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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

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

(Complainant)

Versus

Domain Admin
BharatDNS Pvt. Ltd.
92 Appar Street, Thiruvalluvar Nagar
Thirumangalam, Chennai-600 040
Tamil Nadu, India

(Respondent)

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

The Parties:

The Complainant in this proceeding is Bloomberg Finance L.P., a company incorporated in United States of America, having its address 731 Lexington Avenue, New York, NY 10022, USA.

The Complainant is represented through their authorized representative:

Mr. Sudarshana Sen-Mitra of

D.P. Ahuja & Co.,

14/2 Palm Avenue,

Kolkata – 700 019

(F): (033) 2281 9441

(E): litigation@dpahuja.com

The Respondent in this proceeding is Domain Admin, BharatDNS Pvt. Ltd., 92 Appar Street, Thiruvallieswarar Nagar, Thirumangalam, Chennai- 600 040, Tamil Nadu, India

(E): info@bharatdns.com

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.bloombergnews.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name www.bloombergnews.in, with whom the disputed domain name www.bloombergnews.in is registered is Bharat Domains d.b.a. Bharat.in

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .In Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.bloombergnews.in>.

.In Registry has supplied the copy of the Complaint to me.

On 12.06.2012, I sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 12.06.2012, itself I sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 12.06.2012 with the instructions to file his say latest by 27.06.2012.



On 12.06.2012, I received an email from the Counsels/Representative of the Complainant, which was marked only to the Tribunal but not to the other party and the .IN Registry.

Therefore, on 03.07.2012, the Complainant sent an email informing about the details of the service of the copy of Complaint to the Respondent. According to this mail copy of the complaint was duly sent to the postal address of the Respondent and with the same email the Copy of the Complaint was duly served by the Complainant to the Respondent. It was further informed to the Tribunal that the complaint could not be served upon the Respondent via post as the address provided was incorrect.

Thereafter, on 07.07.2012, the Tribunal sent an email to all the parties strictly instructing the Complainant to make sure that any communication made in regards to the ongoing arbitration matter shall be marked to all the parties, Tribunal and .IN Registry as well.

On 17.07.2012, the Complainant again sent an email to the Tribunal informing that the Respondent appeared to be using an alternate address for which it needed permission from the Tribunal to serve the copy of the Complaint to the Respondent on the alternate address.

Thereafter, on 24.07.2012, the Tribunal while appreciating the gesture of the Complainant to make the efforts to find an alternative address of the Respondent, allowed the Complainant to proceed with the serving of the Complaint and provide service record of the same.

On 27.07.2012, the Complainant provided the service record to the Tribunal of the service made to the alternative address of the Respondent.

The Respondent failed/neglected to file his say/ reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and Annexure/ documents.

Factual Background:

The case of the Complainant from the Complaint and supporting evidence is as follows:-



The Complainant in this proceeding is Bloomberg Finance L.P., a multinational financial news corporation and trusted leader in global business and financial information, founded in 1981.

The Complainant adopted the mark BLOOMBERG in the year 1987 for providing influential decision makers worldwide with data, analytics, news, and insight to give them a critical edge. The company is the owner of the trademark and service mark BLOOMBERG, and other trademarks and service marks in which the BLOOMBERG mark appears as a component thereof. The Complainant also has the exclusive rights to use the aforesaid trademark in respect of the services for which the said trade mark is registered. The Complainant's trademark BLOOMBERG is also its trading name and it promotes services online, using the Internet and worldwide web through the domain name www.bloomberg.com as well as through various other country level domains. Additionally, the Complainant has the trademark BLOOMBERG registered and/or pending registration in more than 100 countries around the world which had definitely helped the company in gaining international repute. The Complainant's trademark BLOOMBERG is registered under the Trademarks Act, 1999 in India in July 1996 for services under International Class 9, 16, 35, 36, 38, 41, and 42 and the services have been a huge success across India.

The Complainant's use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result, the Complainant's marketing and promotion of its services under its trademark BLOOMBERG, the mark has gained worldwide recognition and goodwill and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

The Complainant has spent huge sums of money towards advertisement and promotion of its brand, BLOOMBERG globally and has done so even on the internet, *inter alia*, through its website www.bloomberg.com, accessible anywhere in the world.

