



### INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

### e-Stamp

IN-DL47436352054339L

: RAJEEV SINGH CHAUHAN

: Article 12 Award - Movable

IMPACC (IV)/ dl791003/ DELHI/ DL-DLH

: SUBIN-DLDL79100393577828102550L

08-Aug-2013 10:17 AM

Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

**Property Description** 

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

(Zero)

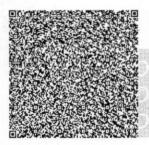
RAJEEV SINGH CHAUHAN

Not Applicable

Not Applicable

RAJEEV SINGH CHAUHAN

(One Hundred only)



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### BEFORE RAJEEV SINGH CHAUHAN, THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY IN THE MATTER OF

Cinepolis India Private Ltd, 3<sup>rd</sup> floor, Plot No. 58, Sector-44, Gurgaon, Haryana-122003

(Complainant)

Rajesh R

Marquisindia,

Marthandam, Tamil Nadu-629165.

(Respondent)

### THE PARTIES

The Complainant in this proceeding is Cinepolis India Private Limited having its office at 3<sup>rd</sup> Floor, Plot no 58, Sector-44, Gurgaon, Haryana 122003.

The Complainant's authorized representative(s) in this administrative proceeding is Mr. Tarvinder Singh & Mr. Anshuman Sharma, KOCHHAR & CO., Advocates & Legal Consultants, Technopolis Building, 3rd Floor, Tower B, Sector- 54, DLF Golf Course Road, Gurgaon – 122002 (NCR) India

The Respondent in this proceeding is Rajesh R. having his office (available through .IN WHOIS) at Marquisindia, Marthandam, Tamil Nadu-629165.

The Respondent is representing himself in this proceeding.

### THE DOMAIN NAME & REGISTRANT

The disputed domain name www.cinemastar.in is registered with GoDaddy.com, LLC.

### PROCEDURAL HISTORY

The Arbitrator was appointed by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.cinemastar.in

.In Registry had supplied the copy of the Complaint and Annexures to the Arbitrator.

The Complainant and the Respondent have filed various documents as Annexures in support of their contentions.

The Arbitrator have perused the record and annexures / document.

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# FACTUAL BACKGROUND COMPLAINANT

Operadora Commercial de Desarrollo, S.A.de C.V. of Mexico is the parent company of the Cinepolis India (P) Ltd. (together hereinafter "the

Complainant"). The Complainant carries on the business of movie exhibition and motion picture theaters in many countries worldwide. It opened its first 5 screen multiplex under the brand CINEMASTAR in Thane Maharashtra in the year 2011.

The Complainant has submitted in its complaint that it has expended a significant amount of money in the promotional activity of its brand. Further, it has submitted that due to this the brand CINEMASTAR enjoys tremendous reputation and goodwill in the minds of consumers and fellow business groups. The Complainant in order to register its Mark CINEMASTAR first applied for its registration with the Indian Trade Mark Registry as early as 24/03/2009.

The Complainant has submitted in its complaint that Mark CINEMASTAR (hereinafter "the mark") has acquired unique importance and association with the complainant over the years and it owns all the rights in the said mark which is its Trade mark and Service Mark. It has further submitted that the use of the mark by a third party either as a Mark, Name and Domain Name, or in any other form whatsoever constitutes as passing off.

The Complainant has submitted in its complaint that recently it came to know that the domain name www.cinemastar.in (hereinafter "the disputed domain name"), which is a natural extension of the mark, has been obtained by someone. Upon searching the WHOIS database the Complainant came to know that Mr. Rajesh R of Tamil Nadu had registered the disputed domain name.

### RESPONDENT

The Respondent in the present proceeding is Mr. Rajesh R of Tamil Nadu of Marquisindia, Marthandam, Tamil Nadu-629165.

The Respondent has registered the disputed domain name www.cinemastar.in on 03.05.2012.

