsisting till February 23, 2010. The Complainant contends that the said trade mark "APNALOAN.COM" and domain name www.apnaloan.com has been assigned in favour of the Complainant i.e. M/S. Apnaloan.com Services Private Limited by virtue of Assignment Deed dated January 11, 2007 executed by the Complainant's predecessors i.e. M/S. Apnaloan.com India Private Limited. It is clear from the initiatives taken by the Complainant that the Complainant has a tremendous amount of goodwill and reputation attached to their trade mark/trade name APNALOAN.COM" and are constantly eager and vigilant to protect the same from being appropriated by unscrupulous



traders, individuals and business concerns.

5A.4 By virtue of the open, consistent and extensive use of the said trade mark/ trade name / domain name, it has acquired an enormous reputation and goodwill amongst the members of the trade and public. The Complainant has spent and continues to spend considerable finance and efforts to popularize the said trade mark/trade name and/or domain name/ web-site. The said trade mark/ trade name / domain name has come to be recognized, identified and associated with the Complainant alone and none else. The said trade mark / trade name / domain name has also come to be recognized as a well known trade mark. The trade mark/trade name APNALOAN.COM and/or domain name www.apnaloan.com has become distinctive of the aforementioned services of the Complainant alone. No one can use and/or reproduce or cause to use and/or reproduce the said trade mark/trade name/domain name without any written expression, consent or permission from the Complainant in any material form.

5A.5 The domain name is identical and/or confusingly similar to the Complainant's registered and long used trade mark/trade name APNALOAN.COM and registered domain name www.apnaloan.com.

5A.6 The Complainant has prior rights in the mark and domain name www.apnaloan.com as early as in the year 2000. The use and registration of the trade mark/trade name/domain name "APNALOAN.COM" by the Complainant is prior to the reservation of the disputed domain name www.apnaloan.co.in



by the Respondent in the year 2006.

5A.7 The Respondent has no right or legitimate interest in respect of the disputed domain name. The disputed domain name is neither used nor is it being proposed to be used by the Respondent in connection with a bonafide offering of goods and/or services. The Respondent being an individual has not been and is not commonly known by a name that involves the element APNALOAN/APNALOAN.COM. The adoption and registration of the domain name www.apnaloan.co.in by Mr. Raj Malhotra is fraudulent, dishonest, malafide and with the sole intention of profiteering from the sale of the same by misappropriating the Intellectual Property of the Complainant and causing confusion, deception and deceiving the public. The Complainant further submits that the Respondent has no right or legitimate interest in the disputed domain name as there is no plausible explanation for Respondent's registration and use of its trade mark/trade name/domain name.

5A.8 The impugned domain name www.apnaloan.co.in has not been published and/or hosted as on August 18, 2007 i.e. date of filing the complaint. The Complainant also asserts that no positive action is being taken by the Respondent in relation to the concerned domain name, i.e., no individual creative efforts to either popularize the same nor have any promotional activities been undertaken with regard to the Respondent's impugned domain name. Thus, the Complainant states that the Respondent is passively clinging or holding on to the site.

5A.9 The Complainant further submits that the domain





name is put up for sale on the website <http://www.indomains.net/forsale.php?pagenum=80&catid=3>

5A.10 The respondent has registered the domain name [www.apnaloan.co.in](http://www.apnaloan.co.in) in bad faith primarily for the purpose of selling, renting or otherwise transferring the domain name registration for valuable consideration. The Complainant's business is mainly carried on online and/or through e-transactions for which the domain name acts like the address at which the business transactions take place. The Respondent has malafidely obtained registration of the domain name [www.apnaloan.co.in](http://www.apnaloan.co.in) being aware of the fact that the use of the said domain name is bound to cause loss and prove detrimental to the Complainant, as it would dilute the mark of the Complainant.

5A.11 Any use of the disputed domain name will inevitably attract Internet traffic for commercial gain to the Respondent by creating a likelihood of confusion, or at least 'initial interest confusion', as to the source, sponsorship, affiliation or endorsement of the web site associated with the domain name, or the products/services sold thereon.

## **B. Respondent**

5B.1 The Respondent did not reply to the complainant's contentions. The claims made by the complainant, therefore, remain unrebutted and unchallenged.

## **6. Discussion and Findings**

6.1 The Complainant, while filing the complaint, submitted to



arbitration in accordance with the Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of the Policy.

- 6.2 The Rules provide that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearings by teleconference video conference, and web conference) unless the Arbitrator, in his sole discretion and as an exceptional matter, otherwise determines that such a hearing is necessary for deciding the complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Under Section 19 of the Arbitration & Conciliation Act, 1996, the Arbitral Tribunal is not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. However, the principles of procedure do apply to these proceedings. Sub-Section 3 of Section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence. It is therefore appropriate to examine the issues in the light of the statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act. The Complainant has filed evidence by way of Annexure A to Annexure P consisting of (A) Printout of WHOIS Search Result (B) to (I) correspondence exchanged between complainant and Respondent between June 19, 2007 - June 26, 2007, (K-L) certificates of Complainant's incorporation, (M) Complainants registration certificates of



trade mark apnaloan.com; (N) print out of Complainant website apnaloan.com; (O) Copy of deed of assignment and (P) Printout of .In domains put up for sale including the disputed domain name.

