



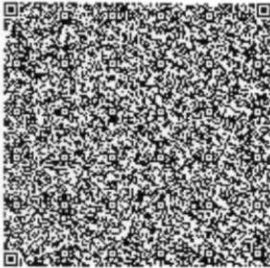
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL60961118156929L
 Certificate Issued Date : 11-Sep-2013 04:15 PM
 Account Reference : IMPACC (IV)/ dl839203/ DELHI/ DL-DLH
 Unique Doc. Reference : SUBIN-DL83920320381995366579L
 Purchased by : SANJAY KUMAR SINGH ARBITRATOR
 Description of Document : Article 12 Award
 Property Description : NA
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : SANJAY KUMAR SINGH ARBITRATOR
 Second Party : Not Applicable
 Stamp Duty Paid By : SANJAY KUMAR SINGH ARBITRATOR
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)



Please write or type below this line.

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR.
 IN DOMAIN NAME DISPUTE RESOLUTION POLICY.
 (IN DRP).

IN RE:-

Sagvn, LLC

complainant.

Raga 2aif

Respondent.

Sanjay Kumar Singh
 08-10-13

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Saavn, LLC

A Delaware limited Liability Company

460 Park Avenue South, 4th Floor

New York, New York 10016

COMPLAINANT

Versus

Raja Zaif

Basni, Basni 1st, Kota

Rajasthan 323435

RESPONDENT

II. THE PARTIES

A. THE COMPLAINANT:

1. The Complainant in this administrative proceeding is Saavn, LLC, a limited liability company under the laws of Delaware; which provides music for streaming over the Internet. The Complainant's official address is 460 Park Avenue South, 4th Floor, New York, New York 10016.
2. The Complainant's contact details are as follows:
Address:
Saavn, LLC
460 Park Avenue South, 4th Floor
New York, New York 10016
3. Complainant's authorized representatives in this administrative proceeding are:
 - a) Ms. Sumita Singh, Advocate
 - b) Ms. Sumita Singh, AdvocateASCENTIALLS
G-1/5, Flat No. 1
Ring Road, Model Town-3
Delhi 110009
Mob-919818402771
Authorized Attorney of the Complainant for this action)
Telephone: 91- 11 – 47082554

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Fax: 91 - 11 - 47560150

E-mail: sumita@ascentials.com
contact@ascentials.com

4. The Complainant's preferred method of communications directed to the Complainant in the administrative proceedings is as follows:

Material including hardcopy

Method: Courier

Address: Ms. Sumita Singh, Advocate

ASCENTIALLS

G-1/5, Flat No. 1

Ring Road, Model Town-3

Delhi 110009

Fax: 91 - 11 - 47560150

Contact: Ms. Sumita Singh

91-9818402771

Electronic-only material

Method: E-mail

Address: Sumita@ascentials.com

Contact: Ms. Sumita Singh

B. THE RESPONDENT

The Respondent (amended) in this administrative proceeding is

Raja Zaif

Basni, Basni 1st, Kota

Rajasthan 323435

Telephone: +91.777777878

Email- saavnindia@gmail.com

The Complainant has submitted that it is not aware of any other details as regards the legal status, place of incorporation, principal place of business etc. of the Respondent. From the search at the "who is" database of .In Registry the Complainant came to know that the disputed domain name is not available and only came to know that this website is registered by the Respondent.

III THE DOMAIN NAME AND REGISTRAR:

This dispute concerns the domain name identified below:

<saavn.in>

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The Registrar with which the domain name is registered is given below:

Big Rock Solutions Limited

The present Complaint has been filed by the complainant on account of the unauthorized and illegal registration and use of the Complainant's trademark "SAAVN", as part of its domain name by the Respondent.

The complainant has contended the following grounds in support of the Complaint in accordance with the .In Domain Name Dispute Resolution Policy:

1. The Registrant's domain name "saavn.in" incorporates the Complainant's trademark "SAAVN" and is identical to the Complainant's trading style and service mark "SAAVN", in which the Complainant has exclusive rights.
2. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
3. The Registrant's domain name has been registered and is being used in bad faith.
4. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.

