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ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF
INDIA**

**.IN domain Name Dispute Resolution Policy
INDRP Rules of Procedure**

IN THE MATTER OF:

1. Franklin Resources, Inc.
One Franklin Parkway,
San Mateo, CA 94403-1906,
United States of America
2. Franklin Templeton Asset Management(India) Private
Ltd.,
Level 4, Wockhardt Towers,
Bandra Kurla Complex,
Bndra (East),
Mumbai- 400 051.

.....COMPLAINANTS

VERSUS

Mr. David,
Dlugitch,
P.O. Box No. 4661,
Florida 33041, USA

RESPONDENT

1 **The Parties:**

The Complainants are:-

1. Franklin Resources, Inc. One Franklin Parkway,
San Mateo, CA 94403-1906, United States of
America and
2. Franklin Templeton Asset Management(India)
Private Ltd.,
Level 4, Wockhardt Towers,
Bandra Kurla Complex,
Bndra (East),
Mumbai- 400 051.

The Respondent is Mr. David, Dlugitch, P.O. Box
No. 4661, Florida 33041, USA

2. **The Domain Name and Registrar**

The dispute domain name

www.franklintempleton.in is registered with
#1 Indian Domains dbaMITSU.IN.

3. **Procedural History**

The Complaint was filed with the .In Registry,
National Exchange of India (NIXI), against Mr.
David, Dlugitch, P.O. Box No. 4661, Florida 33041,
USA. The NIXI verified that the Complaint together
with the annexures to the Complaint and satisfied
the formal requirements of the .in Domain Name
Dispute Resolution Policy ("The Policy") and the
Rules of Procedure ("The Rules").

- 3.1 In accordance with the Rules, Paragraph-2(a) and
4(a), NIXI formally notified the Respondent of the
Complaint and appointed me as a Sole Arbitrator
for adjudicating upon the dispute in accordance
with The Arbitration and Conciliation Act, 1996,
Rules framed thereunder, .in Dispute Resolution
Policy and Rules framed there under on 9th
December, 2008, The parties were notified about



the appointment of Arbitrator on 11th December, 2008.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 11th December, 2008, In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response,

3.3 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within stipulated time of 10 days as was granted to him under the notice by e-mail dated 11th December, 2008. The Respondent was again granted final opportunity to file its response within 7 days time commencing on 24th December, 2008. The Respondent, however, did not file any reply to the Complaint filed on behalf of the Complainant.

3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.5 The present award is passed within the period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.



4. **FACTUAL BACKGROUND**

4.1 The Complainants in these administrative proceedings are (i) Franklin Resources, Inc. One Franklin Parkway, San Mateo, CA 94403-1906, United States of America and (ii) Franklin Templeton Asset Management (India) Private Ltd., Level 4, Wockhardt Towers, Bandra Kurla Complex, Bndra (East), Mumbai- 400 051.

The Complainant requests arbitration proceedings

in accordance with the Arbitration and Conciliation Act, 1996, .in Dispute Resolution Policy and rules framed thereunder and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be fit and applicable to the proceedings.

4.2 The Complainant No. 1 i.e. Franklin Resources ,

Inc. is a corporation organized and existing under the laws of the State of Delaware, of One Franklin Parkway, San Mateo, CA 94403-1906, United States of America.

4.3 The Complainant No. 2 i.e. Franklin Templeton

Asset Management (India) Private Ltd. (FTAMIL) trades its origin/ownership to Complainant No. 1 through various subsidiaries/affiliates of Franklin Resources, Inc. and is registered with Securities and Exchange Board of India to act as an Investment Manager of the various schemes of Franklin Templeton Mutual Fund and also to provide portfolio management services to various individual and institutional clients. The Complainant No. 2 was originally known as Templeton Asset Management India Pvt. Ltd. and was incorporated with the Registrar of Companies,



Mumbai on October 6, 1995. Subsequently, it changed its name to Franklin Templeton Asset Management India Pvt. Ltd. on March 15, 2004.

- 4.4 The predecessors of Complainant No. 1 and its subsidiaries have been engaged in the investment management and fund administration services since the year 1947 in the U.S.A. The Complainant No. 1 was incorporated in the year 1969 and originated its mutual fund business with 'FRANKLIN' family of funds. They expanded their business, in part, by acquiring companies engaged in the investment management and/or related services business.
- 4.5 The Complainant No. 1 through wholly owned direct and indirect subsidiaries around the world provides diversified investment management and fund administration services; sponsored investment products and banking/financial services. It offers, inter alia, sponsored investment products, i.e. a comprehensive range of investment choices including domestic and global/international equity, hybrid, fixed-income, real estate and money market mutual funds as well as other investment products, which are sold to the public under the TEMPLETON', 'FRANKLIN', 'MUTUAL SERIES', BISSETT', 'FIDUCIARY TRUST', and 'DARBY' brand names.
- 4.6 In India, Complainant No. 1 's operations are being carried on primarily through the Complainant No. 2, It is submitted that Complainant No. 1's entry into the India was marked with the launch of the TEMPLETON INDIA GROWTH FUND' in the year 1996, and since then, the business has grown at a steady pace. With a variety .of successful investment



schemes under the mark(s)/name(s) TEMPLETON' and/or 'FRANKLIN' on account of Complainants' expertise in asset management and diversified investments in a wide range of sectors, Franklin Templeton Asset Management (India) Pvt. Ltd. today ranks amongst the top fund housed in India.

