



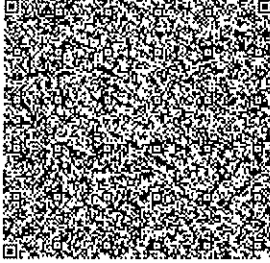
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL738226790857440  
Certificate Issued Date : 21-Jul-2016 06:07 PM  
Account Reference : IMPACC (IV)/ dl831103/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL831103471214228750270  
Purchased by : SUDARSHAN KUMAR BANSAL  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SUDARSHAN KUMAR BANSAL  
Second Party : Not Applicable  
Stamp Duty Paid By : SUDARSHAN KUMAR BANSAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



Please write or type below this line

IN Registry  
(NATIONAL INTERNET EXCHANGE OF INDIA)

**COMPLAINANT**  
Seward Limited

Vs.

**RESPONDENT**  
Mr. Sivasankar,

**ARBITRATION AWARD**

**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "[www.shcilestamp.com](http://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.

IN Registry  
(NATIONAL INTERNET EXCHANGE OF INDIA)

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

**COMPLAINANT**

Seward Limited  
Technology Centre,  
Easting Close – Worthing  
West Sussex BN 14 8HQ UK

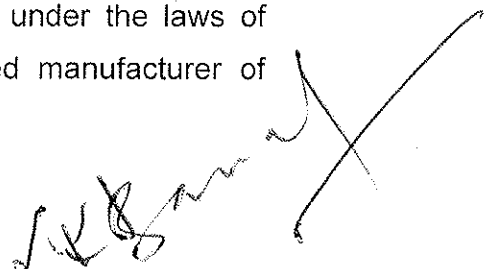
Vs.

**RESPONDENT**

Mr. Sivasankar,  
Esquire Biotech,  
Plot No. 3, Door No. 1/150,  
Kamakshi Nagar, Muglivakkam,  
Chennai, Tamil Nadu, 600 125

**ARBITRATION AWARD**

1. The Complainant is aggrieved by the Respondents registration of the Domain Name stomacher.co.in registered through the Sponsoring Registrar M/s Infocom Network Ltd. (R134-AFIN) and has accordingly made this Complaint seeking the relief that the domain name stomacher.co.in (impugned domain name) be cancelled and/or transferred to the Complainant.
2. The Complainant has preferred this Complaint on the basis of its claimed proprietorship and ownership rights in the Trade Mark STOMACHER, as well as on the basis of its domain name www.stomacher.com bearing the word/mark STOMACHER as its essential feature (collectively referred to as the Trademark/Domain Name STOMACHER).
3. The Complainant is a company incorporated under the laws of United Kingdom and claims to be a well-acclaimed manufacturer of

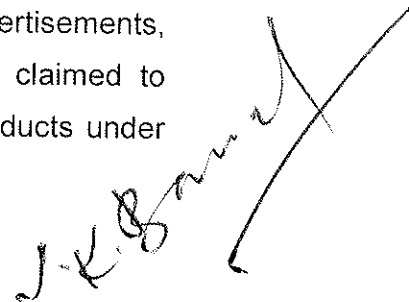


medical products including medical and surgical equipment and supplies, neonatal and obstetric equipment and laboratory systems. The Complainant claims to be engaged in the business of developing and manufacturing of wide range of Apparatus, instruments and machines for blending, mixing and preparing matter for bacteriological and microbiological testing, processing or analysis; medical apparatus and instruments to test or analyze bacteria or micro-organisms inter alia. The Complainant claims to have become synonymous with trust and reliance in the food safety, environmental science and life sciences.

4. The Complainant further claims to have to its credit wide range of products which includes their well-known brand STOMACHER. The Complainant claims that it has come up with its unique and world renowned "Stomacher" range of products which are the result of their painstaking effort.

5. The Complainant claims to have bonafidely adopted its distinctive trade name "STOMACHER" in the year 1972 and has been continuously using the same and its variants as trademarks individually as well as in conjunction with other words or different graphical representations. The Complainant claims its Trademark STOMACHER to be registered in several jurisdictions of the world. In India, the Complainant has applied for the registration of its trademark STOMACHER under Application No. 2112992 in classes 9 and 10. In addition to its rights conferred by the Trademark Registrations under the Trademarks Act, 1999, the Complainant claims to have acquired a valuable trade, goodwill and reputation under its said trademark/domain name STOMACHER being used by it in relation to its goods and business. Consequently the Complainant claims to have common law rights in its said Trade Mark/Domain Name STOMACHER.

