



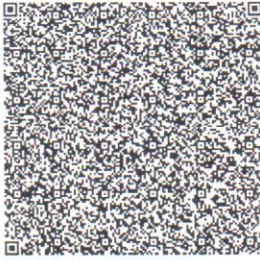
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL25406518537213M
Certificate Issued Date	: 21-Feb-2014 04:46 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130348215289549493M
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line.....

#### BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

##### IN THE MATTER OF

Orange Brand Services Limited  
3 More London Riverside, London  
UNITED KINGDOM

VS.

Anshul Agarwal,  
Orange Electronics Pvt Ltd,  
Near Udipi Hotel,  
Shivaji Statute Road, Jalna  
Maharashtra, 431203

**Complainant**

**Respondent**

##### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website 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.

*Handwritten signature*

## THE PARTIES

The Complainant in the present proceeding is Orange Brand Services Limited, a Company incorporated under the laws of England and Wales having its offices at 3 More London Riverside, London, United Kingdom, SE1 2AQ. The Complainant is represented through its authorised representatives namely, Mr. Srijoy Das and Mr. Bidyut Tamuly, Archer & Angel K - 4, South Extension 2, New Delhi, India - 110049, Tel: +91011026261302 [sdas@archerangel.com](mailto:sdas@archerangel.com), [btamuly@archerangel.com](mailto:btamuly@archerangel.com).

The Respondent in this proceeding is Mr. Anshul Agarwal, of the organization Orange Electronics Pvt. Ltd., having its registered address near Udipi Hotel, Shivaji Statute Road, Jalna, Maharashtra - 431203, Tel: +91-9923000506, [anshul.engineer@gmail.com](mailto:anshul.engineer@gmail.com).

## THE DOMAIN NAME AND REGISTRAR

The domain name in dispute is [www.orangeindia.in](http://www.orangeindia.in). According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name [www.orangeindia.in](http://www.orangeindia.in), with whom the disputed domain name [www.orangeindia.in](http://www.orangeindia.in) is registered is GoDaddy.com, LLC.

## PROCEDURAL HISTORY

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name [www.orangeindia.in](http://www.orangeindia.in). .IN Registry has supplied the copy of the Complaint to me.

On 01.02.2014, I sent an email to the parties informing them about my appointment as the Arbitrator, and also directing the Complainant to supply the copy of the Complaint with annexures to the Respondents, and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondents on 01.02.2014 with the instructions to file his say latest by 11.02.2014.





On 03.02.2014, I received an email from the Respondent stating that he was no longer the owner of the domain name in dispute. The Respondent also enclosed reply from GoDaddy.com regarding the ownership of the domain name in dispute wherein it was stated that the domain name in dispute had expired and was available for purchase through auctions only. It was further mentioned in this reply from GoDaddy that till the domain name in dispute was not purchased by anyone, WhoIs search will show Respondents name as the Registrants name.

Thereafter, on 07.02.2014, I received an email from the Complainant confirming the service of both the soft and hard copy of the Complaint along with the annexures to the Respondent. I was further informed by the Complainant that the hard copy of the Complaint which was duly sent to the postal address of the Respondent was rejected by the Respondent. The Complainant also provided the courier receipt showing that the 'Consignee Refused to Accept Shipment'. On 07.02.2014 itself, the Respondent sent out a mail to the Complainant stating that the domain name in dispute had expired and thus he is no more the owner of the same. It was further stated by the Respondent that the domain name in dispute is available for purchase from GoDaddy through auctions. However, since this mail of the Respondent was not addressed to Tribunal directly, the Tribunal has not taken note of the same, and this was communicated to the parties vide mail dated 14.02.2014 by the Arbitrator. In the same mail dated 14.02.2014, the Tribunal further directed the Respondent to file his official reply to the Complaint within the next seven (7) days, failing which, the matter would be decided on the basis of documents filed by the Complainant.

On 19.02.2014, the Respondent mailed the Tribunal and reiterated that he was no longer the owner of the domain name in dispute, and the same can be purchased by anyone from GoDaddy through auction. However, no reply to the Complaint on behalf of the Respondent was received by the Tribunal. Consequently, in view of the fact that the Respondent failed/neglected to file his say/ reply to the Complaint of the Complainant



within the stipulated time despite receipt of soft copy of the Complaint and annexures, the Tribunal vide mail dated 27.02.2014 informed the parties that the pleadings in the matter stood closed, and the matter will be decided based on documents on record.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response, the present award is passed.

I have perused the record and annexure/ documents.

