

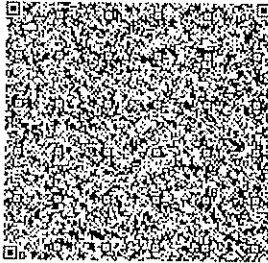
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL36953571564885N
Certificate Issued Date : 31-Jul-2015 05:56 PM
Account Reference : IMPACC (IV)/ dl895103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL89510371378968280358N
Purchased by : SUDARSHAN KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SUDARSHAN KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.

IN.Registry

(National Internet Exchange of India)

COMPLAINANT
Girnar Software Pvt. Ltd.

Vs.

RESPONDENT
Mulcanto GRP,

ARBITRATION AWARD

J.K. Bansal

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

IN.Registry
(National Internet Exchange of India)

COMPLAINANT

Girnar Software Pvt. Ltd.
'Girnar', 21, GovindMarg
MotiDoongari Road,
Dharam Singh Circle
Jaipur – 302 004

Vs.

RESPONDENT

Mulcanto GRP,
Malwani
Jankalyan Nagar
Mumbai – 400 028

ARBITRATION AWARD

The Complainant Girnar Software Pvt. Ltd., is aggrieved by the Respondent's registration of the domain name www.bikedekho.in registered through the sponsoring Registrar, GoDaddy.com, LLC, (R101-AFIN), 14455 N Hayden Rd #219, Scottsdale, AZ 85260, USA and has accordingly made a complaint before the .IN Registry C/o National Internet Exchange of India in accordance with the .IN Domain Name Dispute Resolution Policy approved by the Internet Corporation for Assigned Names and Numbers and .IN Domain Name Dispute Resolution Policy.

1. The case of the Complainant on the basis of which the complaint has been preferred, in gist, is as under:-

(a) The Complainant claims itself to be a company incorporated under the Indian Companies Act, 1956 and claims itself to be the owner and proprietor of the domain name titled as www.bikedekho.com which according to the Complainant is one of India's most leading search and comparison website and under which website, the Claimant claims to provide the following services:-

J.C. Bann

- (i) Offers a database of bikes in categories, ranging from new launches to upcoming models, from brand names to body types, from price ranges to popular choices;
- (ii) Provides its visitors with bike reviews and e-commerce services to help them reach out to the automobile dealers; and
- (iii) A platform for used bikes, with over 15,000 used bike listings.

(b) The Claimant claims to have operated its website under the domain name www.bikedekho.com since September, 2009 offering thereon its aforesaid services as also claims to have launched several similar ventures under its various proprietary trade mark/domain names which include PriceDekho, CarDekho and MobileDekho.

(c) The Claimant also claims to be the owner of the trademark/service mark BikeDekho which forms an essential and constituent part of its domain name www.bikedekho.com.

(d) According to the Complainant, its trademark/service mark BikeDekho and domain name bearing the word/mark BikeDekho is its proprietary ownership and has come to be solely associated with the Complainant and its services and which trademark/service mark and domain BikeDekho has achieved an established goodwill and reputation denoting and connoting the goods/services of the Complainant alone.

(e) The Claimant claims to have served as many as 35 million visitors till date and offered 700,000 registered users. The Claimant also claims to have launched an Android application for growing mobile phone users, which offers a complete experience to customers for making informed choices while buying or selling bikes.

(f) The Claimant claims to have filed applications for registration of its trademark BikeDekho.com under the Trade Marks Act, 1999 under application

J. K. Bani

Nos. 2895136 in Class 4, 2895137 in Class 12, 2895138 in Class 35 and 2895140 in Class 42.

(g) The Claimant claims his said domain name to be accessible across the globe to any person with an internet connection and its trademark/service mark & domain name to be a well known trademark. The Claimant claims that its said trademark/service mark/domain name BikeDekho has created for it (the Complainant) substantial brand value and immense goodwill.

(h) Along with the complaint, the Complainant has filed various documents being Exhibits 'A' to 'M' as under:-

Exhibit A - Printout of the database search conducted in respect to the Domain Name: www.bikedekho.in

Exhibit B-1 - Printout of the 'About Us' page of the website www.bikedekho.com

Exhibit B-2 - Printout of Facebook page of BikeDekho.