6.3 The onus of proof is on the Complainant. Merely because the Respondent has not made a response to the complainant does not avoid the necessity of examining the issues in the light of the evidence. As the proceeding is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name APNALOAN.COM and the reputation accrued thereto have not been disputed or denied by the Respondent. The Respondent has also not denied the correctness or genuineness of any of the Annexures A to P to the Complaint. The Respondent admits in his reply (Annexure 'C') to legal notice sent by Complainant [Annexure 'B'], that the domain name apnaloan.co.in was for sale and respondent was not using the same. The respondent did not assert any legitimate right or interest in the disputed domain name in any of the replies he sent to the complainant (Annexure 'C', 'E', 'F' or 'H').

6.4 Under the provisions of Order 8 Rule 10 of the Code of Civil Procedure, where a party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him. In the present case the respondent failed to file any written statement within the permitted and fixed time. The Panel therefore accepts the case set up and the evidence filed by



the Complainant and concludes that the same stand proved in accordance with Law.

6.5 The WHOIS record filed as Annexure A to the complaint show that the domain name www.apnaloan.co.in was created on September 18, 2006 in the name of Respondent Mr. Raj Malhotra as the registrant.

6.6 The present complaint was filed with .In Registry (NIXI) on August 20, 2007 and on receipt of the complaint Registry lock was put on the disputed domain name.

6.7 The Policy provides that the remedies available to a Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.8 Under the Policy, three elements that the Complainant must prove to merit a finding that the domain name of the Respondent be transferred to the Complainant or cancelled:

- (i) the registrant's of domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and
- (iii) the registrant's domain names has been registered or is being used in bad faith.



That being so, the Panel will now proceed to examine if the Complaint has discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

**A. Identical or Confusingly Similar**

- 6A.1 The Complainant is a company incorporated with the name M/S. Apnaloan.com, forming a key, leading and essential portion of its corporate name. The incorporation of the Complainant Company in 2000 under the laws of India is a matter of public record (Annexure 'V').
- 6A.2 It is also a matter of public record that the Complainant is the registrant of Domain name www.apnaloan.com since 23<sup>rd</sup> February, 2000 (Annexure 'N').
- 6A.3 It is also a matter of public record that the Complainant is the registrant of trade mark APNALOAN.COM under no. 917704 dated 12<sup>th</sup> April, 2000 in India in relation to services inter alia of providing online loans including home loans, personal loans and credit cards in class 9 (Annexure 'M').
- 6A.4 The Respondent, as aforesaid failed to file any response to the complaint. In response to legal notice issued by complainant (Annexure 'B'), the Respondent did not claim any legitimate right of his own to the disputed domain name but offered the same for sale (Annexure 'C', 'E' & 'H').
- 6A.5 The averments made in the complaint and the evidence produced on record by the Complainant sufficiently establishes the prior



adoption and registration of the trade mark / domain name APNALOAN.COM, as aforesaid, by the Complainant.

6A.6 The proprietary rights in a trade mark / service mark are acquired on account of priority in adoption, use and registration to India. Reference be made to the matter of Century Traders Vs. Roshan Lal AIR 1978 Delhi 250 (DHC) and N.R. Dongra Vs. Whirlpools Corporation - 1996 PTC 476 (DHC) and 1996 PTC 583 (Supreme Court of India). There is sufficient material on record to establish proprietary rights of the Complainant in the mark APNALOAN.COM.

6A.7 The copies of registration of trade mark APNALOAN.COM and print outs of the Complainant's website placed on record are not disputed by the Respondent.

6A.8 The Complainant has thus discharged its onus in establishing its proprietary rights in the mark / name APNALOAN.COM on account of priority in adoption, use and registrations. The Complainant has also succeeded in establishing his right to the domain name consisting of the mark www.apnaloan.com on account of their prior use and registrations.

6A.9 The Complainant's trade mark/ trade name is "APNALOAN.COM" and the domain name in dispute is www.apnaloan.co.in. It is evident from the Registration of the Complainant's trade mark in India that the period of adoption of Complainant's trade mark dates back to the year 2000 as against Respondent's domain name registration in 2006. The domain name www.apnaloan.co.in incorporates the entire trademark / trade



name "APNALOAN" of the Complainant except for the expression '.com' which has been replaced by the expression 'co.in' indicating the particular Domain Name Registry. The term '.in' is insignificant and is generally disregarded when comparing the disputed domain name with the Complainant's trademark since the expression '.in' denotes India which is common to all Indian Domain Name Registrations.

6A.10 The domain name www.apnaloan.co.in registered by the Respondent in India is identical to the trademark / trade name and domain name of the Complainant. The panel, therefore, hold that the domain name registered by the Respondent is identical and confusingly similar to the trade mark, trade name, service mark and domain name of the Complainant.

## **B. Rights or Legitimate Interests**

6B.1 Paragraph 7 of the Policy lists the following three non-exclusive methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant 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) have 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 noncommercial 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.

