



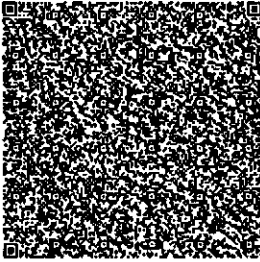
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL94269564926123N  
Certificate Issued Date : 18-Apr-2015 12:31 PM  
Account Reference : IMPACC (IV)/ dl824403/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL82440385683518522856N  
Purchased by : V SHRIVASTAV  
Description of Document : Article Others  
Property Description : N D  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : V SHRIVASTAV  
Second Party : Not Applicable  
Stamp Duty Paid By : V SHRIVASTAV  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



Please write or type below this line.....

**VISHESHWAR SHRIVASTAV**

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

[www.theraffles.co.in](http://www.theraffles.co.in)

between

RAFFLES INTERNATIONAL LIMITED

...COMPLAINANT

AND

MAHAVEER KUSHWAHA

...RESPONDENT


AWARD

1

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "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.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 24/02/2015. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. It was also noticed that the Complainants had not filed their Power of Attorney/ Vakalatnama. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to file their Vakalatnama and either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
  
2. That the Complainants vide their email dated 26/02/2015 requested for three weeks time for filing of their Vakalatnama as their clients were based abroad which was granted by this Tribunal vide its order dated 02/03/2015. The other directions were complied by the complainants.

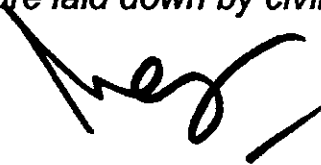
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3. This Tribunal vide same communication directed the Respondent to file their Statement of Defense by 10/03/2015 as they had already received the hard copy of the complaint sent to them by NIXI on 25/02/2015.
4. That vide email dated 07/03/2015 the Respondent through their Counsel Ms. Bitika Sharma of M/s Singh & Singh requested for extension of time for filing their SOD which was granted and extended to 16/03/2015. The Respondent were also directed to file their Vakalatnama vide order dated 09/03/2015.
5. The complainant sent the soft copy of their Vakalatnama vide email dated 10<sup>th</sup> March, 2015 and the Respondent on 12<sup>th</sup> March, 2015. This Tribunal vide order dated 13/03/2015 noticed that the Vakalatnama of the Respondent was defective as the address of Mahaveer Kushwaha did not figure in the Vakalatnama and Madnani Developers was not a party to this Arbitration proceedings. However, no steps were taken by the Respondent to rectify it.



6. That vide its order dated 17/03/2015 this Tribunal had to remind both the parties that the hard copy of their Vakalatnama's had not been received and that they should adhere to the dates. However, after the receipt of the hard copy of SOD & Vakalatnama the complainant were given time till 27/03/2015 to file their Rejoinder and both the parties were directed to file their Evidence by way of Affidavit by 02/04/2015.
7. The complainants sent the soft copy of their Rejoinder vide email dated 26/03/2015 and this Tribunal noted with concern the submissions of the Ld. Counsel for the Complainants which are as under:

*"As requested in my email of 20<sup>th</sup> March, the requirement to file affidavit by way of evidence may kindly be dispensed with. The learned arbitrator will appreciate that the INDRP Rules do not provide for filing of affidavit by way of evidence. Further The Arbitration and Conciliation Act does make it mandatory to follow steps/ procedure laid down by civil procedure code."*



This Tribunal stated that the aforesaid contentions of the Ld. Counsel for the complainants run contrary to Arbitration & Conciliation Act, 1996 read with Rule 3(b), Rule 8 of the INDRP which clearly provide that the Arbitral Tribunal is to determine the rules of procedure and the discretion is given to the Tribunal to take recourse to CPC /Evidence Act if it so desires. There is no bar on it's adopting a procedure as provided under the CPC and/or Evidence Act. This Tribunal also notices that the Respondents did not agree to the suggestion of the complainants dated 20/03/2015 *qua* dispensing of Evidence to be filed by way of Affidavits. Hence the contentions raised by the Ld. Counsel for the complainants are rejected as devoid of merit. This Tribunal then directed the Complainants & Respondents to send their Evidence by way of affidavit by 2<sup>nd</sup> April, 2015 failing which orders as provided under sec. 25 of the Arbitration & Conciliation Act, 1996 shall be passed.

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8. That this Tribunal received the soft copy of the Evidence by way of Affidavit of the both the complainants & Respondent on 02/04/2015 but it is worth mentioning that time for receipt of the hard copy of the Evidence was dated 08/04/2015. The award was reserved vide order dated 10/04/ 2015.

