



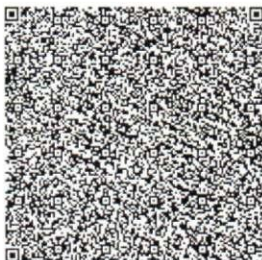
सत्यमेव जयते

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Government of National Capital Territory of Delhi

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Certificate Issued Date	: 13-Dec-2012 02:35 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL10596213350260K
Purchased by	: A K SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: A K SINGH ADVOCATE
Second Party	: NA
Stamp Duty Paid By	: A K SINGH ADVOCATE
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:

Star Television Productions Ltd.
Craigmuir Chambers,
P.O. Box 71, Road Town,
Tortola, British Virgin Islands.

(Complainant)

Versus

Mr. Dharam Sanghvi,
201, Laxmi Niwas, Gaothan Road,
Virar (West), Mumbai 401303,
Maharashtra, India.

(Respondent)

The Parties:

The complainant in this proceeding is Star Television Productions Limited, a company incorporated the Companies Act, 1956, having its principal place of business at address: Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands.

The Complainants contact details are:

The Masterpiece, Marol Naka,
Andheri-Kurla Road,
Andheri (E).

Mumbai-400059

Telephone: Star India Private Limited

Fax: 66305017

E-mail Address: amrita.mukherjee@startv.com

The complainant is represented through their authorized representative:

Mr. Vishal Ahuja

(M): 9873319919

(E): vishal@saikrishnaassociates.com

The Respondent in the present proceeding is Mr. Dharam Sanghvi, 201, Laxmi Niwas, Gaothan Road, Virar (West), Mumbai 401303, Maharashtra, India.

The contact detail of the Respondent is:

Mr. Dharam Sanghvi,

201, Laxmi Niwas,

Gaothan Road,

Virar (West),

Mumbai 401303,

Maharashtra, India.

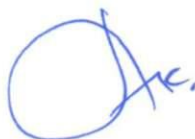
(T): +91 2502510453

(E): dharm.sanghavi@gmail.com

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is

"starsports.in"



According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name "*starsports.in*", with whom the disputed domain name "*starsports.in*" is registered is "*Directi Internet Solutions Pvt. Ltd.*"

PROCEDURAL HISTORY:

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint by the complainant, regarding the dispute over the domain name "*starsports.in*".

.IN Registry has supplied the copy of the Complaint and Annexures to the Arbitrator.

That in accordance with the Rules, on 25/10/2012, the Arbitrator sent an email to the parties informing them about my appointment as an Arbitrator.

Thereafter on 25/10/2012 Arbitrator sent an email to Complainant requesting them to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record. On the same date i.e. 25/10/2012, I sent an email to the Respondent to file the reply of the Complaint within 15 days of receipt of the copy of the Complaint.

On 26/10/2012, I received an email from the Counsels of the Complainant, informing about the details of the service of the copy of Complaint to the Complainant. According to this mail the copy of the complaint was served upon the respondent via electronic mail, courier as well as via speed post and postal.

Thereafter on 29/10/2012 authorized representative of the Complainant sent another mail informing Arbitrator that the copies of the complaint pertaining to the disputed domain name has been delivered to the Respondent, delivery report in respect of speed post and courier is also produced.

That till date no response has been received from the Respondent and as such he has been proceeded ex-parte and the Arbitration proceeding have been conducted in his absence.

The Tribunal has perused the record and Annexures / documents.

Factual Background:

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

The Complainant in this proceeding is Star Television Productions Limited, a company incorporated in the Companies Act, 1956, having its principal place of business at address: Craigmuir Chambers, P.O.Box 71, Road Town, Tortola, British Virgin Islands.



As per the complainant, the complainant is a wholly owned subsidiary of Star group Limited (Star Group). The Star Group owns and/or operates various television channels in India include but not limited to STAR PLUS, STAR GOLD, STAR UTSAV, STAR CRICKET, STAR SPORTS, STAR VIJAY, STAR WORLD, STAR MOVIES, STAR JALSHA, and STAR PRAVAH ("Star Channels"). The Complainant has further stated that each Star Channels has its own trademark which are all incorporated with the word "STAR" and/or "STAR Device" (STAR Marks). The Star Group, through its various Star series channels, broadcasts 35 channels in seven languages and offers a comprehensive choice of entertainment, sports, movies, music, news and documentaries. The complainant has further submitted that the Star Channels have reached nearly 400 million people every week. Star Group and its subsidiaries, including Star India Pvt. Ltd., the operation company in India, are engaged in the business of producing and supplying contents to various channels usually operated under the trade name **"STAR"**

The complainant has further submitted that its trade mark **"STARSPORTS"** was adopted and used by Star Group since the year 1993 when the channel under the trade mark **"STARSPORTS"** was launched. It is submitted that enormous sums of money have been invested in the promotional activities of the channel under the trade mark **"STARSPORTS"** and, in the process, a global reputation for its broadcasting services has been created. It is pertinent to note that on account of its sterling reputation, the channel **"STARSPORTS"** has acquired trade mark significance.