6B.2 As to the circumstances under paragraph 4 of the Policy, the Complainant has not consented to the Respondent's use of the domain name, which incorporates the Complainant's trademark / trade name / domain name APNALOAN.COM or the marks as are identical or deceptively similar thereto. The domain name <www.apnaloan.co.in> bear no relationship to the business of the Respondent. The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization, of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do remotely with the business of Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name. The Respondent is, on the contrary, making commercial use by putting the same for sale on the website and demanding consideration from the complainant for transfer thereof.

6B.3 An entity desirous of trading or providing its services through the medium of the Internet invariably uses its existing trademark/trading style or service mark as its domain name so as to avoid confusion between what is advertised upon the Internet and the mark as used in the physical world. Further, the use of





the real-world trademark serves as the most visible, identifiable and verifiable indicator of the existence of the entity in question upon the Internet. In view of this, the Complainant's domain name, located at the URL www.apnaloan.com, functions as a trademark in the Internet world. No entity other than the Complainant, therefore, has any right or justification to use the word "APNALOAN.COM" or any deceptively similar mark, in respect of its domain name.

6B.4 Once a Complainant makes a *prima facie* showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.

6B.5 The Respondent claims no right or legitimate interest in the domain name in question. The registration of the disputed domain name, as is apparent from the record maintained by WHOIS Registry, was made in the name of the Respondent, Mr. Raj Malhotra on September 18<sup>th</sup>, 2006. At the time of registering the disputed domain name, the Complainant company had already been incorporated, the trade mark as well as domain name apnaloan.com had already been registered in the name of the complainant and put to commercial use.

6B.6 The question which arises for consideration is as to whether the Respondent's registration of the disputed domain name is in fact bonafide. APNALOAN.COM is admittedly the registered trade mark of the Complainant and the registration produced on record is as



of April 12, 2000. The domain name www.apnalaon.com is registered in the name of the Complainant as of February 23, 2000 and number of users are attracted to the said site. The Complainant is also the Registered Proprietor of the trade mark APNALOAN.COM in India under no. 917704 in class 9. The company Apnaloan.com India Pvt. Ltd was incorporated by the complainant in June, 2000. The Respondent has not given any justification or explanation as to how he came about to adopt and register www.apnaloan.co.in as his domain name, which is admittedly not his own name or connected with his business.

6B.7 The disputed domain name is put for sale on the website. This shows that the Respondent is a Cyber-squatter intending profit out of the domain name registration and not keen to have his identity projected by the web page/website. It is further evident from the communications exchanged between the Complainant and the Respondent that the sole intention of the Respondent is to profit from the sale of the domain name. All these elements clearly indicate that the Respondent has registered the domain name www.apnaloan.co.in in bad faith and continues to hold the same in bad faith, much to the financial loss, detriment and disadvantage of the Complainant.

6B.8 This Panel finds that this is a typical case of Cyber squatting.

6B.9 In the absence of any relevant submission by the Respondent, this Panel is inclined to accept all reasonable inferences and allegations included in the Complaint as true. See *Talk City, Inc. v. Robertson*, WIPO Case No. D2000-0009. The Respondent makes no claim to have been authorized by the Complainant to use the



Complainant's mark. Similarly, the Respondent makes no claim that it has been commonly known by the disputed domain name, or that it has attempted to make any legitimate non-commercial or fair use of the domain name.

6B.10 The Panel therefore holds that none of the circumstances listed under 7(i) of the Policy, possibly demonstrating rights or legitimate interests of the Respondent, are present.

### **C. Registered and Used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of our 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 you have engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location."

6C.3 The overriding objective of the Policy is to prevent abusive domain name registration and use for the benefit of legitimate trademark owners, and the Panel notes that the examples of bad faith registration and use set forth in the policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

6C.4 In the present case the domain name www.apnaloan.co.in was registered by the Respondent in his name on September 18, 2006. The domain name consisting of the trade mark/service mark/domain name of Complainant was made in bad faith to take advantage of the reputation of Complainant established therein much prior thereto. The Complainant legitimate right and interest to the exclusive use of the trade/service mark **APNALOAN.COM** on account of priority in adoption, use and registration is well established on record. The Respondent has furnished no explanation about the adoption of an identical mark APNALOAN or registration thereof in September, 2006.



6C.5 The disputed domain name is also being used by Respondent in bad faith to earn money by offering the same for consideration to the complainant and third parties, under the trade mark APNALOAN.COM.

6C.6 In the present case both elements of bad faith registration as well as bad faith use are established. The Respondent, as aforesaid, has no relationship with the business of APNALOAN.COM.

6C.7 There is evidence to conclude that the Respondent has registered the domain in bad faith and has made use of the domain name on account of bad faith registration and under the circumstances of this case.

## 7. Decision

In accordance with Paragraph 10 of the Policy and for the reasons stated above, the Panel directs that the domain name <www.apnaloan.co.in> be transferred to the Complainant.



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**Amarjit Singh**  
**Sole Arbitrator**

Dated: November 6, 2007