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**ARBITRATION AWARD**  
**.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**  
**.IN Domain Name Dispute Resolution Policy**  
**INDRP Rules of Procedure**

**Disputed Domain Name: <CLEARSTREAM.IN>**  
**INDRP Case No. 1708**  
**Before the Sole Arbitrator: Mr. Maram Suresh Gupta**

*[Handwritten Signature]*

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**Disputed Domain Name: <CLEARSTREAM.IN>**

**INDRP Case No. 1708**

**Before the Sole Arbitrator: Mr. Maram Suresh Gupta**

**IN THE MATTER OF:**

**Clearstream Services, Société anonyme**

42, Avenue John F. Kennedy,

855 Luxembourg,

1 Luxembourg

**.....Complainant**

*Versus*

**Ada Pascal**

1337 Services LLC

P.O. Box 590

Charlestown, KN0802, KN.


**Phone No.:** +1.6282511337

**Email:** [whois+clearstream.in@njal.la](mailto:whois+clearstream.in@njal.la)

**.....Respondent**

**1. The Parties**

- a) The Complainant in the present arbitration proceedings is **Clearstream Services, Société anonyme**, (hereinafter referred as '**Complainant**'), with its office at 42, Avenue John F. Kennedy, 855 Luxembourg, 1 Luxembourg. The Complainant is represented by Mr. Hari Subramaniam, of Subramaniam & Associates, of M3M Cosmpolitan, 7<sup>th</sup> Floor, Sector 66, Golf Course Extn. Road, Gurugram – 122 001, NCR India; Tel: +91-124-4849700, Fax: +91-124-4849798/799, Email: [sna@sna-ip.com](mailto:sna@sna-ip.com).
- b) The Respondent in the present arbitration proceedings is **Ada Pascal**, 1337 Services LLC, P.O. Box 590, Charlestown, KN0802, KN. **Phone No.:** (+1.6282511337, **Email:**






[whois+clearstream.in@njal.la](mailto:whois+clearstream.in@njal.la). The contact details of the Respondent were provided by NIXI along with the copy of the complaint and the same were also mentioned in the revised copy of the complaint filed by the Complainant dated 2<sup>nd</sup> June 2023.

## **2. The Disputed Domain Name and The Registrar**

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting exhibits/ annexures thereof.
- b) The disputed domain name is <**CLEARSTREAM.IN**> and the same was created on 19<sup>th</sup> January 2023. It was set to expire on 19<sup>th</sup> January 2024. Based on information from WHOIS database, the registrant client ID is **TUBOBRE54FEKOCI7** and registrant ROID is CO89AD67F75874963942667FBFB98ACA9-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is Tucows Inc.

## **3. Procedural History**

- a) The present arbitration proceedings are as per the .IN Domain Name Dispute Resolution Policy (the “Policy”), adopted by the National Internet Exchange of India [NIXI] and the INDRP Rules of Procedure (the “Rules”), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.
- b) NIXI vide its email dated 31<sup>st</sup> May 2023 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, I have indicated my availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.



c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 1<sup>st</sup> June 2023, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on 2<sup>nd</sup> June 2023, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication to the Arbitrator with a copy to NIXI. Further, the Complainant was also directed to file the missing parts – amended complaint with name and contact details of the Respondent.

d) The Complainant served copies of the Complaint and its supporting annexures via email to the Respondent dated 2<sup>nd</sup> June 2023. The confirmation copies of the email sent to the respondent were submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 2<sup>nd</sup> June 2023. As regards serving hard copies, the Complainant in its email dated 13<sup>th</sup> June 2023 stated that the hard copies are undeliverable to the address of the Respondent. The courier tracking number is 3992 5108 7447, FedEx Express. Therefore, serving documents (complaint + exhibits) via email was to the Respondent was considered sufficient. Therefore, serving via email was considered proper service to the Respondent. It is pertinent to state here that there is no Respondent No. 2 in the present proceedings – as assumed by the Complainant.

e) On 13<sup>th</sup> June 2023, I informed the Parties that though no Response was received by the Panel from the Respondent within the allotted time, in the interest of justice, I granted an additional time of 5 days and that if no reply is filed by 18<sup>th</sup> June 2023, the award would be passed on merits. The additional time granted to the Respondent lapsed and no

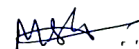


Response was received by the panel. In reality, there has been absolutely no communication from the Respondent till today.

