



सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.

: IN-DL19321063336768S

Certificate Issued Date

: 18-Dec-2020 03:01 PM

Account Reference

: IMPACC (IV)/ dl925103/ DELHI/ DL-DLH

Unique Doc. Reference

: SUBIN-DL92510342698482975534S

Purchased by

: SRIDHARAN RAJAN RAMKUMAR

Description of Document

: Article 12 Award

Property Description

: Not Applicable

Consideration Price (Rs.)

: 0  
(Zero)

First Party

: SRIDHARAN RAJAN RAMKUMAR

Second Party

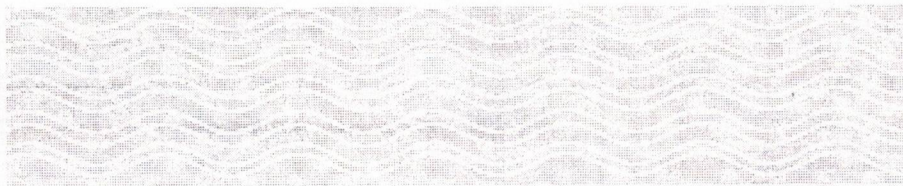
: Not Applicable

Stamp Duty Paid By

: SRIDHARAN RAJAN RAMKUMAR

Stamp Duty Amount(Rs.)

: 100  
(One Hundred only)



Please write or type below this line

#### Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.



**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY**

**INDRP Case No: 1295**

**IN THE MATTER OF:**

**INTERNATIONAL BUSINESS MACHINE CORPORATION**

1, New Orchard Road, Armonk,

New York 10504-1722

United States of America

... Complainant

**VERSUS**

**CHRISTOPHER DALY**

CORPORATION SERVICE COMPANY UK LIMITED

One London Wall, Suite

400 London, EC2Y 5AB,

GB (+44).1144207565409

Email ID: fulfillment\_leaders@cscinfo.com

...Respondent

**AWARD**

**1. THE PARTIES:**

.The Complainant is **International Business Machines Corporation** known as **IBM** a company incorporated under the laws of United States of America and having its headquarters at 1 New Orchard Road, Armonk, New York, 10504 – 1722 USA, hereinafter referred to as the Complainant / IBM. The Respondent is one **CHRISTOPHER DALY having his address as** Corporation Service Company UK Limited, One London Wall, Suite 400 London, EC2Y 5AB, Great Britain and Email ID: fulfillment\_leaders@cscinfo.com.

**2. THE DOMAIN NAME AND REGISTRAR:**

The disputed domain name : ibmwatson.in

The domain name registered with .IN REGISTRY

### 3. PROCEDURAL HISTORY:

November 11, 2020:	Date of Complaint
November 17, 2020:	The .IN REGISTRY appointed Sridharan Rajan Ramkumar as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.
November 19, 2020	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c ) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.  As the Respondent failed to file his response within the stipulated 15 days time period intimated to all parties, the instant award is being passed.

### 4. FACTUAL AND LEGAL BACKGROUND :

#### **THE COMPLAINT**

The Complainant is **International Business Machines Corporation** known as **IBM** a company incorporated under the laws of United States of America and having its headquarters at 1 New Orchard Road, Armonk, New York, 10504 – 1722 USA, hereinafter referred to as the Complainant / IBM.

#### **THE RESPONDENT**

The Respondent in the present proceeding as per the information available with .IN Registry WhoIs is one Christopher Daly of London, GB. No other details are available from the WhoIs records.

A copy of the IN Domain Name Dispute Resolution Policy (INDRP) and the Rules framed thereunder, extract of the .IN Domain Name Dispute Resolution Policy (INDRP) and the INDRP Rules of Procedure was filed and marked as **Annexure A**.

A copy of the extract taken from WhoIs records dated 4.3.2020 was filed and marked as **Annexure B**. A copy of extract shared by NIXI through email dated November 6, 2020, was filed and marked as **Annexure B1**.



