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BEFORE SMT. DEEPA GUPTA, sole ARBITRATOR  
OF  
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

In the Matter of:

Dated: 03/03/2012

Flip Kart Online Services Private Limited  
Jigna Karnick  
Company Secretary  
1<sup>st</sup> Floor, No. 447/C, 1<sup>st</sup> A Cross,  
12<sup>th</sup> main, 4<sup>th</sup> Block,  
Opp. BSNL Telephone Exchange,  
Koramangala, Bangalore-560034

Complainant

VS

Azeem Ahmed Khan  
4228/1, Second floor  
Ansari Road, Daryaganj  
Delhi-110002

Respondent

**1. The Parties :**

Complainants are Flip Kart Online Services Private Limited, 1<sup>st</sup> Floor, No. 447/C, 1<sup>st</sup> A Cross, 12<sup>th</sup> main, 4<sup>th</sup> Block, Opp. BSNL Telephone Exchange, Koramangala, Bangalore-34

Respondent is Azeem Ahmed Khan, 4228/1, 2<sup>nd</sup> Floor, Ansari Road, Daryaganj, Delhi-110002

**2. The Dispute:**

The domain name at issue is < flipcart.in > (the domain name)

The registrar is NIXI at Incube Business Centre, 38 Nehru Place, New Delhi





### 3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 28/06/2011 and the respondent did not submit his reply at all.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter.

It is alleged in the complaint that the complainant has a origination since Year 2009 and is using this name since year 2009. Complainant also has domain registration under the name and style of flipkart.com. It is also revealed from the filed documents that the complainant through this website operate an online store for selling books, movies, music, games, consoles, mobiles, accessories and other B2B E-Commerce. The Website is well known among the members of the public. It is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

Respondent has not submitted any answer in the matter.

### 4. **Complainant's contention's:**

Factual and Legal Grounds

Complainant alleges:-

- a. That the Domain name is identical to a trademark in which the complainant has rights and Complainant has registered trademark in 'Flipcart' , The trademark is in use by 'Flipkart' Online services Private Limited. And By virtue of long continuous use, extensive publicity, acquired distinctiveness, reputation. Goodwill, in the said trademark. That complainant also has domain registration under the name and style of flipkart.com. Through this website it operates an online store for selling B2B E-Commerce. The Website is well known among the members of the public all over the world.

- b. That the Respondent has no rights or legitimate interests in respect of the domain name.

That Respondent as an individual, business, or other organization has not been commonly known by the domain name before taking over the domain.

- c. That the domain name registered and being used in bad faith.

That the domain name registered by Responded is purely for the purpose of sale, It also infringes the trademark of complainant ( Details attached in Annexure)

That word Flipcart.in the domain name is being used in bad faith and it also affects goodwill of the Complainant.





## B. Respondents Contentions

Not responded at all.

### 5. Opinion:

#### I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
  2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
  3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint -

This tribunal is of confirmed opinion that the Complainant has origination since Year 2007 and is using the name Flipkart since year 2007 and has made sincere efforts to promote the brand name Flipkart by consuming various resources available at his end and word 'Flipkart' has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the country and a prominent place in electronic media. That trade mark ' Flipkart ' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in India as attached in the Annexures submitted.

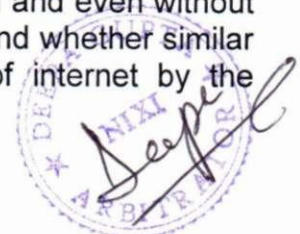
On the basis of the records submitted by the complainant it's proved that the domain name 'flipcart.in' is related to the business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name 'Flipkart'.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark. More so if the case is pronunciation of two different spellings being similar, Flipkart and Flipcart.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the





Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale. It profusely empowers Complainant with the First right to the domain name bancaintesa.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he has been is in the business of B2B E-Commerce etc since the year 2007. That complainant Flipkart Online Services P Ltd offers a wide range of products over the length and breadth of the Nation. That the complainant Flipkart Online services P Ltd has service marks registered with the Trade mark Office at different registrations.

That the Respondent has not been commonly known by the domain name. That Respondent has no relationship with or permission from the complainant for use of its marks. That Respondent cannot have ignored the fact that Flipcart.com is a registered and protected trademark of the Complainant.

Complainant is well-known with its trademark .The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

Respondent's aim is to make a illegitimate, commercial gain, unfair use of the <flipcart.in> domain name, with intent to misleadingly divert consumers or to tarnish the FLIPKART trade/service mark. It is very clear that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the products and services provided by the Complainant make this complaint a plausible case of action.

## **II. Domain name hijacking**

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder , the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of



name and its dummy parking for sale through direct or indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

### **III. Conclusion**

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name flipcart.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 25000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 03<sup>rd</sup> day of March 2012.



**Deepa Gupta**  
Arbitrator