



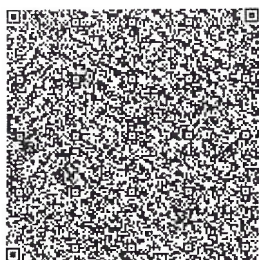
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL58548557060399Q
Certificate Issued Date	: 31-Jul-2018 01:16 PM
Account Reference	: IMPACC (IV)/ dl839103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83910321245024903292Q
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



.....Please write or type below this line.....

NATIONAL INTERNET EXCHANGE OF INDIA  
6C, 6D, 6E, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110 001

Indeed Inc., v. Dinesh Sarang

*V K Agarwal*

**Statutory Alert:**

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

## AWARD

### 1. The Parties

The Complainant is M/s Indeed Inc., 6433, Champion Grand Way, Building 1, Austin, Texas – 78750, United States of America

The Respondent is Mr. Dinesh Sarang, Indeed, SCO 200, Sector 21, Chandigarh – 160017, India

### 2. The Domain Name and Registrar

The disputed domain name is <www.indeedjob.ind.in>. The said domain name is registered with the Registrar – Godaddy.com LLC, Scottsdale, AZ.

The details of registration of the disputed domain name (as per Annexure 2 to the Complaint) are as follows:

- (a) Domain ID : D2414400000005946988 – AFIN
- (b) Date of creation : April 25, 2018
- (c) Expiry date : April 25, 2019

### 3. Procedural History

- (a) A Complaint dated July 06, 2018 has been filed with the National Internet Exchange of India. 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 Annexure 2. 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.

(b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

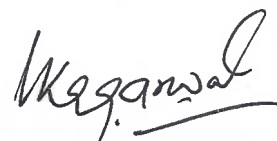
(b) In accordance with the Policy and the Rules, an attempt was made by the National Internet Exchange of India through courier to notify the Respondent about the Complaint. However, the courier informed that the Respondent is not available on the given address and that the address is wrong/incomplete. The new address of the Respondent is not known. Therefore, the Complaint could not be served on the Respondent. Hence, the present proceedings have to be 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 and incorporated according to the laws of the United States of America. According to the Complaint, the Complainant is engaged in the business of helping the companies of all sizes to hire employees and help job seekers to find employment opportunities. The Complainant owns and has used the site "indeed.com" with the employed related search engine since the year 2004.



According to the Complaint, in India, the Complainant has significant presence of its brand and trademark "INDEED" in the market through various promotional and advertising activities. In 2017, the Complainant has sponsored the "Talent Acquisition Summit" in Mumbai during which talks were organized by top industry leaders on next generation digital skills.

Recently, the Complainant has also entered into an agreement with "Yash Raj Films", a leading Indian film producing company, to integrate its brand and trademark "INDEED" in a film (released in India in March, 2018) wherein the Complainant's brand was central to the premise. (Annexure 4)

#### **Respondent's Identity and Activities**

Respondent has not provided the correct address. Therefore, 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 the trademarks "indeed" and "**indeed**" are commonly known in many countries of the world. They are registered in the United States of America since September 12, 2006 and some of the other countries. The said trademarks "indeed" and "**indeed**" of the Complainant are also registered in India

*Megamwal*



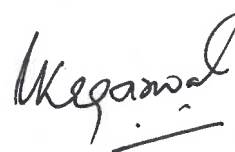
since October 27, 2010 vide registration No. 2044682 and, 2044681. They are registered under Class 09, Class 35 – “Dissemination of advertising for others via the internet” and Class 42 – “Computer services, namely, providing a search engine for obtaining job listings, resume postings, and other job search information via internet”. The Complainant extensively promotes its mark “INDEED” through print, web, television, and trade show advertising. Further that, the Complainant’s trademark registrations are duly renewed, valid and subsisting.

The Complainant is also the registrant and proprietor of domain name registrations at international and domestic levels. Some such illustrations are: <indeed.com>; India <indeed.co.in>; Canada <indeed.ca>; France <.indeed.fr>; Hong Kong <indeed.hk>; Japan <indeed.jp>; New Zealand <indeed.co.nz>; Taiwan <indeed.tw>; Turkey <indeed.com.tr>; United Kingdom <indeed.co.uk>; etc.