Exhibit B-3 - Printout of news article published on the website www.morningstar.in

Exhibit B-4 - Printout of the news article published on the website of Your Story (www.Yourstory.com)

Exhibit B-5 - Printout of news article published on the website www.medianama.com

Exhibit C - Screenshot of the number of visitors to the website www.bikedekho.in from the Complainant's systems.

Exhibit D - Screenshot of the number of users registered with www.bikedekho.in from the Complainant's Systems.

L.K. Bannu

Exhibit E-1 - Printout of the BikeDekho Android app from the website www.play.google.com

Exhibit E-2 - Printout of news article published on the website www.printthis.clickability.com

Exhibit F - List of Trade Mark Applications of the Complainant.

Exhibit G - Printout of the home page of the website www.bikedekho.com

Exhibit H - Printout of the homepage of the website www.bikedekho.in

Exhibit I - Cease and Desist Notice from the Advocates of the Complaint to the Respondent

Exhibit J - Email from the Advocates of the Complaint to the Respondent forwarding the Cease and Desist Notice

Exhibit K - Printout of the confirmation of delivery of the email to the Respondent

Exhibit L - Courier noting "Short Address" on envelope serving the Respondent

Exhibit M - Courier's proof of delivery of the Cease and Desist Notice on GoDaddy Operating Company LLC

(h) The Complainant is aggrieved by the Respondent's adoption and/or alleged use of the domain name www.bikedekho.in (impugned domain name).

(i) According to the Complainant, the impugned domain name bears the Complainant's trademark/service mark/domain name BikeDekho and which the impugned domain name is identical with and/or confusingly similar to the Complainant's said trademark/service mark and domain name bearing the word/mark BikeDekho.

S.K. Sharma

(j) According to the Complainant, the Respondent's use of the impugned domain name is not in connection with a bonafide intention of offering goods or services and which impugned domain name is completely unused by the Respondent. According to the Complainant, the Respondent has no intention to use the impugned domain name and the Respondent intends to misuse the impugned domain name which is a clear case of domain squatting and there exists a definite possibility that by the impugned domain name and its alleged use the goodwill and reputation of the Complainant will be tarnished and would adversely impact the Complainant's trademark/service mark/domain name BikeDehko.

(k) According to the complaint, the Respondent seeks to sell the impugned domain name for making illegal profits apparent from the noting on the Respondent's Homepage in its website under the impugned Domain Name.

(l) The Complainant, through its counsel, alleges to have served a legal notice, dated 17.04.2015 sent through email of 18.04.2015 calling upon the Respondent to, inter alia, cease and desist from using in any manner the impugned domain name, apply for cancellation of the impugned domain name and removing the contents of the website of the impugned domain name. According to the Complainant, the said cease and desist notice was duly delivered to the Respondent as per notification received by its (Complainant) Counsels. According to the Complainant, the Respondent failed to reply to the said notice. The Complainant claims to have also made efforts to serve a hard copy of the said cease and desist notice on the Respondent through courier on the address provided by the Respondent at the time of registering the impugned domain name. The said courier was returned unserved with the remarks "short address". The Complainant also claims to have served the said cease and desist notice on the Respondent's Registrar, GoDaddy.com LLC through courier and which was duly received by them.

(m) According to the Complainant, the Respondent has no legitimate right in the impugned domain name and that the Complainant has nothing to do with the Respondent. The adoption and registration of the impugned domain name

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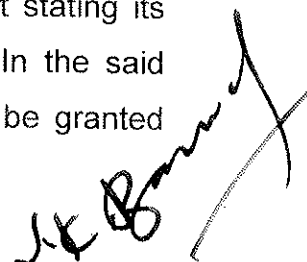
is in bad faith and which the Respondent has registered only to unjustly enrich it and/or squat and/or hold the domain name.

(n) According to the Complainant, the Respondent by its impugned domain name has blatantly violated the Policy adopted by the ICANN and the Rules framed there under, and has intentionally attempted to attract, for commercial gain or otherwise, Internet users to his website, by creating a likelihood of confusion with the Complainant's BikeDekho brand.

