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BEFORE THE .IN REGISTRY OF INDIA

INDRP CASE NO. 1651

IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996

FINAL AWARD

Robin R David

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**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1651
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN
NAME DISPUTE RESOLUTION POLICY
THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996**

IN THE MATTER OF:

OMC Power Private Limited
603, Tower B, Unitech Business Zone
Nirvana Country, Sector 50,
Gurgaon, Haryana - 122018
India

...Complainant

Versus

Mr. Shatanshu Jaiswal
1143/15, Netram Crossing, Old Katra
Prayagraj, UttarPradesh - 211002

AND

GoDaddy.com LLC
Corporate Headquarters, 2155E
GoDaddy Way
Tempe, AZ 85284, USA

...Respondents

A DISPUTE RELATING TO THE DOMAIN NAME OMCPower.IN

FINAL AWARD

Dated: February 13th, 2023

Venue: New Delhi, India



ROBIN RATNAKAR DAVID
SOLE ARBITRATOR

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant is OMC Power Private Limited having its registered business at 603, Tower B, Unitech Business Zone, Nirvana Country, Sector 50, Gurgaon, Haryana - 122018, represented by Ms. Tine Abraham, attorney, and partner at Trilegal, and Ms. Shivani Rawat and Mr. Shourya Bari, attorneys at Trilegal, 1st Floor, Wing A&B, Prius Platinum, D-3, District Centre, Saket, New Delhi - 110017.

2. The Respondents

The Respondent No.1, Mr. Shatanshu Jaiswal, resident of 1143/15, Netram Crossing, Old Katra, Prayagraj, Uttar Pradesh - 211002, is the Registrant of the Disputed Domain Name <omcpower.in>.

Respondent No. 2 is GoDaddy.com, LLC, the Sponsoring Registrar with whom the impugned domain name is registered, having registered business at Corporate Headquarters, 2155E, GoDaddy Way, Tempe, AZ 85284, USA.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name <omcpower.in> with the NIXI accredited Registrar, the Respondent No.1 has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted 2020_(the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.



Filing of the Complaint and Constitution of the Arbitral Tribunal

2. The Complainant filed the Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondents, seeking transfer of the Domain Name <omcpower.in> to the Complainant. Following which, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under 5 (a) of the Rules, to act as Arbitrator in the said matter.
3. On 4th January 2023, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, as Sole Arbitrator was constituted under 5(b) of the Rules in respect of the Complaint filed by OMC Power Private Limited (OMC) against Mr. Shatanshu Jaiswal and GoDaddy.com, LLC, the Respondents.
4. On 10th January 2023, the Arbitral Tribunal issued the Notice of Arbitration under 5 (c) of the Rules.
5. The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

- Domain ID: ROID- D6ACC7776BD5143129CFD6B5F267FAA8F-IN
- Creation Date: 2022-07-18T12:58:52Z
- Expiration Date: 2023-07-18T12:58:52Z
- Registrar Name: GoDaddy.com, LLC
- Registrant Name: Shatanshu Jaiswal
- Registrant Address: 1143/15, Netram Crossing, Old Katra, Prayagraj, Uttar Pradesh – 211002
- Registrant Phone: (+91)9935209273



- Registrant Email: shatanshu28@gmail.com
- Registrant Client ID- CR597274305
- Registrant ROID- C1BDBB127CFA74F43A0EA620419FBEF20-IN
- Registry Admin ID- C06CBA59BBD3049518DA77212736F1C5D-IN
- Registry Tech ID- C9603CE1423774A628C233F8D31CB02CC-IN

IV. PROCEDURAL HISTORY

1. On 10th January 2023, the Arbitral Tribunal issued the Notice of Arbitration to the Respondents by email with the Complaint and Annexures enclosed. The Respondents were given an opportunity to file a response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 27th January 2023. The Complaint (including annexures) was sent to the email addresses of the Respondents shown in the WHOIS details, accordingly, the service on the Respondents was done in accordance with Rule 2(a) of the Rules.
2. Service of the Notice of Arbitration was effected by the Counsel for the Complainant on 10th January 2023 and the same was intimated to the Tribunal by Mr. Shourya Bari of Trilegal. The Complaint (with annexures) was sent to the email address of the Respondents shown in the WHOIS details consequently, the service of the Notice of Arbitration on the Respondents was done in accordance with Rule 2(a) of the Rules.
3. All emails from the Arbitral Tribunal were copied to the Complainant, Respondents and NIXI.