It was submitted that the Complainant was incorporated in the State of New York, United States of America on June 16, 1911 as Computing-Tabulating-Recording Co. (C-T-R), a consolidation of the Computing Scale Co. of America, The Tabulating Machine Co., and The International Time Recording Co. of New York. This new conglomerate was named Computing-Tabulating-Recording Company (C-T-R), and it bore the seeds of what would become **IBM**. In 1924, C-T-R changed its name to "**International Business Machines Corporation**", which led to the birth of the name and mark **IBM**, being an acronym for "**International Business Machines**". Extract from the Complainant's website [www.ibm.com](http://www.ibm.com) on the history of the mark **IBM** was collectively filed and marked as **Annexure C**. A copy of the certificate dated July 19, 2016 issued by the Department of State, State of New York evidencing the above was annexed and marked as **Annexure D**.




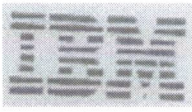
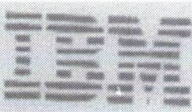

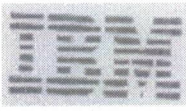


It was submitted that the Complainant is one of the world's leading technology and consulting organizations with presence in over 175 countries through its wholly owned subsidiaries with over 3,52,600 employees worldwide. The Complainant has been using the trademark **IBM** in relation to its products and services at least since 1924. In the early days, these products included office and research equipment such as punch machines, calculating machines, clocks, and scales. The year 1952 witnessed the launch of the Complainant's first large vacuum tube computer under the name "IBM 710". Over the years, the Complainant has continuously used the trademark "**IBM**" in relation to hosts of products and services including but not limited to computers and computer hardware, software and accessories. As of today, the Complainant's breakthrough technologies are transforming industries with smarter ways to do business, new opportunities and strategies to compete and win. In connection with its global business, the Complainant caters to the following industries - Aerospace and Defence, Automotive, Banking and Financial markets, Education, Electronics, Energy and utilities, Government, Government – US Federal, Healthcare, Insurance, Life sciences, Manufacturing, Metals and Mining, Oil and Gas, Retail and Consumer Products, Telecommunications, Media and Entertainment, Travel and Transport by providing its cutting edge products and services. Extract from the Complainant's website on the various industry to which the Complainant caters to was filed herewith marked as **Annexure E**.

It was submitted that the Complainant in connection with its global business has several products under its product category like Analytics, Cloud, IBM Blockchain, Internet of Things, IT Infrastructure, Security and one such product is **WATSON**. The Complainant's product **WATSON** is a suite of enterprise-ready AI services, applications and tooling. Through its product **WATSON**, the Complainant's consumers can build competitive advantage with the help of AI. It was also submitted that the The Complainant's product






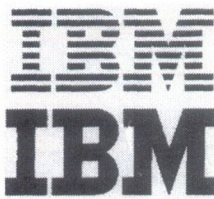



**WATSON** helps its customers unlock the value of their data in entirely new profound ways. With insights from **WATSON**, the Complainant's customers can predict and shape future business outcomes. It was submitted that the Complainant's product **WATSON** can accelerate research and development, enrich interactions, anticipate and preempt disruptions, scale and expertise learning, detect liabilities and mitigate risk and by understanding data recommend with confidence to make better informed decisions, give tailored advice and deepen customer relationships with AI. It was submitted also that the Complainant also has few products and service under its **WATSON** product such as **WATSON STUDIO**, **WATSON MACHINE LEARNING**, **WATSON OPENSACLE**, pre-build applications such as **WATSON ASSISTANCE**, **WATSON DISCOVERY**, **WATSON TEXT TO SPEECH**, **WATSON NATURAL LANGUAGE UNDERSTANDING**, **WATSON KNOWLEDGE STUDIO**, **WATSON API KIT**, **IBM OPENPAGES WITH WATSON**, **WATSON ASSISTANCE**, **WATSON DISCOVERY**. It was submitted that the Complainant's full suite of language, speech, vision, and empathy API's include **WATSON VISUAL RECOGNITION**, **WATSON TEXT TO SPEECH**, **WATSON LANGUAGE TRANSLATOR**, **WATSON NATURAL LANGUAGE CLASSIFIER**, **WATSON PERSONALITY INSIGHTS**, **WATSON TONE ANALYZER**. The solutions offered by the Complainant under **WATSON SOLUTIONS** includes **AI FOR CUSTOMER SERVICE**, **AI FOR FINANCIAL SERVICES**, **AI FOR CYBERSECURITY**. Information about the Complainant's product **WATSON** can be viewed globally by its customers at its website <https://www.ibm.com/watson/about>, the video can be viewed at <https://www.ibm.com/watson>, and the various products/services can be viewed at <https://www.ibm.com/watson/products-services>. Extracts from these links was filed and marked as **Annexure F**. It is pertinent to mention that the Complainant has more than **30,000+ IBM WATSON client engagement**.

