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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA

.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure

IN THE MATTER OF:

Bloomberg Finance L.P.
731 Lexington Ave.
New York, NY 10022
United States

COMPLAINANT

VERSUS

Kanhan Vijay V
L-302 Parivar Apts. 28 Corporation Colony
North Ambazari Road
Nagpur, Maharashtra 440010
India

RESPONDENT

1 **The Parties:**

The Complainant is Bloomberg Finance L.P. 731
Lexington Ave New York, NY 10022 United States

The Respondent is Kanhan Vijay V L-302 Parivar
Apts. 28 Corporation Colony North Ambazari Road
Nagpur, Maharashtra 440010 India

2. **The Domain Name and Registrar**

The dispute domain name <bloomberg.net.in> is
registered with Rediff.Com India Ltd.

3. **Procedural History**

The Complaint was filed with the .In Registry,
National Exchange of India (NIXI), against Mr.
Kanhan Vijay V L-302 Parivar Apts. 28 Corporation
Colony North Ambazari Road Nagpur, Maharashtra
440010 India. The NIXI verified that the Complaint
together with the annexures to the Complaint and
satisfied the formal requirements of the .in Domain
Name Dispute Resolution Policy ("The Policy") and
the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and
4(a), NIXI formally notified the Respondent of the
Complaint and appointed me as a Sole Arbitrator
for adjudicating upon the dispute in accordance
with The Arbitration and Conciliation Act, 1996,
Rules framed thereunder, .In Dispute Resolution
Policy and Rules framed there under on 9th
December, 2008. The parties were notified about
the appointment of Arbitrator on 9.7.2009.

3.2 The Panel has submitted the Statement of
Acceptance and Declaration of Impartiality and
Independence, as required by NIXI to ensure



compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 9.7.2009. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

The Respondent filed the response to the Complaint on 16.07 2009 within the stipulated time period of ten days granted by the Panel vide its notice dated 9.7.2009.

The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in 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 present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the Rules.

FACTUAL BACKGROUND

The Complainant in these administrative proceedings is Bloomberg Finance L.P. 731 Lexington Ave, New York, NY 10022 United States, represented through Sudhir D.Ahuja, constituted Attorney of Bloomberg Finance L.P.

The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act, 1996, .In Dispute Resolution Policy and Rules framed there under and any bye-laws, Rules and



guidelines framed there under and any law that the Arbitrator deems to be fit and applicable to the proceedings.

The complainant Bloomberg Finance L.P., claims to be the registered proprietor of the services mark BLOOMBERG in India and its variants in over 95 countries of the world including Colombia, Czech Republic and South Korea.

The Complainant's predecessor had adopted and first used the expression "BLOOMBERG" IN 1986, as its trademark, trade name, and corporate identity. Complainant is the owner and bone fide prior user of the "Bloomberg" trade name ("Complainant's Trade Name"). Complainant's affiliate, Bloomberg L.P., a Delaware Limited partnership, has been in business continuously since 1981, and has operated under the "Bloomberg" name in the United States and around the world since 1986. Bloomberg L.P. currently uses the "Bloomberg" trade name under license from complainant.

The Complainant's substantial advertising and promotion of its Marks, Complainant's Family of Marks, Complainant's Domain Names and Complainant's Trade Name have created significant goodwill and widespread consumer recognition around the world, including in India. Since the inception of the business in 1981, and the adoption of the "Bloomberg" name in 1986, Bloomberg has become one of the largest providers of worldwide financial news and information, and related goods and services. The Complainant is recognized and trusted worldwide as a leading source of financial information and analysis. The Complainant reaches

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millions of people worldwide through a variety of international, multi-lingual media outlets, including BLOOMBERG TELEVISION AND BLOOMBERG RADIO programming, BLOOMBERG NEWS, BLOOMBERG PRESS, and Complainant's large and popular website at <Bloomberg.com>.

Complainant is headquartered in New York, and employs more than 10,000 people in over 135 offices around the world. Complainant employs 2,300 reporters in 140 news bureaus worldwide. Complainant's subsidiaries operate offices in Mumbai, Bangalore and New Delhi.

