



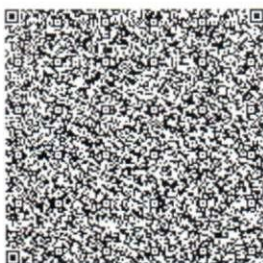
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL59487183852237L
Certificate Issued Date : 09-Sep-2013 02:29 PM
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference : SUBIN-DLDL-SHCIL17427803251247L
Purchased by : NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Second Party : NA
Stamp Duty Paid By : NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION CASE NO. 5 OF 2013

IN THE ARBITRATION MATTER OF:-

VERTEX PHARMACEUTICALS INCORPORATED, USA COMPLAINANT

VERSUS

DR. VRAJESH C. SHAH, DR. SANGEETA V. SHAH

RESPONDENT

[Signature]

AWARD

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

The Complainant has filed the instant complaint challenging the registration of the disputed domain name < www.vertexhospital.in > in favour of the Respondent. In pursuance to 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 is a global pharmaceutical company committed to the discovery and development of breakthrough drugs for serious diseases.

The complainant has further stated that the trademark was adopted in the year 1989, the complainant has extensively and continuously used the trademark/trading style VERTEX internationally as well as in India in connection with a range of pharmaceutical products. The complainant has further stated that the trademark VERTEX has established an impeccable reputation and goodwill amongst consuming public and in trading channels. The complainant has filed the documents to show the proof of the aforesaid registration along-with the complaint.



trademark and its domain name www.vrtx.com, thereby diluting the trademark and causing harm to its reputation.

The complainant has contended that the respondent's domain name is bound to create confusion amongst members of trade and consuming public. The aforesaid contention has been raised by the complainant on the basis that the disputed domain name includes the use of the complainant's trademark VERTEX which will confuse the respondent's activities as those authorized by the complainant. The complainant thus contends that use of the disputed domain name, which includes the complainant's trademark VERTEX will amount to fraud upon the faithful customers of the complainant.

That the complainant has also urged that the use of the disputed domain name by the respondent is done in bad faith only in order to misappropriate the complainant's reputed trademark. The complainant has further stated that the complainant's mark VERTEX is reputed one and the respondent is bound to have prior knowledge of the fame and reputation of the Complainant's trademark VERTEX.

The complainant has averred that the respondent has no legitimate interests in respect of the domain name <www.vertexhospital.in>. It has been stated by the complainant that the respondent does not have any prior rights or legitimate interests in the 'VERTEX' trademark.



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

I entered upon reference regarding the instant dispute on 12.08.2013 and a notice dated 17.08.2013 was sent to the respondent calling upon for a response to the complaint filed by the complainant. However the respondent after being given ample opportunity to file a reply/ response to the aforesaid complaint failed to do so. 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 <www.vertexhospital.in>. The trademark <VERTEX> is a reputed trademark and is used worldwide by the complainant. The complainant has shown its various trademark registration details world over including India. The complainant has filed various documents regarding registration of the trademark VERTEX and the trademarks registered by it under classes 5 and 42.



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 "VERTEX". From the averments of the complaint it is amply clear that the trademark adopted in the year 1989 by the complainant is in its entirety part of disputed domain name i.e. www.vertexhospitals.in. Hence the respondent's action to register the said domain name is not bonafide as he has no right over the mark "<VERTEX>."

Secondly, the respondent has stated that the disputed domain name is identical to or confusingly similar to trademark in which the complainant has prior rights and the respondent's domain name is bound to create confusion amongst member of trade and consuming public. The addition of the word '.in' as suffix to the mark by the respondent is an attempt to harm, create confusion in the minds of public and may cause irreparable loss to the complainant. It was held in **Satyam Infoway Ltd. V. Sifynet Solutions Pvt. Ltd. [AIR 2004 SC 3540]** that "the use of same or similar domain name may lead to diversion of users which would result from such users mistakenly accessing one domain name instead of another. This may



The complainant has stated that the respondent has registered the disputed domain name on 06.02.2009, which incorporates in its entirety the complainant's trademark VERTEX.

In its complaint, the complainant has stated that, "VERTEX" is used worldwide by the complainant as a trademark. The complainant further states that it also uses the trading style under the aforesaid trademark. The complainant states that it had registered the said trademark bearing registration no. 1522439 and 1522440 in India in Classes 5 and 42. The complainant has also provided the details of trademarks and their validity period.

The complainant has contended that it is also present on the internet by highlighting about the domain name registration for the trademark/trading style "VERTEX" i.e. www.vrtx.com. That the complainant has stated that the said domain name is itself illustrative of the importance of said mark. The complainant has provided the details as well as the supporting documents.

That the complainant has contended that the disputed domain name is identical to the trading style and trademark in which the complainant has prior rights. That the complainant further contended that the addition of the country code ".in" (INDIA) to the complainant's existing trademark VERTEX had made the disputed domain name i.e. VERTEXHOSPITAL.IN confusingly similar to the complainant's



occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different web site with an identical name which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner thereby lose their customers." 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 very well known, reputed one and has been using his trademark worldwide for a long time. 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 "VERTEX". 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. <www.vertexhospital.in> in favour of the complainant.

Parties to bear their own costs.



(NIKILESH RAMACHANDRAN)

Date:- 11.09.2013

ARBITRATOR