(o) Accordingly the Complainant in his complaint has sought interalia that the impugned domain name be transferred to the Complainant, alongwith incidental reliefs of costs etc.

2. The .IN Registry appointed me as a Arbitrator to adjudicate the complaint in accordance with the Arbitration & Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules or procedures and/or bye laws Rules and guidelines made therein and notified the factum thereof to the Complainant (through his counsel) as well as to the Respondent vide its email on 22nd June 2015.

3. Thereafter I issued a notice to the Respondent vide email of 1st July 2015 (with copy to the Complainant through counsel and NIXI) wherein the Respondent was notified of me appointed as an Arbitrator and a copy of the complaint along with Exhibits 'A' to 'M' (total pages No.1 to 54) were sent to the Respondent. In the same notice, the Respondent was given an opportunity to submit his written response to the complaint stating its reply and defense together with documents supporting its position within ten days thereof. The Respondent never replied to the said notice and nor did it submit any response or documents within the time granted. Another notice was issued by me to the Respondent (with copy to the Complainant through counsel and NIXI) on 14.07.2015 bringing to the notice of the Respondent of its noncompliance of the notice of 01.07.2015 and wherein another opportunity of ten days was provided to the Respondent to submit his written response to the complaint stating its reply and defense along with documents supporting its position. In the said notice, it was clearly mentioned that no further opportunity would be granted



and in the event of non-compliance, the complaint would be decided on the basis of material on record.

4. The Respondent has not complied with the said notice and has not filed any response and nor provided any information or documents about itself or in its defence.

5. Consequently I proceed to adjudicate this Complaint on the basis of the material available on record.

6. In this award for the sake of convenience the Complainant's trade mark/service mark BikeDekho and the domain name www.bikedekho.com is referred to as the trade mark/domain name BikeDekho while the Respondents domain name www.bikedekho.in is referred to as the impugned domain name.

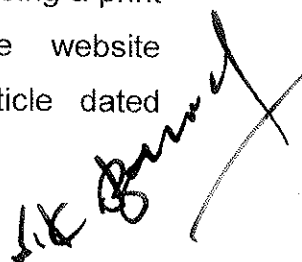
7. In the present case two dates are of material importance as under :-

(i) September 2009 – This is the month and year when the Complainants alleges to have commenced the use of its website under its domain name www.bikedekho.com.

(ii) 5th July, 2014 – This is the date on which the Respondent's impugned Domain Name www.bikedekho.in was created on and as per the search report conducted on the official website .IN Registry and filed by the Complainant as **Exhibit-A** to its complaint.

8. The Complainant has placed on record as **Exhibit-B-3** being a print out of a news article dated 17.12.2012 published on the website www.morningstar.in. This news article has reported upon the extent and nature of activities, traffic and the goodwill under the Domain Name, trade mark bikedekho.com and BikeDekho as also identified this Domain Name/Trade Mark with the subsidiary company of the Complainant.

9. The Complainant has also placed on record as **Exhibit-B-4** being a print out of an article dated 07.03.2014 published on the website www.yourstory.com ; **Exhibit-B-5** being a printout of the article dated



29.04.2015 published on the website www.medianama.com. These two articles pertain to the Complainant's other online portals bearing the word/mark CarDekho and PriceDekho.

10. The Complainant has also placed on record the following other documents –

(a) **Exhibit-B1 and B2** being print outs from the "About Us" page of the website www.bikedekho.com (this print out is dated 29.05.2015) and print out from the facebook page of the Complainant under the word/mark bikedekho (this print out is dated 29.05.2015) respectively.

(b) **Exhibit-E2** being a print out of an article dated 20.04.2015 published on the website www.printthis.clickability.com pertaining to the mobile application launched by the Complainant under the word/mark bikedekho and on its portal bikedekho.com. This news article also mentions about the nature and extent of the Complainant's activities under the trademark/domain name bikedekho and of its standing.

(c) **Exhibit – C & D** being the printout of the screenshot of the number of visitors being depicted as page views 129,209,702 and to the number of registered users as 728,559 on the website www.bikedekho.com respectively.