It was submitted that the Complainant is the registered proprietor of the mark "**IBM**" in several classes across the globe including in India and China. The list of the Complainant's earliest mark in India was given in para 5 (d) of the Complaint. All these registrations are valid and subsisting in the records of the Trade Marks Registry. Copies of some of the registration/renewal certificates/printouts taken from the official website of the Trade Marks Office evidencing the aforementioned registrations were annexed and collectively marked as **Annexure G**.

Sl. No.	Reg. No. & Class	Trade Mark	Filing Date	Status
1.	170687 Class 16		03-09-1955	Registered
2.	428972 Class 9		25-10-1984	Registered
3.	428973 Class 16		25-10-1984	Registered
4.	865158 Class 18		12-07-1999	Registered
5.	865159 Class 16		12-07-1999	Registered
6.	903730 Class 9		15-02-2000	Registered
7.	903731 Class 9		15-02-2000	Registered
8.	903732 Class 16		15-02-2000	Registered
9.	903733 Class 16		15-02-2000	Registered



10.	1236379  Class 37		15-09-2003	Registered
11.	1236380  Class 38		15-09-2003	Registered
12.	1236381  Class 42		15-09-2003	Registered
13.	1236382  Class 41		15-09-2003	Registered
14.	1236383 Class 35	IBM	15-09-2003	Registered
15.	1239148  Class 35, 37, 38, 41, 42		23-09-2003	Registered
16.	1303262  Class 36		17-08-2004	Registered
17.	2120172  Class 06, 08, 09, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35, 41		23-03-2011	Registered

It was submitted that the Complainant is the registered proprietor of the mark **IBM** in the USA with the earliest registration dating back to the year 1957. The said marks are valid and subsisting in the records of the USPTO. Copies of some of the registration/printouts taken from the official website of the USPTO evidencing the aforementioned registrations were annexed and collectively marked as **Annexure H**.

Sl. No.	Reg. No. & Class	Trade Mark	Filing Date	Status
1.	0640606 Class 9	IBM	March 12, 1956	Registered
2.	1058803 Classes 9, 16, 37, 41, 42	IBM	October 29, 1974	Registered
3.	1243930 Class 42	IBM	May 10, 1982	Registered
4.	1696454 Class 36	IBM	August 30, 1990	Registered

It was submitted that the Complainant is the registered proprietor of the mark **IBM** in **CHINA** details of which is given below:

Sl. No.	Reg. No. & Class	Trade Mark	Filing Date	Status
1.	221321 Class 9	IBM Logo	26/5/1984	Registered
2.	221319 Class 16	IBM Logo	26/5/1984	Registered
3.	1767764 Class 9	IBM (Solid)	10/3/2000	Registered
4.	1561710 Class 16	IBM (Solid)	10/3/2000	Registered

Copies of some of the registration/ renewal certificates evidencing the aforementioned registrations was annexed and collectively marked as **Annexure I**. It was pointed out that the Complainant's earliest registration in China dated back to the



year 1984.

It was submitted that the Complainant is the registered proprietor of the mark **IBM WATSON** in jurisdiction like USA, under **International Registration designating several countries** and the Complainant's application in India is pending registration. Details of such registrations/ applications are given below and a copy of the registration certificate from the USPTO was annexed and collectively marked as **Annexure J**.

