



सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

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#### e-Stamp

Certificate No.	: IN-DL74074697672733U
Certificate Issued Date	: 16-Aug-2022 02:58 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1729628612441819U
Purchased by	: KAMAL DAVE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KAMAL DAVE
Second Party	: Not Applicable
Stamp Duty Paid By	: KAMAL DAVE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



In the matter of the Arbitration Act 1996 as Amended by  
Arbitration & Conciliation (Amendment) Act, 2015;

and

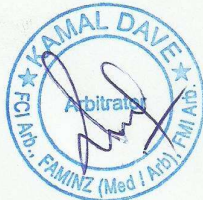
INDRP Rules of Procedure;

and

.IN Domain Name Dispute Resolution Policy (INDRP)

and

In the matter of an arbitration between



- Page # 1 -

#### Statutory Alert:

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In the matter of an arbitration between

Sony Group Corporation  
1-7-1 Konan, Minato-ku,  
Tokyo, 108-0075, Japan

...Complainant

AND

Game the Shop  
204 Zone-1, MP Nagar  
Bhopal-462011  
Madhya Pradesh

...Respondent

in respect of Disputed Domain Name(s):

**[www.sonycentral.co.in]**

**INDRP Case No: 1593**

FINAL AWARD

1. THE PARTIES AND THEIR REPRESENTATIVES

A. Claimant :

Sony Group Corporation  
1-7-1 Konan, Minato-ku,  
Tokyo, 108-0075, Japan

Authorised Representative

Mr. Rahul Chaudhry  
RCY House, C-235,





Defence Colony,  
New Delhi – 110024  
E-mail: domainname@rahulchaudhry.com

B. Respondent

Game the Shop  
204 Zone-1, MP Nagar  
Bhopal-462011  
Madhya Pradesh

2. THE DOMAIN NAMES AND REGISTRAR

- A. The accredited registrar of the disputed Impugned Domain [www.sonycentral.co.in] is GoDaddy.com, LLC The details of the Registrar, are as follows:

Corporate Headquarters :  
2150 E Warner Rd Tempe,  
Arizona 85284-3401,  
United States of America  
www.godaddy.com

3. THE ARBITRAL TRIBUNAL – APPOINTMENT

- A. As per the records, on 05<sup>th</sup> August 2022 NIXI sent intimation to the Arbitrator & the parties including the Respondent regarding the appointment of arbitrator to decide the dispute in respect of domain [www.sonycentral.co.in].
- B. As per the records, I, the undersigned (i.e. Kamal Dave) was appointed as arbitrator by NIXI, in accordance with INDRP Rules of Procedure and .In domain name dispute resolution policy (INDRP), vide appointment order dated 05<sup>th</sup> August 2022 and I submitted declaration of impartiality and independence at all times with NIXI.





C. The .IN Domain Name Dispute Resolution Policy (INDRP) & Rules of Procedure of INDRP mandates appointment of arbitrator by NIXI, Accordingly clause 5 (b) of INDRP Rules of Procedure provides for it, which reads, *"The .IN Registry shall appoint, an Arbitrator from the .IN Registry's list and shall forward the Complaint along with supporting documents to such Arbitrator"*.

D. There is no document/ correspondence on record to show that the Respondent replied to the intimation of arbitration dispute regarding the domain [www.www.sonycentral.co.in].

4. PROCEDURAL HISTORY :

A. After my appointment as arbitrator by NIXI & intimation to me on 05<sup>th</sup> August 2022; On 09<sup>th</sup> August 2022, the arbitral tribunal communicated the parties through email at their respective registered email addresses, whereby it was directed through Procedural Order No 1 that the mode of communication shall be electronic only except as otherwise specifically stated/ directed. Further the tribunal directed the parties (viz. complainant & respondent) through the procedural order no 1 to file their respective pleadings- viz. to file the scanned copy of complaint on oath through an affidavit 11<sup>th</sup> August 2022; And to file physical copy of complaint on oath through an affidavit along-with documents through courier on or before 20<sup>th</sup> August 2022; the tribunal directed the complainant to file the original & physical copy of delivery report of the email (electronic mail), courier along-with the affidavit of service duly sworn-in before a NOTARY to this effect, on or before 20<sup>th</sup> August 2022; Further the tribunal directed respondent to file their reply on affidavit duly sworn-in before a NOTARY after receipt of complaint along-with aforementioned documents on or before 22<sup>th</sup> August 2022 and serve the