(d) **Exhibit – E1** being the print out obtained from the website www.play.google.com pertaining to the Complainant's Android application under the name and description of BikeDekho.

(e) **Exhibit – G** being print outs of the homepage of the website www.bikedekho.com.

(f) **Exhibit – F** being the list of trade mark applications filed by the Complainant for the trade mark BIKEDEKHO.COM.

11. All these documents clearly reveal the Complainant to have adopted its Domain Name www.bikedekho.com and to be commercially active thereon at least since the year 2012 and which is much prior to the year of 2014 when the

J.K. Bandyopadhyay

Respondents allegedly obtained registration of its impugned Domain Name. The aforesaid documents clearly establish the Complainants priority in adoption and commercial use and which is prior to that of the Respondent. Thus the Complainant can be held to the proprietor and/or holding common law rights of its domain name bearing the word/mark BikeDheko [**Century Traders Versus Roshan Lal Duggar and Company reported in AIR 1978 Delhi 250 (DB)**].

12. The rights of the Complainant also stand established on the basis of the aforesaid noticed recognition of the activities of the Complainant under the trade mark/domain names CarDekho and PriceDekho as per the Exhibits/documents mentioned above and which adoption and usage are also prior to the year 2014 being the year of the Respondents obtaining registration of its impugned Domain Name. The trade marks/domain name BikeDekho, CarDekho and PriceDekho each have a common element as also have a similar structure, concept and connotation [see **Amritdhara Pharmacy Versus Satya Deo Gupta reported in 1963(2) SCR 484**]. These marks can be considered to be a "family of marks" and protected as such [**Amar Singh Chawal Wala Versus Shree Vardhman Rice and Genl. Mills Reported in 2009 (40) PTC 417 (Del.) (DB)**].

13. It can hardly be disputed that the word/mark BikeDekho forms an essential, distinguishing, material and memorable feature of the Complainant's and the Respondents respective Domain Names www.bikedekho.com and www.bikedekho.in. The word/mark BIKEDEKHO in the respective domain names is identical/same in every manner including phonetically, visually, structurally and conceptually. The rival and the competing Domain Names would be used and remembered with reference to the word/mark BIKEDEKHO which word/mark would also be retained in the mind of an average internet user exercising ordinary caution. Consequently I have no hesitation in holding that the impugned Domain Name www.bikedekho.in is identical with and/or deceptively similar to the Complainant's subject matter trade mark/service mark BikeDekho and Domain name www.bikedekho.com.

S. K. Bang

14. A perusal of the Complainant's exhibits/documents being **Exhibits B2, E1, G** reveal that they all pertain to services relating to vehicles and specially motor cycles. The representation of motor cycles in various forms, stylizations and artistic placements are prominently incorporated on these exhibits and which readily catch the eye. The literature incorporated on these documents describes the Complainant's business in relation to these vehicles. Even the various news articles and other literature placed on record by the Complainant as **Exhibits B-1, B-3, B-4, B-5, E-2** also highlight the Complainant's activities/services pertaining to motor vehicles being offered on its portal and website www.bikedekho.com. Placed on record by the Complainant as **Exhibit-H** is a printout of the homepage from the Respondent's website under the impugned Domain Name www.bikedekho.in. Prominently incorporated on this **Exhibit-H** are links like New Bikes in India, Bikes in India with price, Bikes Price in India, Used Car Price Value, Bikes Price in India etc. Also incorporated on this very Exhibit is a pictorial representation of a motor cycle under the heading "sponsored listing". This Home Page (**Exhibit-H**) including its contents and placements clearly reveals that the services being offered by the Respondent on its website under the impugned domain name to be of the same/similar/allied nature to that of the Complainant viz. of making informed choices for buying and selling of vehicles including motor cycles and towards their sale and purchase and activities connected therewith.

