



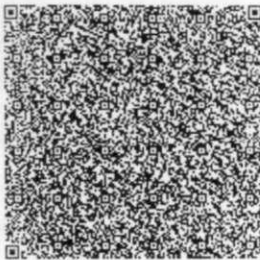
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Certificate No.	: IN-DL64499958854360L
Certificate Issued Date	: 07-Jan-2013 12:00 PM
Account Reference	: IMPACC (IV)/ dl719103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71910328799633550810L
Purchased by	: RAJEEV SINGH CHAUHAN ADV
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: RAJEEV SINGH CHAUHAN ADV
Second Party	: NA
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN ADV
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Mahindra & Mahindra Limited
Gateway Building
Apollo Bunder, Mumbai – 400 001

...(Complainant)

Versus

M and M Associates
No.694, Prateek Plaza
12th Main, 3rd Block, Rajajinagar,
Bangalore, Karnataka – 560 057

...(Respondent)

Handwritten signature

THE PARTIES

The Complainant in this proceeding is Mahindra & Mahindra Limited, having its address at Gateway Building, Apollo Bunder, Mumbai – 400 001.

The Complainants authorized representative in these proceedings are:

Messrs. Khaitan & Co.

Advocates, Solicitors, Notaries, Patents and Trade Mark Attorney

One Indiabulls Centre

13th Floor

842 Senapati Bapat Marg

Elphinstone Road

Mumbai 400 013

India

Telephone: +91-22-6636 5000

Fax: +91-22-6636-5050

E-mail: Mumbai@khaitanco.com

The Respondent in this proceeding is M and M Associates, No.694, Prateek Plaza, 12th Main, 3rd Block, Rajajinagar, Bangalore, Karnataka – 560 057 as Per the WhoIs Database.

The Disputed Domain Name

The disputed domain name is <WWW.MANDM.IN>

Procedural History

That I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <www.mandm.in>

That .In Registry has supplied the copy of the Complaint and Annexures to me.

That on 13/08/2012, I sent an email to the parties informing them about my appointment as an Arbitrator. On the same date I requested the Complainant to serve the copy of the complaint with annexures once again to the Respondent through courier and through email.

I gave the respondent a time of ten days, from the date of receipt of the copy of complaint, to reply to the complaint.

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The Respondent failed/neglected to file its say/ reply to the Complaint of the Complainant within the stipulated time.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make it a part of the proceedings. Since it has failed to join the proceedings, the present ex parte award is passed.

That I have perused the record and Annexure/ documents.

Factual Background:

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

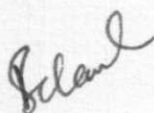
The Complainant in this proceeding is Mahindra and Mahindra Limited, which was incorporated in the year 1945 under Indian Companies Act, 1913. The complainant and its group /subsidiary companies are together referred as the 'Mahindra Group'.

As per the complainant, the complainant has carried on the business of manufacturing goods under its well-known mark "MAHINDRA" and has been providing services under its corporate name, trade name and trading style viz. "Mahindra and Mahindra" since or about 13th January 1948. That the complainant are the second largest tractor manufacturer in the world. Complainant states that they have a leading presence in the key sectors of the Indian economy, including the automotive sector, real estate affairs and building and construction services, financial services, trade and logistics, information technology, infrastructure development, hotel and resort and after-market, retail trade and also the educational field.

Further the complainant states that in general public they are popularly known by its acronym "M & M". The marks "MAHINDRA", "Mahindra and Mahindra" (word per se and label) and "M & M" (word per se and label) are registered in various Classes in India and abroad.

Further, it is also stated that the Complainant is the owner of the top level domain name Mahindra.com as well as numerous variations thereof in the .com and other gTLDs. That the complainant has been incurring huge expenses in sales promotion and advertisements in relation to the goods and services bearing the mark "MAHINDRA", the corporate name "Mahindra and Mahindra Limited" and the trading style "Mahindra and Mahindra".

The complainant has further stated that the popularity, goodwill and reputation of the marks Mahindra/ Mahindra and Mahindra has become so immense with the members of the trade



and public, that the same has naturally flown into and is associated with the term/acronym of the complainant "M & M".

The complainant has further states that the said trade mark has acquired tremendous goodwill and reputation and is exclusively associated with the complainant.

Respondent in this proceeding is M and M Associates who has not filed any written response to the complaint despite being given an adequate notification and time by the Arbitrator.

Parties Contentions:

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical or similar to a trade mark or service mark in which the Complainant has rights.
2. The Respondent's lack of rights or legitimate interest in the domain name.
3. That the domain name has been registered and used in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and time by the Arbitrator.