It is the case of the Complainant that the channel under the trade mark **"STARSPORTS"** has gained distinctiveness on account of continuous use since 1993. The use of trade mark **"STARSPORTS"** in relation to the broadcasting of sports events and activities denotes and connotes the Complainant alone. The use of the trade mark **"STARSPORTS"**, apart from being distinctive, has also acquired substantial goodwill and is as an extremely valuable commercial asset to the Complainant.

The trade mark **"STARSPORTS"** along with Star device is registered in India in classes 9, 16 and 38 since 01 November 2007. The channel under the trade mark **"STARSPORTS"** is well known across the world. It is pertinent to note that the Complainant's trade mark **"STARSPORTS"** has been featured in articles and advertisements in various publications having a circulation and reach among the public.



It is further stated by the Complainant that the channel under the trade mark “STARSports” has attained secondary meaning in respect of broadcasting sports programs. For promoting, advertising and popularizing the channel, under the trade mark “STARSports”, the Complainant commands a formidable presence on the Internet.

Respondent in this proceeding is an individual name Mr. Dharam Sanghvi who has not filed any response and submissions to the complaint despite being given an adequate notification and time to file the response by the Arbitrator.

Parties Contentions:

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name 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 to file the response by the Arbitrator.

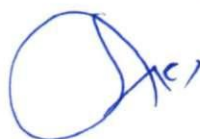
Discussions and Findings:

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 enough chances and time have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, exparte 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”

In these circumstances, the decision of the Arbitrator is based upon the Complainant 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 “STAR SPORTS”.

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

The complainant's trademark “STARSPORTS” was adopted in the year 1993 for the sports channel. The trade mark “STARSPORTS” is also registered with the Trade Marks Registry in India since the year 1st November 2007. Further, the Complainant has, since the year 1993, been involved in rigorous promotion and extensive advertising and promotion of its brand name through various media. The Complainant spent vast sums of money on promotion of the trade mark “STARSPORTS”. At the time of registration of the disputed domain name “starsports.in”, the complainant had already been using the mark “STARSPORTS” as its trademark and domain name with firmly established rights in the same.

The respondent registered the disputed domain name on 19/02/2005, according to the available information.

The disputed domain name is identical to the complainant's trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the complainant's trademarks, as it is. At the time of registration of the disputed domain name “starsports.in”, the complainant had already been using the mark STARSPORTS as its trademark and domain name with firmly established rights in the same. Also, at the time of registration, the complainant's trademark had already acquired the status of a well-known mark. The respondent can neither show any rights superior to that of the complainant in the trademark STARSPORTS nor can the respondent state that it was unaware of the



complainant's mark while registering the disputed domain name. The only logic of getting an identical mark registered in such a case is in the reason that the respondent got the mark STARSPTS registered with the intention to trade upon the fame of the complainant's mark by selling the disputed domain name for substantial commercial gain, in violation of Section 4(b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the complainant.

Thus the conclusion is that the domain name of the Respondent is identical and confusingly similar to the Trademark of the Complainant.

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 averred at the outset that the Complainant's marks are so 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.

Further, there exists no relationship between the Complainant and the Respondent so as to 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. It is also known that the respondent is not commonly known by the disputed domain name and is not making any legitimate use of the same. It is thus clear that the only purpose behind registration of the Disputed Domain Name is to use it detrimental to the interest of the complainant or to offer it to sell the same for commercial gain.

The Tribunal also gets support to the finding from the following case:

In Alliance & Leicester Plc Vs. Henao Berenice, WIPO Case D-2005-0736, it was held that use of the domain name by the Respondent should be bonafide without the intent to mislead



internet users or consumers or to divert them to his website and without our intent to tarnish trademark of Complainant.

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

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))

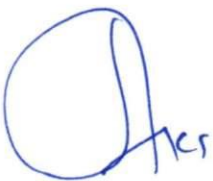
In the present matter Respondent is neither operating a website at the impugned domain name <starsports.in> nor is associated or related to sports activities in any manner. This indicates the bad faith of the Respondent in registering the disputed domain name <starsports.in>. The Complainant further states that the Respondent is related to the business of construction and real estate, gaming and gambling software development and an outsourcing agent having its base in Mumbai should have been well aware of the global reputation of the trade mark "STARSPORTS" of the Complainant.

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 that would not constitute an infringement of the complainant's rights in the trademark. Thus, mere registration of 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 per defined under paragraph 6 (iii) of the policy.

The Tribunal also gets support to the finding from the following cases:

1. Barney's Inc. Vs. BNY Bulletin Board, (WIPO Case No. D2000-0059), it was held that registration of a domain name containing a famous mark is strong evidence of bad faith.



DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint. In the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name was to capitalized on the fame and reputation of Complainant and to make monetary benefit.

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. "STARSPORTS.IN" to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 13th day of December, 2012.



A. K. Singh

Sole Arbitrator

Date: 13th December, 2012