15.1 Not only that any internet user by erroneously or inadvertently typing on the keyboard the ccTLD (country code top-level domain) .in alongwith the "second level" domain name viz. bikedekho instead of the gTLD (generic top-level domain) .com would easily be led to the Respondent's website. Any unwary user of the internet of average intelligence and imperfect recollection may while trying to access the website of the Complainant may erroneously or inadvertently type the ccTLD (country code top-level domain) .in instead of gTLD (generic top-level domain) .com would reach the Respondents website. On the Home page of the Respondent's said website (**Exhibit-H**) under the impugned domain name, the internet user would be offered the same/similar/allied services to those of the Complainant. Obviously the internet user would be led into believing the Respondents impugned website under the

SK Bannu

impugned domain name and the services offered therein to be that of the Complainant or into believing that some nexus, association or connection exists between the Complainant and Respondent or that the services offered by the Respondent under the impugned Domain Name are that of the Complainant or from the Complainant's source or origin. Consequently consumer deception is inevitable and/or highly likely. Such a likelihood of deception is enough and it is not necessary that actual consumer deception be established. **[B.K. Engineering Company v/s U.B.H.I. Enterprises (Regd.) Reported in AIR 1985 Delhi 210]** ; The test of likelihood of confusion "encompasses any type of confusion, including : confusion of source; confusion of sponsorship; confusion of affiliation; or confusion of connection **[McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03]**.

15.2 The Home page extracted from the Respondents website under the impugned Domain Name **(Exhibit-H)** also incorporates therein at the top and at an eye catching placement the following words "The domain bikedekho.in is listed for sale. Click here to inquire about this domain name". (*emphasis supplied*). Such an incorporation and placement would give rise to an impression in the mind of any internet user who is misled into reaching the Respondent while trying to reach the Complainant by the use of the rival domain name into believing that the Complainant has no rights or business under its domain name or is a cyber squatter seeking to make illegal money by way of sale or is suffering in business. This would invariably and irreparably tarnish the goodwill reputation, standing into the business of the Complainant. Such a internet user would obviously be disappointed with the outcome from the Respondent's website and relate it to the Complainant.

15.3 By the Respondent's impugned domain name and the activities thereunder, whether present or prospective, loss and injury would result or likely to result upon the Complainant as well as to the consumer. This is so as interalia the Complainant would have no control over the Respondent or over the standard or quality of the services being offered or sought to be offered by the Respondent. Any inferior services offered by the Respondent would invariably adversely effect the Complainant's business and standing under its

S.K. Gaur

Trade Mark/Domain Name BikeDekho and this is so as the Complainant would have no control over the Respondent or its activities being conducted under the impugned domain name and would always be adversely effected by any dereliction or wrongs that may be committed by the Respondent thereunder. Not only that the Respondent's conduct would dilute the Complainant's trade mark/domain name BikeDekho by diminishing the capacity of the Complainant to identify and distinguish its services on the internet as also would considerably dilute the strength and value of the Complainant's Trade Mark/Domain Name BikeDekho. The consumer would suffer as he would not get what he intended and instead would be deceived. (See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC) Bharati Airtel Limited v. Rajiv Kumar – 2013 (53) PTC 568 (Del); Tata Sons Limited v. D. Sharma & Anr. – 2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited v. Manu Kosuri & Anr. – 2001 PTC 859 (Del) Intermatic v. Toeppen 947 F. Supp.1227].

16. The aforesaid incorporation viz. "The domain bikedekho.in is listed for sale. Click here to inquire about this domain name" (*emphasis supplied*) on the Homepage of the Respondent website under the impugned domain name (Exhibit-H) clearly suggests that the Respondent has no legitimate rights or interests in the impugned domain name. The Complainant has clearly alleged in its complaint of the impugned domain name to be completely unused by the Respondent and of it being a mere parking page and which domain name the Respondent merely offers to sell to make illegal money. The Complainant had duly issued a cease and desist notice dated 17.04.2015 through its counsel upon the Respondent through E-mail of 18.04.2015 and filed as Exhibit – I & J respectively to the Complaint. This Notice had been duly received by the Respondent as per the delivery note filed as Exhibit – K. In this Notice at para 11 the Complainant had alleged upon the Respondent of the Respondents use of the impugned domain name to be not in connection with the bonafide offering of goods and services ; that the impugned domain name to be completely unused by the Respondent as also of the Respondent having no intention to use it. The Respondent never replied to the said legal notice. The Respondent has even not file any response/defence to the present complaint. Thus there is a total non-traverse by the Respondent. The Respondent's impugned

S.K. Bandyopadhyay

Homepage clearly mentions about the impugned domain name being for sale as also the Respondent has invited public enquiries thereon. Thus it can safely be taken that the Respondent has no legitimate rights or interest in the impugned domain name.

