

कुली 1015/16 तमिलनाडु TAMILNADU

3894
4.6.2012

Sridharan

Y 145803

S. Mangalam

S. MANGALAM

STAMP VENDOR,

66 MURTHY STREET,

CHENNAI-600 033

LICENCE NO : 9942/00

PHONE No: 2371 0754

BEFORE THE INTERNATIONAL Exchange of India
Arbitration Award

Arbitrator: S. SRIDHARAN

Dated: 5th June 2012

FIL Limited

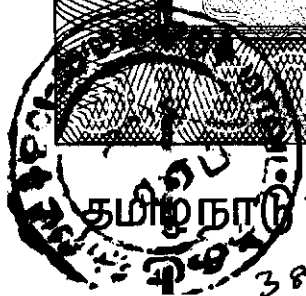
-vs-

Harvard King

--- Complainant

--- Respondent

Sridharan's



சென்னை தமில்நாடு TAMILNADU

3895
4.6.2012

Sridharan

Y 145804
S. Mangalam
S. MANGALAM
STAMP VENDOR,
66 MURTHY STREET,
CHENNAI-600 033.
LICENCE NO : 9942/09
PHONE NO: 2371 0784

BEFORE THE INTERNATIONAL EXCHANGE OF INDIA
ARBITRATION BOARD
ARBITRATOR: S. SRIDHARAN
DATED: 5th June 2012

FIL Limited --- Complainant
-vs-
Howard King --- Respondent
Sridharan

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 5th June 2012

FIL Limited, Bermuda	...	Complainant
Versus		
Howard King, U.S.A	...	Respondent

1. The Parties

- 1.1 The complainant FIL Limited is a Bermudan Company, having its place of business at Pembroke Hall, 42 Crow Lane, Pembroke HM 19, P.O. Box HM 670, Hamilton, HMCX, Bermuda represented by Angela Fox of RGC Jenkins & Co at 26 Caxton Street, London SW1H ORJ, United Kingdom.
- 1.2 Respondent is Howard King, BPM 372858, 8345 NW 66th Street 2000, Miami, Florida 33166, U.S.A.

The Domain Name and Registrar

- 1.3 The disputed domain name <fidelity.co.in> is registered with Dynadot LLC (R117-AFIN). It was registered on 28th December 2011.

2. Procedural History

- 2.1 On 3rd May 2012, NIXI asked me about my availability and consent to take up the Complaint for arbitration. I informed my availability and consent on



the same day. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.

2.2 On 17th May 2012, I received hardcopy of the Complaint. On the same day, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.

2.3 On 27th May 2012, I received a soft copy of the Complaint.

2.4 Respondent has not filed any response to the Complaint.

2.5 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

3.1 The Complainant is one of the largest and best-known investment fund managers in the world. It was formerly named and traded as Fidelity International Limited, but on 1 February 2008 changed its name to FIL Limited. The Complainant, either itself or through its subsidiaries, offers a full range of financial investment services throughout the world to private and corporate investors, including cash and equity ISA options, investment funds, mutual funds, investment portfolio consolidation, consultancy and advice relating to investments, wealth management services for clients with

larger investment portfolios, retirement savings, investment trusts and share dealing. Since the Complainant was founded over 40 years ago, all of these services have been offered under the brand name FIDELITY and marks including FIDELITY

3.2 The Complainant has a United Kingdom subsidiary, FIL Investment Services (UK) Limited, an English company whose registered office is at Oakhill House, 130 Tonbridge Road, Hildenborough, Tonbridge, Kent TN11 9DZ, United Kingdom ("FIL Investment"), which is itself one of the largest investment fund managers in the United Kingdom. Since 1979, FIL Investment and its related companies and predecessors in business have traded in the field of financial services in the United Kingdom under the brand names FIDELITY, FIDELITY INTERNATIONAL, FIDELITY INVESTMENTS and numerous other sub-brands preceded by the core FIDELITY name.

3.3 Through their substantial business and investment in the promotion of FIDELITY and marks incorporating FIDELITY, the Complainant and its subsidiaries have acquired a very considerable reputation and goodwill in FIDELITY and FIDELITY-composite marks in relation to financial services internationally. As at 31 December 2009, FIL Investment alone had nearly 900,000 customers in the United Kingdom and was responsible for looking after assets worth around £140.8 billion.