Documents outlining the Complainant's company information, history, activities and range of goods and services, as also evidencing the Complainant's world wide presence, reputation and popularity, are attached and marked collectively as Exhibit D to the complaint.

The Respondent in the present proceeding is Kanhan Vijay V, L-302 Parivar Apts. 28 Corporation Colony, North Ambazari Road, Nagpur, Maharashtra 440010.

The Respondent submitted its response to the complaint vide its e-mail dated 16.07.2009, submitting as under: "we are a registered partnership firm "Bloomberg Computers" based in Nagpur, Maharashtra, India. We are a small firm dealing in computer hardware and networking equipment. We do not do business on the internet and hence never felt the need to use our website for marketing purposes, we do however use the domain name for mail as well as for helpdesk, the helpdesk is not on port 81 but on other ports the link to



which we have given to our clients. The web page that you see is the default webpage created by ispconfig with the "powered by ispconfig" changed to "powered by Bloomberg". Nowhere on the site do we claim to be part of Bloomberg finance".

The panel granted seven days time to the complainant to file rejoinder to the Respondent's Submissions by e-mail dated 17.07.09.

- 4.6 The Complainant filed the rejoinder to the response filed by the Respondent within the stipulated time granted by the panel on 23.07.2009.
- 4.7 The Panel further granted time to the parties to file evidence if any within 7 days by e-mail dated 25.07.2009.
- 4.8 The Complainant did not file any evidence nor intimated anything to the panel. However, Respondent while filing its evidence filed parawise counter submissions to the complaint on 1.8.2009.
- 4.9 The Panel received request from the Complainant to file rejoinder on 01.09.2009 to the Respondent's counter submissions made along with evidence on 01.08.2009.
- 4.10 The Panel granted the Complainant to file rebuttal to the counter statement filed by the Respondent on 1.9.2009 granting three days time to file the same.

The Panel received rebuttal to the counter statement filed by the Respondent on 4.9.2009 within in stipulated time of three days granted by the Panel.



5 **Discussions and Findings**

- 5.1 The Complainant while filing the complaint submitted to the arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.
- 5.2 Paragraph 12 of the Rules provides 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 hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstances, 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. Sub-Section 3 of Section 19 of Arbitration and Conciliation Act 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. The parties have also agreed on the procedure prescribed under .In Dispute Resolution Policy and the Rules framed there under to be followed by the Arbitral Tribunal.
- 5.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

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5.4 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities.

5.5 The WHOIS record of the domain name <Bloomberg.net.in> is as follows:-

Administrative Contact	KANHAN VIJAY V
Admin ID	RD-134265184
Admin name	KANAN VIJAY V
Admin Organization	
Admin Street 1	L-302, PARVAR APTS 28 CORPORATION COLONY
Admin City	NAGPUR
Admin Postal Code	440010
Admin Country	IN
Admin Phone	+91.24449144
Admin email	kanhan_vijay@rediffmail.com

5.6 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant

5.7 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

- (i) the 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 domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

- 6A.1 The Complainant submit that the domain name <Bloomberg.net.in> is identical to complainant's registered trade mark "BLOOMBERG". The domain name is entirely comprised of complainant's mark "Bloomberg". It further submits that if a well known trademark is incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to the complainant's registered mark. The complainant further relies on the decision ITC Limited Vs. Travel India, Case No.L-2/5/R4, April 15, 2008 (citing Boehringer Ingelheim Pharma Gmbh & Co. KG Vs. Philana Dhimkana, WIPO Case No.2006-1594); HSBC Holdings plc. Vs. Hooman Esmail Zedeh, Case No.L-2/5/R2, March 24, 2007.)
- 6A.2 The Complainant contend that "Bloomberg" is a well known in India and around the world in connection with financial news and information which particularly widespread through use of complainant's popular website <Bloomberg.com>.
- 6A.3 The Complainant further submit that there is strong likelihood that internet user mistakenly believe that website accessible by the URL <Bloomberg.net.in> is a valid or endorsed by the Complainant.
- 6A.4 The Complainant further asserts that Respondent's website welcome visitors with the statement: "welcome to www.bloomberg.net.in" and also annexed the screen shot of Respondent's website as **Exhibit F** to the



complaint. The complainant further assert that Respondent's website also indicates that it was "powered by BLOOMBERG" but otherwise offer no goods or services. It further submit that the Respondent's reference to Bloomberg indicates that the Respondent wish to deceive visitors to the website into believing that the website is affiliated with or managed by complainant or enjoys the benefit of the Complainant's news and information resources.