### **PARTIES CONTENTIONS**

(a) The Complainant has submitted the following in its Complaint:



- The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
- The Respondent has no rights and legitimate interest in respect of the domain name www.cinemastar.in.
- The Respondent has registered and is using the domain name www.cinemastar.in in bad faith.
- The Complainant's mark has established a distinctive, unique and has an established reputation in India.
- The Complainant owns all the rights of the mark and is entitled to protection under the Indian Trademark Law.
- The use of the mark by a third party as a mark, name and domain name, or in any other form whatsoever constitutes violation of the Complainant's rights.
- It is a well-established principle that mere addition of a generic or country code top-level domain names to the disputed domain name does not avoid confusing similarity.
- The Respondent is in the business of holding domain names and selling them.
- The Respondent has no legitimate interests in the disputed domain name and is hoarding the same without doing any business from it.
- There has never been a relationship between the Complainant and the Respondent nor has the Complainant authorized or licensed the Respondent to use the Mark.
- The Respondent does not hold proprietary or contractual right in any mark corresponding to the disputed domain name.
- Registration of a famous mark by a person without any connection to the owner of the trade mark, without authorization and without any legitimate purpose reveals bad faith.

- The illegality of the disputed domain name arises from the fact that domain names today are a part of the corporate identity of a large business enterprise. They act as the address of the business enterprise on the internet.
- The Respondent has registered the disputed domain name with the view to benefit from the financial windfall by selling it.
- The disputed domain name shows various sponsored links/sponsored ads. This does not constitute the bona-fide use of the dispute domain name.
- The Complainant has obtained the registration of domain name www.cinemastar.co.in on 07.10.2010.
- The Respondent registered the disputed domain name years after the registration of the domain name www.cinemastar.co.in shows prima facie evidence of malafide intentions and bad faith.
- The Respondent may use the dispute domain name to extract huge sums of money from the Complainant, who has legitimate interest in the disputed domain name.
- The Respondent may represent itself as the Complainant which may induce some innocent party to enter into a transaction with the Respondent and hence may prove prejudicial to the public interest as well.
- The Respondent may sell the disputed domain name to some business competitor of the Complainant, who may injure the reputation of the Complainant by putting up prejudicial material against the Complainant.
- The Respondent has been earning from the pay per click links placed on the disputed domain name and is not carrying out any genuine business by way of the disputed domain name.
- The use of, a so obviously connected mark with a Complainant, by another person suggests opportunistic bad faith.

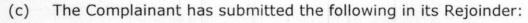
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- The Complainant as such has filed the present complaint praying therein to transfer the disputed domain name in its favour.
- (b) The Respondent contends as follows in its reply to the Complaint:
  - The disputed domain name was registered by the Respondent on 03.05.2012.
  - The Respondent graduated in Mass Communication and has a Diploma from Film and Television Institute.
  - He has been associated with the audio visual media since 1990s in the capacities of Producer, Director, Advertiser, and Marketer of media/audio-visual content.
  - The Respondent had registered the disputed domain name in good faith and that to the best of his knowledge it did not violate or infringe the right of any third party.
  - The Respondent does not have a history of being a cyber-squatter and it registered the disputed domain name only to further his legitimate start up ambitions.
  - The website is not functional yet as the relevant ideas are being developed, funds awaited and execution being planned. One year is a very short time frame for development of a low profile "start-up" concept, from idea to execution, especially in the absence of angel investors.
  - The Respondent has only applied for the registration of the disputed domain name and he neither owns the web hosting space of the disputed domain name nor has applied for the same.
  - The Respondent has also not designed or hosted any web content on the disputed domain name as he does not have the knowhow and the technological means to plant ads or sponsored links or to acquire and disseminate traffic from or to the website for disrupting purposes or web traffic generation, and therefore, can neither be doubted as an intentional accomplice of malevolent online activity or beneficiary of criminal E-commerce.