3.4 For over 40 years, the Complainant and its subsidiaries have regularly and prominently advertised their services under the FIDELITY Marks in print

media circulated around the world and the international financial services trade press, including *inter alia* in *The Times*, *The Sunday Times*, *The Financial Times*, *The Daily Mail*, *The Mail on Sunday*, *The Daily Telegraph*, *The Economist*, *Investment Week*, *Investment Advisor*, *Investment Trust*, *Money Observer* and *What Investment*. The Complainant does not as a rule keep copies of actual published advertisements because of the sheer volume involved, but it does keep electronic copies of the advertisements run, and attached certain examples of these, as well as a few actual copies of published advertisements, from *The Financial Times*, *The Times*, *The Daily Mail*, *The Sunday Times*, *The Daily Telegraph*, *The Mail on Sunday*, *Investment Trust*, *Money Observer* and *What Investment* between 2004 and 2009.

- 3.5 For at least the last 12 years or so, the Complainant and its subsidiaries have placed banners and sponsored content on at least 35 different third-party financial and corporate websites targeting investors and financial advisors around the world, including widely consulted financial websites such as This is Money (www.thisismoney.co.uk), The Motley Fool (www.fool.co.uk), IFAOnline (www.ifaonline.co.uk), Citywire (www.citywire.co.uk), FT.com (www.ft.com), Timesonline (www.timesonline.co.uk), Investment Week (www.investmentweek.co.uk), Investors Chronicle (www.investorschronicle.co.uk) and Moneysupermarket (www.moneysupermarket.com). The Complainant and its subsidiaries have also invested in sponsored ads through the reservation of commonly

Sridharan

searched investment terms such as “personal pensions” as keywords on search engines including Google, Yahoo and MSN, which result in links to advertisements for the services of the Complainant and its subsidiaries under the FIDELITY Marks being prominently displayed whenever the reserved terms are searched.

3.6 For at least the last 20 years the Complainant and its subsidiaries, including FIL Investment, have also promoted services provided under the FIDELITY Marks on the Internet website *www.fidelity.co.uk*. The Complainant and its subsidiaries, including FIL Investment, have invested regularly and substantially over the years in website optimization to ensure maximum visibility of that website to Internet users searching for common investment terms. Based on visitor statistics for the *www.fidelity.co.uk* website from 2006, the Complainant estimates that it has at least a quarter of a million visitors to that website every month, and probably more. Print-outs from these websites showing the use of the FIDELITY Marks in respect of the Complainant's range of financial services are attached. The success and high profile of the Complainant and its subsidiaries under the FIDELITY Marks in the financial services field have given rise to numerous industry awards and praise and recognition from throughout the financial services industry, as reflected *inter alia* by the print-outs attached.

3.7 The Complainant is the registered proprietor of *inter alia* the following trademark registrations and applications for FIDELITY and marks incorporating FIDELITY for a wide range of financial services and related

Indurans

services, all of which pre-date registration of the disputed domain name <fidelity.co.in>.

A. Community Trademark Registrations:

- (a) No. 3844925 for FIDELITY in Classes 16 and 36, filed on 21 May 2004;
- (b) No. 3844727 for FIDELITY INVESTMENTS in Classes 16 and 36, filed on 21 May 2004
- (c) No. 3845047 for FIDELITY INVESTMENTS Logo in Class 36, filed on 21 May 2004;
- (d) No. 9313065 for FIDELITY INVESTMENT MANAGERS Logo in Classes 35, 36 and 42, filed on 21 July 2010;
- (e) No. 9313099 for FIDELITY INVESTMENT MANAGERS Logo [in Colour] in Classes 35, 36 and 42, filed on 21 July 2010;
- (f) No. 10054377 for F in Square Device and FIDELITY WORLDWIDE INVESTMENT Logo in Classes 35, 36 and 42, filed on 16 June 2011;
- (g) No. 10054393 for F in Square Device and FIDELITY WORLDWIDE INVESTMENT Logo [in Colour] in Classes 35, 36 and 42, filed on 16 June 2011;
- (h) No. 4579009 for FIDELITY INTERNATIONAL in Classes 16, 35 and 36, filed on 4 August 2005;

Induram

- (i) No. 4579041 for FIDELITY INTERNATIONAL Logo in Classes 16, 35 and 36, filed on 4 August 2005; and
- (j) No. 4579058 for FIDELITY INTERNATIONAL Logo [in Colour] in Classes 16, 35 and 36, filed on 4 August 2005.