### **CLAIM**

9. The claim as put forward by the complainant is briefly as under:
- A. The Complainant is Raffles International Limited, having its office at 250, North Bridge Road, Raffles City Tower, Singapore 179101 and they claim to be one of the largest luxury management companies in the world, with over 104 hotels worldwide in operation under the RAFFLES, Fairmont and Swissotel trademarks. It is claimed that the Complainant's RAFFLES mark/name spans across the globe from the exotic destinations to vibrant cities with 11 hotels and resort properties in existence and 5 properties under development all over the world. It is also claimed that the Complainant also



offers luxury residence for private ownership under the Raffles Residence trademark and is rated as among the best in the world. Reliance is placed on **Exhibit-B**.

- B. It is claimed that the Complainant's flagship property, the Raffles Hotel Singapore, was established in the year 1887 in Singapore and that the Complainant owns and/or manages hotels, resorts, properties and spas operating under the RAFFLES HOTELS & RESORTS, RAFFLES and RAFFLES SPA brands.
- C. It is further claimed that the Complainant's Raffles Hotels, Singapore, since its inception in 1887 has become well known, not only in Singapore, but also worldwide and it has played host to noted and distinguished persons like Joseph Conrad, and Rudyard Kipling, playwright, novelist and actor Noel Coward, actress Ava Gardner and Elizabeth Taylor, Queen Elizabeth II and Prince Phillip, as well as the Duke of Edinburg besides The Duke and Duchess of Cambridge, Prince William

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and Princess Kate. It is further claimed that the Complainant's Raffles Hotel, Singapore, was designated as a National Monument by the Singapore Government in 1987. Reliance is placed on **Exhibit-C**.

D. It is claimed that the Complainant's affiliate, Raffles Hotels & Resorts, was also at one period involved in the education sector and it from March 2008 to April 2012, established the Raffles School of Hospitality at Republic Polytechnic. Reliance is placed on **Exhibit-D & Exhibit-E**.

E. It is claimed that the Complainant's brand RAFFLES is a premier hospitality brand and is synonymous with excellence in the hospitality business and that the Complainant and its affiliates have invested much time, effort and monies in the promotion and marketing of the RAFFLES trade mark and the RAFFLES family of trade marks in Singapore and worldwide which includes the Complainant's corporate website at [www.raffles.com](http://www.raffles.com) which is available and accessible to the public all over the world. Further the Complainant also

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frequently advertises its services under the RAFFLES trade mark and the RAFFLES family of trade marks in various newspapers, magazines and printed publications. The mark/name RAFFLES is inextricably associated with the Complainant and the same connotes and denotes only the Complainant and the same connotes and denotes only the Complainant. Reliance is placed on **Exhibit-F**.

F. The complainants claim that they and their affiliates own and manage properties under the RAFFLES trade mark all over the world and they include:

- a. Raffles Hotels in Singapore;
- b. Raffles Grand Hotel d'Angkor, in Siem Reap, Cambodia;
- c. Raffles Hotel Le Royal, in Phnom Penh, Cambodia;
- d. Raffles Beijing Hotel in China;
- e. Raffles Hainan, China;
- f. Raffles Dubai in the United Arab Emirates;
- g. Raffles Praslin, Seychelles;
- h. Raffles Makkah Palace; Saudi Arabia;
- i. Raffles Makati, Philippines;




- j. Raffles Le Royal Monceau, Paris; and
- k. Raffles Istanbul, Turkey.

G. Further, the Complainant claims that they have Raffles hotels and resorts in the pipeline in the following cities:

- a. Jakarta, Indonesia;
- b. Warsaw, Poland;
- c. Jeddah, Saudi Arabia;
- d. Sharm El Sheikh, Egypt; and
- e. Shenzhen, China.

Reliance is placed on **Exhibit-G**.

H. The complainants claim that its RAFFLES mark is also used by the Complainant and its related companies in the sporting arena to sponsor the RAFFLES HOTELS & RESORTS CUP, referred to as the RAFFLES CUP and they by virtue of the long and extensive use and publicity of the RAFFLES mark



and RAFFLES family of marks, in Singapore and worldwide, have acquired substantial goodwill and reputation globally.

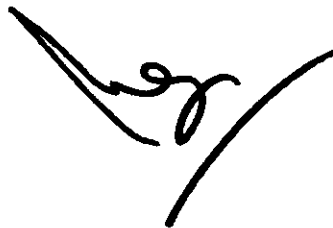
- I. The Complainant emphatically claim that they and their affiliates are the owners and inventors of the distinctive trade mark "RAFFLES" and the right to any variations thereof vests in the Complainant only.
  