IV Factual and legal Grounds:

The complainant has contended the following grounds:

1. The Complainant (which term shall hereinafter include SAAVN, LLC, its subsidiaries, and sister concerns) in this administrative proceeding is SAAVN, LLC, an Internet based service provider for live streaming of music, with its offices at 460 Park Avenue South, 4th Floor, New York, New York 10016.
2. SAAVN, LLC is a limited liability company under the laws of Delaware and has been in the business of high quality web and mobile music streams since March 2007, and is undoubtedly one of the best known and popular web based music streaming websites globally, for South Asian music.
3. The complainant has submitted that the name "SAAVN" was adopted by the Complainant based on the acronym for "South Asian Audio Visual Network". In Hindi, the word "saavn" is the season of Monsoon, which is a unique name in respect of the relevant services. The complainant has further submitted that the fact that the rare combination is used for services of web based streaming of music; it has all the features of a coined service mark.
4. The complainant has submitted that from the time of adoption in 2007, the web-based services has grown with geometric exponent and expanded enormously. The complainant

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has further submitted that Today, the Complainant has digital rights to over 2 million music tracks, and caters to a wide global customer base, including a huge clientele in India. Through dedicated service and concentrated efforts to meet the global standards of digital music streaming, Complainant has expended energy and resources to cater to the global customer base in attending to their digital music requirements. The complainant has submitted that it was the first company to offer Bollywood content on demand on cable television and on iTunes. It is only by incessant efforts that Complainant has managed to carve a niche for itself in the highly competitive arena of digital music streaming.

5. The complainant has submitted that it has supplemented its continual efforts to make a name for itself, in addition to providing digital music content, by expending huge resources at creating a presence for itself at the Internet. Complainant has ensured its presence at various promotional events and has advertised its services at all possible outlets, whether online or off-line. Complainant has ensured that over the last few years, its services are widely promoted to ensure geometrically expanding client base. It has ensured that the current music tastes are catered to, by obtaining rights to available music, including pre-release film music and other non-film music, and available the same for internet streaming to its customers. In addition to the above, the Complainant has submitted that it consistently increased its visibility and presence in the international digital music circles by added participation including cross-linking with other popular websites. The complainant has submitted that it has a dedicated page in the extremely popular website Wikipedia, which details its background and current developments. The complainant has further submitted that it has partnered with several premier distribution platforms worldwide, including Apple iTunes, Google's YouTube Hulu, Netflix, Amazon, Time Warner Cable, Cablevision, and Verizon FiOS and 50+ additional services.
6. The complainant has submitted that it provides free streaming music to listeners over the internet and its mobile Applications, legally. The Complainant holds licenses to content from hundreds of music labels across India, including YRF Music, Sony, Super Cassettes Limited "T-Series". Venus Music and Tips Industries, and is currently the exclusive distribution partner for Saregama. The Complainant's catalog includes over 2 million tracks in 77 languages.
7. The complainant has submitted that few of the development and background milestones are listed herein below; the list is merely indicative and not exhaustive:
 - (a) Complainant began offering Bollywood content on Joost in 2007.

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- (b) Complainant has launched several sponsored marketing campaigns with major brands targeting the South Asian demographic, including State Farm, Emirates, and Verizon Wireless.
 - (c) In 2007, Complainant also brought Bollywood ringtones and ringback tones to Verizon Wireless and Bollywood music videos and films to Verizon FiOS, in addition to mobile wallpapers through several mobile carrier and distribution partners.
 - (d) In 2007, Complainant partnered with Verizon Wireless in the "Verizon, Shah Rukh, and YOU!" contest.
 - (e) In 2008, Complainant began offering mobile music videos on Verizon's V CAST service.
 - (f) In 2008, Complainant partnered with Verizon FiOS to create Bollypop, the world's first online Bollywood dance competition.
 - (g) In 2009, Complainant started distributing Bollywood films (with English subtitles) on Hulu, for online viewers in the USA.
 - (h) Complainant also partnered with YouTube to offer free, legal Bollywood films for global audiences online.
 - (i) In early 2010, Complainant produced its first episodic TV series "Destination: Bollywood", in partnership with Emirates.
 - (j) In 2010, Saavn introduced its first mobile app, Saavn Music for Android, in the Android Market. The free app has a 4.5- star rating in the Android Market Place App Store and has been downloaded over 3,000,000 times.
 - (k) In 2011, Saavn followed up with Saavn Music for iPhone, which carries a 5-star rating in the Apple App Store and has been downloaded over 1,000,000 times.
8. The complainant has submitted that it has expended enormously, in the tune of several millions of dollars, to ensure such wide-spread international presence. This has resulted in tremendous growth in terms of business generated by the efforts made by the Complainant. This generation of business has also ensured that the brand and name "SAAVN" is exclusively associated with the Complainant and none else.
9. The complainant has submitted that the trade name and service mark "SAAVN" has acquired an excellent reputation from the very beginning, and down the years, the said name has consistently been associated with, and denotes the services and business of the Complainant as also the high quality of the services rendered under the said service brand. The Complainant's services are listed as well as acknowledged as highly reputed in several websites, as supported by the fact that Complainant streams digital content legally and has obtained as well by the credentials of several clients.