4.7 The Complainant asserts that 'FRANKLIN

TEMPLETON' forms part of the corporate name of several of several subsidiaries/affiliates of Complainant No. 1 and serves as the principal trade mark and domain name. With a view to protect their trade mark/trade name/domain name 'FRANKLIN TEMPLETON', the Complainants have obtained trade mark registrations for the same in numerous countries of the world including India. A list of worldwide registrations for the trade mark 'FRANKLIN TEMPLETON' in the name of the Complainant/their affiliates/subsidiaries has been annexed to the Complaint. The Complainant has also filed copies of the certificates of registration in respect of the Complainant's trade mark/name 'FRANKLIN TEMPLETON' from few jurisdictions such as Australia, Canada, CTM, New Zealand, the UK, the USA and the WIPO.

4.8 In India, the Complainant No. 2 is the proprietor of

the trade marks 'FRANKLIN', 'TEMPLETON' as well as 'FRANKLIN TEMPLETON' as detailed in the list produced hereinbelow:

No.	Trade Mark	Registration No./Date	Classes	Goods	Status
1.	FRANKLIN	779431	.16	Paper, printed matter, stationery, etc.	Renewed up to November 24, 2017



2.	FRANKLIN TEMPLETON	779432 dated November 24,1997	16	Paper, printed matter, stationery, etc.	Renew cd up to Novem ber 24, 2017
3.	FRANKLIN MUTUAL SERIES	1248878 dated November 11, 2003	36	Financial and investment management services and administration, advisory, analysis, consultation, record keeping and information services relating thereto, mutual fund investment services, transfer agent services, investment underwriting services, securities brokerage services, investment trust services, issue and administration of life insurance and annuity contracts, reinsurance of life insurance and annuity contracts of other licensed insurers, administration of investment accounts which fund the benefits underlying life insurance and annuity contracts.	Renew ed ur. to Novem ber 11, 2017
4.	FRANKLIN	1248879 dated November 11,2003	36	Financial and investment management services and	Renew cd up to Novem

				administration, advisory, analysis, consultation, record keeping and information services relating thereto, mutual fund investment services, transfer agent services, investment underwriting services, securities brokerage services, investment trust services, issue and administration of life insurance and annuity contracts, reinsurance of life insurance and annuity contracts of other licensed insurers, administration of investment accounts which fund the benefits underlying life insurance and annuity contracts.	ber 11, 2013
5.	TEMPLETON	124880 dated November 11, 2003	36	Financial and investment management services and administration, advisory, analysis, consultation, record keeping and information services relating thereto, mutual fund	Renewed up to November 11, 2013

				investment services, transfer agent services, investment underwriting services, securities brokerage services, investment trust services, issue and administration of life insurance and annuity contracts, reinsurance of life insurance and annuity contracts of other licensed insurers, administration of investment accounts which fund the benefits underlying life insurance and annuity contracts.	
6.	FRANKLIN TEMPLETON	124881 dated November 11, 2003	36	Financial and investment management services and administration, advisory, analysis, consultation, record keeping and information services relating thereto, mutual fund investment services, transfer agent services, investment underwriting services, securities brokerage services,	Renewed up to November 11, 2013

				investment trust services, issue and administration of life insurance and annuity contracts, reinsurance of life insurance and annuity contracts of other licensed insurers, administration of investment accounts which fund the benefits underlying life insurance and annuity contracts.
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4.9 The Complainant has obtained top level domain names registrations for franklintempleton.com, franklintempleton.com, templeton.com, templetoncapital.com, franklintempleton-investments.com, franklintempletonindia.com, franklintempletonacademy.com, franklintempletonbank.com, franklintempletonfunds.com, franklintempletongroup.com, franklintempletoninternational.com etc. The Complainant has also obtained country level domain names (ccTLD) in numerous countries of the world such as franklintempleton.co.il, franklintempleton.co.uk, franklintempleton.com.au, franklintempleton.com.sg, franklintempleton.fi, franklintempleton.de, franklintempleton.cs, franklintempleton.fr, franklintempleton.eu, franklintempleton.ru, franklintempleton.nu, etc. The Complainant has filed list of domain names comprising 'FRANKLIN TEMPLETON', owned by them.