V. COMPLAINANT'S CONTENTIONS

1. The Complainant, OMC Power Private Limited states that it is the owner of the registered trademarks 'OMC' (word) and OMC label with three distinct squares designed like arrows placed in a series pointing right. The Complainant requests



that the Tribunal issues a decision that the disputed domain name registration be transferred to the Complainant and a heavy cost be imposed on the Respondent No. 1 as a deterrent to future bad faith registration by the said party.

2. The Complainant claims that the Disputed Domain Name <omcpower.in> is identical to the Complainant's domain name <omcpower.com>. Further, it is confusingly similar to Complainant's registered and distinctive trademark as the disputed domain name was adopted long after the 'OMC', word and label, became well known and reputed among users.
3. The Complainant avers that where at least one domain feature of relevant of the relevant mark is recognizable in the disputed domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing. Relying on Dabur India Ltd. v Ashok Kumar & Ors. CS(Comm) 135 of 2022, a ruling of the Delhi High Court, which states that when at least one domain characteristic of the relevant mark is discernible in the domain name, the domain name is regarded confusingly similar to that mark for the purposes of UDRP standing.
4. The Complainant relies on paragraph 3 of the INDRP which states that it is the responsibility of the Registrant, i.e., Respondent No.1 to ensure that the domain name registered by it does not violate the rights of any proprietor or third party.
5. The Complainant further relies on Lego Juris A/S v. PrivacyProtect.org. WIPO Case No. D2011-2265 stating that the Respondent in not providing any contact information about itself indicates the absence of any right or legitimate interest in the impugned domain name and that the Respondent No.1 is conscious of that absence.
6. The Complainant avers that the Respondent No. 1 has registered the impugned domain name <omcpower.in> by misappropriating, illegally and without authority or consent, the trademark/ trade name 'OMC' which is the exclusive property of Complainant.



7. The Complainant avers that the Respondent No. 1 is former employee of the Complainant, and held the position of 'Supply Chain Manager' from 2 August 2021 until his resignation on 31 January 2022.
8. The Complainant on 8 August 2022 issued a notice to Respondent No.2, the Sponsoring Registrar of the impugned domain name <omcpower.in> to suspend the impugned domain name. The Complainant also submitted a trademark infringement complaint through an online form on Respondent No.2's website. However, Respondent No.2 did not suspend the impugned domain name.
9. The Complainant avers that the purpose of registering the disputed domain name was to misappropriate the reputation associated with the Complainant's Trademark and the illegal use of the disputed domain name was to hurt the business and commercial interest of the Complainant and its Trademark. Respondent No.1 was a former employee of the Complainant, thus he was aware of the reputation enjoyed by the Complainant in relation to such registered trademark, considering its extensive use by the Complainant. Thus indicating Respondent No. 1's bad faith.
10. The Complainant states that Respondent No. 1 is not making any legitimate, non-commercial, or fair-use of the impugned domain name because there is no website associated with the impugned domain name. Neither does Respondent No. 1 engage in any activity under the name 'OMC', nor does it carry out any business or commercial activity relating to building, owning, and operating renewable energy plants. Thereby the Respondent No 1's not having legitimate right or interest in the impugned domain name and indicating the Respondent No.1's bad faith and malicious intention in registering the disputed domain.
11. The Complainant states that a simple trademark search of the word 'OMC' would have revealed the Complainant's prior right on the registered trademark. The Complainant relied on Carrefour v Bryce Smith, WIPO Case No. D2018-2140, stating that a failure to conduct the trademark search of the Complainant's



trademarks is a contributory factor in Respondent No.1's bad faith registration of the impugned domain name.

12. The Complainant states that Respondent No. 1 acquired the disputed domain name <omcpower.in> despite being aware of the Complainant's registered trademark 'OMC' or, at the very least, in utter disregard of its obligation to verify the registration status of mark 'OMC'. Accordingly, the Complainant states that this conduct indicates the Respondent No.1's bad faith and fraudulent intention in registering the domain along with imitation of the Complainant's well-known trademark.
13. The Complainant avers that the Respondent No. 1 had registered the impugned domain name with the intention to unlawfully capitalize on the reputation and goodwill of Complainant's registered trademark 'OMC', and to hurt the business interest of the Complainant in the process.
14. The Complainant states that the Respondent No. 1 has registered the disputed domain name and is using it in absolute bad faith. The Complainant requests the transfer of the disputed domain name and a heavy cost be imposed on Respondent No.1 as a deterrent to future bad faith registration by him.