- The Respondent has not gained monetarily from the disputed domain name and he neither has, nor will in the future sell or rent the disputed domain name to another or benefit illegitimately from the disputed domain name.
- The Respondent has never contacted nor has the intention to contact the Complainant in any way to coerce large sums of money from it.
- That the Complainant has now taken a belated fancy to the disputed domain name and now wants to reverse hijack the disputed the disputed domain name.
- Furthermore, a delay of more than 15 months in filing the present complaint is evidence of the Complainant's belated interest in the disputed domain name and it is trying to reverse hijack the disputed domain name as it would serve his business/online interests more efficiently and attractively. The same is also proof of the legitimacy of the Respondent over the disputed domain name.
- That the Complainant is, from the choice of words of the disputed domain name, aware of the fact that the Respondent is into the business of cinema and the Complainant being the subsidiary of a world leader in the fields of cinema exhibition/theatres, senses competition has wantonly filed this complaint in order to exert its monopoly and to force the Respondent to give up its start up ambition.
- That paragraph 15(e) of the Rules says that when a complaint is brought in bad faith for e.g. with an intention to reverse hijack the domain name then it shall be declared as brought in bad faith.
- Neither NIXI nor the Complainant informed the Respondent before
  placing the disputed domain name on registrar lock and the
  Respondent was also not given a copy of the Complaint before the
  register lock was carried on despite the fact that the details of the
  Respondent are available on the WHOIS database.
- The Complainant sent the copy of the complaint to all the parties, excluding the Respondent, on 06.08.2013 and NIXI placed the

- disputed domain name on registrar-lock even before receiving the hard copy of the complaint by courier.
- All the contentions of the Complainant are based on wrong, vague, unsubstantiated and even false premises. The Complainant has made effort to insinuate and paint the Respondent, without providing concrete evidence.
- The Complainant did not register the disputed domain name before
   May, 2012 when the Respondent finding it available registered it.
- That the Complainant finding that the suffix ".co.in" was old fashioned and out of times and .IN ccTLD was used by most smart Indian businessmen today., wants to acquire the domain name of the Respondent.
- The Complainant does not have any trade mark/service mark registration in India and the status of the applications does not have a bearing on the present matter, which in fact does not have any optimism for approval as the status is objected for all the applications.
- The Complainant's contention that the mere mention of the word CINEMASTAR clearly establishes a connection and identity with the Complainant is misleading, highly exaggerated and even false.
- The mark "CINEMASTAR" has been registered to more than one entity all around the globe e.g. Beautiful Films, HGST Netherlands, Cinemastar Luxury theatres etc.
- The percentage of audience in the Complainant's theatre is 0.005% (approx.) of the total Indian cinema going audience and it has been active for the last 3-4 yrs in very few localities.
- In absence of evidence to the contrary, it is read that a majority of the Indian cinema going audience is unaware of the mark CINEMASTAR- in relation to the Complainant.
- Although there are dozens of articles on the internet relating to Cinepolis India, but there is hardly any material on Cinemastar in relation to the Complainant.

- A cursory search of the mark on the internet does not give the name of the Complainant but that of actors like Shahrukh Khan, Salman Khan, etc.
- Moreover, even the website of the Cinepolis India hardly mentions its mark CINEMASTAR.
- That the Complainant is allegedly in the business of movie exhibition and motion picture theatres but in its registration it has filed for various goods and services that are very less to do with movie exhibition and motion picture theatres.
- The Annexures 3 and 4, provided by the Complainant along with its complaint are of a very later period i.e. 2013 and hence have no bearing on the present case.
- The Claim is in contravention of Section 11(6) of the Trade Marks
   Act because the Complainant had just 4 mulitplexes (around 20
   screens) in 2012 i.e. at the time of the disputed domain name's
   registration.
- At present, there are more than 50 domain names with CINEMASTAR name and since the Complainant has not registered them then it can be assumed that the Complainant has exercised its Right of First Refusal and has allowed them in the open market to be used by the internet's public.
- The Respondent contacted <u>support@godaddy.com</u> to resolve the issue of sponsored ads being placed on the disputed domain name's webpage and the support team further directed the query to its experts due to the technical nature of the query, admitting it to be a technical glitch.
- The Respondent has submitted that the suo-moto act of putting Registrar locks by NIXI placing the disputed domain name has hurt its interests as it causes panic among his investors, tarnishes his reputation, etc.



