



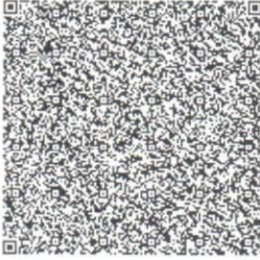
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL38316113424944M
Certificate Issued Date	: 27-Mar-2014 10:59 AM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SHCIL73888538200646M
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: NA
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
Flat No. 6B, 6th Floor, Uppals M6 Plaza,
Jasola District Centre,
New Delhi – 110 025

Icreon Communications Pvt. Ltd. v. Navneet Kaushal

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Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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AWARD

1. The Parties

The Complainant is Iceon Communications Pvt. Ltd. Development Center 1, 68 AD, Noida SEZ, Noida Phase II, U.P. 201305

The Respondent is Mr. Navneet Kaushal, onlineNIC Inc., Los Angeles - 94116, United States of America. The e mail ID of the Registrant is Elizabeth.Garfield@gmail.com.

2. The Domain Name and Registrar

The disputed domain name is <iceon.in>. The said domain name is registered with Online NIC .

The details of the disputed domain name are as follows:

- (a) Domain ID : D575762-AFIN
- (b) Date of creation : 16th February 2005
- (c) Expiry date : 16th February 2015

3. Procedural History

- (a) A Complaint was filed with the National Internet Exchange of India. The Complaint as filed before the National Internet Exchange of India contained typographical errors. Hence, it was returned to the Complainant for correction of errors. Thereafter, the corrected Complaint was filed in May 2014.
- (b) The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Exhibit F. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (c) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on 13th May 2014. The arbitrator finds



that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (d) In accordance with the Rules, on 15th May 2014 the Sole Arbitrator tried to formally notify the Respondent of the Complaint. The Arbitrator found that the Respondent has mentioned "elizabeth.garfield@gmail.com" as the e-mail address. Efforts were made to communicate a copy of the Complaint to the Respondent on this e mail address. However, the said attempt failed.
- (e) Similarly, the Respondent has given the postal address as "Mr. Navneet Kaushal, onlineNIC Inc., Los Angeles - 94116, United States of America. This address is also incomplete. Hence, it has not been possible for the Arbitrator to communicate the Complaint to the Respondent and seek his reply to the Complaint. Therefore, the case has to proceed ex-parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company existing under the corporate laws of India. Earlier it was known as Indicom Communication (P) Ltd. The Complainant is in existence since 2000. According to the Complaint, the Complainant provides customized process-driven software solutions and technology solutions for clients.

The Complainant is providing services in the United States of America, India and the United Kingdom. The customers of Complainant include National Geographic Channel, Kenya Airways, Fox Movies, Nokia Siemens Network, etc.

According to the Complaint, since its inception the Complainant has adopted ICREON as trade name as well as trademark.

Respondent's Identity and Activities

The Respondent could not be contacted. Hence, the Respondent's activities are not known.



5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that it is one of the leading companies providing technology solutions to various customers. The trademark "ICREON" of the Complainant is registered in some countries including India since 2006. In India the said trademark is registered in Class 42, that is, "Software Development, Website Design and Development, E Commerce and Internet Applications, Network Security Consulting, Corporate Presentations, Web Hosting, Graphic Design Services".

The Complainant is the owner of a number of domain names incorporating the word "ICREON". Some such domain names are <www.icreon.com>; <www.icreon.co.uk>; <www.icreon.org>, <www.icreonglobal.com>; <www.icreontech.com>, <www.icreon.us>; <www.icreon.net>; <www.icreon.mobi>; <www.icreon.asia>, etc. They have been in use since 2003. Therefore, the Complainant is well known to its customers as well as in business circles as ICREON all around the world.

The Complainant has contended, based on the decision of the Hon'ble Supreme Court of India, that in recent times, the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for ICREON products in India or elsewhere would mistake the disputed domain name as of the Complainant.

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "icreon". The name of the Registrant/Respondent is Mr. Navneet Kaushal. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and



misleading the general public.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.icreon.in> by the Respondent/Registrant is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

In support of its contentions, the Complainant has relied on the decisions in the cases of *Bayer Aktiengesellschaft v. Henril Monsse*, WIPO Case No. D2003-0275; *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, and *HSBC Holdings plc v. Hooman Esmail Zadeh*, Case No. 2/5/R2 (March 24, 2007). In these cases it has been held that the Respondent’s passive holding of the disputed domain name does not create any rights or legitimate interests and it is an evidence of bad faith registration and use of the domain name. .

B. Respondent

The Respondent could not be contacted. Hence, the Respondent’s contentions are not known.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used or adopted in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The 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 interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

As per the whois information, the Respondent has created the disputed domain name <www.icreon.in> on February 16, 2005. The expiration date is February 16, 2015. Thus, the Registrant/Respondent has owned the disputed domain name for the last about 9 years. The Complainant has not offered any explanation as to why any action was not taken against the Registrant/Respondent for all these years.

According to the information submitted by the Complainant, the Complainant is the owner of trademark ICREON. The trademark ICREON is registered in certain countries.

The present dispute pertains to the domain name <www.icreon.in>. The Complainant possesses a large number of other domain names with the word “icreon” as indicated above. The Complainant is also the owner of trademark “icreon”. Most of these domain names and the trademark have been created by the Complainant much before the date of creation of the disputed domain name by the Registrant/Respondent. The disputed domain name is very much similar or identical to other domain names and the trademark of the Complainant.

Therefore, I hold that the domain name <www.icreon.in> is confusingly similar or identical to the Complainant's marks.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:



- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable 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; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate non-commercial 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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Registrant/Respondent has no rights or legitimate interests in the disputed domain name.

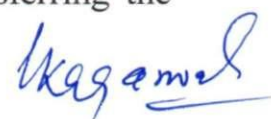
Icreon Communications Pvt. Ltd. is the name of the Complainant. The Respondent is known by the name of Mr. Navneet Kaushal. It is evident that the Respondent can have no legitimate interest in the aforesaid disputed domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Registrant/Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 documented out of pocket costs directly related to the domain name; or

- (ii) The Respondent 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 it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. The Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. The Complainant has contended that the Registrant/Respondent also belongs to India. However, the complete address of the Registrant/Respondent could not be found and the e mail address mentioned in the WHOIS record is also not correct. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

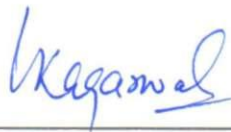
Therefore, I conclude that the domain name was registered and used by the Registrant/Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in

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respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.icreon.in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: 23rd June 2014