

MERIAL

...COMPLAINANT

VERSUS

HARISH MELWANI

.....RESPONDENT

CORAM:

HON'BLE DR. PANKAJ GARG

AWARD

12.11.2022

The matter is taken up today by this Tribunal for passing an award in terms of the notice issued by this Tribunal on 13.09.2022.

The service of the copy of the Complaint and the Notice of this Tribunal upon the Respondent has already been completed.

The Respondent failed to file a reply/counter on the Complaint, preferred by the Complainant till date. The Respondent through e-mail dated 13.09.2022 referring to Legal NIXI states *"What should I do now? Please help me with the process to close this case. I'm the holder of the domain."*



Considering the circumstances that the award has to be passed in time bound manner, within 60 days from the date of initiation of the Arbitral Proceedings, an award on merits is passed today on 12.11.2022.

CONCLUSION FOR AWARD

As per the material placed on record and the averments made in the complaint and also in the annexed evidences and documents, which have been proved in evidence, it is evident that the domain name www.nexgard.in is a well known domain name. The same is known to most of the people of the entire world. No one is entitled and can be authorized to use the same either as a domain name or as a trademark in relation to the similar or dissimilar business, as the said domain name/trade mark has got a unique goodwill and reputation.

In nutshell the case of the Complainant is that the impugned domain name is being illegally used by the Respondent giving an injury to the Complainant. It is also stated by the Complainant that Trade Mark in the name of "NEXGARD" have already been registered in India as well, since 2013 and being continuously used by the Complainant.

Respondent despite the opportunities failed to file a reply/counter on the complaint preferred by the Complainant till date and admittedly wants to close the present case.

It is an undisputed fact that the Complainant is the legitimate owner of the Trade mark "NEXGARD" and has acquired ownership rights in terms of the provisions of Section 17 of Trade Marks Act, 1999, even if it is considered that the Respondent is using the impugned domain name which includes the word "NEXGARD", since 2013, then also the

Respondent cannot have a better title over the names "NEXGARD". This Tribunal is jurisdictionally bound to consider only the dispute of present



domain name. And in the present circumstances under the impugned domain name word “NEXGARD” is already a registered Trade Mark under the ownership of the Complainant and one particular fact can also not be ignored that Respondent, since 2013 when the Domain name “NEXGARD” was registered for Complainant, the Respondent has not taken any steps against Complainant, thus Respondent can be said to be estopped.

In the opinion of this Tribunal, the impugned domain name is a trademark backed domain name and it not only violates the provisions of the Trade Marks Act, 1999 but also violates Clause 4 of the INDRP policy issued by the NIXI. The impugned domain name conflicts with the legitimate rights and interests of the Complainant on the following premises:-

- a) The impugned domain name is identical and confusingly similar to a named trademark as well as a service mark, in which the Complainant has a right;
- b) Respondent has no right or legitimate interest in respect of the impugned domain name;
- c) The Respondent impugned domain name has been registered and is being used in bad faith by using the registered trademark of the Complainant and giving a pecuniary loss to the Complainant by using the name and trademark of the Complainant.

The evidences filed by the Complainant have been proved by the Complainant, therefore, the statements and documents filed by the Complainant are accepted as correct deposition. In view of the facts and



settled law, with the deposition and documents of the Complainant placed before this Tribunal, the Complaint deserves to be allowed for an Award on merits in favour of the Complainant, as prayed in the Complaint by the Complainant.

DECISION

- a) In view thereof, it is directed that the domain name **www.nexgard.in** be transferred in favour of the Complainant by the Registry. As a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name **www.nexgard.in** or any other deceptively similar trademark, which may amount to infringement of Complainant registered trademark and also from doing any other thing, which is likely to create confusion and deception with the goods/services of the Respondent for any connection with the Complainant.
- b) The Complaint is allowed in the above terms.
- c) National Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the domain name, as directed.




(DR. PANKAJ GARG)
SOLE ARBITRATOR

Place: New Delhi

Date: 12th November, 2022