- The Respondent has failed to give any reason for the adoption of the disputed domain name.
- There is no need of any know how/technical education to plant google ads/sponsored links in domain name/website. Moreover, the owner of the domain name directly benefits from the revenue generated from the ads on a domain name's website and it was only after the filing of the complaint that the Respondent sought a clarification from GoDaddy.com.
- In case a dispute arises regarding a domain name the parties to the dispute have to compulsorily submit to mandatory arbitration proceedings and till the dispute is resolved, NIXI locks the disputed domain name.
- The Respondent has been unable to provide any legitimate use of the disputed domain name for over fifteen months and passive holding is an evidence of bad faith under the INDRP.
- According to para 3 of the INDRP it is the responsibility of the Respondent to find out before the registration of a domain name that it does not violate the rights of any proprietor/brand owner.
- The Respondent, by its own statement, was aware about the existence of the Complainant and hence the act of registering the disputed domain name is a blatant act of bad faith.
- The Complainant's mark is an earlier trademark in accordance with Section 11 of the Indian Trade Mark Act, 1999, and hence is entitled to protection against the Respondent's trademark.
- The word CINEMASTAR is not a generic word and all the submissions of the Respondent regarding the same are totally misconceived. The word Cinemastar is neither a commonly used word nor does it have any meaning attached to it.
- Trade mark registrations in different country do not have a bearing on the registrations in India as trade mark is territorial in nature.
- It has been held that it is not necessary that to enjoy the right of an unregistered trademark that it should have been in-use undisturbed over an extended period, while being promoted to a wide market.

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- That Cinemastar being a separate brand of the Complainant, from Cinepolis, it has a website of its own namely <u>www.cinemastar.co.in</u>.
- Annexures 3 and 4 are very much relevant to the proceedings. The Complainant is selling/offering its products and services through various third parties and these third parties provide reference to the Complainant's mark.
- Para 4(i) of the INDRP does not limit the application of the Rule to merely "trademark or service mark" and does not limit its application merely to a registered mark or service mark.
- (d) The Respondent has submitted the following in its Reply to the Complainant's Rejoinder:
  - The Respondent submits that the Complaint has changed its stance in the Rejoinder from what it had taken in the Complaint.
  - If the Mark is not a generic word but an invented word, then the Complainant should tell, letter by letter, how it arrived to the said name, and explain its connotation.
  - The Complainant has applied for trademark "CINEMASTAR" as two separate words and even its website displays it in the same manner.
  - The Complainant is now saying that INDRP is applicable to unregistered trademarks and service marks and it has even downgraded its brand's famousness and visibility.
  - According to INDRP guidelines, previous passive holding of a domain name is vital proof of bad faith and the Respondent does not have any such previous record.
  - The Complainant is trying to reverse hijack the disputed domain name and the Respondent wishes to place emphasis on this.
  - The Respondent has not made any arrangement with google ads/ad sense with regard to the disputed domain name or its webpage, and maintains that the Respondent lacks the technical knowhow.

- The Respondent did not infringe upon anyone's right by registering the disputed domain name as the Complainant did not have any right over the mark incorporated in the disputed domain name.
- The Respondent says that the purpose of giving global statistics of the Mark's registrations is to prove that the Complainant neither has a right, in respect of the Mark, in India or anywhere in the world.
- The Complainant has done searches for its mark very recently and not at the relevant time i.e. when the disputed domain name was registered in May, 2012. The Respondent has submitted the same along with its Response to the Complaint.
- The Complainant has on multi-instances, repeatedly distorted, misrepresented, exaggerated and even made blatantly false affidavits.

### **DISCUSSIONS AND FINDINGS:**

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 fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.