#### UNITED STATES OF AMERICA –

Sl. No.	Reg. No. / Application No.	Trade Mark	Filing Date	Status
1.	5082512	IBM WATSON	June 20, 2011	Registered

It was submitted that the Complainant applied for **INTERNATION REGISTRATION** for the mark **IBM WATSON** designating **China**, United States of America, **European Union**, Switzerland, Russian Federation, Morocco, Oman, Egypt, Tunisia. The said mark has been **Granted Protection** in **China**, Switzerland, **European Union**, Morocco, Oman and Russian Federation. Details of the International Registration is given below and the extract from Madrid real time status and the copies of Grant of Protection from the relevant designated countries was annexed and collectively marked as **Annexure J**.

#### INTERNATIONAL REGISTRATION –

Sl. No.	Reg. No. / Application No.	Trade Mark	Filing Date	Status
1.	IR No. 1108810	<b>IBM WATSON</b>	21.09.2011	Registered

It was submitted that the Complainant has applied for registration of its mark **IBM**

**WATSON** in India and details of the application is given below. Extract from the online records of The Indian Trade Marks Registry was annexed and collectively marked as **Annexure J**.

INDIA –

Sl. No.	Reg. No. / Application No.	Trade Mark	Filing Date	Status
1.	4486274	IBM WATSON	09/04/2020	Pending

It was submitted that the Complainant is also the registered proprietor of the mark **WATSON** in various jurisdictions of the world. The Complainant has applied for **International Registration** for the said mark designating Switzerland, China, **European Union**, Bahrain, Russian Federation, Oman, Egypt, Morocco, Tunisia and the United States of America. The said mark has been granted protection in Switzerland, **European Union**, Oman, Morocco and the Russian Federation. Details of the International Registration is given below and extract from Madrid real time status and copies of Grant of Protection were filed and marked as **Annexure K**.

Sl. No.	Reg. No. / Application No.	Trade Mark	Filing Date	Status
1.	IR No. 1113321	<b>WATSON</b>	21.09.2011	Registered

It was submitted that the Complainant is the registered proprietor of the mark **WATSON** in China and a copy of the registration certificate for the mark **WATSON** in China was filed and marked as **Annexure L**.

It was submitted that the Complainant has applied for registration of the mark **WATSON** in India and a copy of the online extract from the Indian Trade Marks Registry was filed and marked as **Annexure M**.

It was submitted that from the above, it is evident that the Complainant has obtained statutory protection of its mark IBM, IBM WATSON and WATSON in several jurisdictions of the world with some of the earliest registrations dating back several



years. It is submitted that the Complainant is known all over the world by the name and mark **IBM** and the consumers globally are well-aware of the Complainant's product **WATSON** also known as **IBM WATSON**. This is evident from the ample documents filed with the Complaint.

It was submitted that the Complainant has offices all over the globe with offices in USA, UK, India and China. In fact, the Complainant's established its first office in China in 1928 in Shanghai. In this regard, extract from the Complainant's website

<https://www.ibm.com/ibm/history/ibm100/us/en/icons/makingibm/transform/>

is given below and the same is annexed herewith marked as **Annexure N**.

It was submitted that the Complainant opened its first office in India in 1951. Extracts from the history of the Complainant [https://www.ibm.com/ibm/history/interactive/ibm\\_history.pdf](https://www.ibm.com/ibm/history/interactive/ibm_history.pdf) was filed and collectively marked as **Annexure N**.

#### **IBM expands to China**

*IBM established its first office in China in 1928 in Shanghai. As advances in communication technology and transportation during the 1930s facilitated international business, IBM US and IBM China enjoyed a closer connection: IBM vice president and general manager F.W. Nichol made the first-ever business call from the US to China when he called the Shanghai office from New York in May 1937. The same month, the flying boat China Clipper carried a letter to Watson Sr. from the Shanghai office on the first direct China-to-US air mailflight.*

It was submitted that from the aforesaid facts, it was clear that the Complainant has business activities in China since 1928 and the trade, public and consumers are well aware of the name and mark **IBM** in China for more than 90 years. The Complainant's precursor had presence in the **UK as early as 1912**. Similarly, the Complainant's business in India since 1951 clearly establishes that the name and mark **IBM** is well-known in India with tremendous goodwill and reputation associated with the name and mark **IBM**. In fact, the name and mark **IBM** has become a well-known mark globally.