- J. It is claimed that the Complainant's RAFFLES mark is also registered in many countries of the world. Reliance is placed on **Exhibit-H, Exhibit-I and Exhibit-J.**
  
- K. It is also claimed that the Complainant, in order to secure protection for its reputed RAFFLES mark in India, has filed applications for registration of its mark/name RAFFLES which is pending before the Trademarks Registry. Reliance is placed on **Exhibit-K.**

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- L. The Complainant's by relying on **Exhibit-L** spent a huge amount on advertisements.
- M. It is claimed that the Complainant's reputation and goodwill has not been limited to the shores of any one country and has flowed into India as there is a large expatriate population of Indians in Singapore through whom the RAFFLES mark/name is well known to the people in India besides a large number of Indians travel to Singapore every year as tourists and the Raffles hotel and the entire area that is recognized by them.
- N. The Complainant claim to have secured the favorable decisions from various *fora*. Reliance is placed on **Exhibit-M**.
- O. It is alleged that the Respondent has registered an identical domain name [www.theraffles.co.in](http://www.theraffles.co.in) with the .in Registry on November 19, 2012. It is alleged that the aforesaid domain name incorporates the Complainant's well-known, prior used mark RAFFLES and prior registered domain [www.raffles.com](http://www.raffles.com).

Further the Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademark in any manner. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant in its trade mark and domain name RAFFLES.

- P. It is alleged that the Respondent has started operating a hotel under an identical name "The Raffles" in Kota, Rajasthan. It is also alleged that the Respondent's adoption of an identical name in relation to an identical industry, *i.e.*, the hotel business, is clearly in bad faith. Besides, the Complainant on coming to know of the Respondent's clandestine activities has issued a warning letter putting them on notice of the Complainant's rights in the RAFFLES mark. Reliance is placed on **Exhibit-N**.

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Q. The Complainants alleged that the intention of the Respondent was to leverage the strength of Complainant's brand/domain name to divert traffic to their business and make illegal gains as they operate in an identical industry, *i.e.*, the hotel business. It is also alleged that Respondents was aware of the Complainant's mark/name RAFFLES. It is further alleged that the Respondent in order to cause confusion and deception among the trade and public to make unlawful gains have secured the disputed domain name. The complainants allege that the Respondent's act in operating the website [www.theraffles.co.in](http://www.theraffles.co.in) is misleading the general public who may get confused into thinking that their business is in some manner associated with the Complainant in India or approved, owned or licensed by the Complainant. Reliance is placed on **Exhibit-P.**

R. The complainant prays that the domain name [www.theraffles.co.in](http://www.theraffles.co.in) be transferred to the Complainant and costs and damages be awarded in favor of the Complainant.



10. i) *Per contra* The Respondent submits that he was one of the website developers involved in setting up the business website of hotel "The Raffles". Reliance is placed on **ANNEXURE-B**.
- ii) It is claimed that the domain name [www.theraffles.co.in](http://www.theraffles.co.in) is controlled and operated by the partnership firm Madnani Developers of which Mr. Rahul Madnani is a partner and CEO, and is authorized to take all decisions on behalf of Madnani Developers. It is stated that the said partnership firm was formed in the year 2007 for the purpose of construction of the hotel "The Raffles". Mr. Kushwaha is submitting that further it is stated 'Respondent' should include the 'partnership firm' Madnani Developers.
- iii) It is claimed that the respondent is a partnership firm with three partners, being Mr. Rahul Madnani, Mrs. Dolly



Madnani and Mr. Ram Madnani, having office at Madnani Developers, c/o Hotel The Raffles, Station Road, Kota, Rajasthan. Reliance is placed on **ANNEXURE-C.**

- iv) It is claimed that the respondent has been actively involved in the business of management and running of hotel services in India by the name of "The Raffles" since the year 2012 in Kota, Rajasthan which is now well established and has earned immense goodwill and reputation in the trade circles and among the general public and that the respondent is a prior user of the mark/name. Further the hotel business of the respondent under the name "The Raffles" is registered with all the relevant Government Authorities and has obtained all necessary approvals/ licenses required to operate the said business. Reliance is placed on **ANNEXURE-D & ANNEXURE-E.**