6A.5 The Respondent on the other hand submit that the complaint against the Respondent is initiated with misunderstanding and the Respondent is unnecessarily dragged into the proceedings.

6A.6 The Respondent further submit that the contention of the complainant regarding the similarity in the name and apprehension regarding the diversion of clients is devoid of any substance. It is submitted by the Respondent that not a single incident has been quoted by the Complainant to substantiate its stand and therefore merely on the basis of vague statements the relief prayer cannot be granted.

6A.7 The Respondent submit that he is trading in computer hardware and peripherals since 2002 and Bloomberg Computers, Nagpur is duly registered under the Partnership Act 1932 with the Registrar of Nagpur and also with the Sales Tax Department.

6A.8 The Complainant has annexed the complainant's trademark, registration certificate relating to the trademark "BLOOMBERG" in class 9, 16, 36, 38, 41 and 42. The Complainant also annexes its WHOIS database records as Exhibit C to the complaint for the domain names :

<Bloomberg.co.in> registered October 12, 2004



<Bloomberg.in> registered February 16, 2005
<Bloomberg.gen.in> registered March 31, 2004
<Bloombergnews.co.in> registered October 20, 2004
<bloombergtelevision.co.in>registered Oct. 19, 2004
<bloombergtradebook.cc.in>, registered Oct 12, 2004

6A.9 The Complainant further assert that it holds registration for "**Bloomberg.com**" since 1993 and other GTLDS <Bloomberg.net>, <Bloomberg.br>, <Bloomberg.org> and <Bloomberg.info>.

6A.10The Respondent registered impugned domain name <Bloomberg.net.in> on 23rd March, 2007. The Respondent has submitted **Annexure A** as evidence with its counter submissions dated 01.08.2009 providing the details of sales tax registration with the domain name as "Bloomberg computers". However, the Respondent has failed to provide any cognant evidence to the use of the mark "Bloomberg" as a service mark for which the mark has been used in the past by him for providing the services for computers hardware and software since the year 2002 as alleged in its response.

6A. 11 The Respondent has annexed the true copies of print outs from the Sales Tax Department dated 23.7.2009 and nothing has been provided by the Respondent to substantiate its claims with regard to its business activities since the year 2002.

6A.12The Panel, on comparison of the registered trademarks of the complainant and the disputed domain name and consideration of the evidence filed on record hold that the disputed domain name www.bloomberg.net.in is identical to the earlier registered trade mark and domain names of complainant. The first element of similarity between complainant's registered mark and



the respondent's domain name <Bloomberhg.net.in> is thus established.

6A.13 The complainant has been successful in proving first element required under Paragraph 4(1) of the policy.

B. Rights or Legitimate Interests

6B.1 To be successful in establishing the case under Paragraph 4 of the policy. The Complainant must prove that the Respondent has no rights or legitimate interests in respect of the domain name.

6B.2 The complainant submit that it neither licensed nor otherwise permitted the Respondent to use the complainant's mark or any of the complainant's family of marks nor has the complainant licensed nor otherwise permitted the Respondent to apply for the use in domain name incorporating those marks.

6B.3 The Complainant further assert that on 6.4.09 the Complainant sent the respondent a demand letter via fax and mail at the address listed on the domain name WHOIS database. The Complainant has also annexed the said letter as **Exhibit G** to the complaint.

6B.4 The complainant submit that he has not received any response from the Respondent to the said letter.

6B.5 The complainant further submit that to the best of its knowledge, the respondent does not carry on any commercial or non-commercial venture/enterprises under the name and style of "Bloomberg" and that the Respondent is known as Kanhan Vijay V and not as <Bloomberg.net.in>. Therefore the Respondent cannot

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have any legitimate reasons for adopting the "Bloomberg" as part of disputed domain name.

