



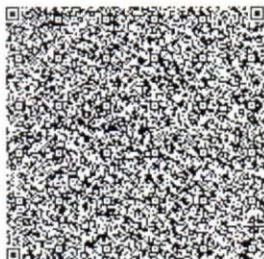
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL73108562271782O
Certificate Issued Date	: 20-Jul-2016 02:19 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130345690664854093O
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
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:

TV Sundram Iyengar and Sons Private Limited  
TVS Building, 7-B, West Veli Street  
Madurai – 625001, State of Tamil Nadu, India  
Vs.

(Complainant)

Rohit Kumar  
Kumar Enterprise  
B 56 Mohan Nagar, Near MMX Complex  
Ghaziabad 201001, Uttar Pradesh

(Respondent)

##### Statutory Alert:

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**THE PARTIES:**

The Complainant in this proceeding is T V Sundram Iyengar & Sons Private Ltd., established in 1911 and is the holding company of the TVS group and is a leading automotive dealership and distribution company in India. The Complainant has its office at TVS Building, 7-B, West Veli Street, Madurai 625001, Tamil Nadu. Phone Number- +452 2356400. The Complainant has authorized an representative for the administrative proceedings namely Ms. Malavika T Vikram of DePenning & DePenning (email: domain@depenning.com).

The Respondent in this proceeding is Mr. Rohit Kumar, Kumar Enterprise, B 56 Mohan Nagar, Near MMX Complex, Ghaziabad - 201001, Uttar Pradesh, Telephone Number- +1.8750835358, Email address - [rohit.kumar.gupta1971@gmail.com](mailto:rohit.kumar.gupta1971@gmail.com).

**THE DOMAIN NAME AND REGISTRAR:**

The domain name in dispute is [www.tvsgroup.in](http://www.tvsgroup.in) The Registrar of this domain name is Godaddy.com (email: [disputes@godaddy.com](mailto:disputes@godaddy.com)).

**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.tvsgroup.in](http://www.tvsgroup.in).

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

The Complainant has filed various documents as Annexures in support of their contentions.

The Respondent has not filed any reply to the complaint.

The Arbitrator has perused the record and annexures / documents.



## **FACTUAL BACKGROUND:**

The Complainant has given the following factual background:

- T V Sundram Iyengar & Sons Private Ltd. was established in 1911, is the holding company of the TVS group and is a leading automotive dealership and distribution company in India. The Complainant is a leading distributor of commercial vehicles, multi-utility & sports utility vehicles, three wheelers, passenger cars etc. The Complainant operates through its three main divisions TVS & Sons, Sundaram Motors and Madras Auto Service.
- The Complainant honestly adopted TVS as a trade mark in the year 1966, which was invented from the name of the founder Thirukkurungudi Vengadam Sundram Iyengar.
- Any product/services offered under the trade mark TVS or its group companies connotes and denotes distinct reputation and eminence and goodwill associated with the quality of products manufactured, marketed and serviced and otherwise dealt-with by the Complainant and its group of companies.
- The Complainant is the prior adopter and user of the trade mark TVS. Since adoption the Complainant has been using the trade mark TVS in respect of its distinguished products and services and has been trading under the said name extensively across the world.
- The Complainant has been extensively advertising their products and services through various printed media including newspapers, magazines and trade journals, leaflets and other promotional literature depicting the said trade mark which have been extensively distributed through the Complainant's offices situated throughout the world; and also have been advertising through electronic media such as internet, satellite television, and due to the superior quality of the Complainant's goods and services, the trade mark of the Complainant, has acquired immense reputation and goodwill amongst the trade and public. None except, the



Complainant have any justification whatsoever to adopt and use the said well-known trade mark.

- TVS brand, has gained a huge customer base nationally as well as internationally and is identified, associated and recognized only with the Complainant. Therefore, adoption and/ or usage of the mark TVS by others would amount to not only dilution of the Complainant's rights over the distinct mark but also would result in confusion and deception by any unauthorized usages of others.

## **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.

Having perused the submissions and documentary evidence placed on record by the Complainant, the Arbitrator is convinced that the Complainant has proved that he has statutory and common law rights in the mark "TVS".

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 Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) The Respondent's domain name has been registered or is being used in bad faith.

The present award has been passed after the expiry of 60 days as the proof of service of complaint to Respondent was received by the arbitrator in the last week of June, 2016 only.



## **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 has submitted that the Complainant and its group companies are the registered proprietors of trade mark TVS in India and in few other jurisdiction. The Complainant has also submitted the copies of journal publication and print out of the relevant pages from the respective officials trade mark office websites and have submitted them as Annexure-G.