6. The Complainant claims to have made substantial investment in building its brand STOMACHER, through various advertisements, promotions and marketing activities. The Complainant has claimed to have conspicuously made strong efforts to advertise its products under



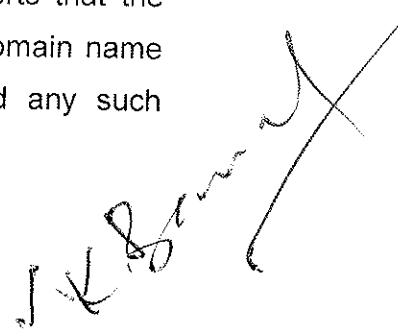
its various trademarks, through every mode viable including its website [www.stomacher.com](http://www.stomacher.com). The website, as claimed by the Complainant, depicts the goods and services of the Complainant as well as elaborates its functionalities and other characteristics and has been a great source of advertisement of the company, its trademarks and its goods including that of its well-known trademark STOMACHER.

7. The Complainant claims that its domain name "stomacher.com" was registered on November, 09, 1999 and used by the complainant extensively since its registration. The Complainant claims that by virtue of exclusive use of the domain name has earned it goodwill and reputation over a period of time.

8. The Complainant claims that its website gives detailed information about the evolution of the Complainant company, Aims, objectives and achievements of the Complainant, the goods rendered by the Complainant under the trademark STOMACHER across the world speak volumes of the Complainant's credibility and stature. The Complainant claims that it has earned tremendous goodwill by satisfying the needs of its customers across various countries including India.

9. The Complainant claims that its domain name "stomacher.com", its Trademark "STOMACHER" and its variants represent its invaluable proprietary rights and the Complainant vigorously enforces and defends its rights against any act of infringement and passing off.

10. According to the Complainant, the Respondent has registered the domain name [www.stomacher.co.in](http://www.stomacher.co.in) (impugned domain name) and which the Respondent is so using. According to the Complainant, it has never authorized, licensed or otherwise permitted the respondent to use the name, trademark or domain name consisting of STOMACHER or to use "stomacher.co.in" as a domain name and further asserts that the Complainant wishes to use "stomacher.co.in" as another domain name or protection of its own website and trade mark to avoid any such extreme misuse of the domain name.



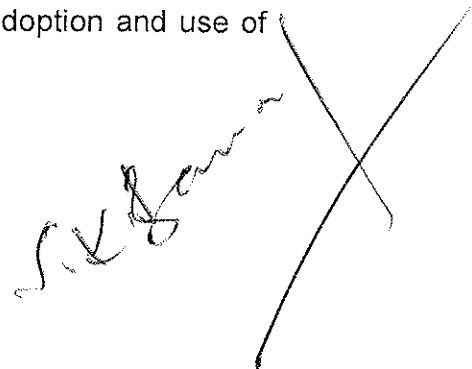
11. According to the Complainant, the Respondent's impugned domain name stomacher.co.in is identical with and deceptively similar to the Complainant's said Trade Mark/Domain Name STOMACHER, being a pirate thereof and is in violation of the Complainant's rights therein. The Complainant alleges the adoption of the impugned Domain Name is mala fide and the same is allegedly being used by Respondent for making illegal gains to trade upon the Complainant's goodwill and reputation attached to the Complainant's said Trade Mark/Domain Name STOMACHER resulting in consumer deception and violation and dilution of the Complainant's rights therein. The Respondent's impugned Domain Name and its alleged adoption, use and registration with the sponsoring Registrar is without the leave and license of the Complainant.

12. According to the Complainant by the impugned domain name, deception would be caused in the public who would be deceived into believing that the Respondent and its impugned domain name is sponsored or affiliated to the Complainant and which impugned domain name would otherwise be detrimental to the distinctive character and repute of the Complainant's said STOMACHER trademarks and domain names.

13. The Complainant alleges the Respondent to have created and registered the impugned domain name subsequent to the Complainant's conception, adoption and usage of the Complainant's STOMACHER trademark and domain name bearing the word/mark STOMACHER.