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10. The complainant has submitted that in view of the above, the Complainant is the owners of common law rights in the trade name and service mark "SAAVN", in respect of free streaming of digital content online. In addition to the same, Complainant has taken steps to strengthen its common law rights by preferring a trademark application to obtain statutory protection of its proprietary rights in the service mark "SAAVN", as follows:
- (a) The Complainant is the registered proprietor of the trademark in the United States under registration No. 3671305.
- (b) The Complainant is the proprietor of the following trademark applications in India: TM No. Class Services 2555026 41 Distribution of non-downloadable television programs, motion picture films and music featuring South Asian content, via cable, Internet, satellite, video-on-demand television service; entertainment services, namely, non downloadable prerecorded music, video, motion picture films, television programs, presented to mobile communications devices via a global computer network and wireless networks 2557325 35 Advertising; business management; business administration; office functions; advertising via cable, Internet, satellite, and video-on-demand television service. 2557326 38 Telecommunications; diffusion of radio or television programmes via cable, Internet, Satellite, and video-on-demand television service. 2557327 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; design and development of computer apps related to diffusion of radio or television programmes via cable, Internet, satellite, and video-on-demand television service.
11. The complainant has submitted that in the light of the above, the mark "SAAVN" enjoys an excellent reputation and goodwill, which travel far beyond any specific services or territories.
12. The complainant has submitted that in addition to all the above, The Complainant is also the registered proprietor of the domain name "saavn.com" since June 01, 2006.
13. The complainant has submitted that the present complaint has been filed on account of the unauthorized and illegal registration and use of the Complainant's prior trademark "SAAVN", as part of its domain name by the Respondent.

RESPONDENT

1. The Respondent in the present dispute has registered the domain name <saavn.in>. The Complainant has submitted that Respondent is seeking to capitalize on the goodwill

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associated with trademark of Complainant and has registered in bad faith and without authorization, the domain name in issue <saavn.in>, which (i) wholly incorporates the word "SAAVN" (ii) is identical to the Complainant's trademark "SAAVN". The domain name <saavn.in> is identical to the trademark of the Complainant as well as the Complainant's existing website "saavn.com", thereby making confusion and deception inevitable.

COMPLAINANT'S CONTENTION

1. The Complainant has submitted that the Respondent has no legitimate justification for having registered a domain name incorporating word "SAAVN" and has no apparent use for the domain name other than to profit from the diverted traffic to its website, which may confuse the Registrant as the website of the Complainant. The Complainant has further submitted that the Complainant could not approach the Respondent to request him to cease all use of the impugned website and transfer the domain name <saavn.in> to the Complainant, because of the fact that all the contact details given in the WHOIS data are false and incorrect and It is obvious that the address given is false, fictitious and vague. It has been submitted by the complainant that the Respondent has no *bona fide* intention to use the domain name <saavn.in>.
2. The complainant has submitted that the malafides of the Registrant are obvious from the following:
 - (a): The registration contact details are incomplete and fabricated, thus in violation of the domain registrar's registration agreement;
 - (b) There is no other information given either on the website or the registration details; nor any explanation given of the adoption of domain which is identical to Complainant's famous brand. The website is indicated to be "A product of Fresh Web Network, Pakistan". It is obvious that this is an attempt to avoid any claims to be bound by the jurisdiction of Indian courts.
 - (c) The email address is a general one "saavnindia@gmail.com"; which clearly is a misappropriation of Complainant's trademark "SAAVN". This email address clearly shows that the registrant is passing himself off as someone connected with the Complainant in its India operations.
 - (d) The operational website links to the URL "http://www.songlover.us", and thus the domain "saavn.in" does not have an operational website. The website www.songlover.us has a link to a Facebook page, which lands on "Box Office

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Capsule". The information detailed on said Facebook page suggests that the owners' are some one interested Indian film music, but does not give any other details. Thus, the illegal and malafides tendencies and intent is revealed by these actions.