4,10 The Respondent did not disputed any of the contentions as have been raised by the Complainant in its Complaint regarding the transfer of domain name FRANKLINTEMPLETON.IN to the Complainant.

5. Parties Contentions

A Complainant

5A(1) The Complainant submits that Respondent had registered the domain name FRANKLINTEMPLETON.IN and has provided WHOIS records and print outs as evidence. The Complainant further submits that the Respondent has parked the domain on sedo.com and has put the domain for sale. He further submits that the Respondent has 'Offer Description' of domain names as under:-

"Offer Description

If you know mutual funds, then you know Franklin Templeton.

This domain is a bedrock name for the financial industry.

Plus, their India mutual fund is very popular in India and throughout the world.

This domain will be a very visited website with heavy traffic-much

from type-ins from the 1.2 Billion residents of India.

Don't miss you opportunity to get this valuable domain"

5A(2) The Complainant submits that the Respondent has provided links to websites offering information on other mutual funds investments which may be their competitors.



The Complainant has filed the print outs from the impugned website of the Registrant as an annexures to the Complaint.

B Respondent

The Respondent has been given two opportunities to file its response to the Complainant by the panel by its notice dated 11th December, 2008 and 24th December, 2008.

The Respondent has failed and/or neglected and/or omitted to file any response to the Complaint filed by the Complainant.

6 Discussions and Findings

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .in Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstances, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub Section 3 of Section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the

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manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 Under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the reliefs claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.

The Complainant has filed evidence by way of Annexure A to S with the Complaint,

The Respondent has not filed its reply or any documentary evidence.

6.5 The onus of proof is on the Complainant. As the proceedings is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the



Complainant's legitimate right, interest and title in the trade mark, trade name and domain name FRANKLIN TEMPLETON and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the annexures filed by the Complainant along with the Complaint

6.6 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted,

6.7 The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs. Dwarika Prasad -AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (see Section 58 of the Indian Evidence Act, 1872).

6.8 The Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law. The Complainant has provided the WHOIS record for the domain name FRANKLIN TEMPLETON.IN to the Panel as annexure to the Complaint details whereof are as follows:-

Name: Mr. David

Address; Dlugitch, P.O. Box No. 4661,
Florida 33041, USA

Phone: -- +305.5551212

E-mail: — southernmost@gmail.com

6.9 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be

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limited to the cancellation or transfer of domain name registration to the Complainant

6.10 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled;

(i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the domain names; and

(iii) the domain names have been registered and are being used in bad faith.

That being so, the Panel will now proceed to examine if the Complaint has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A, Identical or Confusingly Similar

6A.1 The Complainant is the owner of trade mark/name FRANKLIN TEMPLETON around the world mainly covering services relating to Mutual Funds Investment, Portfolio Management Services, Investment Management and Asset Management Services,

6A.2 It is not dispute that the Complainant holds registration of the trade mark FRANKLIN TEMPLETON in India and around the world.



6A.3 The Complainant submits that the impugned domain name FRANKLINTEMPLETON.IN is identical to its following domain names:

S. No.	Complainant's domain names	Registrant's domain name
1,	<u>franklin-templeton.com</u> ,	franklin templeton. in
2.	<u>franklintempleton.com</u> ,	
3.	<u>franklintemplctonindia.com</u>	
4,	<u>franklintempleton.co.il</u>	
5.	franklintempleton. <u>com.au</u>	
6.	<u>franklintempleton.co.uk</u>	
7.	<u>franklintempleton.com.sg</u>	
8,	Franklintempleton- <u>investment.com</u>	
9.	<u>Franklintempletonacademy.com</u>	
10.	<u>franklintempleton.de</u>	
11	franklintempleton.eu	
12.	<u>franklintempleton.fi</u>	
13.	<u>franklintempleton.fr</u>	
14.	<u>franklintempleton.es</u>	
15.	franklintempleton.ru	

Note: the said list is illustrative and not exhaustive

The same is not disputed by the Respondent.

6A.4 The Respondent has thus failed to prove the first element of establishing the Complainant rights in the trade mark /service mark FRANKLINTEMPLETON.

B. Rights or Legitimate Interests

6B.1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:



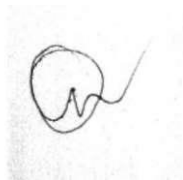
(i) before any notice to the Registrant of the dispute, the Registrant use of, or demonstrate preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

(ii) the Registrant (as an individual, business, or other organization) have been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or

(iii) the Registrant is making a legitimate noncommercial 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.