It was submitted that the name and mark **IBM** forms integral part of the corporate/trading names of the Complainant and its various wholly owned

subsidiaries of the Complainant that are operating in different countries across the world. The Complainant's **2019 full-year revenue** was **\$77.1 billion**, and its net income was **\$11.4 billion**. In this regard, relevant pages of the Annual Report of the Complainant for the year 2019 was filed and marked as **Annexure O**.

It was submitted that the Complainant also owns hundreds of domain names incorporating its mark IBM, including <ibm.com>, which was created on 19.03.1986. A print-out of the Whois report pertaining to the domain name <ibm.com> was filed and marked as **Annexure P**. The Complainant hosts an active website [www.ibm.com](http://www.ibm.com) under the domain name <ibm.com>. The printouts of the screenshots taken from the said website was filed and marked collectively as **Annexure Q**. The Complainant also owns the domain name <ibm.in>, which was created on 14.02.2005 corresponding to the website <https://www.ibm.com/in-en>. A print-out of the Whois report pertaining to the domain name <ibm.in> was filed and marked as **Annexure R**.

It was submitted that the Complainant's brand **IBM** is one of the most reputed and iconic brands worldwide. This can be gauged from the following:

- Forbes listed IBM at 5th position in its "The World's Most Valuable Brands" rankings for the year 2015. In the 2016 list of Forbes' "The World's Most Valuable Brands" IBM featured at 7th position. In the 2017 list of Forbes' "The World's Most Valuable Brands" IBM featured at 13th position.
- BrandZ listed IBM at 3rd position in its list of "Top 100 Most Valuable Global Brands" for the year 2014. In the 2015 list of BrandZ's "Top 100 Most Valuable Global Brands", IBM featured at 4th position. In the 2016 list of BrandZ's "Top 100 Most Valuable Global Brands", IBM featured at 10th position. In the 2017 list of BrandZ's "Top 100 Most Valuable Global Brands", IBM featured at 9th position. In 2019, Complainant was ranked the 13th most valuable global brand by BrandZ.
- Interbrand listed IBM at 5th position in its list of "Best Global Brands" for the year 2015. In the 2016 list of Interbrand's "Best Global Brands", IBM featured at 6th position. In the 2017 list of Interbrand's "Best Global Brands", IBM featured at 10th position and in 2019 at 12<sup>th</sup> position.



- Fortune listed IBM at 32nd position in its list of "World's most Admired Companies" for the year 2016. In the 2017 list of Fortune "World's most Admired Companies", IBM featured at 24th position. In the 2017 list of Fortune 500 Companies, IBM featured at 32nd position. In the 2017 list of Fortune Global 500 list, IBM featured at 81st position. In 2019, the Complainant was listed as 114th largest company on the Fortune Global 500 list.

The printouts of the relevant extracts/screenshots evidencing the same was filed and marked as **Annexure S**.

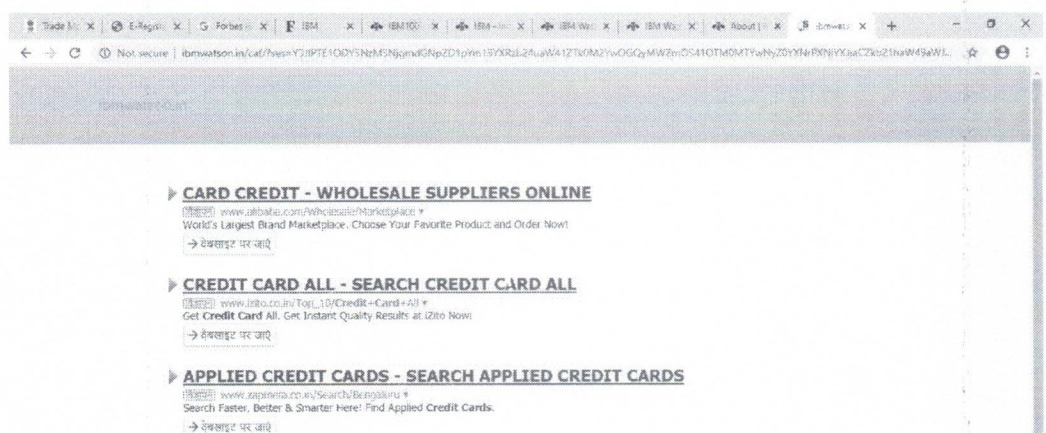
It was submitted that the Complainant actively enforces its rights in well-known mark **IBM** and has succeeded in several complaints filed by it before the WIPO Arbitration and Mediation Center and .IN Registry against third parties concerning adoption of the mark "IBM" or variations thereof as part of domain names. It is pertinent to mention that the Complainant's mark **IBM** was considered very famous and widely recognized mark in WIPO Case No. D2018-2476, WIPO Case No. D2016 – 0546 and WIPO Case No. DCC2011 - 0006. In WIPO Case No. DR002010- 0003, the Administrative Panel concluded that the Complainant's trademark is well-known around the world. Similarly, in the decision rendered in Case No. INDRP/854, the learned Arbitrator concluded that the Complainant has successfully established that its mark **IBM** is known all across the globe including India. Similar decision were rendered by the learned Arbitrators for complaint filed by the Complainant for the domain name <ibmglobal.in> under INDRP/968 where the disputed domain name was transferred to the Complainant. Copies of these decisions was filed and marked collectively as **Annexure T**.

