



सत्यमेव जयते

# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	: IN-DL40405482893196T
Certificate Issued Date	: 02-Feb-2021 05:39 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL-SELF82899892414908T
Purchased by	: KARNIKA SETH
Description of Document	: Article 12 Award
Property Description	: ARBITRATION AWARD UNDER .IN POLICY OF NIXI
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KARNIKA SETH
Second Party	: NOT APPLICABLE
Stamp Duty Paid By	: KARNIKA SETH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

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**SELF PRINTED CERTIFICATE  
TO BE VERIFIED BY THE RECIPIENT**

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## ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case no. 1307

### 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.
3. In case of any discrepancy please inform the Competent Authority.

**.IN REGISTRY**  
**(NATIONAL INTERNET EXCHANGE OF INDIA)**  
**.IN Domain Name Dispute Resolution Policy (INDRP)**

Disputed Domain Name: www.tencent.co.in

Dated: 2<sup>nd</sup> February, 2021

IN THE MATTER OF:

Tencent Holdings Limited  
Room no.2701, Park Place,  
1601 Nanjing Road (West)  
Shanghai, China

..... Complainant

Vs.

Apex Consulting  
No.33, Tongji East Road, Chancheng District,  
Foshan City, Guangdong Province, China

..... Respondent

**1. Parties**

- 1.1. The Complainant in this arbitration proceeding is Tencent Holdings Limited, having address at Room no.2701, Park Place, 1601 Nanjing Road (West), Shanghai, China.
- 1.2. The Respondent in this arbitration proceeding as per 'Whois' record is Yitao /Apex Consulting and upon enquiry from NIXI made by the Complainant, the complete details of Respondent were found having address No.33, Tongji East Road, Chancheng District, Foshan City, Guangdong Province, China. (as per Annexure 1 of the complaint)  
The Respondent's email address is sunong@live.com.



2. **The Dispute-** The domain name in dispute is “**www.tencent.co.in**”. According to the .IN ‘Whois’ search, the Registrar of the disputed domain name is Dynadot LLC.

3. **Important Dates**

S. No	Particulars	Date (All communications in electronic mode)
1.	Date on which NIXI’s email was received for appointment as Arbitrator	Dec 14, 2020
2.	Date on which consent was given to act as an Arbitrator in the case	Dec 14, 2020
3.	Date of appointment as Arbitrator	Dec 21, 2020
4.	Soft copy of complaint and annexures were received from NIXI through email	Dec 21, 2020
5.	Date on which notice was issued to the Respondent	Dec 22, 2020
6.	Date on which Complainant filed proof of completed service of Complaint on Respondent	Jan 28, 2021
7.	Date on which Award passed	February 2, 2021

4. **Procedural History**

- 4.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act,

1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure> By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as the sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.
- 4.3 The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy.
- 4.4 The Arbitrator issued notice to the Respondent on 22<sup>nd</sup> Dec., 2020 at email address [sunong@live.com](mailto:sunong@live.com) calling upon the Respondent to submit his reply to the Complaint within fifteen (15) days of receipt of the Arbitrator's email i.e., before 5<sup>th</sup> Jan, 2021. The Complainant also filed proof of completed service of the complaint upon Respondent on 28<sup>th</sup> January, 2021 (served both in hard copy and electronically).
- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

## **5. Factual Background**

- 5.1 The Complainant, trading as TENCENT is one of the world's largest

Internet service company headquartered in China. Founded in 1998, the Complainant provides value added internet, mobile and telecommunication services and products, entertainment, artificial intelligence and technology both in China and worldwide.

- 5.2 The Complainant is headquartered in Shenzhen, China and through its trademark TENCENT has been providing internet services. The Complainant is a holding company with diverse operations also known and famous for making some popular apps and products including QQ (instant messenger), WeChat which is social media instant messaging, commerce and payment services app, Tencent games, Tencent comic, Tencent pictures, Tencent news and Tencent videos. (as per Annexure 5 of the complaint)
- 5.3 The Complainant has been advertising its services and products using its trademark 'Tencent' since 1998, including through its website at [www.tencent.com](http://www.tencent.com) and through its affiliated companies. The Complainant is also widely known in India and Hong Kong and its services are widely recognized worldwide. The Complainant owns the trademark 'TENCENT' and by virtue of its long and continuous use, it has earned significant goodwill and international recognition.
- 5.4 The Complainant owns numerous trademark registrations and exclusive rights in the 'TENCENT' trademark in many countries around the world including India. In India, the mark TENCENT is registered in name of the Complainant 'Tencent Holdings Limited' (word mark) in class 99 (multiclass application) since 25<sup>th</sup> July, 2007 and 'Tencent holdings Limited', Tencent with Chinese characters (logo mark) in class 99 since 9<sup>th</sup> May, 2017 (which has not been opposed till date). Copies of registration certificates for the mark TENCENT and variants from various jurisdictions in which the



mark is registered are filed by the Complainant. (as per Annexure 13 of the complaint)

- 5.5 The Respondent in this administrative proceeding, as per WHOIS database is Apex Consulting. NIXI provided complete contact details of the Respondent as per INDRP Rules of Procedure, that is, Yitao / Apex Consulting having address at No.33, Tongji East Road, Chancheng District, Foshan City, Guangdong Province, China. The Respondent's email address is [sunong@live.com](mailto:sunong@live.com).

