



हरियाणा HARYANA

M 321677

**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

In The Matter Between

**International Amusement Limited
Metro Walk,
Sector 10 Rohini,
Near Rithala Metro Station
New Delhi
India**

Complainant

Versus.

**Manish Kumar
K-7 Arya Samaj Road
New Delhi, India**

Respondent

Manish Kumar

The present Arbitration proceedings pertain to a dispute regarding the domain name <appughar.in>. The registrar hosting the disputed domain name is Incyber Advertising Incorporation (R29- AFIN). The Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the INDRP Policy and Rules.

The basis of the present complaint is that the Complainant is the owner of the trademark APPUGHAR that it uses in connection with its services. In order to protect its rights under the APPUGHAR trademark, the Complainant had filed the present dispute. The Complainant owns registered trademarks for the APPUGHAR mark and has provided the registration numbers of its registered marks as evidence of its rights in the mark. The Respondent registered the disputed domain name <appughar.in> on February 23, 2013.

The Complainant, International Amusement Limited, is a company that was incorporated under the Indian Companies Act 1956 on September 15 1984 by Mr. Gian Vijeshwar, a non-resident Indian based in Sweden. The

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Complainant contends it is the pioneer of Indian amusement parks and that its amusement park APPU GHAR was inaugurated on 19th November 1984. Its trademark has been widely used and popularized since 1984 and its mark is very well known and is popular by virtue of its simplicity and familiarity with the masses. The Complainant adds that it's other products and offerings under the mark include world-class retail shopping facility, amusement parks, hotels, eateries and entertainment centers. It houses many national and multinational brands at its multiple destinations that are regularly frequented by foreign tourists and leisure travelers from many countries. It claims the footfall at its various projects is about four Crores each year and its website <appughar.com> receives about 44193 hits every year. The Complainant further states that its trademarks are widely advertised in various magazines and through the media.

The Complainant requests for the transfer of the disputed domain name as the disputed domain name is identical or confusingly similar to a trademark in which it has rights and the Respondent has no rights in the disputed domain name that was registered and used in bad faith.

The Arbitrator received the Complaint from the .IN registry on May 2, 2013, and sent a notification to the Respondent regarding the commencement of the Arbitration proceedings on May 3, 2013. On May 4, 2013 the Respondent sent an email stating that he is willing to handover the disputed domain name <appughar.in> to the Complainant and requested the Complainant to reimburse the registration charges of Rs. 500 that he had paid to the hosting registrar. On May 4, 2013 the Arbitrator sent a communication to the Complainant informing the Complainant of the

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Respondent's willingness to transfer the disputed domain name and settle the matter. In yet another email dated May 16, 2013, the Respondent reiterated his willingness to transfer the disputed domain name unconditionally to the Complainant by undertaking to provide all the details regarding the disputed domain name such as login details and password in order to hand over control of the disputed domain name to the Complainant.

On May 17, 2013 the Complainant through their counsel replied stating that the Complainant is willing to settle its claim against the Respondent and listed three points for the Respondent to comply with in order to withdraw its claim. The three points mentioned in the Complainants email were:

- (i) Transfer of the disputed domain name unconditionally and irrevocably by the Respondent in favor of the Complainant
- (ii) Payment of Rs. Five hundred to the Respondent towards the costs of procuring the domain name
- (iii) An unconditional apology by the Respondent to the Complainant.

The Respondent on May 20, 2013 then sent a communication with the details relating to the control of the disputed domain name; These included the: Domain administration link, domain user name, domain pass word and account type login details for the Complainant to take control of the disputed domain name. The Respondent declined the Rupees Five hundred that the Complainant was willing to pay towards reimbursement costs of procuring the domain name and the Respondent apologized to the Complainant for the inconvenience caused due to the registration of the disputed domain name.

By an email communication dated June 27, 2013 the Complainant through its authorized representative, Mr. Akshat Pande of M/s Alpha Partners stated

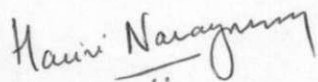
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inter alia, that in the light of the Respondent's willingness to settle the dispute and transfer the disputed domain name to the Complainant, the Complainant does not wish to pursue the case further.

Accordingly, the Arbitrator determines the case as withdrawn without prejudice to the Complainant's legal rights. The parties have mutually agreed to transfer the disputed domain name to the Complainant.

DECISION

For the reasons discussed, it is ordered that the disputed domain name <appughar.in> be transferred to the Complainant.



Harini Narayanswamy

Sole Arbitrator

Date: June 28, 2013