Respondent in this proceeding is Domain Admin, BharatDNS Pvt. Ltd., who has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Parties Contentions:

(a) Complainant

The Complainant contends as follows:



1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, exparte and the Arbitration proceeding have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "BLOOMBERG".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.



The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The Complainant's trademark "BLOOMBERG" was adopted in the year 1981 and the Complainant is the registered user of the same in about 100 countries around the world. It is also the registered proprietor of the trade mark BLOOMBERG in India under the International Class 9, 16, 35, 36, 38, 41, and 42, dated July 1996.

The Respondent registered the disputed domain name on 08/11/2011, according to the available information. The disputed domain name is identical to the Complainant's trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the Complainant's trademarks, as it is. At the time of registration of the disputed domain name www.bloomberghnews.in, the Complainant had already been using the mark BLOOMBERG as its trademark and domain name with firmly established rights in the same. Also, at the time of registration, the Complainant's trademark had already acquired the status of a well-known mark. The Respondent can neither show any rights superior to that of the Complainant in the trademark BLOOMBERG nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name. The only logic of getting an identical mark registered in such a case is in the reason that the Respondent got the mark BLOOMBERG registered with the intention to trade upon the fame of the Complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of Section 4(b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

It can thus be proved that the registration of the disputed domain name in this case, is nothing but a blatant imitation with a malafide intention of earning upon the name and fame of the Complainant.

The Registrant has no rights or legitimate interests in the respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*



The Complainant averred at the outset that the Complainant's marks are so well known and it has gained rights purely based upon prior use and registration of the mark, that there can be no legitimate use by the Respondent. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, in itself.

Further, there exists no relationship between the Complainant and the Respondent so as to give rise to any license, permission or authorization by which the Respondent could own or use the disputed domain name which is identical to that of the Complainant. It is also known that the Respondent is not commonly known by the disputed domain name and is not making any legitimate use of the same.

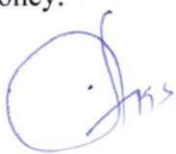
The Complainants thus proved that the registration and use of the disputed domain name by the Respondent was done in bad faith as per paragraph 6(i) of the policy, in the sense that their use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon.

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

Bloomberg makes up one third of the 16 billion dollar global financial data market. Bloomberg's partnership with UTV in 2008 and the resultant creation of the 24-hour "Bloomberg-UTV" channel is public news. Such facts firmly lead to the conclusion that Respondent was aware of Complainant's marks before registering the <bloombergnews.in> domain name. The bad faith of the Respondent is apparent from the fact that a cease and desist letter was sent by email, Speed Post and courier to the Respondent's physical address, as per the WhoIs record of .IN Registry. However, the Respondent did not reply.

Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent that would not constitute an infringement of the Complainant's rights in the trademark. Thus, mere registration of such a well-known trademark would be an evidence of the Respondent's bad faith.

The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain and the usage of the disputed domain name is in bad faith as per defined under paragraph 6 (iii) of the policy.



Decision

The Complainant has relied upon numerous cases for proving the infringement of its trademark rights in the trademark BLOOMBERG and related domain names by the registration and usage of the disputed domain name by the Respondent. In one of the cases, *ITC Limited v. Travel India*, it was decided 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” In relation to proving the Respondent’s bad faith while registration and subsequent usage of the disputed domain name, the judgment in *Northwest Airlines, Inc. v. Mario Koch* was relied upon which held that, “bad faith is found if it is unlikely that the registrant would have selected the domain name without knowing the reputation of the well known trademark in question.” Also, in *ITC Limited v. Travel India*, it was held “registration of a domain name with actual knowledge of a trademark holder’s rights in a mark is strong evidence that the domain name was registered in bad faith.” And “only a person who is familiar with Complainant’s mark could have registered a domain name that is confusingly similar.”

In view of the above facts and circumstances, it is clear that Complainant has succeeded in his complaint. In these circumstances it can be presumed that only reason for the registration of the disputed domain name by the Respondent was to capitalize on the fame and reputation of Complainant and to make monetary benefits.

Therefore the Respondent registration and use of the disputed domain name is done in bad faith and .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. www.bloomberghnews.in to Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 13th day of August 2012. The award has exceeded the time span of 60 days due to non availability of Indian non-judicial Stamp paper in New Delhi.



A.K. Singh

Sole Arbitrator

Date: 13.08.2012