## **6. Parties Contentions**

### **6.1 Complainant's submissions-**

- 6.1.1 The Complainant states that in relation to its services and products, the Complainant adopted the trading name TENCENT which is a coined word with no independent meaning apart from referring to the Complainant.
- 6.1.2 The Complainant states that it has continuously ranked 1<sup>st</sup> in BrandZ rankings for China brands from 2015 to 2018. (as per Annexure 11 of the complaint). The Complainant also states it was named in global fortune 500 in 2017 (as per Annexure 12 of the complaint). The Complainant further states that it has been listed on the Hong Kong Stock Exchange since 2004 and also partnered with Ibibo which is an online travel organisation to bring with respect to Indian internet sphere services like chat, mail and game. The Complainant has also launched WeChat in India in 2013 (as per Annexure 9 and 10 of complaint).
- 6.1.3 The Complainant states that it uses the trademark "TENCENT" in several counties like China, Hong Kong, India and other countries and the mark is registered in word and logo form in India. A list of trademark registration granted in favour of the Complainant are

enclosed with the complaint as **Annexure 13**. The Complainant states that it has been advertising TENCENT services and products through continuous use of its trademark which has gained huge popularity worldwide. Results of search for TENCENT on google were also filed by the Complainant as **Annexure 15** with the complaint.

- 6.1.4 The Complainant submits that purchase and use of the disputed domain name by the Respondent is clearly subsequent to the use and registration of the Complainant's trademark TENCENT in India (disputed domain name was registered on 1 Feb 2014). The disputed domain name is identical to and is a clear imitation of the 'TENCENT' trademark and has been used with an intention to pass off as its own.
- 6.1.5 The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers and thereby infringe the 'TENCENT' trademark and deceive consumers as to affiliation, connection or association of the disputed domain name with the Complainant, which is incorrect and injures the Complainant's interests.
- 6.1.6 In addition, the Complainant submits that the Respondent has a pattern of bad faith conduct and has presently as also previously indulged in domain name squatting by registering in bad faith similar domain names using trademark TENCENT of the Complainant. This is evidenced by the INDRP Awards passed in domain name disputes decided against the Respondent (as per **Annexure 18** of the complaint) and the correspondence by Respondent filed by Complainant as **Annexure 17** to the complaint.

## 6.2 Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 8(b) reads as follows:

*"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."*

6.2.3 Further the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

*"In the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to law."*

6.2.4 In present arbitration, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex parte in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.





## **7. Discussion & Findings**

7.1 The .IN Domain Name Dispute Resolution Policy (“.IN Policy”), in para 4 requires Complainant, to establish the following three requisite conditions –

- (a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights,
- (b) The Respondent has no rights or legitimate interest in the domain name and
- (c) The Respondent’s domain name has been registered or is being used in bad faith.

### **7.2 The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))**

The Complainant has filed documents of its registered trademarks in India and other countries to prove its rights in the trademark “TENCENT”. The Complainant is the registered proprietor of the mark “TENCENT” (word and logo mark) in India under the Trade Marks Act, 1999. The Trademark “TENCENT” (word) is registered in India in class 99 since 25<sup>th</sup> July, 2007 and (device) is registered in India in class 99 since 9<sup>th</sup> May, 2017. The Complainant has filed supporting proof of registration of trademark in other countries too. The Complainant has filed sufficient proof to substantiate that the Trademark “TENCENT” is registered in India since 2007. Therefore, it is established that the Complainant has statutory protection in the trademark “TENCENT” in India since 25<sup>th</sup> July, 2007. The Arbitrator finds that the disputed name www.tencent.co.in , is clearly identical and deceptively similar to



the Complainant's trademark in which the Complainant has exclusive trademark rights.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for purposes of UDRP standing.

The disputed domain name consists of "TENCENT", the Complainant's trademark in entirety and the ccTLD "co.in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125 (2010))

Also, use of a mark for several years by a Complainant establishes its rights in the mark. Evidence of long use of the mark is filed by the Complainant which undoubtedly shows its right in the mark. (*Starbucks Corporation v. Mohan Raj*, INDRP/118 (2009))


As the Respondent's disputed domain name is exactly same as Complainant's registered trademark and the Respondent failed to file any reply to rebut the contentions of the Complainant, the Arbitrator finds that the Respondent's domain name is identical to



Complainant's registered trademark and is likely to deceive the customers.