6B.2 The impugned domain name has been parked at

www.sedo.com for sale. Sedo is a well-known site for selling domains. Sedo's [JSP is that it allows Registrants to simply place their domain names at its website for sale. Sedo further facilities Registrants by providing targeted ad links which give a 'flavour' to the interested buyer as to the kind of domain name that is on offer. The Registrant herein is not offering any goods/services of his own under the domain name franklintempleton.in. In fact, the website simply lists out various mutual funds being offered by the Complainants alongwith links to the websites of entities that are in the same line of business as that of the Complainants. Therefore, by no stretch of imagination can be Registrant demonstrate any use relating to bona fide offering of goods or services before any notice of this dispute or at any point in time whatsoever.

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The Registrant has used the picture of Benjamin Franklin on its website. This is in fact a trade mark of the Complainants. Further, the Registrant has even acknowledged rights of the Complainants. It is submitted by the Complainant that in the global investment arena both the 'FRANKLIN' and 'TEMPLETON' mutual funds have been active for more than half a century. Further, due to the continuing use of 'FRANKLIN TEMPLETON' as a trade mark/name since 1992, the said mark/name is distinctive of the Complainants' products and business and is associated with them alone. On the other hand, the Registrant registered the impugned domain name only recently on February 27, 2008. Therefore, it is crystal clear that the Registrant is not known by the said domain name.

The Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name. Merely listing the funds being offered by the Complainants alongwith links to the websites of Complainants' competitors who are in the same line of business cannot come under the definition of 'bona fide use'. The same is aimed to gain mileage from the immense goodwill and reputation of the Complainants' trade mark(s) thereby creating a dent in their business. Also, by narrating the business profile of the Complainants and parking the impugned domain name on sedo.com, the Registrant is actually attempting to sell the impugned domain name at a higher price. Thus, the Registrant is indulging in (i) "unfair use of the domain name with an intention to reap profits therefrom" (ii) "misleading/diverting" customers to the Complainants' competitors' websites" and (iii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade mark 'FRANKLIN TEMPLETON'.

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6B.3 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent.

6B.4 The Panel, therefore holds that the circumstances listed above demonstrates rights or legitimate interests of the Complainant in the domain name FRANKLINTEMPLETON.IN and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name.

C Registered and used in Bad Faith

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy slates circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of our documented out-of-pocket costs directly related to the domain name; or
- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a



corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has


intentionally attempted to attract, Internet users to the Registrant website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Registrant has registered the impugned domain

name 'franklintempleton.in' with the sole purpose of selling/transferring the same for excessive consideration. The said objective is evident from the fact that the impugned domain name has been parked at www.sedo.com, a well-known website for selling domain names to interested parties. Further, the Registrant through the said website trumpets the advantages associated with the impugned domain name, thereby soliciting the visitors to buy the impugned domain name (see 'Offer Description' at www.sedo.com. **Annexure-N**). Thus, the said act by the Registrant clearly establishes (mis)use of Complainants' registered and well-known trade mark (s)/name(s) 'FRANKLIN TEMPLETON' to gain illegal benefits.

(i) The Registrant registered the impugned domain

name knowing fully well of Complainants' goodwill/reputation as well as their worldwide registration vesting in the trade mark/s, trade name/s and domain name/s comprising 'FRANKLIN TEMPLETON'. Thus, the registration of the domain name by the Registrant has resulted in



the Complainant being prevented from reflecting the trade mark(s)/name(s) 'FRANKLIN TEMPLETON' in a corresponding domain name with the INRegistry which is presently in the name of the Registrant. The Complainants have already established that they own and manage several ccTLDs comprising 'FRANKLIN TEMPLETON'.

(ii) The Registrant's website has been constructed in a manner so as to portray an association/affiliation with the Complainant. The Registrant has even posted the photograph of Mr. Benjamin Franklin, one of the founding fathers of the USA, which forms part of the website/trade marks/printed materials of the Complainants. Further, the confusion is further enhanced by the presence of links to the websites of Complainants competitors. Thus, the conduct of the Registrant amply proves it's mala fide to attract internet users to its website by creating a likelihood of confusion with the Complainants name(s) or mark(s) as to the source, sponsorship, affiliation, or endorsement of the Registrant's website and/or of a product/service on the Registrant's website Further, internet users desirous of accessing the Complainants website may get diverted to the impugned website, thereby creating confusion in their minds.

6C.4 The Respondent docs not dispute any of the contentions raised by the Complainant,

6C.5 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **Decision**

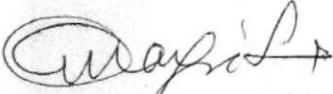
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In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the Respondents to:-

a) Transfer the domain name

FRANKLINTEMPLETON.IN to the Complainant.

b) Pay the cost of proceedings fixed at Rs. 25,000 to the Complainant.


AMARJIT SINGH 15/1/2009
Sole Arbitrator