It was submitted that the Complainant also has a prominent social media presence, including accounts on Facebook (<https://www.facebook.com/IBM/>); Twitter

[https://twitter.com/IBM?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwg%5Eauthor](https://twitter.com/IBM?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwg%5Eauthor)); and Instagram (<https://www.instagram.com/ibm/?hl=en>). The Complainant's social media accounts are extremely popular, with over 1,100,427

Facebook followers; over 577.1K Twitter followers and over 332K Instagram followers. Print- outs of the screenshots taken from Facebook, Twitter and Instagram evidencing the same was filed and marked collectively as **Annexure U**.

It was submitted that the Complainant came across the disputed domain name <ibmwatson.in> on 11/2/2020 through its regular monitoring services. Immediately on coming to know of the disputed domain name the Complainant issued notice to abuse- [contact@publicdomainregistry.com](mailto:contact@publicdomainregistry.com) on 11/2/2020 with a follow-up on 27/2/2020. However, the Complainant did not receive any response in this regard. Copies of the email communications were filed and marked as **Annexure V**. The WhoIs search for the disputed domain name shows that the disputed domain name was created as recently as 15.6.2019 and registered in the name of Zhao Ke with the Registrant state/ province given as Shanghai. The disputed domain name leads to the page which has on the right-hand corner the information “Buy this Domain The domain ibmwatson.in may be for sale by its owner!” The page also displays the following links: CAR INSURANCE, CREDIT CARD, LIFE INSURANCE, COMCAST, CHEAP FLIGHTS, ONLINE COLLEGES, FLOWERS, AARP, INTERNET, DENTIST. On clicking each of the links given above, it takes to different links, screenshot of which is given below:



On further clicking the above links as shown, it takes to the different pages of the link which are in no manner connected with the Complainant. Few extracts / screen of the website corresponding to the disputed domain name was filed and marked as **Annexure V**. It is submitted that through the disputed domain name Respondent is generating revenue through



pay-per-click advertisement. Further, the disputed domain name has on the right hand corner the search box which says in Hindi “vigyan khoje” which translates to “search for advertisements”.

## 5. PARTIES CONTENTIONS:

### A. Complainant

- (a) The Domain Name is identical or confusingly similar to a Trademark of the Complainant
- (b) Respondent has no legitimate interest in the domain name
- (c) Respondent has registered the domain name in bad faith

The Complainant asserts that each of the aforementioned factors are established, as substantiated as substantiated below:

The disputed domain name <ibmwatson.in> contains the Complainant's registered mark "IBM" as well as its mark “IBM WATSON” and is thus identical to the Complainant's registered marks IBM, IBM WATSON as well as WATSON for which the Complainant has registrations worldwide, including India and China, as detailed in paragraphs 5 d) to k) above. Apart from statutory rights, the Complainant also enjoys common law rights in its coveted and well-known mark “IBM”, “IBM WATSON” and “WATSON”.