B. United Kingdom Registrations:

- (a) No. 2100049 for FIDELITY in Class 36, filed on 13 May 1996;
- (b) No. 1310766 for FIDELITY INVESTMENTS in Class 36, filed on 21 May 1987;
- (c) No. 2100004 for FIDELITY INVESTMENTS Logo in Class 36, filed on 13 May 1996;
- (d) No. 2351340 for FIDELITY INVESTMENTS Logo in Class 36, filed on 15 December 2003;
- (e) No. 2554033 for FIDELITY INVESTMENT MANAGERS Logo [Series of Two] in Class 36, filed on 23 July 2010;
- (f) No. 2583955 for F in Square Device and FIDELITY WORLDWIDE INVESTMENT Logo [Series of Two] in Class 36, filed on 8 June 2011;
- (g) No. 2398490 for FIDELITY INTERNATIONAL in Class 36, filed on 3 August 2005;
- (h) No. 2398491 for FIDELITY INTERNATIONAL Logo in Class 36, filed on 3 August 2005;

Indharams

3.8 The Complainant after coming to know of the Respondent's registration of the disputed domain name <fidleity.co.in>, through its authorized representatives, sent a cease and desist letter to the Respondent on March 7, 2012 notifying the Respondent of the Complainant's trademark rights and requesting transfer of the disputed domain name. In reply, the Respondent sent an email stating simply: "I think we can find a(n) easy way to solve this problem. I'd like to sell it at \$300. Through this way, it could save our time." The Complainant has attached copies of the correspondence exchanged between the Complainant's authorized representatives and the Respondent.

B Respondent

3.9 The Respondent has not filed any reply to the Complainant's Compliant in this arbitration.

4. Parties Contentions

A Complainant

4.1 The disputed domain name <fidleity.co.in> is confusingly similar to trademarks in which the Complainant has rights. The only distinctive element within the disputed domain name <fidleity.co.in>, the word "fidleity", is a common misspelling of the Complainant's trademark FIDELITY (and indeed of the distinctive element of the Complainant's other FIDELITY-composite marks) likely to be made as a result of typographical errors by Internet users attempting to type the Complainant's FIDELITY

Indhira

trademark into an Internet browser bar. Indeed, the automatic "spell correct" function on Microsoft Word anticipates this error and when the word "fidleity" is typed, the program automatically changes it to "fidelity". The differences are visually hard to detect without close examination and when the disputed domain name is read quickly as an Internet address on a screen, it is likely to be mistaken by Internet users as in fact being "fidelity.co.in". The domain name suffix ".co.in" is non-distinctive and its presence does nothing to diminish the confusing similarity of the disputed domain name and the Complainant's FIDELITY trademark.

4.2 In consequence, the average consumer encountering the disputed domain name <fidleity.co.in> in an Internet search for the Complainant's FIDELITY-branded services (as a result, most likely, of having mistyped the Complainant's trademark into a browser bar) is likely to assume that the linked website is that of, or is in some way connected to, the Complainant, and that the disputed domain name is, essentially, "fidelity.co.in". Similar findings of "typosquatting" behaviour of the type reflected by the disputed domain name have been reached by domain name panelists in many cases, including *inter alia* *Wachovia Corporation v. Peter Carrington* (WIPO Case No. D2002-0775) involving the trademark WACHOVIA and the domain names <wochovia.com>, <wachvia.com> and <wachovai.com>; *Backstreet Prods., Inc. v. Zuccarini* (WIPO Case No. D2001-0654) involving the trademark BACKSTREET BOYS and *inter alia* the domain names <backsreetboys.com> and <backstreetboyz.com>; *AltaVista Co. v.*

Sudhakarans

Yomtobian (WIPO Case No. D2000-0937) involving the trademark ALTA VISTA and the domain names <altabista.com> and <altaista.com> ; *Oxygen Media, LLC v. Primary Source* (WIPO Case No. D2000-0362) involving the trademark OXYGEN and the domain name <oxygen.com>; and *Encyclopaedia Britannica, Inc. v. Zuccarini* (WIPO Case No. D2000-0330), involving the trademark ENCYCLOPAEDIA BRITANNICA and the domain name <encyclopediabritannica.com>. Copies of these decisions are attached.