copy thereof to the complainant; And it was optional for the complainant to file any rejoinder on or before 29<sup>th</sup> August 2022 and serve the copy thereof to the respondent; And it was optional for the respondent to file their reply in response to the rejoinder on or before 02<sup>nd</sup> September 2022 and serve the copy thereof to the complainant; And it was further optional for the parties to file their evidence by way of affidavit in support of their claim/ reply which shall be duly sworn-in before a NOTARY to that effect; and thereafter submit the electronic/ scan image and physical copy same before myself on or before 02<sup>nd</sup> September 2022 and shall serve the copy thereof to the other party ; And the parties were at liberty to file their written arguments before myself along-with evidence by way of affidavit i.e. on or before 02<sup>nd</sup> September 2022 and serve the copy thereof to the other party.

- B. The complainant through AR has sent scanned copy of documents with email dated 19<sup>th</sup> August 2022 and filed affidavit of service. All aforementioned documents have been taken on record.
- C. The AR of the complainant, pursuant to directions the Complainant submitted Affidavit in support of the complaint duly sworn-in by the Counsel for the Complainant and attested by Notary and thus PO1 was duly complied.
- D. The complainant through AR has filed documents regarding service of copy of complaint along-with documents/ annexures, affidavit, through electronically as well as courier. The electronic delivery and copy of courier receipt and tracking report of courier service has been placed on record by the complainant through AR.
- E. The respondent has neither replied to the intimation by NIXI sent on 05<sup>th</sup> August 2022; Nor to the notice sent on 09<sup>th</sup> August 2022 along-with





procedural order 1. The complainant through AR has taken steps to serve the respondent through email as well as courier on 10<sup>th</sup> August 2022 but the respondent has not replied to notice nor even filed their reply. Therefore I am satisfied that the complainant the complainant has taken adequate steps for serving the respondent and thereby complied with the directions. The respondent has been duly served as mandated by clause 2 of INDRP Rules of Procedure and service on respondent is completed as per the clause.

- F. The respondent has chosen to abstain and not participate in the arbitration proceedings. Hence as per clause 12 of INDRP Rules of Procedure, which mandates that where parties are in default i.e. who willfully abstains from the proceedings may be proceeded *ex-parte*. Accordingly, the tribunal concluded that proceedings against the respondent to continue *ex-parte*.
- G. The complainant cannot take benefit from the non-presence of the other party and his claim must stand on merits.

5. PLEADINGS :

- A. The complainant has filed its complaint supported by Affidavit in support of the complaint duly sworn-in by the Counsel for the Complainant and attested by Notary on oath stating/ contending facts & grounds of the case:

FACTUAL BACKGROUND:

- I. The complainant along-with its complaint filed documents as annexures. That the Complainant through their complaint stated :
- The Complainant is an established business enterprise present in diverse fields related to electronics, media and entertainment. The Complainant including its subsidiaries is a leading manufacturer/provider of audio, video, communications and information technology products/services for the consumer and professional





market with sales and operating revenue of approx. 9,921 Billion Yen for the fiscal year ended on March 31, 2022. The Complainant employs an enormous staff across the globe. As of March 31, 2021, the Complainant had a consolidated headcount of 109,700. Annexed as Annexure A are few extracts of the Complainant's Annual Reports and Financial Statements with the earliest of the year 1961 and for the year 2021..

II. the Complainant humbly submits that the following are the grounds for this Complaint:

**B. GROUNDS**

I. The complainant contended under the head, *"The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:*

- *The Complainant is the proprietor of the well-known trademark SONY worldwide, including registrations of SONY in India, which has been in continuous, extensive and uninterrupted use since the year 1956. The Complainant's domain name www.sony.com has acquired distinctiveness and is associated with the business of Complainant and the mark SONY is registered world over. The Respondent in its domain name www.sonycentral.co.in has completely copied the Complainant's well-established mark SONY (among several other trademarks of the Complainant, which feature on the website operating on the impugned domain name), as the Respondent's domain name incorporates Complainant's mark in its entirety. Complainant including its subsidiaries owns/controls various domain names for or that include SONY, including but not limited to www.sony.com, www.sony.co.in, www.sony.net, www.sonymusic.com and www.sonymobile.com etc. as detailed hereinabove.*
- *The word SONY has become distinctive of the products/ services of the Complainant such that use of the said mark is immediately associated with the Complainant.*
- *Respondent's domain name www.sonycentral.co.in completely incorporates the Complainant's mark SONY. The addition of the words "CENTRAL" and ".co.in" does not make the impugned domain name distinguishable from the*





