



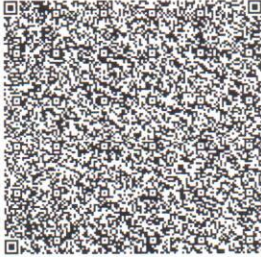
सत्यमेव जयते

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Certificate Issued Date	: 01-Dec-2014 11:41 AM
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Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

M/S. TATA MOTOR LIMITED

(Formerly known as

M/S. Tata Engineering & Locomotive Company Ltd.)

24 Homi Mody Street, Fort, Mumbai – 400 001, INDIA

-Vs-

.....(Complainant)

Gao Gou,

Suite 1100 South Tower,

Toronto, CANADA

.....(Respondent)

Statutory Alert:

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THE PARTIES

The Complainant in the present proceeding is M/S. TATA MOTOR LIMITED (Formerly known as M/S. Tata Engineering & Locomotive Company Ltd.); a Company registered under the Indian Companies Act, 1913 having its registered office at 24 Homi Mody Street, Fort, Mumbai – 400 001, India. The Complainant is represented through its authorised representative namely, Ms. Malavika T. Vikram, DePenning & DePenning, Patents-Trademarks-Designs-Copyright, 120 Velachary Main Road, Guindy, Chennai – 600 032.

The Respondent in this proceeding is Mr. Gao Gau, having its registered address as Suite 1100 South Tower, Toronto, Canada. Telephone number: +1-4163231176, chromebooks@hotmail.com

THE DOMAIN NAME AND REGISTRAR

The domain name in dispute is www.tatamotors.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name www.tatamotors.in, with whom the disputed domain name www.tatamotors.in is registered is Webiq Domains Solutions Pvt. Ltd.(R131-AFIN) and details of the server name pertaining to the disputed domain name are as follows:

Name Server: FIG1NS1.DNS1.POD.NET

Name Server: FIG1NS2.DNS2.POD.NET

PROCEDURAL HISTORY

The Arbitrator was appointed by the .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name www.tatamotors.in.

.In Registry had supplied the copy of the Complaint and the Annexures to the Arbitrator.

The Complainant and the Respondent has filed various documents as Annexures in support of their contentions. The Respondent has not filed any reply/documents.

The Arbitrator has perused the record and annexures / documents

FACTUAL BACKGROUND

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

The Complainant in this proceeding is Tata Motors Limited (formerly known as M/s. Tata Engineering & Locomotive Company Ltd.), a company registered under the Indian Companies Act, 1913, having its registered office at 24 Homi Mody Street, Fort, Mumbai-

400001, which is a part of the Group of Companies known as the Tata Group of Companies, consisting of over 100 operating companies in seven business sectors such as communication and information technology, engineering, materials, services, energy, consumer products and chemicals. The group has operations in more than 80 countries across continents with an export and import overreach in 85 countries. It has been consistently independently valued 45th among the top 500 most valuable global brands in their BrandFinance® Global 500 March 2012 report and 17th among the '50 Most Innovative Companies' list in 2010 by Business Week Magazine.

It has been further submitted by the Complainant that the brand has over 100 operating companies in seven business sectors: communications and information technology, engineering, materials, services, energy, consumer products and chemicals. The total revenue of TATA companies, taken together, was \$100.09 billion (around Rs. 475.721 crores) in 2011-12, with 58% of this coming from business outside India. And, TATA companies employ over 450,000 people worldwide and also the first company from India's engineering sector to be listed in the New York Stock Exchange.

Further the Complainant submits that the mark 'TATA MOTORS' forms a dominant and essential feature of the Complainant's corporate name and its variants in all forms in multiple classes and they have been in continuous use by the Complainant since 1945. Their international use expanded through exports since 1961 and as per the information provided it has been in use in over 80 countries across 6 continents, including India. A schedule of trademarks registrations for the marks TATA and TATA MOTORS throughout the world in the ownership of the Complainant has been provided.

The Complainant with its long standing in the field of manufacturing commercial vehicles ever since 1954, is the prior adopter and user of the trademark "TATA MOTORS, and has been using it in respect of the distinguished services and products of the Complainant, which is well known, identified and availed by traders and consumers throughout the world under the well known trademark "TATA MOTORS"

The Complainant states 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. The Complainant further claims that due to its efforts the TATA Group of Companies are now associated throughout the world with quality and reliability.