- 4.3 The Respondent has no rights or legitimate interests in the disputed domain name <fidelity.co.in>. The Respondent is not commonly known by the disputed domain name <fidelity.co.in>, and is not using the domain name or a name corresponding to it in connection with a *bona fide* offering of goods or services. Nor is the Respondent making any legitimate non-commercial or fair use of the disputed domain name <fidelity.co.in>, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant's trademark.
- 4.4 The Respondent is using the disputed domain name <fidelity.co.in> for what appears to be a pay per click ("PPC") landing site offering links to third-party websites, including to commercial websites offering financial and investment-related services that compete with the Complainant's FIDELITY-branded financial services, and from which the Respondent is believed to derive click-through revenue. Print-outs of the Respondent's PPC landing site showing such links are attached.

Induram

- 4.5 The website linked to the disputed domain name <fidelity.co.in> also includes a link to the Complainant's own website at www.fidelity.co.uk. In addition, the list of links on the left-hand side of the linked site includes links entitled "Fidelity Investment" and "Fidelity Investment Co" which appear to refer to the business of the Complainant's subsidiary, Fidelity Investment, but which, when clicked, generate search results including links to third-party commercial websites in the field of investments and financial services and to competitors of the Complainant, as shown in the attached print-outs.
- 4.6 Numerous panels have found that use of a disputed domain name to host a PPC landing page offering links to websites of a complainant's competitors, where the domain name is not clearly descriptive or generic, does not constitute a right or legitimate interest under Paragraph 4(a)(ii) of the Policy, and that such conduct is evidence of cybersquatting behaviour. See, *inter alia*, *American Automobile Association, Inc. v Texas International Property Associates* (WIPO Case No. D2007-0592), where the panelist noted that the Respondent "uses the disputed domain name to collect revenues by providing links to advertisers who seek to sell, among other things, products (i.e., maps) similar to those offered by the Complainant. There have been many prior panels operating pursuant to the Policy that have declared this sort of disputed domain name use to fall short of the requirements of both paragraphs 4(c)(i) and 4(c)(iii) [of the UDRP]".
- 4.7 Moreover, in *mVisible Technologies Inc v. Navigation Catalyst Systems, Inc.* (WIPO Case No. D2007-1141) the panelist stated, "If the links on a

Sudhakar

given landing page...are based on the trademark value of the domain names, the trend in UDRP decisions is to recognize that such practices generally... constitute abusive cybersquatting". Similar conclusions have been reached by panellists in other cases, including *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. D2007-1415; *Grundfos A/S v. Texas International Property Associates*, WIPO Case No. D2007-1448; *Champagne Lanson v. Development Services/MailPlanet.com, Inc.*, WIPO Case No. D2006-0006; *The Knot, Inv. v. In Knot we Trust Ltd*, WIPO Case No. D2006-0340); and *Brink's Network, Inc. v. Asproductions*, WIPO Case No. D2007-0353 .

- 4.8 In this case, it is clear that the links on the Respondent's landing page, which relate mainly to financial services, are based on the trademark value of the disputed domain name which arises from its confusing similarity to the Complainant's distinctive FIDELITY Marks. The word FIDELITY has no descriptive meaning in respect of financial services that would allow it to function as a generic descriptor. The disputed domain name <fidelity.co.in> is likely to be understood by Internet users as a trademark, and in particular as the Complainant's FIDELITY trademark; and it is clear from the Respondent's references to the Complainant's *www.fidelity.co.uk* website on the Respondent's PPC landing page that the Respondent is well aware of the Complainant and its FIDELITY financial services business. Indeed, the Respondent is seeking to capitalise on the confusing similarity of the disputed domain name <fidelity.co.in> with the Complainant's

Sudhanshu

FIDELITY Marks for commercial gain by attracting Internet users seeking the Complainant and then using them to generate pay-per-click advertising revenue. The Respondent's unauthorized use of a domain name that is confusingly similar to the Complainant's registered trademark in order to attract Internet users to a PPC landing page promoting services of third parties in the field of finance and investments, including of competitors of the Complainant, is inherently misleading and is not a *bona fide* commercial use of the disputed domain name <fidelity.co.in>.

