



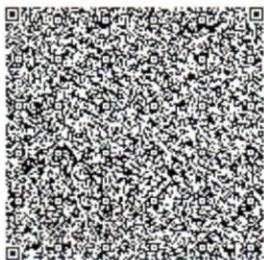
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No. : IN-DL17313144619246M
Certificate Issued Date : 03-Feb-2014 01:04 PM
Account Reference : IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71220332101091305883M
Purchased by : Nikilesh Ramachandran
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : Nikilesh Ramachandran
Second Party : Not Applicable
Stamp Duty Paid By : Nikilesh Ramachandran
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION CASE NO. 1 OF 2014

IN THE ARBITRATION MATTER OF:-

TATA SONS LTD.

COMPLAINANT

VERSUS

RELIANCE FINANCE

RESPONDENT

Nikilesh Ramachandran

AWARD

The present dispute relates to the registration of the dispute domain name <tatafinance.co.in> in favour of the respondent.

The Complainant has filed the instant complaint challenging the registration of the disputed domain name <tatafinance.co.in> in favour of the Respondent. In pursuance to Rule 3 of the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant had preferred this arbitration for raising this dispute for redressal of its grievances.

The complainant states that it was established in the year 1917 as a body corporate, is the promoter and principal investment holding company of the House of TATA which is India's oldest, largest and best known business conglomerate, with a turnover of about US \$ 100 billion in 2011-2012, with 58 per cent of this coming from businesses outside India.

The complainant has stated that the trademark/tradename "TATA" is derived from the surname of the founder Jamsetji Nusserwanji Tata which is a household name synonymous with excellence in several field of business activities.

The complainant had shown various registration with regard to said trademark in various classes and more specifically, in Class 36 and have filed list of trademarks in para 21 of the complaint and have annexed the document in support of the said trademark .

That the complainant has contended that the disputed domain name is identical or confusingly similar to a name, trademark or service mark in which Complainant has rights as the complainant is the sole legitimate owner of the trade/service mark TATA.



That the complainant has also contended that the respondent has no rights or legitimate interest in the domain name as it is a well-known trademark and it is created for confusion and to bait internet users to access its website.

The complainant has averred that the disputed domain name was registered and is being used by the Respondent in bad faith.

On the basis of the aforesaid averments and contentions on behalf of the complainant, the complainant has sought remedy that the domain name <tatafinance.co.in> may be transferred to the Complainant.

I entered upon reference regarding the instant dispute on 05.12.2013 and a notice dated 20.12.2013 was sent by me to the respondent calling upon for its response to the complaint filed by the complainant. The aforesaid notice was sent to the respondent on the address i.e. doc.reliance@live.com provided by the complainant on the basis of a search conducted on Whois.com database. The registry i.e. NIXI as per its guidelines vide e-mail dated 19.12.2013 to the respondent sent a soft copy of the complaint and informed that they would be sending hard copy through courier. On the same date, the registry sent another e-mail informing the respondent that the address of the respondent available in WHOIS database is not clear enough for sending hard copy of the complaint and the annexures, therefore the registry requested the respondent to provide a proper postal address at the earliest. Thereafter vide an e-mail dated 20.12.2013 the registry informed me about the emails dated 19.12.2013 sent to the respondent asking for its address. In response, I sent an email dated 11.01.2014 to NIXI seeking clarification as to whether hard copy of the complaint is received by the complainant or not. NIXI vide e-mail dated 16.01.2014 informed me that they had already sent an e-mail to me wherein they had already sought postal address of the respondent. Thereafter as a matter of abundant precaution, I sent an e-mail dated



23.01.2014 to the complainant to furnish me alternative address or appropriate address of the respondent. The complainant vide e-mail dated 24.01.2014 informed that WHOIS database is only physical address which the complainant has and further stated that under the clause 2 of the INDRP Rules of Procedure, service of the papers pertaining to the instant proceedings on the Registrant's email ID doc.reliance@live.com can be deemed proper service.