6B.6 The Respondent maintains the website connected to domain <Bloomberg.net.in> but appears to offer no goods or services. The impugned website also indicate that it is powered by "Bloomberg" and as such there is strong likelihood/possibility of internet users looking for Complainant's website and getting diverted to the Respondent's website. The Respondent's website has no apparent purposes. The chances of confusion and deception are thus established in the facts of the case.

6B.7 The Complainant further submits that the Respondent has made no use of the domain name in connection with the bonafide offering of goods or services.

6B.8 The Complainant reiterates that the Respondent uses the domain name to support an essentially dormant website and does not use the domain name for any legitimate non-commercial or fair use.

6B.9 The Complainant further submits that the Respondent's registration and design of domain name <Bloomberg.net.in> fails to demonstrate any use in connection with the bona fide offering of goods and services.

6B.10The Respondent admits that they do not do business on the internet and hence never used the website for marketing purposes. However, the Respondent submits that they used the domain name for mail and for help desk and the help desk is not on Port 81 but on other Ports, the link to which they had given to their clients.



6B.11 The Respondent further submits that the web page is default web page created by isconfig Bloomberg which has been changed to "powered by Bloomberg" by the Respondent.

6B.12 The Respondent submits that the contention of the complainant that the Respondent does not use the domain name for any legitimate non-commercial or fair use is incorrect and no evidence is produced in order to substantiate the said contentions.

6B.13 The Respondent further submits that the contention regarding non submission of alleged diversion of traffic of the alleged website advanced by the Complainant is also incorrect since there is no diversion of traffic.

6B.14 It is further submitted by the Respondent that the contention of the Respondent regarding registration of passively holding of the domain name is also incorrect since the Respondent is running the said business since the year 2002 and also have business relationship with reputed names, INTEL, MAX, HPCL etc.

6B.15 The Respondent further submits that the Bloomberg Computers a highly reputed firm and with very known clientel like Nagpur University, Western Coalfields Limited,¹ Priyadarshini College of Engineering, Lokmanya Tilak College of Engineering, etc.

6B.16 The Respondent further submits that the case law cited by the Complainant is not applicable to the present case.

6B.17 It is further submitted by the Respondent that it was never the intention of him to create any picture before

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the user to divert the traffic and the Respondent has been using the domain bonafidely and not in bad faith.

6B.18 It is submitted by the Respondent that the Respondent will suffer great loss and injury if the complaint filed by the Complainant is allocated since it has been operating the help desk and mails from the domain. The Respondent submits that the long standing use without any interference of the domain name certainly resulted into accruing of rights in favour of the Respondent and legitimate exceptions.

6B.19 The Respondent further submits that the just because the Complainant's domain name is registered with various countries it does not mean that it will have a monopolistic right or the exclusive ownership for the name which Respondent was allowed to own the domain name at relevant time without any objection.

6B.20 The Panel arrives at the findings as follows :

- (i) The Respondent's registration of the disputed domain name <Bloomberg.net.in> on 23rd March, 2007 is of a date which is much later to the date of domain name registration by the Complainant under .in CCTLD. This fact shows that complainant is prior in adoption, use and registration of domain name. The Complainant is also the registered proprietor of the trade mark BLOOMBERG from the dates prior to the registration of disputed domain name by the respondent. The Respondent has failed to offer any valid explanation as to how he hit upon and adopted the word Bloomberg as part of his trade name. In the circumstances, it is safe to draw an inference that the disputed domain name is



adopted in bad faith on the part of the Respondent.

- (ii) The Respondent himself has admitted that he does not do any business on the internet. If that be so, then the Respondent has no legitimate interest in the disputed domain name but has obtained registration in bad faith to squat on the Register.
- (iii) The Respondent's claims that the domain name is used for "help desk" is not supported by any evidence.
- (iv) The Complainant has registered various domain names under .in CCTLD incorporating "Bloomberg" as the name and is prior adopter, user and registrant.
- (v) The panel hold that the Respondent has no reason to adopt or register the <Bloomberg.net.in> as domain name.
- (vi) In the absence of any evidence pertaining to the Respondent's use of the domain for mailing or help desk operation, panel admits the case set up by the Complainant and rules against the Respondent as per the Paragraph 4(b) of the Policy.
- (vii) The Panel finds that the Complainant's submissions and evidence produced on record satisfy the second element under the policy.