14. According to the Complainant, the impugned domain name has been registered by the Respondent only on 6<sup>th</sup> November, 2013 and that to almost fourteen (14) years of the Complainant's adoption and use of its STOMACHER domain name.

*S. K. Sawan*



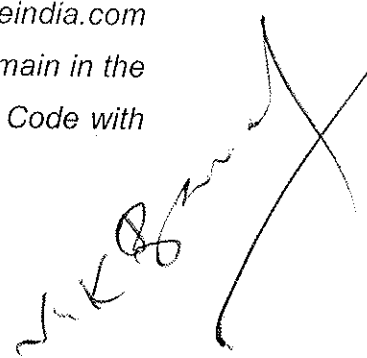
15. The Complainant claims the Respondent to have no rights or legitimate interest in the impugned domain name and the impugned domain name to be registered and/or used in bad faith.

16. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 23<sup>rd</sup> June, 2016.

17. Thereafter, I issued a notice to the Respondent vide email dated 28<sup>th</sup> June, 2016 with a copy of the Complaint and documents wherein the Respondent was also notified of me being appointed as an Arbitrator and wherein the Respondent was given an opportunity to submit its written response to the Complaint stating its reply and defense together with documents supporting its position within 10 days thereof with copy to the Authorized representatives of the Complainant.

18. The Respondent submitted a response to the notice dated 28<sup>th</sup> June, 2016 through its email dated 29<sup>th</sup> June, 2016 which read as under:

- "1. *We stop and cancel use of the domain name stomacher.co.in and we will not use this domain any more.*
2. *Regarding the transfer of the domain name stomacher.co.in to M/s Seward Ltd. K, We here with provide the Authentication code for the domain name stomacher.co.in. (EEP Code:87b50a2e) which is controlled by tradeindia.com and we have advised tradeindia.com with no objection from our end to transfer the domain in the name of M/s Seward Ltd. UK and with this EEP Code with*

A handwritten signature, possibly 'S.K. Seward', is written in black ink in the bottom right corner of the page. It is accompanied by a large, stylized scribble or flourish that extends across the bottom right area.

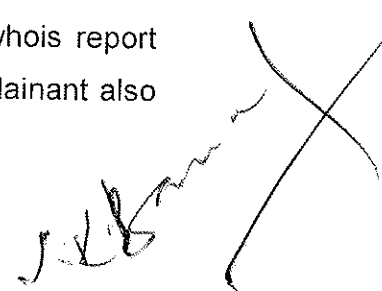
*immediate effect as M/s Seward Ltd. UK can transfer the domain in their name immediately with this EEP Code."*

19. In the aforesaid circumstances I proceed to decide this complaint.

20. The Respondent has not contested any of the Complainant's complaint claims or allegations therein. The Respondent in his response issued a letter dated 29<sup>th</sup> June, 2016 as set out above. In its said letter dated 29<sup>th</sup> June, 2016, the Respondent has raised no defense except to say that he will not use the domain name stomacher.co.in and has agreed to transfer the domain name in the name of the Complainant. There has been no traverse by the Respondent of the Company's claimed rights or allegations against him. Such a non-traverse has to be taken against the Respondent. (Uttam Singh Dugal & Company Limited vs. Union Bank of India & Ors. – reported in AIR 2000 SC 2740). The Respondent has also not set up any claim to rights in its favour.

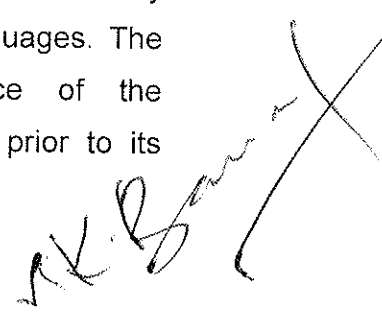
21. Be that as it may, and in addition to the aforesaid, I am also of the confirmed view that the Complainant has been able to establish its rights in the trade mark/domain name STOMACHER, the Respondent has no rights in the impugned Domain Name, the impugned Domain Name is in bad faith with the Respondent and that by the impugned Domain Name there is a complete likelihood of consumer deception. This is so for the following reasons :-