In the present case, suffice it to say that the registry had sent the soft copy of the complaint to the respondent vide e-mail dated 19.12.2013 and asked for a postal address as well. However, the respondent even after repeated reminders and requests failed to provide any proper address and even after being given ample opportunity failed to file a reply/ response to the complaint. Therefore as per Clause 2 of the INDRP Rules of Procedure, service of the proceeding on the registrant address i.e. doc.reliance@live.com is deemed to be proper service. I have perused the e-mails sent by the Registry to the respondent which show that the registry had ensured to employ reasonably available means to serve notice of complaint to the respondent as provided in Clause 2(ii) by sending the complaint in an electronic form to the respondent on the basis of search conducted on Whois database. Hence I am of the view that the service to the respondent is deemed to be proper service. Accordingly, the respondent is proceeded ex-parte.

I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the respondent to the complaint, I shall deal with the complaint on the basis of its merits.

Firstly I shall deal with the ground regarding the rights of the complainant vis-à-vis that of respondent's over the disputed domain name <tatafinance.co.in>. The trademark <TATA> is a reputed



trademark and is used worldwide by the complainant. The complainant has shown its various trademark registration details in India. The complainant has filed various documents regarding registration of the trademark TATA and the trademarks registered by it under various classes more specifically in Class 16 and Class 36.

Since the respondent has failed to file any response to the complaint or appear in the proceedings before me to present his case. Hence the averments made by the complaint and the documents filed as evidence are left un-rebutted.

I have carefully considered the averments and perused the records filed by the complainant. I am of the view that that respondent has no legitimate right over the mark "TATA". From the averments of the complaint it is amply clear that the trademark adopted by the complainant is in its entirety part of disputed domain name i.e. <tatafinance.co.in>. It was held in **Tata Sons Limited & Ors. vs Tata Sumo Industrial Recruitment** (C.S (OS) No. 1837 of 2006) decided on 27th October, 2009 acknowledging "TATA" as a well known trade mark within the meaning of Section 2 (1) (zg) of the Act, because of its distinctiveness and goodwill and reputation, it cannot be appropriated by any party in India in relation to any merchandise goods/services/trade name as it would be a clear case of violation of the rights. Hence the respondent's action to register the said domain name is not bonafide as he has no right over the mark <TATA>.

Secondly, the respondent has stated that the disputed domain name is identical to the trademark in which the complainant has rights and the respondent's domain name is a well-known trademark which is bound to create confusion and to bait internet users to access its website. It was held in **Satyam Infoway Ltd. V. Sifynet Solutions Pvt. Ltd. [AIR 2004 SC 3540]** that "the use of identical or similar domain name may lead to diversion of users which would result from such users mistakenly accessing one domain name instead of another".



Therefore I am of the view that the respondent is using the trademark of complainant which is liable to confuse the consumers and will also lead to losses to the complainant. Hence the use of the disputed domain name by the respondent cannot be treated as a fair one.

Thirdly, the respondent has acted in bad faith in respect of domain name as the trademark of the complainant is reputed one and has been using his trademark worldwide for a long time. Relying upon the judgement in **Kabushiki Kaisa Hitachi Seisakusho (d/b/a Hitachi Ltd) v. Click Consulting , Ltd., (WIPO Case no. D2007-0809)** where the panel was of the opinion that "incorporating a widely- known trademark as domain name is a clear indication of bad faith in itself, even without considering other elements and in *Adidas-Saloman AG V. Domain locations* bearing Case No. D. 2003 0489, it was held that, "the registration of a well known trademark of which the respondent must reasonably have been aware of is in itself sufficient to amount to bad faith". I am of the view that respondent's action suggest that the registration of the domain name has been done by him in bad faith as the use of domain name by the respondent will cause substantial harm to complainant.

Considering the facts and circumstances of the present case and in view of the precedents in this context, I hold that the complainant has proprietary right over the trademark "TATA". Thus under the facts and circumstances of the present case and on perusal of the records filed by the complainant, I deem it fit and proper to allow the prayer of the complainant in its favour and direct the registry to transfer the said domain name i.e. <tatafinance.co.in> in favour of the complainant.

Parties to bear their own costs.

Dated: 03.02.2014


(NIKILESH RAMACHANDRAN)

ARBITRATOR