



उत्तर प्रदेश UTTAR PRADESH

AR 707047

20 JUN 2011

Bodhisatva Acharya
ARBITRATOR

(Appointed by IN Registry-National Internet Exchange of India)

Case No. Of 2011.

ARBITRATION AWARD: DISPUTED DOMAIN NAME:

In the matter of:

Netflix, Inc.

100 Winchester Circle,

Los Gatos, California-95032,

USA

Email: *arharvey@netflix.co.in*

Filed by its authorized representative attorney -

Remfry & Sagar, Remfry

House at Millennium Plaza,

Sector-27, Gurgaon-122009, India

Email: *remfry-sagar@remfry.com.* ...Complainant

BL

Vs.

Ms. Neema Sharma,
Nahan,
District Sirmour,
Himachal Pradesh-173001
E-mail pksharma26jan@gmail.com

Respondent.

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is **Netflix.Inc.** 100 Winchester Circle, Los Gatos, California-95032. USA with email address as arharvey@netflix.com filed by its authorized representative Remfry & Sagar. Remfry House at Millennium Plaza, Sector-27, Surgaon-122009, India, with email address as remfry-sagar@remfry.com

Respondent in this arbitration proceeding is Ms. Neema Sharma, Nahan, District Sirmour, Himachal Pradesh-173001 E-mail: pksharma26jan@gmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.netflix.co.in

3. Procedural History:

The complainant, through its authorized representative, filed **this** complainant to NIXI regarding the disputed domain name www.netflix.co.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed **Mr. Bodhisatva Acharya** (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The



Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on April 27th, 2011 and the complaint was produced before the Arbitrator on May 3rd, 2011.

4. Factual Background:

Arbitrator sent a notice to the Respondent through his email on May 4th, 2011 for the Arbitration Proceeding with a 10 days deadline to submit his reply but The Respondent in her reply demanded the copy of complaint then Arbitrator directed Complainant to send the copy thereof on May 5th, 2011 and on May 6th, 2011 complainant send email to Arbitrator that he has sent the copy by email to Respondent then Arbitrator sent his second notice to Respondent to submit her reply but again in reply the Respondent demanded the hard copy by giving her postal address on May 15th, 2011, again Arbitrator directed Complainant to send the hard copy to Respondent and on May 27th, 2011 Complainant sent an email by giving the proof of sending the hard copy to Respondent's giving postal address. On June 3rd, 2011 Arbitrator sent his final notice to Respondent to submit her reply but nothing was neither filed nor replied by the Respondent.

On June 29th, 2011 Complainant sent an email to Arbitrator to submit the copy of Fax dated June 29th, 2011 sent by Blaze Flash Courier as proof of delivery to Respondent of Complaint at the postal address of Respondent but till the declaration of Award no reply was filed by the Respondent.

Hence the Award is giving as Ex-parte on July 1st, 2011.

5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;



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, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response and produced no reply.

6, Discussion & Findings:

Under the Paragraph 4 of the Policy (INDRP) 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 Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right.
- (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 with bad faith

After having gone through the records, documents, produced by the Complainant, Arbitrator's findings are:

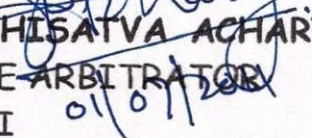
- (i) That the Respondent's performance was clearly ***ab initio*** in bad faith because Respondent filed no reply to Arbitrator at any stage of proceeding and it clearly shows that the Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

- (ii) The *Complainant* produced many evidences in his favour and the Arbitrator is satisfied by them. Arbitrator want to submit his findings through the following *cases*-
- (a) *Non use of the domain name has been held as an evidence of bad faith use - see Bayer Aktiengesellschaft vs. Henrik Monssen (WIPO Case No. 02003-0275)*
- (b) *The Respondent never hosted websites under the disputed domain names further substantiate the bad faith and malafide intenions of the Respondent - see Telstra Corporation Limited vs. Nuclear Marshmallows (WIPO Case No. 02000-0003)*
- (iii) The complainant has proved all the aforesaid premises as mentioned in paragraph 4 of Policy in his favor and he is has produced all the documentary proof in his favor.

7. Decision:

Hence the Arbitrator decides, the Disputed Domain Name www.netflix.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and *orders* that the domain name www.netflix.co.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI 01/07/2011

DATED: July 1st, 2011,
PLACE: NEW DELHI,
INDIA.