

उत्तर प्रदेश UTTAR PRADESH

CF 563707

INDRA ARBITRATION

MONTBLANC - SIMPLO S.M.O.Y.

v.

M.S. MOHAMMED SALIHU

DISPUTED DOMAIN NAME.

WWW.MONTBLANC.CO.IN

*Handwritten signature*

**INDRP ARBITRATION  
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: RODNEY D. RYDER**

**MONTBLANC-SIMPLO G.M.B.H.**

**v.**

**M S MOHAMED SALIHU**

**ARBITRATION AWARD**

**Disputed Domain Name: [www.montblanc.co.in](http://www.montblanc.co.in)**

A handwritten signature in red ink, appearing to be 'R. D. Ryder', is located at the bottom left of the page. The signature is stylized and written in a cursive-like font.



### **The Parties**

The Complainant in this arbitration proceeding is Montblanc - Simplo G.m.b.H., a corporation organized and existing under the laws of Germany, having its principal place of business at Hellgrundweg 100, D22525, Hamburg, Germany; represented by Lall & Sethi Advocates, New Delhi, India.

The Respondent in this arbitration proceeding is M S Mohamed Salihu, Net Gross, Old No.37, New No.86, Muthu Mari Chetty Street, Chennai, Tamil Nadu – 600001, India as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

### **The Domain Name and Registrar**

The disputed domain name is www.montblanc.co.in. The said domain name is registered with Webiq Domains Solutions Pvt. Ltd. [R131-AFIN].

### **Details of the disputed domain name**

The dispute concerns the domain name www.montblanc.co.in. The said domain name was registered on February 28, 2004. The particulars of the said domain name are as follows:

Registrant: M S Mohamed Salihu

Registrant Address: Net Gross, Old No.37, New No.86, Muthu Mari Chetty Street, Chennai  
Tamil Nadu – 600001, India

Registrant Phone: +91.9840137302

Registrant Email: salih@netgross.com

### **Procedural History [Arbitration Proceedings]**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India ["NIXI"]. By registering and subsequently renewing the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

In this matter, the arbitration proceedings commenced on May 1, 2015. The request for submission with a complete set of documents was dispatched to the Respondent. A reminder was sent on May 15 2015, following which the Respondent submitted his response on May 18, 2015. On May 18, 2015, the Arbitrator requested the Respondent to send a detailed response to the Complaint. The Respondent did not reply to this request.



### **Grounds for the administrative proceedings**

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is/are being used in bad faith.

### **Parties Contentions**

#### **Complainant**

The Complainant in his complaint, inter alia, contended as follows:

*The Respondent's domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.*

The Complainant, based on various International and Indian trademark registrations of the mark 'MONTBLANC', and based on the use of the said trademark[s] in India and other countries, submitted that it is the lawful owner of the trademark 'MONTBLANC'.

The Complainant is the registered proprietor of the trademark 'MONTBLANC' in India across several classes. The Complainant submits that as the disputed domain name is 'www.montblanc.co.in', the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

#### **Background of the Complainant and its statutory and common law rights Adoption:**

The Complainant has been consistently present in the luxury market for the last 100 years and has been synonymous with the very highest writing culture following lasting values such as quality and traditional craftsmanship. Its uncompromising demands on shape, style, materials and workmanship have been reflected in its products. The Complainant began as the 'Simplo Filler Pen company' producing up-market pens in the Schanzen district of Hamburg. Their first model was the Rouge et Noir in 1909 followed in 1910 by the pen that gave the Complainant its new name, 'MONTBLANC', which was registered as a trademark and henceforth used for all writing instruments produced by the company. Today, the MONTBLANC brand is used inter alia on a variety of goods other than pens, watches, jewellery, fragrances, leather goods and eyewear. The Complainant, has therefore, acquired a great renown in its field of business.

#### **Statutory rights:**

The Complainant is the owner of the Registered Trademark 'MONTBLANC' in India with registrations across multiple classes.

#### **Respondent**

The Respondent, through a brief response dated May 18, 2015, contended the following:

The disputed domain name <www.montblanc.co.in> is being used by Mont Blanc Financial Services Private Limited which has been operational since 1990. A Certificate of Incorporation of the company under the Companies Act, 1956 was provided proving the same.





The Respondent contended that the company, Mont Blanc Financial Services Private Limited has been operational for many years and that the domain name was being used fairly by the Respondent/Company and thus the Complainant's claim over the disputed domain name is not tenable. However, the Respondent did not submit any documentary evidence in support of its contentions apart from the Incorporation Certificate of Mont Blanc Financial Services Private Limited.

### **Discussion and Findings**

The Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand 'MONTBLANC', except a company named Mont Blanc Financial Services Private Limited. Further, the Respondent has not shown a connection between himself, the Registrant on record [M S Mohamed Salihu] and Mont Blanc Financial Services Private Limited. The Respondent has failed in showing any trademark or common law usage rights in the mark 'MONTBLANC'; neither has the Respondent demonstrated use of the domain name. The Complainant, the registered proprietor of the mark [Mont Blanc], has neither given any license nor authorized the Respondent to use the Complainant's mark.