Discussions and Findings:

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above adequate time and notification have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, ex-parte and the Arbitration proceeding have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under and any law that the Arbitrator deems to be applicable"*

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In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "MAHINDRA" and "Mahindra and Mahindra".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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 has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

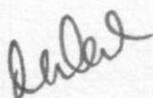
The Respondent's domain name is identical or similar to a trade mark or service mark in which the Complainant has rights- (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The complainant submits that the Respondent has incorporated the entire mark "M & M" of the Complainant in the disputed domain name. Such resemblance between the disputed domain name and the Complainant's registered and well-known trade mark cannot be by any stretch of imagination be considered as a mere co-incidence. The complainant further submits that the Respondent has merely replaced '&' of the registered said trade mark of the Complainant with the word 'and' in the disputed domain name.

The Complainant further submits that under paragraph 3 of the INDRP, it is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Therefore, it was the Respondent's burden to verify before applying for the disputed domain name that the disputed name does not violate any third party rights.

The Respondent has not filed any reply regarding the above mentioned contentions of the complainant and therefore it is deemed to be admitted by him.

The Arbitrator, therefore, concludes that the domain name <www.mandm.in> registered by the Respondent by putting the word "and" in between the two M's, is confusingly similar to



the well known mark of the complainant and the Complainant has therefore succeeded in establishing the first element of the test in paragraph 4(a) of the Policy.

The Registrant has no rights or legitimate interests in respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

The Complainant submits that the disputed domain name comprises of the well-known and famous trademark "M & M" in which the Complainant has sole and exclusive proprietary right and interests, it is evident that the Respondent cannot have any right or legitimate interest in the domain name.

The Complainant further submits that the said trade mark is solely associated with the Complainant. Any use of the said trade mark in respect of any goods/services is bound to relate them to the Complainant. Moreover, since the Complainant is in diversified field as aforesaid the use of the said trade mark by the Respondent in its domain name is bound to create confusion and the members of trade and public would lead them to believe that the Respondent is some way connected / associated with the Complainant.

The Complainant further submits that the Respondent does not appear to have any reason for adopting and registering the disputed domain name. the mark "M & M" is neither a personal name of the Respondent nor the Respondent is commonly known by the disputed domain name.

The complainant further submits that the Respondent is not making any legitimate non – commercial or fair use of the disputed domain name and the Respondent is not a licensee of the Complainant nor has the Respondent ever been authorized by the Complainant to use the said trade mark or to register the domain name mandm.in.

The Respondent has not filed any reply regarding the above mentioned contentions of the complainant and therefore it is deemed to be admitted by him.

Therefore in the light of above facts, the Arbitrator holds that the Respondent do not have any legitimate interest in the Domain name

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

The Complainant submits that the Respondent is presumed to have had knowledge of the Complainant's mark at the time it registered the identical/confusingly similar domain name,

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moreover due to the Complainant's mark "M & M" being well-known and therefore this knowledge indicates Respondent's bad faith and malicious intention in registering the disputed domain name.

The Complainant further submits that the Respondent has registered the domain name with a malicious intention to trade upon the Complainant's reputation and / or to attract for financial gains the internet users to the Respondent's website by creating a deliberate confusion and/or deception with the Complainant's said trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or to capitalize on the likelihood of confusion between its domain name and Complainant's said trade mark "M & M".

The Complainant has relied upon the decision of the Hon'ble High Court of Delhi in *Cardservice International Inc Vs McGee* 42 USPQ 2d 1850, to support its contention.

The Complainant's further submits that by parking the disputed domain name, the Respondent is disrupting the Complainant's legitimate use of its trade mark and preventing the Complainant and/or its affiliates from rightfully obtaining its registration and therefore such conduct of the Respondent clearly violates the legal right and interest of the Complainant over the said trade mark.

The Complainant further submits that the Respondent has deliberately and in bad faith chosen the domain name as 'mandm' which incorporates the entire said trade mark.

The Respondent has not filed any reply regarding the above mentioned contentions of the complainant and therefore it is deemed to be admitted by him.

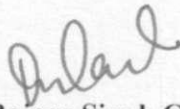
Therefore in the light of above facts, the Arbitrator holds that the Respondent has registered the domain name in bad faith.

Decision

The complainant has relied upon the following cases for its case: *Rediff.com v. Abhishek Verma & Anr. Cardservice International Inc. v. McGee* 42 USPQ 2d 1850, *Pantaloon Retail (India) Limited v. John Glennon* (decided on 27th March 2009), *Samsung Electronics Co. Ltd. v. Vishal Didwani*, *Morgan Stanley USA v. Bharat Jain USA*, *Yeshiva University v. Mr. Liu (Xiong)*, *Pantaloon Retail (India) Limited v. Online Directory Services*, *Suresh Kumar Sareen v. Jim J* (decided on 4th October, 2006) and *Mahindra India v. Wangyuan*.

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In view of the above facts and cases cited the Arbitrator holds that the Respondent has registered and used the disputed domain name in bad faith and therefore NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.mandm.in> to Complainant. The Award is accordingly passed on this 16th day of April 2013.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 16.04.2013