**7.3 The Registrant has no rights or legitimate interests in respect of the domain name (Paragraph 4(b))**

Under paragraph 6 of the policy, a Respondent or a Registrant can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to the 'TENCENT' trademark, in which Complainant enjoys substantial reputation and goodwill including web shots of its website (annexed as **Annexure 14** to complaint) and registration of trademark in India and several other countries (annexed as **Annexure 13** to complaint). The Respondent has failed to submit its reply to prove any rights or legitimate interests in the disputed domain name/trademark 'TENCENT.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. The same is also identical to the Complainant's prior registered trademark, 'TENCENT' and domain name www.tencent.com. Complainant has also submitted that it has not authorized Respondent to use its TENCENT mark and Respondent has failed to rebut the same. The burden of proof thus shifts to Respondent to demonstrate the rights or legitimate interests it holds in the mark as per WIPO Overview 3.0, section 2.1. Despite notice, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show its interest or right in the disputed domain name.



The Complainant has submitted that the Respondent is engaging in unfair commercial use of the disputed mark and disputed domain

name as it leads to a parked page containing links that redirect to website of various competitors of Complainant. (annexed as **Annexure 16** of the complaint). Further, the panels under the WIPO Overview 3.0, section 2.9 have consistently held that the use of a domain name to host a parked page comprising of pay per click links does not represent a bona fide offering where such links compete with the reputation and goodwill of the Complainant's mark. (*Paris Hilton v. Deepak Kumar*, case no. D2010-1364)

Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and has registered the domain name only to take unfair advantage of Complainant's global reputation and goodwill. The fact that the disputed domain name has not been put to legitimate non-commercial fair use or commercial/business use shows Respondent holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy 4(b).

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence and extensively used when disputed domain was registered by the Respondent (registered on 01.02.2014), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. However, despite notice Respondent failed to reply and also failed to discharge this onus.





The Respondent also failed to file any reply to show that he is making any legitimate, non-commercial or fair use of domain name without intent for commercial gains nor is likely to divert consumers or tarnish trademark by registering the disputed domain name. The Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

**7.4 The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4 (c))**

For the purposes of Paragraph 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has secured registration of the mark "TENCENT" (word mark) since 25<sup>th</sup> July, 2007 and 'Tencent holdings Limited', Tencent written in Chinese characters (logo mark) since 9<sup>th</sup> May, 2017 for use in providing value added internet, mobile and telecommunication services and related products. The Respondent has produced no evidence or justification for registering the disputed name. Infact, Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain showing its unfair use by Respondent through publishing pay per click ads and redirecting the parked page to website of various competitors of Complainant. The Complainant submitted that the Respondent is not authorized by it to use the disputed domain name in the absence of any license or agreement from Complainant to use or apply its trademark.



The Arbitrator in the present case finds bad faith in the registration and use of the disputed domain name. Complainant provided sufficient evidence showing widespread use, goodwill and trademark registrations of the 'TENCENT' mark in India and other countries which long predates Respondent's registration of the disputed domain name which incorporates completely the registered trademark TENCENT of the Complainant. (WIPO overview 3.0 notes in section 3.14 "*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith*".

The sample principle is relied on in *Adobe Inc. v. Amin Mohammadsalehi, Uranos*, case No. DIR2020-0006.)

Moreover, Arbitrator finds that Respondent's disputed domain name feature pay-per-click advertisement with the Complainant's trademark 'TENCENT' clearly establishes the bad faith registration. It also shows that respondent intended to hoard the disputed domain name preventing the Complainant from using it or divert customers of the Complainant.

The Complainant's domain name www.tencent.com was created and used since 1998. (supporting document filed as Annexure 14 to complaint). The disputed domain name www.tencent.co.in was registered by Respondent on 1<sup>st</sup> February, 2014. Thus, Complainant's rights in the TENCENT mark pre-dated



Respondent's registration of the disputed domain name. Therefore, Respondent was aware of the 'TENCENT' mark as it has previously also engaged in domain name squatting of the Complainant's other marks (where Respondent on separate occasions has indulged in bad faith registration of other domain names identical/deceptively similar to trademark TENCENT of complainant.)

Complainant has filed evidence to show he was contacted by Respondent with a view to sell the disputed domain (absent any legitimate interest / right) indicative of bad faith registration and cybersquatting (*WIPO overview 3.0 section 3.1(i)*).

Also, the Arbitrator finds that the disputed domain name led to a parked page containing links that lead visitors to websites belonging to some of Complainant's competitors. Such registration and use of domain names as in the present case constitute an attempt to intentionally attract, for commercial gain, consumers to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the affiliation or endorsement of the Complainant, particularly so as domain name incorporates completely the mark of the Complainant. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. (WIPO Overview 3.0, section 2.5.1.)

Moreover, it is settled law that the incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith. (*Microsoft Corporation vs. Montrose Corporation, (WIPO*

*Case No. D2000-1568*). In present case, the Respondent failed to file any response to the contentions and submissions of the Complainant.

For the aforesaid reasons, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the .IN Policy

## **8. Decision**

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- (a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- (b) Respondent has failed to rebut averments, contentions and submissions of the Complainant.

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name “tencent.co.in” to the Complainant.

The Award is passed on this 2<sup>nd</sup> February, 2021

Place: Noida



Dr. Karnika Seth  
Sole Arbitrator