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- v) It is claimed that the adoption of the name "The Raffles" by the respondent is *bonafide* and in complete good faith and that the word "Raffle" has a dictionary meaning which means a gambling competition in which people obtain numbered tickets, each ticket having the chance of winning a prize.
- vi) It is claimed that the inauguration of the hotel was done on 23<sup>rd</sup> December 2012 by the UDH (Urban Development and Housing Department) Minister of Rajasthan Shri Shanti Dhariwal. Reliance is placed on **ANNEXURE-F**.
- vii) It is claimed that over a short span of time, the hotel of the respondent has grown tremendously and now includes a swimming pool, banquet halls and the famous Romy's Dine Restaurant. Further, the hotel of the respondent, "The Raffles" has Corporate tie ups with numerous companies like ICICI bank, Vodafone,



standard chartered, Ruchi Soya, Honda, etc, as well as tenders of companies like GAIL India as a result of the immense goodwill and reputation of the said hotel. Reliance is placed on **ANNEXURE-G**. It is also emphasized that the respondent has spent considerable amount of money on the advertisement and promotion of its hotel under the name "The Raffles". Reliance is placed on **ANNEXURE-H**. It is claimed that subsequently, the respondent adopted and registered the domain name [www.theraffles.co.in](http://www.theraffles.co.in) for its hotel business and the same was registered on 19<sup>th</sup> November, 2012. Further, its adoption of a '.in' domain clearly shows that the same is localized in India and is operating only in India where the complainant has no presence. Reliance is placed on **ANNEXURE-I**.

- viii) It is alleged that the complainant has no presence in India and that the Respondent on the contrary is the prior user of the mark in India for its services and has



acquired immense goodwill in the same by virtue of long and continuous use. That in a small place like Kota, where the respondent is based and is running their hotel, no one even knows about the complainant. It is alleged that the complainant does not even have a trademark registration in India leave aside the goodwill as has been alleged by it. It is emphasized that there can be no goodwill without use of the name or mark *qua* goods and/or services.

- ix) It is alleged that the complainant claims for registration of its mark in India is under opposition from third parties in India. Reliance is placed on **ANNEXURE -J**.
- x) It is claimed that the respondent is the prior adopter/ user of the mark in India and has been using the same continuously and uninterruptedly since 2012, whereas the complainant has no presence whatsoever in India, is not known to the public in India and neither does it have

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any goodwill or reputation qua the mark 'Raffles' in India.

Reliance is placed on **ANNEXURE -K**.

xi) It is stated that there is no chance of confusion as the clientele of the complainant and the respondent are totally different inasmuch as the respondent is localized in India and is extremely well known in the trade circle due to its immense goodwill and reputation.

xii) It is claimed that the respondent uses its name 'The Raffles' along with the unique tag line 'A PLACE YOU FEEL LIKE HOME" which makes it totally different from the mark of the complainant.

#### **LACUNAE / DEFECTS NOTICED BY THE TRIBUNAL**

1. Mr. Mahaveer Kushwaha the Respondent has filed a photocopy of a document titled **Annexure B** with the SOD which is a photocopy which states that Mr. Rahul Madnani, Partner of Firm M/s Madnani Developers shall be signing and filing the SOD etc.

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2. Madnani Developers are not a party to the present complaint so far as it relates to the domain name www.theraffles.co.in due to the fact that as per WHOIS (**Exhibit A**) Mr. Mahaveer Kushwaha is shown as the registrant and owner of the disputed domain name and the address is given as 4-B-10, Rangbari Main Road, Talwandi, Kota, Rajasthan-324005. Further w.r.t. the details of Registrant Organisation is N/A (not applicable) is denoted that means that this Registration of the disputed domain name has been done by Mr. Mahaveer Kushwaha in his own name.
3. There is no impleadment of Madnani Developers in the present proceedings.
4. Even for the sake of argument Annexure B filed with SOD is taken as a POA the same is
  - a) a scanned copy by camscanner the original of which has not been filed.

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- b) The said instrument is deficient w.r.t. Stamp Duty and the same cannot be looked into and read in evidence in view of section 35 of the Stamp Act, 1899.
- c) The POA is also defective as it does not give the address of the donor Mr. Mahaveer Kushwaha.
5. Thus in the eyes of Law there is no Special or General Power of Attorney executed by Mr. Mahaveer Kushwaha in favour of Mr. Rahul Madnani to take part in the present case.
6. This Tribunal also notices that there are no signature of the respondent Mr. Mahaveer Kushwaha in the statement of defense.
7. This Tribunal notices and as observed by it in its order dated 13/03/2015 that the Vakalatnama is not proper due to the fact that it has been signed as *"I Mahaveer Kushwaha, Authorised Signatory of Madnani Developers above named Respondent ...."*