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 byelaws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"

In the present circumstances, the decision of the Tribunal is based upon the contentions and evidence filed by both the parties respectively and conclusion drawn from the same. In addition to this there are certain unnecessary pleadings by the Parties which do not come under the purview of this Arbitration and therefore they are not discussed in this



present award and the Arbitrator choose to ignore these pleadings completely.

Having perused the submissions and the voluminous documentary evidence placed on record, the Complainant has successfully proved that it has statutory and common law rights in the marks "CINEMASTAR".

Further, the Tribunal 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.

- 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.

### **BASIS OF FINDINGS:**

The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant registered the domain name www.cinemastar.co.in on 07/10/2010 and its Trademark application is pending since 24/03/2009.

The Hon'ble Supreme Court in its judgment titled as Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd. (AIR 2004 SC 3540), held that :

"The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e- commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar web site which offers no such services.



Such users could well conclude that the first domain name owner had mis-represented its goods or services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trademark and could found an action for passing off."

From the above mentioned judgment it is clear that Domain name may have all the characteristics of a trademark and could found an action for passing.

The Supreme Court in this matter further held that

"As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extra territorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off."

Therefore domain names are now protected under law of passing off also.

There is no doubt that the disputed domain name is identical to the Complainant domain name (www.cinemastar.co.in) for which Complainant has prior registration. In addition to this, Complainant has also applied for Trademark registration in the year 2009, which is pending till date.

Moreover, the document produced by the complainant clearly shows that they are well known in the public by the name of CINEMASTAR and enjoys tremendous reputation and goodwill in the minds of the consumers and members of the trade all over India.

Since disputed domain name is identical to the Complainant domain name www.cinemastar.co.in and that the Complainant has registered its domain name www.cinemastar.co.in prior to that of disputed domain name, the Complainant is entitled for the protection under the law of passing off.

Respondent has failed to show any rights superior to that of the Complainant in the mark "CINEMASTAR".

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Morevover, the fact whether the Respondent has added a generic or country top code level to the disputed domain name is irrelevant as in Lego juris A/S v. Robin Martin, INDRP/118 (February 14, 2010), it was held that the addition of country code ("CTLD") in the domain name is not sufficient to distinguish from the mark and does not change the overall impression of the designation as being connected to a trademark of the complainant.

Thus, from the above facts and circumstances of the case, the Tribunal is of the view that the Complainant is successful in its first contention that the disputed domain name is confusingly similar to its mark "CINEMASTAR" in which it has rights.

## The Registrant has no rights or legitimate interests in the respect of the domain name:

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

- 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;
- ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has submitted that there has never been any relation between the Respondent and itself and neither has the Complainant has authorized the Respondent to used its mark or the disputed domain

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name. Moreover, as a result of the Complainant's marketing and promotion of its goods and services under its mark "CINEMASTAR", the mark has gained recognition and goodwill, and is associated with the Complainant. The disputed domain name incorporates, in whole the mark of the Complainant, which might look to an innocent internet user as being connected to or affiliated with the Complainant.

Moreover, the Respondent has not provided any concrete evidence to prove that it is commonly known by the disputed domain name and neither it has been able to prove use of or demonstrable preparations to use of disputed domain name. Respondent has also not provided any substantial evidence to show that he has substantial rights to use the disputed domain name.

Thus, after considering the submissions of both the parties, the Tribunal is of the view that the Respondent has failed to show its right or legitimate interest in the disputed domain name. The Tribunal has further relied upon the following cases to support its point:

- (1) Beiersdorf A.G.v. Ajay Sukhwani & Anr. (156(2009)DLT83).
- (2) Times Internet Ltd. v. Belize Domain Whois Service Ltd. & Ors. (2011(45) PTC96 (Del)).
- (3) Charles Jourden Holding AG v. AAIM (WIPO Case No. D2000-0403).
- (4) The Caravan Club v. Mrgsale (National Arbitration Forum/FA95314).
- (5) Microsoft Corporation v. Chun Man Kam. (INDRP 119).