Complainant's registered and well-known mark SONY. In fact, the same is likely to suggest that the said domain name is related to the services provided by the Complainant, especially when the Complainant's products are displayed and offered for sale on the website operating on this domain name. It is clear that the website on the impugned domain name is attempting to create confusion in the minds of customers by associating itself with the Complainant and thereby generating revenue by directing the said users to its website.

- The Complainant relies on *K.R. Chinna Krishna Chettiar v. Shri Ambal and Co. and Ors.*, (1969) 2 SCC 131, which held that "There is no visual resemblance between the two marks, but ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. There is a close affinity of sound between Ambal and Andal."
- The Complainant also relies on *Stephen Koeing vs. Arbitrator NIXI and Ors.*, 2015 (64) PTC 406 (Del), which held that "use of a mark which bears such close resemblance to a registered mark as to amount to "deceptive similarity" results in a presumption of infringement (of the mark) by virtue of Section 29 (3) of the Trade Marks Act, 1999. Therefore, in this context, the learned Single Judge's use of *Satyam Infoway v.11 Siffynet Solutions (P) Ltd.* (2004) 6 SCC 145 in the present case, was apt; trade mark law in India would apply for domain name use, wherever issues of confusion or similarity arise between web-based services or use of domain names."
- Further, in *Philip Morris USA Inc. v. Domain Administrator [WIPO Case No. D2016-2078]* (September 02, 2016) it was held that "disputed domain name <marlbos.com> is confusingly similar to Complainant's MARLBORO mark. The names look and sound similar."

II. The complainant contended under the head, "The Respondent has no rights or legitimate interests in respect of the domain name"

- The Respondent neither has any legitimate interest in the trademark SONY nor is the lawful owner of any right relating to the Complainant's mark. The Respondent bears no relationship to the business of Complainant and is neither a licensee nor has obtained authorization of any kind whatsoever to use an





identical mark for selling identical products as that of the Complainant. Respondent is not commonly known by the infringing domain name.

- The impugned domain name [www.sonycentral.co.in](http://www.sonycentral.co.in) of Respondent was created on January 25, 2022. Further, a perusal of the website operating on the said domain name shows that the Respondent is calling itself as SONY CENTRAL and is fraudulently displaying/ offering the Complainant's products for sale on the said website, in order to falsely pretend that it is the Complainant's website and/or the Respondent is authorized seller of the Complainant, which is not true. A print out of screenshot of the website operating on the impugned domain name is annexed as Annexure F.
- Therefore, it is evident that the Respondent has no legitimate interest to use the impugned domain name.
- Respondent cannot demonstrate or establish any legitimate interest in the domain name [www.sonycentral.co.in](http://www.sonycentral.co.in). Respondent registered the impugned domain name long after Complainant started using the mark SONY in 1956 and have established rights in the said trademark through extensive use around the world. Further, the domain names [www.sony.com](http://www.sony.com) and [www.sony.co.in](http://www.sony.co.in) of the Complainant's sister concerns were created on July 07, 1989 and February 28, 2003 respectively, way before the date of creation of the impugned domain name. Given that Complainant's adoption/extensive use of the mark SONY predates Respondent's registration of the impugned domain name and the word SONY is a coined word having no dictionary meaning, the burden is on the Respondent to establish its rights or legitimate interests in the impugned domain name.
- From the facts, it is clear that the Respondent had adopted the mark SONY with the full knowledge of the Complainant's mark. Thus, the use of the mark SONY and the adoption of the impugned domain name by the Respondent is to capitalize on the goodwill of the Complainant.
- In the case of *Paris Hilton v. Deepak Kumar*, [WIPO Case No. D2010-1364] (September 23, 2010), it was held that "if the owner of the domain name is using it in order to unfairly capitalize upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain





Name here seems to be a clear attempt to unfairly capitalize on or otherwise take advantage of the Complainants' trade marks and resulting goodwill." Therefore, the Respondent is put to strict proof, in case it claims of having any legitimate interest in the mark SONY.