The Respondent in this proceeding is an individual named Mr. Gao Gou, who does not belong to any particular organisation residing in Suite 1100, South Tower, Toronto, Canada. On 10.03.2014, a search conducted in the official website of the .In Registry i.e. www.registry.in/whois revealed the Registrant details as Lincwise Internet Service, 4/607 Kamdhenu Shopping Center, Lokhandwala Complex, Mumbai and the disputed domain name was created on 16.02.2005. Although, after a further search undertaken on 28.08.2014 it was revealed that the registrant is Gao Gau who is the current Respondent in this case.

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, claims 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 opportunities 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 “TATAMOTORS” 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 submits that it is the proprietor of the mark ‘TATAMOTORS’ and its variants in all forms in multiple classes and they have been in continuous use by the Complainant since 1945.

The Complainant further submitted that on 10.02.2014 it discovered that the Respondent had registered the disputed domain name and has tactfully changed the Registrant details and the sponsoring Registrar details, with sole intention of continuing his free riding activities.

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.

Various judicial forums have upheld the Complainant's and its Group of Companies trade mark right over the well-known mark 'TATA' and in this regard these judgements can be relied upon – Arun Jaitley v. Network Solutions Private Limited [181(2011)DLT716], Titan Industries Limited v. Ramkumar Jewellers [CS(OS) No. 2662 of 2011], Tata Sons Ltd. v. Manu Kosuri [2001 PTC 432; 90 (2011). DLT 659]

The Complainant states that at the time of registration of the disputed domain name www.tatamotors.in, the Complainant had already been using the mark "TATAMOTORS" 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.

It is submitted that the Respondent is trying to en-cash on the goodwill and reputation of the Complainant although the Respondent has no connection with the Complainant and the 'Tata Group of Companies' whatsoever.

'Tata Group of Companies' have not licensed or otherwise permitted the Respondent to use its trade mark 'TATA MOTORS', nor has it permitted the Respondent to apply for or use any 'Domain Name' incorporating the mark 'TATA MOTORS'.

Complainant has showed its enormous presence on the Internet and ownership of various domain names comprising of 'TATA MOTORS' in over 30 different countries namely – Angola (.co.ao), Bangladesh (.com.bd), Bhutan (.bt), Brunei (.com.bn), China (.cn.com), Columbia (.co), Ecuador (.Com.ec), Europe (.Eu.com), Hong Kong (.hk), Iran (.Ir), Japan (.jp), Kenya (.co.ke), Korea (.kr), Malaysia (.my), Mexico (.mx), New Zealand (.Co.nz), Peru (.pe), Philippines (.Ph), Russia (.Ru), Singapore (.Sg), Singapore (.Com.Sg), Spain (.Com.Es), Taiwan (.Tw), Tanzania (.co.tz), Thailand (.Co.Th), Turkey (.com.tr), Ukraine (.Co.Ua), Uruguay (.com.uy) etc.

It is further submitted that in the present case, it is undeniable that the disputed domain name www.tatamotors.in wholly incorporates the Complainant's registered mark. Further, the word ".in" 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 “.in” 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 Tata Motors in India, which is one of the markets in which the TATA mark of the Complainant is renowned.

The submissions stated above by 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))

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. Complainants have further relied on ***AB Electrolux v. Ruo Chang, (Electrolux-professional.co.in)*** [INDRP Case No. 333 dated 02.04.2012] 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.

Further it is submitted that the Respondent being mindful that a complaint was in pipeline has deactivated the impugned website and has offered the impugned domain for sale. The Complainant also relied upon another INDRP judgement of *Indian Hotels Company Limited v. Mr. Sanjay Jha (singerhotels.co.in)* [INDRP Case No. – 148 dated 27.09.2010]

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.

The Arbitrator, therefore comes to the conclusion that the Respondent has no right or legitimate interest in respect of the 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))

The Complainant further submits that the activities of the Respondent to get registered the domain name in a 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..

Moreover, 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.

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

Accordingly in the light of the above submissions and evidence on record and failure of the Respondent to file any reply, 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.tatamotors.in to the Complainant. The Award is accordingly passed on this 6th day of December, 2014.

Rajeev Singh Chauhan
Sole Arbitrator
Date: 06th December, 2014