



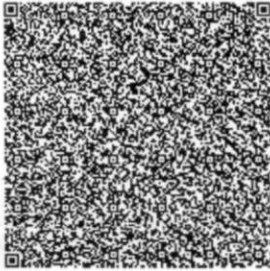
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL94493443500065L
Certificate Issued Date : 05-Dec-2013 01:55 PM
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DL DL-SHCIL86838081257028L
Purchased by : NIKILESH RAMACHANDARAN SO SHRI U K RAMACHANDARAN
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : NIKILESH RAMACHANDARAN SO SHRI U K RAMACHANDARAN
Second Party : NA
Stamp Duty Paid By : NIKILESH RAMACHANDARAN SO SHRI U K RAMACHANDARAN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION CASE NO. 7 OF 2013

IN THE ARBITRATION MATTER OF:-

COLDWELL BANKER LLC, USA

COMPLAINANT

VERSUS

JIAAI , EAC INTERNATIONAL CO. LTD AUSTRALIA

RESPONDENT

AWARD

The present dispute relates to the registration of the dispute domain name <http://www.coldwellbanker.in> in favour of the respondent.

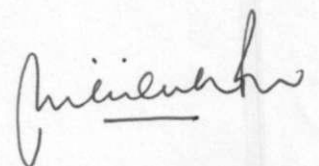
The Complainant has filed the instant complaint challenging the registration of the disputed domain name <http://www.coldwellbanker.in> in favour of the Respondent. In pursuance to Rule 3 of the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant had preferred this arbitration for raising this dispute for redressal of its grievances.

The complainant states that it is the oldest and most established residential real estate franchise system in North America, and it is known as one of the most innovative, forward- thinking real brands today.

The complainant has stated that the trademark/tradename "COLDWELL BANKER" is used worldwide by the complainant as a trademark for carrying out its business. It was further stated that the complainant's association with the trademark "COLDWELL BANKER" dates back to the year 1906 when the complainant has extensively and continuously used the trademark. The complainant has further stated that it also operates the website <<http://www.coldwellbanker.com>> which is accessible around the world and operated the said domain name since 2nd May, 1995.

The complainant had shown various registration with regard to said trademark and have filed list of trademark in para 5 of the complaint and have annexed the document in support of the said trademark.

That the complainant has contended that the disputed domain name is identical to the trademark as well as to the international website URL of the complainant in which the complainant. The complainant has further contended that the respondent's domain name



is bound to create confusion and thus will cause loss of business and reputation to the Complainant.

That the complainant has also urged that the respondent have registered the dispute domain name in bad faith use for promotion of its business and causing loss to the business and reputation of the complainant.

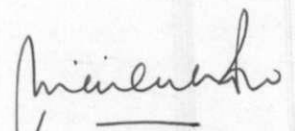
The complainant has averred that the disputed domain name has been registered by the Respondent despite having no affiliation, past or present with the complainant. It has been stated by the complainant that the respondent does not have any legitimate rights or interests in respect of disputed domain.

On the basis of the aforesaid averments and contentions on behalf of the complainant, the complainant has sought remedy that the domain name <<http://www.coldwellbanker.in>> may be transferred to the Complainant.

I entered upon reference regarding the instant dispute on 15th October and a notice dated 28th October was sent to the respondent calling upon for a response to the complaint filed by the complainant. However the respondent after being given ample opportunity to file a reply/ response to the aforesaid complaint failed to do so. Accordingly, the respondent is proceeded ex-parte.

I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the respondent to the complaint, I shall deal with the complaint on the basis of its merits.

Firstly I shall deal with the ground regarding the rights of the complainant vis-à-vis that of respondent's over the disputed domain name <http://www.coldwellbanker.in>. The trademark <COLDWELL BANKER> is a reputed trademark and is used worldwide by the complainant. The complainant has shown its various trademark registration details in India. The complainant has filed various

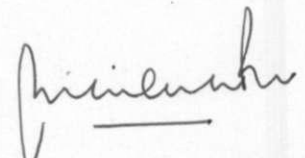


documents regarding registration of the trademark COLDWELL BANKER and the trademarks registered by it under classes 16 and 36.

Since the respondent has failed to file any response to the complaint or appear in the proceedings before me to present his case. Hence the averments made by the complaint and the documents filed as evidence are left un-rebutted.

I have carefully considered the averments and perused the records filed by the complainant. I am of the view that that respondent has no legitimate right over the mark "COLDWELL BANKER". From the averments of the complaint it is amply clear that the trademark adopted in the year 1989 by the complainant is in its entirety part of disputed domain name i.e. <<http://www.coldwellbanker.in>. Hence the respondent's action to register the said domain name is not bonafide as he has no right over the mark "<COLDWELL BANKER>."

Secondly, the respondent has stated that the disputed domain name is identical to the trademark in which the complainant has prior rights and the respondent's domain name is bound to create confusion amongst member of trade and consuming public. It was held in **Satyam Infoway Ltd. V. Sifynet Solutions Pvt. Ltd. [AIR 2004 SC 3540]** that "the use of identical or similar domain name may lead to diversion of users which would 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 web site with an identical name which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner thereby lose their customers." Therefore I am of the



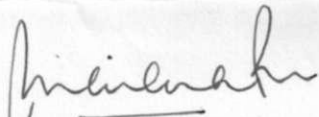
view that the respondent is using the trademark of complainant which is liable to confuse the consumers and will also lead to losses to the complainant. Hence the use of the disputed domain name by the respondent cannot be treated as a fair one.

Thirdly, the respondent has acted in bad faith in respect of domain name as the trademark of the complainant is reputed one and has been using his trademark worldwide for a long time. In **Adidas-Saloman AG V. Domain locations** bearing Case No. D. 2003 0489, it was held that, "the registration of a well known trademark of which the respondent must reasonably have been aware of is in itself sufficient to amount to bad faith". I am of the view that respondent's action suggest that the registration of the domain name has been done by him in bad faith as the use of domain name by the respondent will cause substantial harm to complainant.

Considering the facts and circumstances of the present case and in view of the precedents in this context, I hold that the complainant has proprietary right over the trademark "COLDWELL BANKER". Thus under the facts and circumstances of the present case and on perusal of the records filed by the complainant, I deem it fit and proper to allow the prayer of the complainant in its favour and direct the registry to transfer the said domain name i.e. <http://www.coldwellbanker.in> in favour of the complainant.

Parties to bear their own costs.

Date:- 14.12.2013


(NIKILESH RAMACHANDRAN)
ARBITRATOR