### **FACTUAL BACKGROUND**

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

The Complainant in this proceeding is Orange Brand Service Limited, which is a part of the Group of Companies known as the Orange Group, and has been consistently independently valued as the top 50 most valuable brand in the world with an estimated brand value of US \$10 billion.

The Complainant has stated that it is the proprietor of the mark 'ORANGE' and its variants in all forms in multiple classes and they have been in continuous use by the Complainant since April 1994. Their international use expanded and as per the information provided it has been in use in over 200 countries worldwide, including India. A schedule of trademarks registrations for the marks ORANGE and Orange Device throughout the world in the ownership of the Complainant has been provided.

It has further been submitted by the Complainant that the brand has been expanding into new business areas including communications, IT services, research and development, charitable services, financial services, healthcare, advertising. The Orange brand was launched in India





in February 2000, its retail outlets selling mobile phone goods and services operate throughout India and were highly successful.

The Complainant has stated that it has incurred significant expenditure in protecting its intellectual property, and has acquired worldwide public recognition and goodwill in connection with security and hospitality systems. Complainant claims that due to its efforts the Orange Trade Marks are now associated throughout the world with quality and reliability.

The Respondent in this proceeding is an individual named Mr. Anshul Agarwal, of the organization Orange Electronics Pvt. Ltd.

In or around October 2012, the Complainant discovered that the Respondent had registered the disputed domain name for services and products identical/similar to those provided by the Complainant. On 25.10.2012, the Complainant sent a Ceased and Desist letter to the Respondent informing him of the Complainant's rights in and to the Orange Trade Marks and related domains, and further requesting the Respondent to immediately cease all use thereof. The Respondent replied via an email dated 18.11.2012 stating that they do not have any products or services in the name of 'Orange' and they had no intention of gaining any benefits either intentionally or unintentionally from the Complainant's brand or company name.

On 30.11.2012, the Complainant sent a letter explaining its rights in the Orange Trademarks and the nature of the Respondent's infringing use of them. However, the Complainant did not receive any reply from the Respondent. Consequently, on 10.01.2013 the Complainant sent a reminder letter to the Respondent. On 01.02.2013, the Respondent replied via email, stating that they have initiated steps for the change of the name of the company and indicated their willingness to execute an undertaking to transfer the domain name [www.orangeindia.in](http://www.orangeindia.in) to the Complainant.



On 15.02.2013, the Complainant responded with a letter along with the draft undertaking to be executed by the Respondent and requested for the transfer of the domain name. Thereafter, on 25.03.2013, the Complainant sent a reminder letter to the Respondent as it did not receive any response. Finally, in March 2013, the Complainant received an executed undertaking stating that the Respondent would transfer the domain name to the Complainant by July 31<sup>st</sup>, 2013.

On 01.08.2013, the Complainant sent a reminder letter since neither it had heard from the Respondent nor were any steps taken for the process of transfer of the disputed domain name in favour of the Complainant. Since no response was received to the reminder letter, on 11.09.2013, the Complainant sent a legal notice to the Respondent, calling upon it to transfer the disputed domain name to the Complainant without any further delay.

Since the Respondent failed to comply with the above-mentioned legal notice dated 01.08.2013, the Complainant has filed the present Complaint.

The Respondent has not filed any response and submissions to the present Complaint despite being given an adequate notice and several opportunities by the Arbitrator.

## **PARTIES CONTENTIONS**

### **(a) Complainant**

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondents has no rights or legitimate interest in respect of the Disputed Domain Name; and
3. The Disputed Domain Name was registered and is being used in bad faith.

### **(b) Respondent**



The Respondent has not filed any response/submissions to the Complaint despite being given an adequate notification and several opportunities by the Arbitrator.

## **DISCUSSION AND FINDINGS**

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

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 enough chances 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 proceedings 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"*

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 evidence placed on record by the Complainant, it is proved that the Complainant has statutory and common law rights in the mark "ORANGEINDIA" and its other variations.

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.

## **BASIS OF FINDINGS**

### **1. The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))**

The Complainant has stated that it is the proprietor of the mark 'ORANGE' and its variants in all forms in multiple classes and they have been in continuous use by the Complainant since April 1994.

The Complainant has further stated that somewhere around October, 2012 it discovered that the Respondent had registered the disputed domain name. The disputed domain name is identical to the Complainant trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the Complainant trademarks except for the words "INDIA". However, these differences can be ignored for the purpose of determining similarity between the disputed domain name and Complainant trademark as has been held in various cases such as *Morgan Stanley vs. Bharat Jain*, [INDRP Case No. 156 dated 27.09.2010], *Kenneth Cole Productions Inc Complainant vs. Viswas Infomedia* [INDRP Case No.93 dated 10.04.2009] etc.