Pursuant to the long, continuous and extensive use of the IBM mark internationally as well as in China and in India, the mark “IBM”, “IBM WATSON” and “WATSON” have come to be associated exclusively with the Complainant and its business activities. From the above it is evident that the disputed domain name <ibmwatson.in> is identical to the Complainant's trade marks IBM, IBM WATSON and WATSON.

It was submitted that the

- Respondent has no rights or legitimate interests with respect to the disputed domain name. That the Respondent appears to be an individual located in Shanghai, China. The Respondent is not connected with the Complainant in any manner and the Complainant has no knowledge of the Respondent. The Respondent has no connection with the Complainant in any manner whatsoever. The Complainant has not authorized or permitted the Respondent to apply for, register, or use the disputed domain name which incorporates the Complainant's registered mark "IBM", “IBM WATSON” and “WATSON” or any other domain name.

- Complainant's trade and service marks are known all over globally as well as in India since 1951 and in China as early as 1928 and the Complainant is among the top Global IT services company. The Respondent has no due cause for registering the disputed domain name <ibmwatson.in>.
- Respondent chose to register the disputed domain name in order to create an association with the Complainant. By registering the disputed domain name < ibmwatson.in > the Respondent is illegally trying to attract internet users to its website under the pretext that the website belongs to or is endorsed by the Complainant or is authorized by the Complainant.
- Complainant has not given any license to the Respondent to use its marks in any domain name or in any manner whatsoever.
- Respondent is not commonly known by the domain name and mark nor making any legitimate non-commercial or fair use of the domain name. The disputed domain name contain links on Car Insurance, Credit Cards, Internet, among others. It also has on the right hand corner the search box which says in Hindi "vigyan khoje" which translates to "search for advertisements". It is submitted that the Respondent is generating revenue through pay-per-click advertisement.

Thus it was argued that from the above mentioned facts, it was evident that the Respondent is not making any legitimate non-commercial or fair use of the domain name. Since the Complainant has business and customers across several sectors including the banking and financial sector, automotive, travel and transport worldwide any link / information provided by the Respondent using the disputed domain name will lead internet users to believe that such information is endorsed by the Complainant. It was submitted that use of the disputed domain name by the Respondent is only to create an impression of association between the Respondent and the Complainant.

It was further submitted that infact, the Respondent has registered the disputed domain name with the sole purpose of selling the disputed domain name as is evident from the corresponding website. It is obvious that the Respondent is not using the disputed domain name in connection with bonafide offering of goods or services.

Further, it was submitted that to the best of the Complainant's knowledge (a) the Respondent is not conducting any business under the name and mark IBM WATSON to warrant registration of the disputed domain name in his name; (b) the Respondent is not known by the disputed domain name; and (c) the Respondent does not have any trademark or service mark rights in the expression "IBM", "IBM WATSON" and "WATSON".



### **The Domain Name was registered or is being used in bad faith**

It was submitted that the Domain Name was registered *and* is being used in bad faith for following reasons:

#### **Registration in bad faith**

That it is inconceivable for the Respondent to state that he did not have knowledge of the Complainant's prior owned and registered trade mark at the time of registration of the Domain Name in the year 2019, particularly as the Complainant's trade mark rights predate the registration date of the Domain Name by many years.

#### **Use in bad faith**

That the Domain Name is not resolving to an active website. However, it is a well-established principle that it is not necessary for a disputed domain name to be associated with an active website for a finding of bad faith to be made under the Policy. That though it was fairly submitted that to the best of the Complainant's knowledge, the Respondent has never actively used the Domain Name. I hold that such passive holding of the Domain Name would not preclude a finding of bad faith given the overall circumstances of the case.

I have given considerable thought to the totality of the circumstances in this case and considered all relevant factors in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the domain name may be put. I thereafter have no hesitation to hold that in the present case, all factors are satisfied.

That inspite of the Complainant's efforts to contact the Respondent prior to submitting the present Complaint, the Respondent has failed to engage with the Complainant or otherwise come forward with any actual or contemplated good-faith use of the Domain Name the Respondent 'knew or should have known' of the registration and use of the trademarks IBM, IBM WATSON and WATSON prior to registering the disputed domain name. The Complainant has been known by the name and mark IBM since 1924 globally and in China since 1928. The Complainant's precursor had presence in the UK as early as 1912.