III. The complainant contended under the head, "The domain name was registered or is being used in bad faith"

- The circumstances detailed above indicate that the Respondent has registered or acquired the impugned domain name with dishonest intention to mislead and divert the consumers of the Complainant.
- Respondent has registered and is using the impugned domain name in bad faith for commercial gain and to benefit from the goodwill and fame associated with the Complainant's SONY mark and domain names [www.sony.com](http://www.sony.com) and [www.sony.co.in](http://www.sony.co.in) and from the likelihood that internet users will mistakenly believe that the impugned domain name and its associated website is connected to the Complainant and its goods/services.
- The Respondent has registered and is using the impugned domain name primarily for the purpose of disrupting the business of the Complainant and diverting the public, who is searching for the Complainant, to its website and has no prior rights in and no authorization to use given by the Complainant for the SONY trademark.
- Registering the impugned domain name and further acts of Respondent demonstrate Respondent's clear intention to attract, for commercial gain, internet users to Respondent's website by creating a likelihood of confusion with that of the Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's products. The registration of a similar domain name by the Respondent in an effort to gain commercial benefits is evidence of bad faith.
- Upon information and belief, particularly considering the international fame of the Complainant's trademark SONY, including the reputation in India, Complainant asserts that the Respondent intentionally registered the impugned domain name to trade off the goodwill associated with the Complainant's mark.
- The Complainant places reliance on *De'Longhi Appliances S.r.l v. Ye Genrong*, INDRP/1262 (September 8, 2020) which observes that actual knowledge of the



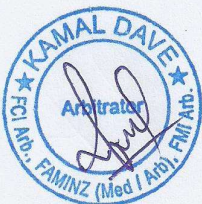


Complainant's distinctive marks before registering the domain name constitutes bad faith.

- The Respondent has also made fraudulent and incorrect claims while registering the impugned domain name since all registrants are required to warrant at the time of registering the domain name, under Paragraph 3(b) of the INDRP that, "to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;" and under Paragraph 3(d) that, "the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations". It was incumbent upon Respondent to ensure that it was not encroaching any third party rights while registering the domain name as held in *Voltas Ltd. v. Sergi Avaliani*, INDRP 1257 (September 22, 2020).
- The Complainant relies on *Pentair Inc. v. Bai Xiqing*, INDRP 827 (November 10, 2016) in which the panel had accepted that "the complainant has established its prior adoption and rights in the trade mark PENTAIR. Further the complainant's trade mark applications were clearly made before the disputed domain name PENTAIR.IN was registered. The evidence on record shows that the complainant's trade mark is well-known. Thus, the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the respondent's website, such registration of a domain name, based on awareness of a trade mark is indicative of bad faith registration under the Policy".

IV. The complainant sought remedies : It is, therefore, most respectfully prayed that the learned Arbitrator may be pleased to grant the following relief:

- To immediately transfer the impugned domain name [www.sonycentral.co.in](http://www.sonycentral.co.in) to the Complainant and direct the Respondent to take all necessary steps with the domain name registering authority to transfer the impugned domain name to the Complainant.
- Any further order(s), including awarding of costs, which the Learned Arbitrator may find fit and proper given the facts and circumstances of the present complaint.





C. The respondent has abstained from the arbitration proceedings and has been proceeded ex-parte as per clause 12 of INDRP Rules of Procedure.

D. From the complaint following issues have been framed :

6. The Issues :

A. Whether the Impugned Domain name [www.sonycentral.co.in] is identical or confusingly similar to a trademark or service mark in which the Complainant has rights?

B. Whether the Respondent has no rights or legitimate interests in respect of the domain name [www.sonycentral.co.in] ?

C. Whether the impugned domain name [www.sonycentral.co.in] was registered or is being used in bad faith?

D. Relief – *REMEDIES REQUESTED : It is, therefore, most respectfully prayed that the learned Arbitrator may be pleased to grant the following relief:-To immediately transfer the impugned domain name www.sonycentral.co.in to the Complainant and direct the Respondent to take all necessary steps with the domain name registering authority to transfer the impugned domain name to the Complainant; Any further order(s), including awarding of costs, which the Learned Arbitrator may find fit and proper given the facts and circumstances of the present complaint.*

7. Analysis of the issues on Merit

A. Whether the Impugned Domain name [www.sonycentral.co.in] is identical or confusingly similar to a trademark or service mark in which the Complainant has rights?

