

தமிழ்நாடு தமில்நாடு TAMILNADU

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13 OCT 2016

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor,
No. 90 / 73, Armenian Street,
Chennai - 600 001.

BL 812166
P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L. No. 10 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: **DELHIVERY.IN**

DELHIVERY PRIVATE LIMITED

B-244, Okhla Industrial Area
Phase-1, New Delhi 110 020.

.. Complainant

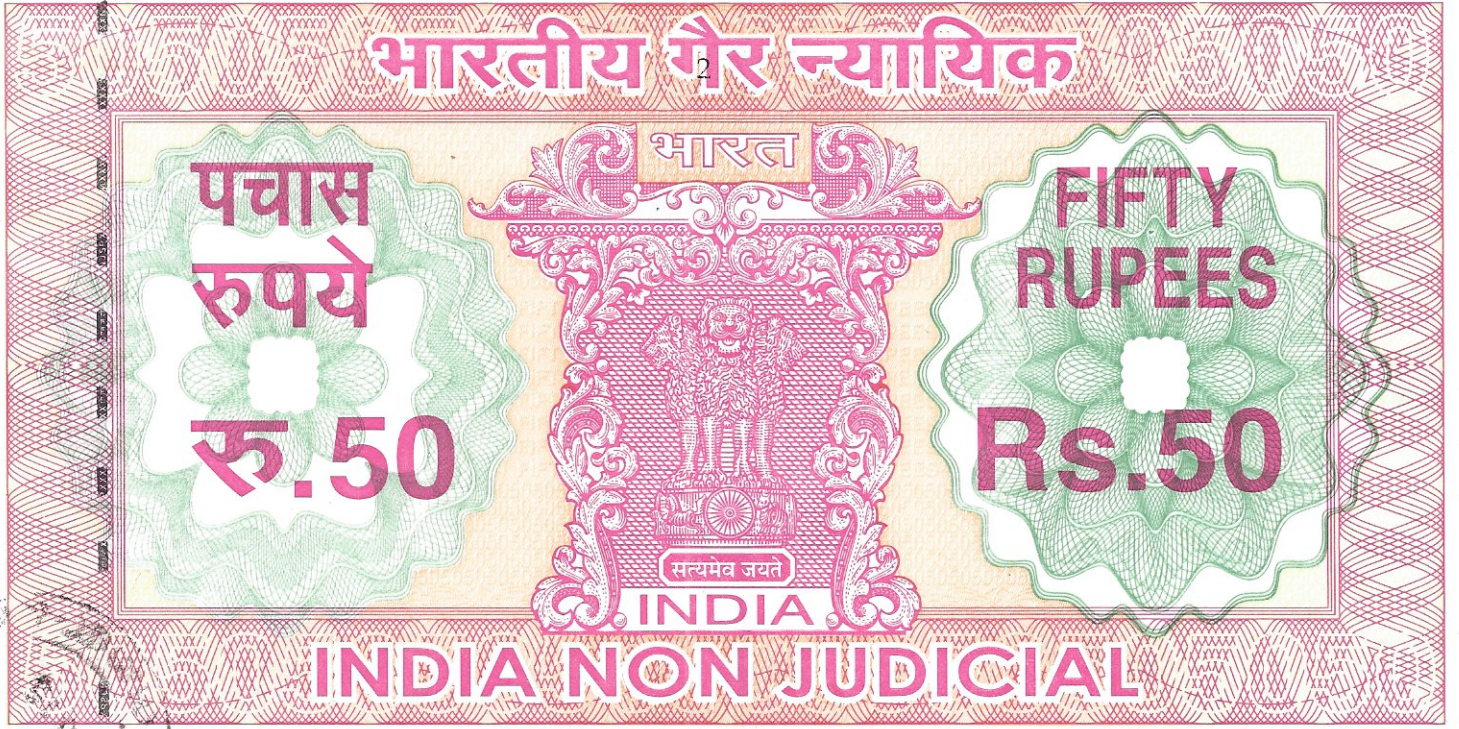
Vs.

ALEX WANG

995, Shangchuan Road
Pudong, Shanghai 210016
China.

.. Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

49802
13 OCT 2016

D. SARAVANAN
Advocate & Arbitrator
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AR 662402
P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L. No: B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

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1. The Parties:

The Complainant is DELHIVERY PRIVATE LIMITED, B-244, Okhla Industrial Area, Phase-1, New Delhi 110020, India, represented by its representative M/s.Yash Associates, Advocates & IP Attorneys, Suite 505, Pearls Business Park, Netaji Subash Place, Pitampura, New Delhi 110 034, India.

The Respondent is ALEX WANG, 995, Shangchuan Road, Pudong, Shanghai 210016, China. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is DELHIVERY.IN. The domain name has been registered with .IN REGISTRY



3. Procedural History:

March 22, 2016	:	Date of Complaint.
September 20, 2016	:	The .IN REGISTRY substituted D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
September 20, 2016	:	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
September 28, 2016	:	.IN REGISTRY sent an email to all the concerned intimating the substitution of arbitrator along with the soft copy of the complaint with annexure to the respondent
October 03, 2016	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
October 14, 2016	:	Due date for filing response.
October 19, 2016	:	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant is DELHIVERY Private Limited, B-244, Okhla Industrial Area, Phase-1, New Delhi-110020, represented by its representative M/s. Yash Associates Advocates & IP Attorneys, Suite 505, Pearls Business Park, Netaji Subash Place, Pitampura, New Delhi-110034, India.