#### **4. Factual Background and Parties Contentions**

The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) First and foremost, the Complainant is a subsidiary of Deutsche Börse AG and is a vital player in offering post-trade infrastructure and securities services to the customers in almost 110 countries. From **Exhibit D** it is evident that the Complainant is actively involved in business for more than 50 years and offers the securities services, settling > 250,000 transactions per day. Similarly, **Exhibit E** provides insights about the Complainants parent company - Deutsche Börse AG which are not discussed here.
- b) A perusal of **Exhibits F to H** indicates milestones of the Complainant starting from 1947 to 2019, its products and/or services (cash and banking services, asset services, Target2-securities services, connectivity and data solutions, global securities financing services, fund services, issuance and settlement services, and others) offered under the trademark CLEARSTREAM. More particularly, **Exhibit H** provides the Complaints activities in India *per se*. The Complainant has provided various daily news papers, dated 30<sup>th</sup> November 2011, 25<sup>th</sup> November 2014, and the latest being 23<sup>rd</sup> March 2023, under Exhibit H, that make reference to the Complainant's mark 'clearstream'. In addition, a perusal of **Exhibit I** provides details pertinent to different awards and accolades received by the Complainant for its leadership in variety of areas.
- c) Similarly, a perusal of **Exhibit J and K** indicates details pertinent to the advertisement and promotional activities of the Complainant with respect to its mark 'clearstream'. **Exhibit N** discloses annual sales details generated under the mark 'clearstream' and



**Exhibit O** shows information on expenditure incurred on advertisements/ promotional activities of Complainant in relation to its mark ‘clearstream’.

- d) A perusal of **Exhibit L** reveals details about the registered trademark, CLEARSTREAM, of the Complainant in different countries. Few of the registered marks (*see Table 1*) of the Complainant under different classes are recited below:

**Table 1:** Registered Trademarks of the Complainant in different jurisdictions

Sl. No.	Name of the country	TM Application No./ Registration No. and classes	Name of the mark
1	Canada	TMA607002 (Classes: 9,36,38 and 42)	<b>CLEARSTREAM</b>
2	Switzerland	P-516604 (Classes: 9, 36, and 42).	
3	Australia	2027265 (Classes: 9, 35, 36, 38 and 42).	
4	EUIPO	001403476 (Classes: 9, 36, and 42).	
5	United Kingdom	UK00901403476 (Classes: 9, 36, and 42).	

- e) The Complainant contends that the disputed domain name (**CLEARSTREAM.IN**) subsumes its registered trademark **CLEARSTREAM** thereby amounting to infringement. The Complainant submits here that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word **CLEARSTREAM**.
- f) The Respondent did not reply to the Complainant’s contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received any response from the Respondent’s.

## 5. Discussion and Findings

- a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the

Complainant it is abundantly evident that the trademark **CLEARSTREAM** is registered in different countries (*see Table 1 above and Exhibit L of the Complaint*). In addition, the Complainant has never authorized the Respondent in any manner whatsoever to offer the goods and/or services for sale under its registered trademark CLEARSTREAM. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark CLEARSTREAM. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.

- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file any Response till today towards the Complaint. According to the Rules, I have given a fair opportunity to the parties to present their case. Though sufficient time (10 days + 5 days) was offered, the Respondent failed to file any response to the Complaint. Accordingly, the proceedings are set to award *ex parte*.
- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/ submit a Response despite offering sufficient opportunity and time to do so.

## **6. Issues in the Dispute**

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name



has submitted to the mandatory arbitration proceedings in terms of the Policy, which determines the essential elements for a domain name dispute, which are as follows:

- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?
- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

**Essential Element No. 1:** Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves the comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark CLEARSTREAM in its entirety. In order to assess confusing similarity, it is permissible for the Panel to ignore the country code Top-Level Domain ("ccTLD") ".in". In short, the disputed domain is identical to the Complainant's registered trademark CLEARSTREAM. In addition, the Complainant has furnished sufficient evidence (see **Exhibit L/ Table 1**) in support of its registered trademark CLEARSTREAM, arising out of its use.

Therefore, given the Complaint and its accompanying annexure/ exhibit documents, I am convinced beyond any ambiguity that the disputed domain name is absolutely same/ identical to the Complainants registered trademark CLEARSTREAM. Accordingly, the disputed domain name is identical to Complainant's registered trademark. The complainant has satisfied the first essential element.





**Essential Element No. 2:** Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

Initially, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark CLEARSTREAM for a domain name registration. Besides, it **appears** that the Respondent is an individual. There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the individual/ Respondent has any rights in CLEARSTREAM. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.

Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit a reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with the exhibits and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

**Essential Element No. 3:** Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

The Complainant is the registered owner of the mark CLEARSTREAM. In addition, the panel accepts that the Complainant's mark CLEARSTREAM enjoys world-wide reputation and also has wide presence in the internet and other platforms. At present, due to rapid advancement in information technology services, reputation of marks transcends national borders. In the present case, a simple cursory internet search for the disputed domain name CLEARSTREAM would have disclosed its ownership and its use thereof by the Complainant. Accordingly, a strong presumption arises towards the aspect that the Respondent was very much aware of the existence of the Complainant's mark



CLEARSTREAM at the time of registering the disputed domain name. Therefore, using the same known and registered mark of the Complainant strongly suggests opportunistic bad faith. The fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

## **7. Decision**

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy. In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <CLEARSTREAM.IN> to the Complainant with a request to NIXI to monitor the transfer. This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.



**Maram Suresh Gupta**  
**Sole Arbitrator**

Date: 20<sup>th</sup> June 2023