Therefore, according to Tribunal the Complainant is successful in proving the fact that Respondent has no right and legitimate interest in the disputed domain name.



# The Registrant domain name has been registered or is being used in bad faith:

The Complainant has contended that the Respondent registered the disputed domain name years after the registration of the domain

www.cinemastar.co.in, which in itself shows the *malafide* intentions and bad faith of the Respondent. The Respondent, on the other hand, has relied on the WIPO case of *Digital Vision*, *Itd*, *v*. *Advanced Chemill Systems* (WIPO case No. D2001-0827.) and states that bad faith registration cannot be found if the disputed domain name was registered before the registration of the trade mark or service mark of the complainant.

This argument of Respondent does not hold good because the Complainant has registered domain name www.cinemastar.co.in on 07.10.2010, which shows its bonafide interest and to an extent proves its earlier right on the mark CINEMASTAR, owing to earlier usage. Moreover, the Complainat trademark application is also pending since 2009, which also prove earlier usage of term CINEMASTAR by Complainant and therefore Complainant right in word CINEMASTAR is also protected under the law of passing off.

The Respondent has further asserted in his defence that the Complainant has applied for the trademark "CINEMASTAR" for cinema allied services as well as other services too, while the Respondent deals only in cinema. This argument of the Respondent does not hold good in view of WIPO decision in J.D. Edwards & Co. vs. Nadeem Bedar, WIPO Case D-2000-0693, wherein it was held that its irrelevant that domain name or trademark carry on business in different fields, when they are similar phonetically or in appearance.

The Complainant has further submitted that disputed domain name contains certain sponsor links and also show certain advertisements, which belong to the businesses that offer goods and services that compete with, or rival, those goods and services offered by the Complainant. The Respondent has contended and replied that in view of the present complaint he contacted the support team at GoDaddy.com and they responded back to him saying that they had forwarded his query to the technical team and they would get back to him soon.

The Tribunal agrees with the Complainant and is of the view that prima facie, the sponsored links and advertisement on the disputed domain

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name can disturb the business of the Complainant and the internet users and the potential customers can be misled by it thereby causing loss to Complainant.

The Respondent has held the disputed domain name for over fifteen months, even than he has failed to upload even the very basic content on the disputed domain name, which proves the passive holding of the disputed domain name by Respondent.

In past, in various domains name dispute it has been held that the passive holding of the domain name is the evidence of bad faith use. The Tribunal has relied upon the following cases to support its point:

- (1) Bayer Aktiengesellshaft v. Henrik Monssen (WIPO Case No. 2003-0275),
- (2) HSBC Holdings plc. v. Hooman Esmail Zedeh (INDRP- 32),
- (3) Bloomberg Finance L.P. v. Kanhan Vijay V (INDRP 110)

wherein, it was held that "It is a settled law that non-use and passive holding is evidence of bad faith use."

Moreover, the disputed domain name also goes against the respondent/registrant's representation under rule 3(b) .INDRP, which states that

"3(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party."

Therefore, the Tribunal is of the view that the disputed domain name has been registered or is being used in bad faith.

The Respondent in his reply has also taken the plea of Reverse Domain Name Hijacking against the Complainant. The concept of Reverse Domain Name Hijacking although has been recognized by Uniform Domain Name Dispute Resolution Policy (UDRP), but till date it has not been recognized by NIXI and INDRP does not recognize this defense. Therefore, Tribunal has not dealt with this contention of the Respondent.

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### DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

.IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. < www.cinemastar.in> to the Complainant. Since this matter involved bulky pleadings, therefore extra time was consumed in going through all the documents, due to which the award got little bit delayed. The Tribunal regrets the inconvenience caused to parties due to this. The Award is accordingly passed on 20<sup>th</sup> January, 2014.

Rajeev Singh Chauhan

**Sole Arbitrator** 

Date: 20th January, 2014