The First Indian Trademark registration for IBM in India under no 170687 in class 16 dates back to 03/09/1955. The Complainant's application for the mark IBM WATSON was filed in India on 09/04/2020 with first date of use claimed from 01/12/2015 and is prior in date.

The Complainant's mark "IBM" is extremely well-known globally and the Complainant had established international reputation that extends not only in USA, UK, EU, India, China but to several jurisdictions. The disputed domain name was registered in 15.6.2019 by the Respondent after more than 90 years since the Complainant started its business in UK, China under its mark "IBM". The Complainant is also the registered proprietor of the mark IBM WATSON in UK, China. The name and mark IBM has been continuously used by the Complainant for more than 90 years and is extremely well-known globally, have garnered tremendous reputation and goodwill, is globally famous and people all over associate the name and mark IBM and IBM formative marks including the mark IBM WATSON exclusively with the Complainant and its business.

In fact, due to the wide and diverse business activities of the Complainant in India, UK, China, the name and mark IBM has nearly become a household name. Being fully aware of the goodwill and reputation of the Complainant's name and mark IBM as well as IBM WATSON, the Respondent registered the disputed domain name to ride upon the goodwill associated with the Complainant's well known trademark and create an impression of direct association and connection with the Complainant. It is unimaginable that the Respondent was not aware of the Complainant's name and mark IBM which has been used in China since 1928 and in the UK as early as 1912. The Respondent's address in WhoIs records is given as UK. From the above it is clear that the Respondent 'knew or should have known' about the trademarks of the Complainant.

It appears that the use of the words IBM WATSON in the disputed domain name was intended by the Respondent to create the impression of an authorized association between the Complainant and the Respondent, which, never existed. By registering the disputed domain name, the Respondent attempted to attract internet users for commercial gains to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

The Respondent has registered and is using the disputed domain name to create a likelihood of confusion with the Complainant and attempts to mislead people by creating the impression that the links provided in the website corresponding to the disputed domain name are associated / endorsed / connected with the Complainant and its business. The Respondent's use of the disputed domain



name of the Complainant is solely to create a false impression of association with the Complainant among the internet users. The endeavor of the Respondent is to commercially gain and take undue advantage of the reputation and goodwill enjoyed by the Complainant in its world famous and well-known mark IBM, IBM WATSON.

Registration by the Respondent of the word IBM WATSON as part of the disputed domain name prevents the Complainant from reflecting the Complainant's trademark in corresponding domain names.

Accordingly, the Respondent's registration of the disputed domain name <ibmwatson.in> is contrary to and in violation of paragraph 4 of the INDRP Policy.

## 6. DISCUSSION AND FINDINGS:

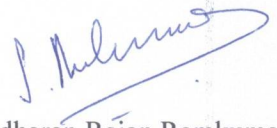
In view of all the above facts and well known legal propositions and legal precedents I find and hold as under:

- that that the Respondent's domain name is identical to IBM WATSON the trademark in which the Complainant has rights.
- that the disputed domain name ibmwatson.in registered by the Respondent incorporates the Complainant's well-known "IBM" and "WATSON" trademarks singularly and collectively in their entirety.
- that due to the fame of the distinctive and reputation of the trade marks IBM and WATSON, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- that Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name or to use the "IBM" and "WATSON" trademarks singularly and collectively in their entirety.
- that the Complainant has prior rights in the trademark "IBM" and "WATSON" trademarks singularly and collectively in their entirety which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- that the disputed domain name has been registered in bad faith
- that the disputed domain name is identical to the Complainant's registered trademarks "IBM" and "WATSON" trademarks singularly and collectively in their entirety, in which the Respondent cannot have any rights or legitimate interest.

That I received no Response / Reply to the Complaint on behalf of the Respondent though proper service was effected to his email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit his reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

### **DECISION**

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "ibmwatson.in" to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 18<sup>th</sup> Day of January, 2021.



Sridharan Rajan Ramkumar  
Sole Arbitrator  
Date: 18/01/2021