C Registered and used in Bad Faith

6C.1 The Complainant submit that "bloomberg" has a strong reputation and high profile presence in the

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financial sector and is subject of substantial consumers recognition and goodwill.

- 6C.2 The Complainant further submit that it has a famous and substantial reputation in the name "Bloomberg" such that consumers and public in general invariable associate the use and application of the word "Bloomberg" with complainant's corporate identity, business and various financial services.
- 6C.3 The Complainant submit that the registration of a domain name with actual knowledge of trademark holder's right in a mark is a strong evidence that the domain name was registered in bad faith.
- 6C.4 The Complainant further submit that the Respondent is not using the website associated with domain name <Bloomberg.net.in> for any apparent purpose. Non-use and passive holding are evidence of bad faith registration.
- 6C.5 The Complainant relies upon the decision of HSBC Holding plc. Vs. ooman Esmail Zadeh, Case No.L-2/5/RZ (March 24, 2007) Copy of decision attached as **Exhibit M**, to the Complainant.
- 6C.6 The Complainant further submit that in the light of international fame and wide use of complainant's mark "BLOOMBERG", the Complainant believes that the Respondent knew of and knowingly exploited the Complainant's mark and its substantial accompanying goodwill.
- 6C.7 The Respondent submit that without prejudice to his legal rights and suggest without admitting anything states that in order to avoid any



complications, the respondent is ready to add in his website the following words in bold manner as "Bloomberg Computers, Nagpur". The Respondent further submits that he without admitting anything, voluntarily can add "Bloomberg Computers, Nagpur" is not part of the Complainant Bloomberg Finance L.P.

6C.8 The Complainant in his rebuttal to the counter submissions submits that does he not wish to comment on the same in this forum. The Respondent's proposal does not fall within in the scope of the present proceedings and neither has any relevance to present proceedings. The Complainant submits that the dispute is with regard to the domain <Bloomber.net.in> and not with regard to the website of the Respondent.

The Panel gives its finding to the element of registration and use of the domain name in bad faith as follows :

- i. The Panel finds that he Respondent has not registered the domain name <Bloomberg.net.in> primary for the purposes of selling, recruiting or transferring the domain name registration to the Complainant who is the owner of the trade or service mark or a competitor of that Complainant for valuable consideration in access of documented out of pocket costs related to the domain name.
- ii. The Panel finds that the Registrant/Respondent has prevented the owner of the trademark/service mark from reflecting the mark in a corresponding domain name.



- iii. The Panel finds that by using the domain name the Registrant has intentionally created a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Registrant of website.
- iv. The Panel further finds that the bad faith element is established from the fact that the Respondent has registered the disputed domain name <bloomber.net.in> much later to the Complainant's registration of the domain names even under .in CCTLD such as <Bloomberg.co.in> on 12.10.2004, <Bloomberg.in> on 16.02.2005, <Bloomberg.gen.in> on 31.03.2004, <bloombergnews.co.in> on 20.10.2004 etc. The Respondent should have done due diligence before registering the domain name incorporating the mark "Bloomberg" of the Complainant.
- v. Further more the Respondent has failed to provide any evidence of the use of the mark "BLOOMBERG" since the year 2002 as alleged by him.
- vi. The Respondent has also failed to provide any explanation as to how it hit upon and adopted the mark "BLOOMBERG".
- vii. The contention of the Respondent to put disclaimer on the website associated with domain name <Bloomberg.net.in> can not be admitted by the Panel as the Panel is not empowered to mediate the dispute in question. However, if the parties would have arrived at the settlement during the dispute, the Panel had the power to record such settlement and pass the award thereof. Since there does not exist such settlement and Complainant's disagreement with the Respondent



offer, the Panel rejects the plea taken by the respondent in the proceedings.

- viii. The Panel, therefore rules in the favour of the Complainant and against the Respondent with respect to the last and third element of Paragraph 4 of the Policy.

Decision

In view of the fact that all the elements of Paragraph 4 of the Policy have been satisfied and in facts and circumstances of the case, the Panel directs transfer of the domain name <Bloomberg.net.in> to the Complainant.

The parties shall bear the costs on their own.



AMARJIT SINGH
Sole Arbitrator

Dated : 8.9.2009