- a. It can safely be held that the Complainant's said Trademark/Domain Name is a prior mark. The Respondent's impugned domain name as per the copy of the search report conducted on the website whois.com (as Annexure-G to the complaint) has been granted on 6<sup>th</sup> November 2013, which is much subsequent to the date of 3<sup>rd</sup> November, 1999 on which date the domain name of the Complainant was created and registered by the Sponsoring Registrar, as per the whois report attached as Annexure F to the Complaint. The Complainant also



filed for the Trademark Registration in India under Application No. 2112992 in Class 9 and 10 and which as of date is pending. This Application is dated 10<sup>th</sup> March, 2011 and as per the status report obtained from the online records of the Trade Mark Office filed as page 52 Annexure-E to the complaint. Thus, with reference to the date of creation of Domain Name and the Trademark Application date, the Complainant's said trademark STOMACHER is clearly a prior mark.

- b. The Complainant in para 6 of the complaint has set out his Trade Mark registrations for the word/mark STOMACHER in various jurisdictions of the world at Sr. No.2 to 12 of the table incorporated in the said paragraph. These registrations are in the countries/regions of Ireland, Denmark, U.S.A., Canada, EUIPO, Norway, Japan, United Kingdom, France and Italy. The earliest of this registration is of the year 22.10.1973 in Norway. The rest of the registrations stretch from the year 1973 to 2004. The Complainant has filed as Annexure-E (Colly.) extracts of the downloaded records from the respective Trade Mark Registries in evidence of some such overseas country registrations. These registrations have not been challenged and nor contested by the Respondent.
- c. The Respondent whether in its letter dated 29<sup>th</sup> June, 2016 or otherwise has not furnished any explanation, leave aside any plausible explanation, as to how he came to adopt the impugned word/mark STOMACHER as a material part of its domain name and which impugned word/mark is completely identical with the Complainants STOMACHER trade mark/domain name in each and every manner whether phonetically, visually, structurally or otherwise. The word/trademark STOMACHER is not a dictionary word and nor forms part of the ordinary Indian languages. The Respondents prior knowledge of the existence of the Complainants prior said trade mark STOMACHER prior to its

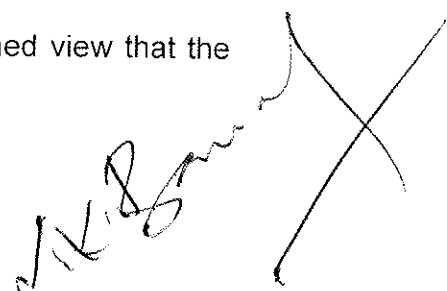




adoption and alleged registration with the sponsoring Registrar of the impugned domain name bearing the word/mark STOMACHER cannot be ruled out. In such circumstances, the very adoption and registration of the rival impugned domain name by the Respondent bearing the Complainant's entire trademark STOMACHER as its essential feature can only be considered to be in bad faith to derive benefit from the complainants prior STOMACHER trade mark/domain name, especially in the absence of any justifiable reason given by the Respondent as to its adoption.

- d. It is with reference to the word/mark STOMACHER that any internet user would be directed to the impugned domain name and consequently the onward internet incidences involved. The word/mark STOMACHER would be retained in the mind of the internet user. Not only that, and in addition, by the impugned domain name, which bears the identical trademark STOMACHER of the Complainant and by its impugned usage there is complete likelihood of deception and confusion being caused especially amongst the internet users, who may think that the Respondent is associated, affiliated, sponsored or connected with the Complainant. The impugned Domain Name bears the word/mark STOMACHER as its distinguishing/essential feature and is identical with and deceptively similar to the Complainant's Trademark/Domain Name bearing the name STOMACHER. The Internet user seeking to avail the services in question by erroneously or inadvertently typing on the keyboard the ccTLD.co.in along-with the "second level" domain name viz. stomacher instead of the gTLD (generic top-level domain).com would easily be led to the Respondent's website.

In the aforesaid view of the matter, I am of the confirmed view that the complaint must be allowed.

A handwritten signature in black ink, appearing to read 'N. K. B. S.', is written over a large, bold 'X' mark also drawn in black ink.

Accordingly, it is decided herein that the disputed domain name www.stomacher.co.in be transferred to the Complainant.

Signed at New Delhi on this 21<sup>st</sup> day of July, 2016.



Sudarshan Kumar Bansal  
Sole Arbitrator