17. By the aforesaid incorporations viz. **Exhibit-H**, the Respondent in my considered view is guilty of trafficking and cyber-piracy besides bad faith and malafide.

18.1 Trafficking has been recognized by the Hon'ble Supreme Court of India in its decision of **American Home Products Corporation vs. Mac Laboratories Pvt. Ltd. reported in AIR 1986 SC 136** as a "cardinal sin" of Trade Mark law. In the very same judgement the Hon'ble Supreme Court has held trafficking to involve obtaining registration of Trade Marks without any intention to use it in relation to any goods but merely to make money out of it by selling it to others the right to use it as also the Hon'ble Supreme Court quoted with approval the observations of Lord Brightman in the case of (1984) 1 All ER 426 viz.

".....To my mind, trafficking in a trademark context conveys the notion of dealing in a trade mark primarily as a commodity in its own right and not primarily for the purpose of identifying or promoting merchandise in which the proprietor of the mark is interested. If there is no real trade connection between the proprietor of the mark and the licensee or his goods, there is room for the conclusion that the grant of the licence is a trafficking in the mark. It is a question of fact and degree in every case, whether a sufficient trade connection exists".

(emphasis supplied)

18.2 The Courts have repeatedly held that the basic principles of Trade Mark law as also the laws of passing off to apply to disputes in respect of internet domain names **[See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)]**

18.3 "Cyber-piracy" has been defined as "the act of registering a well known name or mark" (or one that is confusingly similar) as a website's domain name,

L.K. Bhandari

usually for the purpose of deriving revenue” [See The BLACKS LAW DICTIONARY 444 (9th ed. 2009)]. Thus encompassed in the concept of “trafficking” is the concept of cyber-piracy.

18.4 A clear perusal of Exhibit-H as mentioned above, the Respondent seeks to make money by the sale of the impugned domain name and more so as it has no legitimate rights or interest therein as found above besides having no bonafide use or offerings thereon.

19. In my considered opinion the Respondent's adoption of the impugned Domain name and its registration is in bad faith and actuated by malafide and fraud. Trafficking and cyberpiracy as noticed above itself amounts to an act of bad faith.

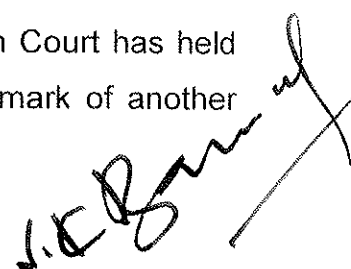
19.1 While considering the concept of malafide the Hon'ble Supreme Court in its celebrated case of Parbodh Sagar v/s The Punjab State Electricity Board and Ors reported in 2000 (5) JT 378 has held – “.....that the expression “malafide” is not a meaningless Jargon and it has its proper connotation. Malice or malafide can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set of guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances.” In light of the aforesaid pronouncement it can be safely held that the concept of or what amounts to bad faith, malafide or dishonesty is not one that lends itself to a exhaustive definition and for the determination of which there can be no rigid strait jacket formula and nor prescribed hard and fast rules or set guidelines. They have to be judged with reference to the facts and circumstances of each case. The Oxford dictionary of law 6th Edition 2006 defines malafide as - [Latin: bad faith] Describing an act performed fraudulently or dishonestly. In Gramax Plasticulure Limited V/s Don & Low Nonwovens Limited 1999 RPC 367 at page 379 bad faith has been defined to include dishonesty and dealings which fall short of the standards of acceptable commercial behavior observed by reasonable and experienced men in the particular area being examined. In Road Tech Computer Systems Limited v/s Unison Software (UK) reported in 1996

J.K. Kumar

FSR 805 at page 817 bad faith has been defined to mean dishonest, lack of good faith : not necessarily for a financial motive but still dishonesty.