It is a well-established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that he has some legitimate interest in the domain name to rebut this presumption.

### **The issues involved in the dispute**

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads:

*"Types of Disputes -*

*Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:*

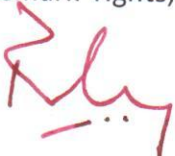
- (i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;*
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and*
- (iii) the Respondent's domain name has been registered or is being used in bad faith.*

*The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."*

According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in the light of the facts and circumstances of this case.

*The Respondent's domain name is identical and confusingly similar to a name, trademark or service in which the Complainant has rights.*

It has been proved by the Complainant that it has intellectual property, particularly trademark rights, and other rights in the mark 'MONTBLANC' by submitting substantial



documents. The disputed domain name contains Complainant's 'MONTBLANC' Trademark in its entirety. The mark is being used by the Complainant in relation to its business and is internationally renowned.

Further, it has been previously decided under the INDRP that incorporating a well-known trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name.

According to the INDRP paragraph 3 it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

Paragraph 3 of the INDRP is reproduced below:

*"The Respondent's Representations -*

*By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that:*

- the statements that the Respondent made in the Respondent's Application Form for Registration of Domain Name are complete and accurate;*
- to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- the Respondent is not registering the domain name for an unlawful purpose; and*
- the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.*

*It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights."*

The Respondent has failed in his responsibility discussed above and in the light of the pleadings and documents filed by the Complainant; the panel has come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainant's 'MONTBLANC' mark[s]. Accordingly, the panel concludes that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

*The Respondent has no rights or legitimate interests in respect of the disputed domain name*

The second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorised the Respondent to register or use the 'MONTBLANC' Trademark. The Complainant has been using the domain name [www.montblanc.com](http://www.montblanc.com) for a bonafide purpose.

Moreover, the burden of proof on the Complainant regarding this element in the domain name lies most directly within the Respondent's knowledge. Once the Complainant makes a





prima facie case showing that the Respondent does not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent has contended that the disputed domain name is being used for its company, Mont Blanc Financial Services Private Limited which has been incorporated under the Companies Act, 1956. However, the Respondent has failed to prove that the disputed domain name is being used in connection with a bonafide offer of goods or services. The Respondent has also failed to prove its rights in the mark 'MONTBLANC' by way of trademark, common law rights or any legitimate non-commercial or fair use of the disputed domain name.

Further, the Respondent's response has been sparse and does not rebut the contentions asserted by the Complainant. This further indicates that the Respondent has no right or legitimate interest in respect of the disputed domain name [www.montblanc.co.in](http://www.montblanc.co.in).

For these reasons, the panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

*The disputed domain name has been registered or is being used in bad faith.*

It has been contended by the Complainant that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

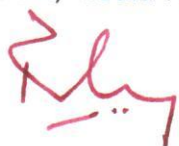
Paragraph 6 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

*"Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or*

*the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or*

*by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."*

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the panel is of the opinion that the Respondent had no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public,





who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product/services on the Respondent's website and otherwise, due to the use by Respondent of the Complainant's said trademark 'MONTBLANC' in the disputed domain name, which trademarks have been widely used all over the world by the Complainant and which trademarks are associated exclusively with the Complainant.

The domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'MONTBLANC' as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the registrant's website or location.

The Panel is therefore prepared to accept the Complainant's contention that its 'MONTBLANC' trademark and corresponding business is well-known and has developed a significant global reputation. With regard to Famous Names, successive UDRP panels have found bad faith registration because Complaint's name was famous at the time of registration: *WIPO/D2000-0310 [choyongpil.net]*. On bad faith registration and use [generally], panels have noted: "Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith": *NAF/FA95314 [thecaravanclub.com]*, *WIPO/D2000-0808* [very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith - *4icq.com*].

The Complainant's mark 'MONTBLANC' has acquired significant reputation all over the world, including India, as has been proved through numerous submissions made by the Complainant. The Panel is thus of the belief that the Respondent would have definitely known about the Complainant's mark 'MONTBLANC' and its reputation at the time of registering the disputed domain name. Such knowledge on part of the Respondent constitutes evidence that the domain name was registered in bad faith.

Thus, all the three conditions given in paragraph 6 of the INDRP are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent/Registrant is a registration in bad faith.

#### **Decision**

The Respondent failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights.

The Complainant has given sufficient evidence to prove extensive global trademark rights on the disputed domain name. Further, the Respondent's adoption and registration of the disputed domain name is dishonest and malafide.

While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore a Complainant is

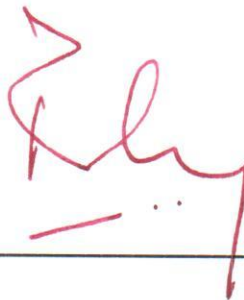




required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. Thus it is clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

[Relevant decisions: *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu* WIPO D2003-0849; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119]

The Respondent's registration and use of the domain name [www.montblanc.co.in] is abusive and in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Arbitrator directs that the disputed domain name [www.montblanc.co.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.



Rodney D. Ryder  
Sole Arbitrator

Date: May 27, 2015