The Complainant has further submitted that the impugned domain name is identical to the domain registered well known trade mark TVS, which enjoys a wide reputation, goodwill and recognition of high order. The Complainant also contends that the Respondent has wrongfully and fraudulently adopted and registered the impugned domain name [www.tvsgroup.in](http://www.tvsgroup.in) to utilize the name and reputation, attached to the well known mark TVS without having any rights thereto and in spite of having knowledge about the Complainant and the reputation associated with TVS. The Respondent has also chosen the impugned domain name to deceive the members of the public deliberately and intentionally with a view to trade upon and encash on the name, reputation, image and goodwill acquired by the Complainant and its group companies.

The Complainant has also given the list of domain names which is operated by it and its group companies i.e. TVS.in, tvsmotors.co.in, tvsgroup.com, etc.

The Complainant has also submitted various judgments in support of its argument which have been considered by the Tribunal.

In addition to above submissions the Complainant has also made various other submissions in support of its arguments which have been considered by the Tribunal but the same are not repeated herein.



The submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Further from the facts of the present case, it can be assumed that the Respondent have chosen the impugned domain name with a view to trade upon and en cash on the name, fame, reputation, image and goodwill acquired by the Complainant and its group of companies. Even otherwise the above facts and annexures establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant

It is therefore concluded that the disputed domain name of the Respondent 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 had submitted that one of the Complainant's group companies had adopted and registered the domain www.tvn.in on 06.01.2005 for the purpose of its business and also for providing information to its potential customers around the world. The Complainant further submitted that the disputed name has been registered by the Respondent on 9<sup>th</sup> April, 2015 which is almost after 10 years of the adoption and usage of the domain www.tvn.in by the Complainant and that on account of the long and consistent use of the trade mark TVN, it has attained certain distinctiveness and has become famous to be associated solely and exclusively with the Complainant worldwide including in India.

The Complainant also states that the Respondent's registration and use of the disputed domain name is a clear case of cyber squatting, whose intention is to take advantage of the complaint's substantial reputation and its prominent presence on the internet.



The Complainant has also alleged that the Respondent has created the disputed domain name with a purpose to derive profits from pay-per-click links.

The Complainant has also relied upon the decision passed in the case of *Indian Hotels Company Limited Vs. Mr. Sanjay (gingerhotels.co.in) Jha*, INDRP Case No.148 of 27 September, 2010, to show that a domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.

In addition to above submissions the Complainant has also made various other submissions in support of its arguments which have been considered by the Tribunal but the same are not repeated herein.

The Respondent has failed to prove that it has any rights or legitimate interests in the subject in impugned domain name and did not come forward to file any reply or submissions.

From the facts of the case, it can be concluded that the Respondent has no right or legitimate interest in the domain name [www.tvsgroup.in](http://www.tvsgroup.in), as the Respondent is not making any bona fide offering of goods or services, is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii).

The Tribunal therefore comes to the conclusion that the Respondent has no right or legitimate interest in respect of the domain names.

**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 has submitted following argument to show that the disputed domain name was registered and being used in bad faith.



- At the time of creation and registration of the disputed domain name by the Respondent the Complainant has already a well established business presence globally and the Respondent have not been granted any authorization, license or consent to use the trade mark TVS.
- The basic purpose and intend of the Respondent in registering the trade mark is to encash upon the goodwill, name, fame, reputation of the Complainant and its group companies, which has been built by them over the period of last 100 years.
- The Respondent is in active search of an assignee of the impugned domain name in order to sell the same and to make illegal profit.
- The passive holding of the domain name www.tvsgroup.in by the Respondent amounts to action taken in bad faith.
- That the Complainant will not be able to effectively pursue its business plan in the internet unless the registration of the domain name is held by the Complainant and Complainant stands to lose financially and face the risk of dilution of brand value of TVS mark if the disputed domain name is not transferred to it.

In addition to above submissions the Complainant has also made various other submissions in support of its arguments which have been considered by the Tribunal but the same are not repeated herein.

As stated in earlier paragraphs also, none of the submissions of the Complainant have been rebutted by Respondent, as such they are deemed to be admitted.

On the basis of the Complainant submissions and the evidence provided in support of it, the Tribunal 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 its complaint.

The Respondent has 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.tvsgroup.in> to the Complainant. The Award is accordingly passed on this day of 19<sup>th</sup> July, 2016.



**Rajeev Singh Chauhan**

**Sole Arbitrator**

**Date: 19<sup>th</sup> July, 2016**