19.2 The Respondent has not furnished any explanation or reason on his adoption of an identical prior trade mark/domain name BikeDekho. The Complainant's various usage and activities under the trade mark/domain name BikeDekho as well as family marks CarDekho and PriceDekho had been reported in various news and publication literatures (See **Exhibit B3, B4**). The Respondent was well aware of or ought to have been aware of or could have become aware of the Complainant's said domain name inter alia from the said publications. The Respondent who has registered the impugned Domain Name must be an internet user or having knowledge and interest in the internet and in the services being offered on its website under the impugned domain name. The word/mark BikeDekho is not an ordinary dictionary word. The adoption of the impugned domain name could not have been made randomly or by mere chance. The Respondent never even cared to reply to the Complainant's cease and desist legal notice dated 17.04.2015 served upon him through E-mail of 18.04.2015 (**Exhibit I & J**) and nor made any mends in terms therewith. The Respondent's impugned conduct speaks for itself (res ipsa loquitur) and falls short of the standards of acceptable commercial behavior. Obviously the motive of the Respondent was to derive some benefit from the Complainant's trademark/domain name BikeDekho including by way of sale of its impugned domain name a fact mentioned in the Homepage of its website (**Exhibit-H**).

19.3 The Hon'ble Delhi High Court in its celebrated decision of **M/s Hindustan Pencils Pvt. Ltd. v/s M/s India Stationary Products Company & Anr. Reported in 1989 PTC 61** affirmed the observation of Romer J, in the matter of an application brought by J.R. Parkington and Coy. Ltd., 63 R.P.C. 171 at page 181 that "in my judgment, the circumstances which attend the adoption of a trademark in the first instance are of considerable importance when one comes to consider whether the use of that mark has or has not been a honest user. If the user in its inception was tainted it would be difficult in most cases to purify it subsequently". In the same judgment the Hon'ble High Court has held that if a party for no or apparent or valid reason adopts the mark of another



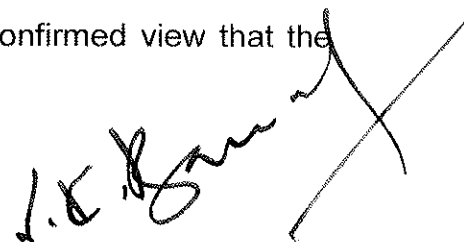
business it can be assumed that such an adoption was not honest and the Court would be justified in concluding that the defendant/Respondent by such an act wanted to cash upon the name and reputation of the Complainant and which was the sole primary and real motive of the defendant/Respondent in so adopting such a mark. In the same judgment the Hon'ble Court further held that the violator business who uses or adopts someone else marks must be aware of the consequence which must follow. The Respondent cannot derive any benefit from its own wrongs.

20. The fact that the Complainant prior to instituting of the Complaint served a cease and desist legal notice upon the Respondent (**Exhibit I & J**) does establish that there is no element of acquiescence involved and that the Complainant never consented to the Respondents impugned adoption and/or alleged use of the impugned Domain Name. As noticed above the Respondent had not even preferred to reply to the said cease and desist Legal Notice.

21. In my considered view the Complainant has discharged his onus/burden of proof. The wrongs of the Respondents are also apparent from the fact that it has not traversed nor challenged the complaint facts against him. Such a non-traverse has to be taken against the Respondent (**Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740**).

22. It is now well settled and duly recognized that domain names are business identifiers, serving to identify and distinguish itself or its services and to specify its corresponding online location. Domain names have attained legal sanctity and the services rendered over the internet are important for any business. The domain name is a valuable corporate asset entitled to protection (**Satyam Infoway Ltd., v. Sifynet Solutions 2004 (6) SCC 145 ; Yahoo Inc., v. Akash Arora 2999 PTC 201; Rediff. Communication Limited v. Cyberbooth, AIR 2000 Bom.271**).

In the aforesaid view of the matter I am of the confirmed view that the complaint must be allowed.



Accordingly it is decided that the disputed domain name www.bikedekho.in be transferred to the Complainant.

Signed at New Delhi on this 31st day of July, 2015.


Sudarshan Kumar Bansal
Sole Arbitrator