VI. RESPONDENTS' CONTENTIONS

1. The Respondents has not filed any response to the Notice of Arbitration dated 10th January 2023. The Respondents have not replied to the contentions of the Complainant even though the Respondents have been served as required by the Rules. The emails of service sent to the Respondents were not returned undelivered. However, the Respondents' default would not automatically result in a decision in favour of the Complainant.
2. Supreme Court of India in Sudha Agrawal v Xth Additional District Judge and others (1996)6SCC332 held that even in an uncontested matter the petitioner's case must stand on its own legs and it cannot derive any advantage by the absence of the defendants. Therefore, the Complainant must still establish each of the three elements required by Paragraph 4 of the Policy.



VII. DISCUSSIONS AND FINDINGS

1. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy namely:

- a) The Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.
- b) The Respondent has no rights or legitimate interests in respect of the domain name; and
- c) The Respondent's domain name has been registered or is being used in bad faith.

2. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:

- a) Whether the Respondent No. 1's domain name <omcpower.in> is identical and/or deceptively similar to domain name and trademarks of the Complainant?

- i. The Complainant provided evidence to establish that the Disputed Domain name is identical or confusingly similar to the Complainant's registered and distinctive trademark since the disputed domain name by Respondent No. 1 was acquired long after the 'OMC' trademark was recognised.

- ii. The Complainant holds 'OMC' trademark registrations in India and because of the extensive use and promotion of the 'OMC' trademark, the brand has gained recognition. A perusal of the trademark registration certificates and WHOIS records shows Complainant is the owner of the trademark registrations in India.

- iii. The Arbitral Tribunal notes the decision of Dabur India Ltd. v Ashok Kumar & Ors. (CS(Comm) 135 of 2022, which states that when at least one domain characteristic of the relevant mark is discernible in the domain name, the disputed domain name is regarded confusingly similar to that mark for the purposes of UDRP standing.



- iv. The Arbitral Tribunal notes the decision of WIPO Panel's in Lego Juris A/S v PrivacyProtect.org, WIPO Case No. D2011-2265 stating that the Respondent in not providing any contact information about itself indicates the absence of any right or legitimate interest in the impugned domain name.
 - v. The Arbitral Tribunal also notes the decision of Carrefour v Bryce Smith, WIPO Case No. D2018-2140, that a failure to conduct the trademark search of the Complainant's trademarks is a contributory factor in its bad faith registration of the impugned domain name.
 - vi. After taking into consideration the facts of the present case and the settled law on the issue, it can be said that the disputed domain name registered by the Respondent No. 1 establishes a likelihood of confusion with the Complaint's trademark and this would mislead the internet users as it is confusingly identical. Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy Paragraph 4(a) is satisfied as the domain name is confusingly similar to Complainant's registered and distinctive 'OMC' trademark.
- b) Whether the Respondent No. 1 has no rights or legitimate interests in respect of the domain name?
- i. To pass muster under Paragraph 4(b) of the Policy, the Complainant has to show that the Respondent No.1 has no rights and legitimate interests in the disputed domain name under Paragraph 6 of the Policy.
 - ii. The Respondent No.1 is not affiliated with Complainant in any way and has never been authorised or licensed by Complainant to use or register its trademarks, or to seek registration of any domain name incorporating the trademark in question. Furthermore, the Respondent No.1 is not commonly known by the Disputed Domain Name or the name 'OMC' and nor does the Respondent No.1 operate a legitimate business or other organization under the 'OMC' trademark. Additionally, the

‘OMC’ trademark was registered years before the disputed domain name was registered.