The Complainant is also the owner of several other domain names containing its registered trademark “INDEED” viz. <indeed.net>; <indeed.online>; <indeed.org>; <indeed.career>; <indeed.jobs> and <indeed.ceo>; ect. (Annexure 10)

According to the Complainant, earlier the Respondent had registered two domain names. The Complainant filed complaints in respect thereof before the Internet Exchange of India, namely, <indeedjob.org.in> (INDRP/987) and <indeedjob.net.in> (INDRP/973). The complaints were successfully adjudicated by the Panel in favour of the Complainant. (Annexure 12)

The Complainant contends that the disputed domain name contains the complete trademark, that is, “indeed”. The addition of the words “job”, “ind” and “.in” gTLD in a domain name is insignificant. It does nothing to



distinguish or alleviate confusion between the Complainant's trademark and disputed domain name <indeedjob.ind.in>.

Therefore, the disputed domain name is identical and/or confusingly similar to the Complainant's registered trademark INDEED.

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 "INDEED". The Respondent does not own any trademark registration for "INDEED". The Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use <indeedjob.ind.in> domain name or the INDEED Mark.

Further, the Respondent has not used, nor made any demonstrable preparations for use, the disputed domain name in connection with a *bona fide* offering of goods and services. The Respondent registered the domain name <indeedjob.ind.in> for the sole purpose of creating confusion and misleading and deceiving the job seekers in to purchasing services that are never provided. The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing services cannot be considered a "*bona fide offering of goods and services*".

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.indeedjob.ind.in> by the

*Megamul*

Respondent is to mislead the customers of the Complainant. The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated or related with the trademark "INDEED" of the Complainant.

Thus, the facts strongly demonstrate that the Respondent has registered and used the domain name <indeedjob.ind.in> in bad faith.

In support of its contentions, the Complainant has relied on a number of decisions of the Internet Exchange of India and of the Arbitration and Mediation Centre, World Intellectual Property Organisation.

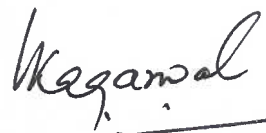
#### **B. Respondent**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.indeedjob.ind.in> or any trademark right, domain name right or contractual right.

#### **6. Discussion and Findings**

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties 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 Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The disputed domain name <indeedjob.ind.in> was registered by the Respondent on April 25, 2018. The Complainant is an owner of the registered trademark "INDEED" in many countries including India for the last many years. The Complainant is also the owner of a number of domains as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <indeedjob.ind.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that 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 "INDEED" services in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the

*Kagana*



trademark, or a confusingly similar approximation, regardless of the other terms in the "domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <indeedjob.ind.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### **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 Registrant of the dispute, the Registrant'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 Registrant (as an individual, business or other organization) has 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 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. The name of the Registrant/Respondent is Mr. Dinesh Sarang. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

*Wegamal*

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "INDEED" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide 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 prospective job seekers.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

### **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 Registrant 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant's 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 the Registrant has engaged in a pattern of such conduct; or

*Wagawal*

- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. The Respondent is evidently using the disputed domain name for the purpose of illegitimately extracting money and personal information from innocent job seekers, who believe the Respondent to be Complainant or affiliated with the Complainant, and who pay money to the Respondent to secure interview opportunities which never occur. It may also lead to deceiving and confusing the trade and the public.

The Complainant has contended that even if the Respondent was offering actual online career search and recruiting services through the disputed domain name, such use would still support a finding of bad faith use and registration, as these are the same services offered by the Complainant under its famous and registered trademark "INDEED".

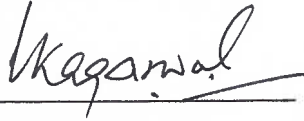
The foregoing circumstances lead to the presumption that the domain name in dispute is registered and used by the Respondent in bad faith.

## **7. Decision**

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

*Megamall*

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.indeedjob.ind.in> be transferred to the Complainant.



Vinod K. Agarwal

Sole Arbitrator

Date: 06<sup>th</sup> August, 2018