4.2 Complainant's Activities:

The Complainant states *inter-alia* that they provide preeminent e-commerce services, other commerce services, fulfilment & Logistics and Unified Platform for outstanding buyer services under the mark/label 'DELHIVERY'. They further claim that their services in India is hugely popular and currently they operate in more than 350 Indian cities with a team size of more than 15000. They further claim that huge investments are made by reputed Companies in their Company and it has attained an enviable goodwill and incessant reputation by virtue of marketing and advertising in various forms of media such as print, internet, magazines, etc. In the course of time, Complainant Company has established global business and 'DELHIVERY' was established as a well known trademark which is an extremely valued Intellectual property.

4.3 Complainant's Trading Name:

The Complainant states *inter-alia* that it is the prior adopter, user and registered owner of the trademark DELHIVERY; the Complainant Company was previously been operated under the name SSN Logistics Pvt. Ltd and later changed to DELHIVERY Pvt Ltd with effect from 08.12.2015. ; they are using the trademark 'DELHIVERY' since 2008; they are also the owner of a number of domain names, such as, www.delhivery.com, www.delhivery.io, www.delhivered.com, www.delhivery.me, www.delhivery.net, www.delhivery.org, www.delhivery.pw, www.delhivery.rest, www.delhivery.asia, www.delhivery.eu, and www.delhivery.co which support their dedicated and official websites for its consumers and other visitors. The first of which www.delhivery.com was created on 16.03.2011. The website was used for services like Advertising, Business management, Business Administration, Office functions of Logistics and Cargo services.

4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Alex Wang who has registered the domain name delhivery.in but he is not offering any goods/services under the



same and the Complainant has also not authorized or licensed the domain name to him. As per the WHOIS record, the Respondent is based in China.

5. Dispute

The Complainant had the domain names DELHIVERY.COM and other domain names with the mark DELHIVERY but when they intended to register the domain name DELHIVERY.IN they were shocked to see that the respondents have already registered the same with sole purpose of blocking the Complainant from registering the said domain in its name and selling/transferring the same for excessive consideration. The respondent clearly establishes misuse of the Complainant's domain name and 'ride on coattails' of the Complainant by selling similar services of the Complainant.

6. Parties contentions:

A. Complainant:

(i) The domain name www.delhivery.in is identical or confusingly similar to the Complainant's trademark:

The Complainant states that the Respondent's impugned domain name is identical to and comprises in entirety the Complainant's well known trademark, DELHIVERY. It is submitted by the Complainant that the Respondent has registered the domain name DELHIVERY.IN on 30.09.2013 whereas Complainant's earliest DELHIVERY.COM was created on 16.03.2011 and its mark DELHIVERY dates back to April 2008 in India. The Complainant has filed the application of registration of the trademark DELHIVERY 06.09.2011 and thus the use of DELHIVERY.IN by respondents is identical to that of the Complainant.

(ii) The Respondent has no rights or legitimate interest in the domain name DELHIVERY.IN:



The Complainant states that the domain name www.delhivery.in was registered by the Respondent on 30.09.2013; at this time, the Complainant had already made use of mark/domain names DELHIVERY as a trade mark; Complainant had also registered the domain name www.delhivery.com on 16.03.2011 and enjoys considerable reputation in the mark and domain name; the Respondent does not have any active business in the name DELHIVERY; the Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademarks in any manner; the mark/domain name "DELHIVERY" was used extensively and continuously by the Complainant and hence established a well known trademark associated only with the Complainant and no one else; the mark was used since 2008 and also there were numerous trademark applications filed under the same name to be registered in due course of time; the Respondent is acting mala fide to have unfair advantage, tarnishing the goodwill and reputation enjoyed by the Complainant and diluting the distinctive character of their well known mark and the domain name. The Complainant asserts that they have not authorized or licensed any one to use its mark.

(iii) The domain name was registered and is being used by the Respondent in bad faith:

The Complainant states that at the time of registration of the domain name by the Respondent i.e. on 30.09.2013 the Complainant's name/mark 'DELHIVERY' and domain name www.delhivery.com was well-known; the Complainant is the prior user of the mark/name DELHIVERY and prior owner of domain name registration www.delhivery.com; the Respondent is not carrying out any legitimate business activities through the domain name and has many other inactive domain names; the Complainant has already established that several gTLDs comprising DELHIVERY are owned and managed by them and the Respondent with mala fide intention is aiming to make undue gains; the conduct of the Respondent infers that he with mala fide intention attracts internet users to his website by creating likelihood of confusion of the well known mark and their domain name.



B. Respondent:

The Respondent, in spite of notices dated 30th April, 2016, 12th May, 2016 and 3rd October, 2016 and default notice dated 19th October, 2016 did not submit any response.

6. Discussion and Findings:

The Complainant must prove each of the following three elements of its case:

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

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "DELHIVERY" in India; it owned the domain name www.delhivery.com and various other domain names with that mark. The Tribunal finds from Annexure D that the Complainant has registered the domain name DELHIVERY prior to the Respondent. Thus, this Arbitral Tribunal finds that the disputed domain name <delhivery.in> is identical or confusingly similar to that of the Complainant's mark.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy and Para 3(b)(vi)(I).



(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "DELHIVERY". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) Registration and Use in Bad faith:

i) **Annexure M** proves that the Respondent is not operating an active website in the impugned domain name. In the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a mala fide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

ii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name **<DELHIVERY.IN>** be transferred to the Complainant.


D. SARAVANAN
Sole Arbitrator

19th October, 2016
Chennai, INDIA.