- iii. Evidence was provided by the Complainant to show that the Respondent No.1’s actions are most certainly not a bona fide offering of goods and services under Policy Paragraph 6(a), and therefore domain name impersonates the Complainant’s domain name. Particular reference has been made to the Complainant’s website hosted on the domain name <omcpower.com> (at pages 50-58) and Respondent No.1’s disputed domain name <omcpower.in> (at page 67). A careful perusal of the above shows that the Respondent No.1’s domain name impersonates the Complainant’s and the same is not bonafide.
 - iv. Accordingly, the Arbitral Tribunal finds that the Complainant has made out a prima facie case that the Respondent No.1 has no rights and legitimate interests in respect of the disputed domain name <omcpower.in> as Complainant has never assigned, granted, licensed, sold, transferred, or otherwise authorised Respondent No.1 to register or use the Disputed Domain Name or the OMC trademark and the same is also not used for making legitimate non-commercial use. Thus, it satisfies the second element under Paragraph 4 (b) of the Policy.
- c) Whether the Respondent No.1’s domain name was registered or is being used in absolute bad faith?
- i. The Complainant is a well-known rural utility company that builds, owns, and operates renewable energy plants with smart mini-grids to serve telecommunication companies, businesses, and rural houses. The Complainant has strong presence in Uttar Pradesh, India. The Complainant provided the following reasons to show that the Respondent No.1 acquired the disputed domain name in bad faith—
 - 1. Firstly, the Respondent No. 1 used the ‘OMC’ trademark without consent from Complainant.

2. Secondly, Respondent No.1 was aware of Complainant's rights in its well-known trademark as a consequence of Complainant's substantial use of the Mark which long predates before the Respondent No.1 acquired the domain name.
 3. Thirdly, that Respondent No. 1 was an employee of the Complainant.
 4. The Respondent No.1 impersonated the Complainant's domain name <omcpower.com>, which demonstrates his purpose to deceive users for commercial benefit and to harm Complainant's business by redirecting people to the infringing domain name and also making commercial gains by banking on the hard-earned goodwill and reputation of the Complainant which is done in bad faith.
- ii. Considering, that Respondent No. 1 is a former employee of the Complainant, it is impossible that the Respondent No. 1 was unaware of the Complainant's registered trademark OMC, and the reputation enjoyed by the Complainant in relation to such registered trademark, considering its extensive use by the Complainant. Therefore, Respondent No. 1 has registered the impugned domain name despite being fully aware of the rights of the Complainant in the trademark 'OMC'. This is clear indicator of the Respondent No.1's bad faith.
 - iii. On careful consideration of the above findings, Arbitral Tribunal holds that the Respondent No. 1's domain name <omcpower.in> has been registered with an opportunistic intention and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

3. Costs

- a) The Complainant has prayed for the transfer of the disputed domain name and for "heavy cost to be imposed on the Respondent No. 1 as a deterrent to future bad faith registrations by him."
- b) Para 11 of the INDRP Policy states as under

“11. Remedies

The remedies available to a Complainant pursuant to any proceeding before an Arbitrator shall be limited to praying for the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs as may be deemed fit may also be awarded by the Arbitrator. However, the implementation of such award of cost will not be supervised or controlled by .IN Registry.”

- c) Therefore, this Tribunal is empowered to award costs as may be deemed fit under the INDRP Policy and the Arbitration and Conciliation Act, 1996.
- d) Considering that the Respondent No.1s' domain name is identical and confusingly similar to the complainant's trademark 'OMC' and the Respondent No. 1 has no rights or legitimate interests in the disputed domain name <omcpower.in> and the same has been registered in bad faith. This tribunal deems it fit to award costs of Rs. 1,00,000/ (One Lakh Only) to the Complainant under para II of the Policy read with Section 31A of the Arbitration and Conciliation Act, 1996.

VIII. DISPOSITIONS

The Arbitral Tribunal holds that the Respondent No. 1's domain name <omcpower.in> is identical and confusingly similar to the name, trademark and brand name 'OMC' Power owned by the Complainant. The Respondent No.1 has no rights or legitimate interests in the domain name <omcpower.in> and the same has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant. The Arbitral Tribunal further awards cost Rs. 1,00,000 (Rupees One Lakh Only) to the Complainant which shall be paid by Respondent No.1.



The Arbitral Tribunal directs that -

- a) The disputed domain name <omcpower.in> be transferred to the Complainant, OMC Power Private Limited, 603, Tower B, Unitech Business Zone, Nirvana Country, Sector 50, Gurgaon, Haryana – 122018**
- b) The Complainant is awarded costs of Rs.1,00,000 (Rupees One Lakh Only) which shall be paid by Respondent No. 1.**

Place of Arbitration: New Delhi, India

Date: February 13th, 2023

**Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal**