



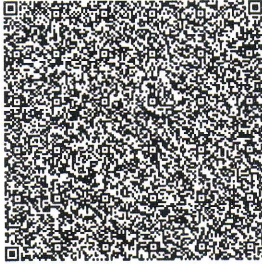
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL471782150801280
Certificate Issued Date	: 09-May-2016 04:10 PM
Account Reference	: IMPACC (IV)/ dl883903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL883903934840294698550
Purchased by	: JAYANT KUMAR
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYANT KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: JAYANT KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

IN THE MATTER BETWEEN

Century 21 Real Estate LLC

Complainant

v.

Sambit Basu

Respondent

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.

ARBITRATION AWARD

PARTIES

The Complainant is Century 21 Real Estate LLC, a limited liability company organized and existing under the laws of the State of Delaware, USA and has its registered office at 175 Park Avenue, Madison, New Jersey 07940. The Respondent is Mr. Sambit Basu, Century 21 Realty having address at 2/1, Siddhinath Chatterjee Road, Behala Manton, Kolkata – 700034, West Bengal.

DISPUTED DOMAIN NAME AND REGISTRAR

The disputed domain name is <century21realty.in> registered on July 31, 2011. The registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd.

SOLE ARBITRATOR

The Sole Arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI on March 30, 2016.

PROCEDURAL HISTORY

The Parties were informed about the appointment of the Arbitrator by NIXI vide email dated April 4, 2016 and a physical copy of the complaint was provided to the Arbitrator.

On April 6, 2016, the Arbitrator directed the Complainant to serve an electronic copy of the complaint upon the Respondent by email within 3 days. The Complainant complied with the same.

On April 6, 2016, the Arbitrator received an email from one 'Suman Saha' suman@century21realty.in from C21 Advisory Services Pvt. Ltd. and she stated as under:

Suman

"This is in response to the mail we have recently received from your end.

We believe some issues have arisen regarding our company URL century21realty.in however, we have failed to understand the reason for the same as we have been actively using this website since the establishment of the company which is 5 Years till now and fortunately never received any complaint or like.

We would also like to inform that we are open to all sorts of discussions concerning the matter.

Kindly reach us at kaushik@century21realty.in or contact the undersigned for all future communication."

On April 8, 2016, the Respondent was directed to file their Reply, if any, within 15 days and were also given liberty to explore possibility of settlement, if any, with the Complainant in the meantime.

The Respondent failed to file their Reply within the stipulated time and on April 27, 2016, the Respondent was given another 5 days to file their Reply, if any.

On April 27, 2016, the Arbitrator received an email from the Respondent (viz. Mr. Sambit Basu) stating that:

"I have received all the documents relating to the domain issue (www.century21realty.in). The rightful owner of this domain as on date is "C21 Advisory Services Pvt. Ltd.", since I was the director of the company the domain was registered in my name on behalf of the Company. The said domain has been used for almost 4 years without any complain and in its own way, without hampering anybody's image and business module.

But I am no more the Director of C21 Advisory Services Pvt. Ltd., and I have no rights and claims in the company or the brand anymore. But still the domain remains in my name by mistake and has not been transferred in the name of C21 Advisory Services Pvt. Ltd. Since I have no bindings with the company or the domain, I am freely ready to act/leave/transfer all the rights of the said domain (century21realty.in) to C21 Advisory Services Pvt. Ltd. and/or to anybody as directed by the present directors of C21 Advisory Services Pvt. Ltd. I have already submitted the hard copy documents that was sent to me to C21 Advisory

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Services Pvt. Ltd. and I am ready to act as directed by C21 Advisory Services Pvt. Ltd. or by its Directors.

For any kind of discussions request you to contact the present Director of the Company Mr. Kaushik Das (+91 8170040800, kaushik@century21realty.in) or any concerned person of the Company."

On April 29, 2016, the Arbitrator received an email from 'Suman Saha' suman@century21realty.in from C21 Advisory Services Pvt. Ltd. and she stated as under:

"After Read Your Trail Mail Please Note That My BOSS & Our Company Consultant Was Out Of Country For Personal Reason, So This Is My Humble Request To You Please Give Us 20-25 Days More Time To Proceed Our Next Steps."

On May 1, 2016, the Arbitrator declined the request of Suman Saha seeking additional 3 weeks to file their Reply on the ground that she and her organization is not a party to the complaint and therefore, she and her organization cannot be granted any further time to file their Reply.

The email dated April 27, 2016 is treated as Reply from the Respondent.

COMPLAINANT'S SUBMISSIONS

The Complainant has submitted that it is engaged in the business of residential real estate sales and is among the largest players in the field worldwide. It has more than 6,900 independently owned and operated franchised broker offices in 78 countries. It is the owner of the mark "CENTURY 21" and has applied-for and obtained registrations for the mark "CENTURY 21" in numerous jurisdictions all over the world. The first such trademark registration was obtained in the USA on April 12, 1977. It also owns trademark registrations for the mark "CENTURY – 21" and CENTURY 21 Logo in India in class 16 since March 13, 1989. The Complainant has submitted that it has conceived and adopted the trademark/trade name "CENTURY 21" in 1972 as its corporate name and the same has been in use continuously till now.