- (e) On the impugned website, Registrant is involved in illegal streaming and downloads of digital content for which Complainant has online rights to. Thus, not only is the Registrant violating Complainant's trademark rights, it is also violating copyrights of the various owners of the digital content that is being streamed over the impugned website.
 - (f) There is no other digital trace to the actual Registrant behind the impugned domain name, and there are no disclosures made to the legality of the content being streamed online.
 - (g) The Complainant has conducted an investigation of the domain history of the impugned website, through the internet service provider Domain Tools, and has found that ever since its registration of the impugned website the impugned registrant has changed its registration details several times and has adopted several fictitious names and addresses to cover its tracks. A copy of the report is enclosed.
 - (h) An investigation into the impugned registrant's domain history has also revealed that the impugned domain name is also connected to another disputed domain name "www.saaavn.us", which is also identical to the Complainant's trademark and name. This particular domain name has been registered under the name "David Dhawan", which is the name of a famous Indian film personality. The rest of the contact details are fictitious. Thus, the impugned registrant is a habitual offender and has targeted to profit from the Complainant's legitimate trademark rights.
3. The complainant has submitted that the registration of the domain name <saaavn.in> is clearly in bad faith and reeks of *mala fides*. The Respondent is guilty of exploiting the chance of registering a country level domain for which the generic level domain is registered by the Complainant. The DOT IN country level domain is registered by the Respondent which will confuse and divert customers to believe that the disputed domain name maybe a country level equivalent to the Complainant's legitimate website. The complainant has submitted that the two domain names being identical, bad faith registration is writ large from the fact that the Respondent could have no justification for seeking registration of a domain name of which the word "SAAVN" is the whole and only component. It has been submitted by complainant that "SAAVN" is a well-known service mark in the digital music industry which is evident from the material filed along with the present complaint. The act of registering a domain name, which incorporates the Complainant's trademark "SAAVN", by the Respondent is likely to

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cause confusion, deception or persuade Internet users into believing that the registration by the Respondent of the domain name <saavn.in> has been effected on behalf of the Complainant or is sponsored, licensed or authorized by, or that the Respondent is affiliated, connected or otherwise associated with the Complainant or its services. The domain name <saavn.in>, registered in the name of the Respondent, is an instrument of fraud and deception, which is causing considerable damage to the Complainant's business interests, apart from prejudicing substantial public interest.

4. The Complainant submits that the unlawful registration of the domain name by the Respondent would and is resulting in the dilution of the Complainant's service mark SAAVN". This coupled with the fact that the Respondent is streaming music without obtaining appropriate licenses from the content owners, violates the respective digital content owners' copyrights as well. The illegal registration of the above-mentioned domain name is causing irreparable damage and injury to the Complainant's reputation and goodwill, which is unascertainable due to the intangible nature of the goodwill. As explained hereinabove, the Complainant has established both Common Law and Statutory rights in respect of its mark "SAAVN".
5. The complainant has prayed that domain name <saavn.in> be transferred in favour of the Complainant and costs be also awarded in the matter.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name <saavn.in>
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has stated in his complaint that:
 1. The Registrant's domain name "saavn.in" incorporates the Complainant's trademark "SAAVN" and is identical to the complainant's trading style and service mark "SAAVN", in which the Complainant has exclusive rights.

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2. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
 3. The Registrant's domain name has been registered and is being used in bad faith.
 4. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website.
7. The complainant as such has prayed for an award in the above matter for the transfer of the domain name **<saavn.in>** in favour of the complainant. The complainant has also prayed for cost in his favour.
8. On 07-09-2013, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.
9. On 09-09-2013 I received the intimation / e-mail from the respondent from the e-mail id of the respondent saavnindia@gmail.com. The contents of the e-mail dated 09-09-2013 sent by respondent are reproduced as under:
- "We are not using now saavn.in from last few months. If someone have problem with saavn.in domain. We regret for that problems. If saavn.com wants this domain you are free they can use this. We don't want this domain."**
- thanks**
- regards**
- Raja Zaif**
10. There upon the complainant was asked to submit the response to the e-mail dated 09-09-2013 sent by respondent so that the arbitration proceedings could be completed within statutory period.
10. On 13-09-2013 I received letter from complainant stating that **"we acknowledge the respondent's submission that he has stopped using the impugned domain name. We also acknowledge and appreciate the respondent's submission to concede to the transfer of the impugned domain name, in favour of the complainant, so that the complainant can rightfully use the same."**

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11. In the facts and circumstance stated above the award is hereby passed in view of the e-mail of the respondent from e-mail id of the respondent saavnindia@gmail.com whereby he has conceded that he doesn't want this domain name.
12. Further It has been held in **M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Therefore, this matter is being decided in view of the e-mail of the respondent from e-mail id of the respondent saavnindia@gmail.com whereby he has conceded that he doesn't want this domain name and as per law of the land as discussed above.

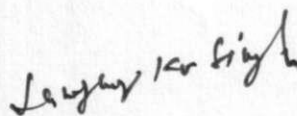
RELIEF

The domain name <saavn.in> of respondent be transferred to the complainant in view of the e-mail of the respondent from e-mail id of the respondent "saavnindia@gmail.com" whereby he has conceded that he doesn't want this domain name and further the domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name <saavn.in> to him, as complainant has established its bonafide rights in trademark in facts and circumstances and in view of law discussed herein above. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 28-09-2013.


(Sanjay Kumar Singh)
Arbitrator