



महाराष्ट्र MAHARASHTRA

BU 047655

नंबर १२३४ रूपये १०० x १००
दिनांक २१/७/०९
नाव श्री. जयश्री बेलसरे
पत्ता ४२५ च, शनिवार पेठ, पुणे-३०
हरते श्री. रामा स्वामी
सौ. जयश्री बेलसरे, स्टॅम्प केंद्र, ला.नं. - हवेली १/३६/१९९५
४२५ च, शनिवार पेठ, पुणे-३०



AWARD

IN ARBITRATION

1

Yamaha Corporation
§0-1, Nakazawa - Cho
Naka-Ku, Hamamatsu Shizuoka
30-8650.Japan

THE COMPLAINANT

AND

Mr.Rama Svamy
29, Kotturpuram, Venkatesan Salai
Chennai. 600028.
Tamil Nadu. India

THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: - yamaha.co.in

- 2) Since the Complainant is holder of various trademarks / service marks with the word **YAMAHA** it has disputed registration of domain name **yamaha.co.in'** (the disputed / domain name) in the name of **Mr.Rama Swamy, 29, Kotturpuram, Venkatesan Salai, Chennai, Tamil Nadu 600028. India. (The Respondent).**
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 16th July 2009 with the instructions to file his say 27th July 2009.
02. The Respondent failed / neglected to submit his say / reply to the Complaint by 27th July 2009.
03. Therefore reminder notice was sent to the Respondent on 28th July 2009 with the instructions to file his say / reply to the Complaint latest by 31st July 2009.
04. The Respondent has failed / neglected to file his say / reply to the Complaint even by the extended deadline of 31st July 2009.
05. The Respondent has failed / neglected to communicate with the Arbitrator even for extension of period to submit his say on both the instances of notices sent to him.

III] SUMMARY OF THE COMPLAINT: -

(A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- a) The Complainant is a registered proprietors of the following trademarks in India on which the complaint is based: -

Sr. No.	Trade mark No.	Trade Mark	Date of Registration	Class
01	254580	YAMAHA	06/02/1969	15
02	254579	YAMAHA	06/02/1969	09
03	310574	YAMAHA	04/12/1975	06
04	310575	YAMAHA	04/12/1975	11
05	310576	YAMAHA	04/12/1975	16
06	310577	YAMAHA	04/12/1975	20

22	310578	YAMAHA	04/12/1975	25
08	311746	YAMAHA	19/01/1976	28
09	322621	YAMAHA	02/02/1977	08
10	331429	YAMAHA	02/02/1977	18
11	331431	YAMAHA	12/12/1977	03
12	331432	YAMAHA	12/12/1977	19
13	331433	YAMAHA	12/12/1977	30
14	331434	YAMAHA	12/12/1977	26
15	359340	YAMAHA	12/12/1977	27
16	363893	YAMAHA	10/03/1980	14
17	363894	YAMAHA	17/07/1980	17
18	363895	YAMAHA	17/07/1980	21
19	674464	YAMAHA	17/07/1980	22
20	674465	YAMAHA	26/07/1995	01
21	674466	YAMAHA	26/07/1995	05
22	674467	YAMAHA	26/07/1995	10
23	674469	YAMAHA	26/07/1995	13
24	674470	YAMAHA	26/07/1995	24
25	674471	YAMAHA	26/07/1995	29
26	674472	YAMAHA	26/07/1995	31
27	674473	YAMAHA	26/07/1995	32
28	674474	YAMAHA	26/07/1995	33
29	748933	YAMAHA	26/07/1995	34
30	1246483	YAMAHA	19/03/1997	09
31	1248854	YAMAHA	29/10/2003	24
32	1289894	YAMAHA	14/07/2004	35,36,37,38 39,40,41,42
33	1371539	YAMAHA	15/07/2005	10

These trade marks are valid, duly renewed and subsisting on the Register of Trade Marks.

- b) The Complainant is a corporation organized and incorporated under the laws of Japan and has a history of more than 100 years. Mr.Torakusu Yamaha was its founder.
- c) The Complainant has been manufacturer and marketer of a vast range of musical instruments including pianos, guitars and keyboards. It also offers a wide range of products and services including but not limited to audio and video products, information technology products, new media services,



home furnishings, auto components, speciality metals, music education and resort facilities. **(The products and services)**

- d) The Complainant adopted the trade mark / name YAMAHA having roots in the name of the founder Torakusu Yamaha, which has become synonymous with unparalleled quality throughout the world.
- e) The Complainant has today over 26000 employees and carries on business under the trademark / name YAMAHA through 106 subsidiaries located all over the world.
- f) The Complainant's products and services are supplied through a well-established network of subsidiaries, affiliates, distributors etc. globally including but not limited to America, Europe, Asia, Middle East, Oceania comprising of almost all countries of the world.
- g) The Complainant's statutory and proprietary rights in the trade mark YAMAHA have been recognised and acknowledged all over the world by way of trade mark registration in respect of a diversity of goods / services.
- h) The Complainant promotes its business and activities globally through website www.yamaha.com and numerous other region/country specific websites including www.yamaha.in.
- i) The Complainant invests substantially in research and development activities that support its progress in advanced technology, securing, protecting and utilizing related intellectual property.
- j) Due to quality and exclusivity and protected by its brand name YAMAHA, the complainant has achieved international goodwill and reputation which is reflected in its turnover figures for the last years. In 1997-98 its turnover stood at Japanese Yen 608990 M which stood at JY 548754 M in the year 2007-08. Due to its quality and exclusivity the trade mark / name YAMAHA is solely distinctive of and identified with the Complainant.
- k) Sometime in October 2008 the Complainant learnt about the disputed domain name was registered in the name of the Respondent and that the Respondent was purporting to offer YAMAHA products. The Complainant has attached few printouts from the impugned website on various dates ranging from November 4, 2008 to the date of the complaint to this effect.



1) The legal notices sent to the Respondent via registered post, courier were returned undelivered with the remarks 'address not traceable'. Notice sent by email also did not evoke any response from the Respondent.

m) The complainant has requested for transfer of disputed domain name in his favour alongwith costs for the same on the following legal grounds: -

1. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights.
2. The Registrant has no rights or legitimate interests in respect of the domain name.
3. The Registrant's domain name has been registered or is being used in bad faith.

IV] NO LY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent has failed / neglected to submit his say / reply to the complaint, despite being given sufficient notice and period, including extended period for the same. I am therefore constrained to pass this award *EX-PARTE*.

ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?	Yes
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	No

04	Whether the Registrant / Respondent has registered domain name in bad faith?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No

VII] BASIS OF FINDINGS: -

Due to failure / negligence on the part of the Respondent to submit his say / reply to the Complaint, I have to rely solely on the documents furnished by the Complainant and his written complaint. Accordingly above findings have been based solely on the Complaint along with documentary supporting furnished by the Complainant.

IX] AWARD: -

On the basis of findings and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name - **yamaha.co.in'**
The Respondent shall transfer the same to the Complainant.
02. No order as to the costs.

Dated: -01.08.2009


(S.C. INAMDAR)
ARBITRATOR