8. There is no appointment letter or POA on record which authorizes Mr. Mahaveer Kushwaha to apply for the disputed domain name on behalf of Firm Madnani Developers.
9. That being so Madnani Developers are not a party before this *fora* as they never sought themselves to be impleaded.
10. On this count the execution of the vakalatnama by Mr. Mahaveer Kushwaha in favour of M/s Singh & Singh (Law Firm) is defective.
11. Though the Vakalatnama says Authorised Signatory there is no authorization given by Madnani Developers in the name of Mahaveer Kushwaha to engage attorney.
12. This Tribunal cannot help noticing that the S.O.D. reads Mahaveer Kushwaha Respondent through Ms. Bitika Sharma Partner, Singh & Singh, LLP, however there is only signature of Ms. Bitika Sharma.



13. The partnership Firm i.e. Madnani Developers portrayed as Respondents are not registered as per the requirement of the Partnership Act, 1932.
14. However, keeping the pleadings and SODs & documentary evidence this Tribunal is impelled to implead M/s Madnani Developers as a necessary party to the present proceeding due to the following reasons:
- i) the complainants have not taken any objection to this effect.
  - ii) The Complainant & Respondent i.e. Madnani Developers have exchanged the notices/ replies **Annexure L & M** hence it is gathered that they are reconciled to the fact that Madnani Developers are the Contesting Respondents for the disputed domain name.
  - iii) The affidavit of Rahul Madnani has also not been objected to by the complainants.

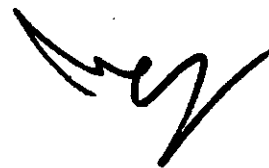




15. Hence, M/s Madnani Developers the partnership firm is impleaded as a party along with Mahaveer Kushwaha.

### **FINDINGS**

- I. The domain name www.theraffles.co.in was registered by the Respondent Mr. Mahaveer Kushwaha on November 19, 2012 whereas prior to 2012 the Complainant since 1991 had been using the mark RAFFLES ref Exhibit H. Further it can be seen that complainant have been operating a property with a name as RAFFLES Hotel in Singapore since 1887 hence the prior use of the name is established by the complainants.
- II. Further the Complainant had registered the domain name www.affles.com on December 06, 1995 i.e. 17 years prior to the Respondent's registration for the domain www.theraffles.co.in. In the circumstances, it is obvious that the Complainant is prior in adoption and use of the name/mark RAFFLES in relation to hotel and hospitality services.



- III. Besides the complainant has filed sufficient evidence attached to the Complaint especially Exhibits C to E to show its prior adoption and use of the name RAFFLE.
- IV. The Respondents have sought to rebut the claims of the complainants by citing some of their statutory registrations with various Govt./ Civic / Tax Bodies. I am afraid that this does not help the case of the respondents as none of the bodies referred to in Annexure E of SOD have any powers *qua* registry of a Trade name & Mark. The Authorities such as VAT, Labour Department, Central Excise, Tax Authorities, etc, are concerned with functions given to them by Legislature which does not include registering of Trade Mark. Moreover, the entire activity of the Respondents has been started only in the years 2012/2013. The Annexure-E filed by the Respondent is a Form ST-2 from Central Board of Excise and Custom where they are registered as "THE REFFELS", and they have not taken any steps to get the same corrected.

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- V. The Hon'ble Tribunal by perusing **Exhibits H, I, J, K** notices that the complainant has filed its prior registrations globally and its application in India is prior to domain registration by the Respondent.
- VI. This Tribunal also notices after perusing the **Annexure J** and **Annexure N** of the Respondent's SOD and Evidence that the application of the Complainant to get a Trade Mark by the name RAFFLES registered in India is under opposition by various parties but those parties do not include the Respondent. Hence the Respondents cannot take a Piggy back ride on the opposition of others to the Trade name of the complainants.
- VII. It can be seen, after perusal of **Exhibit M**, that not only the Hon'ble Delhi High Court but also Courts in Australia and Singapore have upheld the complainant's rights in the Raffles mark.

## ORDER

11. In view of the facts and circumstances stated supra this Tribunal holds that the respondent Mr. Mahaveer Kushwaha and Firm Madnani Developers do not have a plausible claim on the domain name www.theraffles.co.in hence this Tribunal directs the Registry to transfer the domain name www.theraffles.co.in to the complainants.
12. The Complainants too are free to approach the Registry and get the same transferred in their name.
13. There is no order as to the cost as no details of the cost / damages have been specified in the claim statement.
14. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 22<sup>nd</sup> day of April, 2015.

NEW DELHI  
22/04/2015



V. SHRIVASTAV  
ARBITRATOR