I. I have perused the complaint, affidavit of the counsel of the complainant & documents/ Annexures placed on record. From the submissions made in complaint and perusal of Annexures, it is





evident that the complainant has obtained Trademark certificates from Intellectual Property Office in India & other countries worldwide which are specifically placed at Annexure 'D'.

- II. I am thus satisfied that the complainant is the lawful owner of the trademark and is carrying out business activities under the trademark SONY & domain name www.sony.com since 07-July-1989.
  - III. I have perused the submissions of the complainant I am satisfied respondent have adapted the trademark "SONY" by appending/suffixing the word "CENTRAL" to the word "SONY" and thus making it "SONYCENTRAL" in violation of complainant's exclusive right to use the trademark "SONY".
  - IV. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
  - V. In view of the submissions and the judgments cited, I conclude that the domain name [www.sonycentral.co.in] is identical and confusingly similar to the trademark "SONY" over which the Complainant has rights and thus has contravened the Paragraph 4(a) of INDRP Policy.
- B. Whether the Respondent has no rights or legitimate interests in respect of the domain name [www.sonycentral.co.in] ?
- I. I have perused the complaint, affidavit & documents/ Annexures placed on record and their submissions.
  - II. I am satisfied that respondent who has not been authorized by the complainant thus are violating rights or legitimate interests of the complainant who have exclusive right to use the trademark "SONY".
  - III. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.





- IV. After analyzing the submissions & details made herein-before, the documents placed on record and the judgments cited, I conclude that the respondent has no claims, rights or legitimate interests to use the trademark "SONY" in respect of carrying out any business activities from the disputed domain name [www.sonycentral.co.in]. I am satisfied and conclude that the respondent has acted in contravention of paragraph 4(b) of INDRP Policy.
- C. Whether the impugned domain name [www.sonycentral.co.in] was registered or is being used in bad faith?
- I. I have perused the complaint, affidavit & documents/ Annexures placed on record.
- II. And after perusing Annexures on placed record, submissions made and the judgments cited, it is apparent that the complainant company is bonafide owner of trademark "SONY" and is carrying out business activities.
- III. I am satisfied that respondent have registered domain name using the trademark "SONY" thus violating the exclusive rights of the complainant over the trademark "SONY" and the registration of the Impugned Domain [www.sonycentral.co.in] has been done in bad faith and with dishonest intention to mislead the innocent public.
- IV. The respondent has abstained from the arbitral proceedings despite service to contradict the submissions of the complainant.
- V. After analyzing the submissions & details made herein-before and the documents placed on record, I conclude that the the domain name [www.sonycentral.co.in] is registered and being used in bad faith by the respondent. I further conclude that the respondent has acted in contravention of paragraph 4(c) of INDRP Policy.





D. Remedies Requested – *REMEDIES REQUESTED* : It is, therefore, most respectfully prayed that the learned Arbitrator may be pleased to grant the following relief:-To immediately transfer the impugned domain name *www.sonycentral.co.in* to the Complainant and direct the Respondent to take all necessary steps with the domain name registering authority to transfer the impugned domain name to the Complainant; Any further order(s), including awarding of costs, which the Learned Arbitrator may find fit and proper given the facts and circumstances of the present complaint.

I. Analysis of the issue (D) Relief – Regarding the prayer for relief as prayed, I have perused the complaint, affidavit & Annexures placed on record and after analyzing them in details herein-before and in view of the submissions and the judgments cited, I conclude that the respondent has acted in contravention of paragraph 4 of INDRP Policy in entirety. I thus conclude the issue i.e. Relief to be settled in favour of the complainant and accordingly I allow the prayer of the complainant to transfer the ownership of domain name [*www.sonycentral.co.in*] in favour of the complainant.

II. Regarding the prayer for relief as to award of cost, I conclude that the parties to bear their own costs.

**8. AWARD**

A. I AWARD AND DIRECT, that the ownership of domain name [*www.sonycentral.co.in*] be transferred in the name of the complainant.

This is my final award made and published by me on this 03<sup>rd</sup> day of October 2022, at New Delhi, the seat of arbitration.

  
Kamal Dave

Sole Arbitrator