The Complainant has also submitted that it operates the website www.century21.com since 1995 as well as www.century21realty.in since 2011.

The Complainant has further submitted that it has presence in India through DGB Realtors Pvt. Ltd. since 2007 and has been providing services in India under the mark CENTURY 21 since 2007.

The Complainant further submitted that its attention was drawn some time back to an entity by the name of Century 21 Realty and then it came across the website www.century21realty.in. It then also filed a suit for infringement and passing off against 'C21 Advisory Services Pvt. Ltd.' and its Directors, including the Respondent herein, before the Delhi High wherein the Delhi High Court had granted ex-parte ad-interim injunction vide Order dated May 28, 2015 restraining the Defendants from using the mark 'CENTURY 21' in respect of similar goods/services.

The Complainant has contended that (a) the disputed domain name is confusingly similar to the registered trademark of the Complainant; (b) the Respondent has no legitimate interest in the domain name; (c) Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT'S SUBMISSIONS

The Respondent, in its Reply vide email dated April 27, 2016, has stated that it registered the disputed domain name <century21realty.in> for and on behalf of C21 Advisory Services Pvt. Ltd. and while being a Director of the said company. A perusal of the website hosted at the disputed domain name also reveals that a business website is being hosted thereat on behalf of C21 Advisory Services Pvt. Ltd. The mark 'CENTURY 21 REALTY' is also being used as a trademark on the webpages hosted at the disputed domain name.



FINDINGS

Identical and/or Confusingly Similar

Complainant owns numerous trademark registrations for the mark 'CENTURY 21' across jurisdictions, including India [Registration No. 506834 for the mark "CENTURY – 21" in class 16 since March 13, 1989]. The disputed domain name incorporates the mark 'CENTURY 21' in entirety, which is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademark. Moreover, the addition of a dictionary word "realty" does not make the Respondent's domain name distinctive in itself.

Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no rights or legitimate interest in the domain name and the sole purpose of the registration is to misappropriate the reputation associated with the Complainant's famous trademark "CENTURY 21". The Complainant has not authorized the Respondent to use its trademark/ trade name, and thus, the Respondent has no rights or legitimate interests in the domain name.

The Respondent, on the other hand, submitted that the said domain name has been used by him and the organization C21 Advisory Services Pvt. Ltd. for last 4 years without any complaint. A perusal of the website hosted at the disputed domain name also reveals that they are offering services in the real estate industry under the mark 'CENTURY 21 REALTY'. It also refers itself by the trade name 'Century 21 Realty' at many places. The WhoIs details of the registrant also refers as organization name as 'Century 21 Realty'.

The Arbitrator finds that there is no strong inference that the Respondent registered the disputed domain name to misappropriate the goodwill and reputation of the Complainant's mark. The Arbitrator also finds that the Respondent directly uses the dispute domain name in connection with its

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legitimate business and the disputed domain name is identical to Respondent's trade name.

The issue whether Respondent's trade name and the disputed domain name infringes the trade mark rights of the Complainant is best left to the Courts to decide as the Arbitrator is not empowered, under the INDRP, to render a finding on this issue. The Complainant has already filed a suit for infringement and passing off against the Respondent herein restraining it from using the mark "CENTURY 21" but has not sought injunction in respect of the disputed domain name.

For these reasons, the Arbitrator finds that the Complainant has failed to establish its case under Paragraph 4(ii) of the Policy.

Registration or Use in Bad Faith

The Complainant has submitted that the Complainant's mark CENTURY 21 is exclusive to the Complainant and has been used by them for years, and the Respondent is presumed to have had knowledge of the Complainant's mark at the time it registered the disputed domain name, which is a prima facie evidence of the Respondent's bad faith use and registration.

It is beyond doubt that bad faith may be found where the Respondent registered and used the disputed domain name to take unfair advantage of the Complainant's rights in some way. In this case, however, there is no evidence which shows that the Respondent, registered or using the disputed domain name, to exploit the goodwill and reputation of the Complainant's mark or that the Respondent was aware of the rights of the Complainant in the mark "CENTURY 21" at the time of registration of the disputed domain name. As stated above, there is a plausible evidence of a legitimate business use of the disputed domain name by the Respondent.

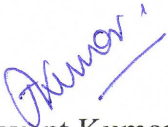
Answer

For these reasons, the Arbitrator finds that the Complainant has failed to establish its case under Paragraph 4(iii) of the Policy

DECISION

For the foregoing reasons, the Complaint is denied.

Dated: May 9, 2016


Jayant Kumar
Sole Arbitrator