Further, it is stated that at the time of registration of the disputed domain name [www.orangeindia.in](http://www.orangeindia.in), the Complainant had already been using the mark "ORANGE" and its variants as its trademark and domain name with firmly established rights in the same and such rights have been recognized and confirmed by WIPO as well as NIXI in previous cases. The Complainant makes a reference to the





INDRP Order in the matter of *Orange Brand Services Ltd. vs. Exuberant Services and solutions Pvt. Ltd. <orangeinfosolutions.in>* [INDRP Case No. 522 dated 16.11.2013] wherein the Complainant's rights in the mark 'ORANGE' were upheld. The panel in its Order stated that:

*"This tribunal is of confirmed opinion that the Complainant has origination since Year 1994 and is using the mark 'ORANGE' since then, has a huge customer base and has made massive efforts to promote the brand name 'ORANGE' by consuming various resources available at his end. Complainant has sponsored large International events and got International media coverage. It has received several prestigious accolades and awards from different respectable forums."*

In the present case, it is undeniable that the disputed domain name [www.orangeindia.in](http://www.orangeindia.in) wholly incorporates the Complainant's registered mark. Further, the word "INDIA" at the end of the disputed domain name is not sufficient to avoid confusion. The word is a noun denoting the country India and cannot be monopolized or used to indicate single trader or business. It is a well established that the addition of generic or descriptive terms to a trademark in a domain name does nothing to distinguish it from the trademark. In fact, the inclusion of the word "INDIA" only serves to increase the risk of confusion. There is a strong likelihood that the customers will perceive a nexus between the business of the Complainant, the disputed domain name and the content on the Respondent's website. The consumers will be led to believe that the same is a branch/offshoot of Orange Brand Services Limited in India, which is one of the markets in which the ORANGE mark of the Complainant is renowned.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. The Arbitrator, therefore, comes to the conclusion that the disputed

domain name is confusingly similar and identical to the mark of the Complainant.

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

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii):

- i) *"before any notice to the Registrant of the dispute, the Registrant's use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services";*

The Complainant has stated that its mark is well known and it has gained rights purely based upon prior use and registration of the mark, that there can be no legitimate use by the Respondent. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, in itself.

Furthermore, the Complainant states that there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Disputed Domain Name which is identical to that of the Complainant. Reliance has been made on the decision in *Sony Ericsson Mobile Communications AB vs. Salvatore Morelli*, [INDRP Case No. 30 dated 20.01.2007] where the Respondent was neither a licensee of the Complainant, nor had it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark, it was held that the Respondent did not have rights or legitimate interests in respect of the Disputed Domain Name



Moreover, the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any *bonafide* goods or services in the name of the disputed domain name. In fact, in the Undertaking executed by the Respondent, he has admitted that the Complainant is the rightful owner and proprietor of the mark 'ORANGE' and its variants in all forms. Further, the fact that the Respondent did not renew the domain name in dispute, also does not work in his favour in any manner.

The Complainant has thus proved that the registration and use of the disputed domain name by the Respondent was done in bad faith as per paragraph 6 (iii) of the policy, in the sense that its use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant marks as to the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon.

Therefore, it can be said that the Respondent has no right or legitimate interest in the disputed domain name.

**3. 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))**

Since the Respondent has not responded to the Complaint, it can be safely presumed that he has nothing to say, and the activities of the Respondent to get registered the domain name in dispute rise to the level of a bad faith and usurpation of the Complainant Mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws.

Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent, which would not constitute an infringement of the Complainant's rights in the trademark. Thus, mere registration of a



domain name similar to such a well-known trademark would be an evidence of the Respondent's bad faith.

The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain and the usage of the disputed domain name is in bad faith as defined under paragraph 6 (iii) of the policy.

Accordingly in the light of the above submissions and evidence on record, the Arbitrator has come to the conclusion that the disputed domain name was registered in bad faith.

### **DECISION**

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

The Respondent has got registered and used the disputed domain name in bad faith. IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. [www.orangeindia.in](http://www.orangeindia.in) to the Complainant. The Award is accordingly passed on this 19<sup>th</sup> day of May, 2014.



**Rajiv Singh Chauhan**

**Sole Arbitrator**

**Date: 19<sup>th</sup> May, 2014**