4.9 The disputed domain name <fidelity.co.in> was registered and has been used in bad faith.

4.10 By using the disputed domain name <fidelity.co.in> in respect of a PPC landing page offering links to the Complainant's competitors in the financial services field, it is clear that the Respondent has intentionally set out to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant. The Complainant has been trading under the FIDELITY Marks in the financial services field by itself and through its subsidiaries for over 40 years. The content of the Respondent's PPC landing site makes it quite implausible that the Respondent was not aware of, and seeking to draw commercial benefit from confusion with, the Complainant's FIDELITY Marks at the time it acquired the disputed domain name <fidelity.co.in>. The fact that the Respondent's website contains links to the Complainant's own website at www.fidelity.co.uk and to search results (albeit misleading ones) for "Fidelity Investment" and "Fidelity

Sudhanshu

Investment Co.”, and the fact, moreover, that the vast majority of links on the Respondent’s website are to financial services providers make it clear that the Respondent was not only aware of the Complainant and its subsidiary FIL Investment (trading under the FIDELITY INVESTMENT name), but also that it was seeking to derive commercial benefit in the form of click-through revenue by using a domain name that is confusingly similar to the Complainant’s trademark in order to attract Internet users seeking the Complainant.

4.11 Such conduct is inherently misleading, and the use of a confusingly similar domain name to lure Internet users to a site hosting links to providers of competing products or services is *prima facie* evidence of bad faith (see *inter alia American Automobile Association, Inc. v Texas International Property Associates*, WIPO Case No. D2007-0592, *supra*; and *mVisible Technologies Inc v. Navigation Catalyst Systems, Inc, supra*: “Because Respondent’s many domain names resolve to landing pages at which competitive services are offered, Complainant has established that Respondent’s use of these domain names is in bad faith. The domain names appear designed to attract Internet users who are looking for Complainant’s MYXER TONES services, appear to cause confusion with Complainant’s marks and websites, appear to disrupt Complainant’s business by diverting consumers away from Complainant’s websites, and do all of these things for commercial gain because Respondent profits from the PPC revenue generated by these websites”; see also *inter alia Mudd*,

Siddhant

LLC v. Unasi, Inc., WIPO Case No. D2005-0591; and *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No. D2005-0556). The Respondent's conduct in relation to the PPC landing site is evidence of both bad faith registration and bad faith use of the disputed domain name **<fidelity.co.in>** under Paragraph 6 (iii) of the INDRP.

4.12 The Complainant, through its authorized representatives, sent a cease and desist letter on March 7, 2012 notifying the Respondent of the Complainant's trademark rights and requesting transfer of the disputed domain name. In reply, the Respondent sent an email stating simply: "I think we can find a easy way to solve this problem. I'd like to sell it at \$300. Through this way, it could save our time." Copies of the correspondence exchanged between the Complainants authorized representatives and the Respondent is attached.

4.13 This conduct strongly suggests that the Respondent acquired the disputed domain name **<fidelity.co.in>** primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name. For the reasons already given, it is highly implausible that the Respondent was unaware of the Complainant's business at the time it acquired the disputed domain name **<fidelity.co.in>**; indeed, on the contrary, the content of the Respondent's PPC landing site points to a clear awareness of the Complainant and its business under the FIDELITY Marks. It will have been obvious to the

Indranonans

Respondent that the Complainant would object to the Respondent's misleading and disruptive use of the Complainant's trademark to divert Internet users to websites of its competitors, and the Respondent might therefore have calculated that the Complainant might be prepared to pay a substantial sum for its transfer. Moreover, it would have been clear to the Respondent that competitors of the Complainant might also encounter the disputed domain name <fidelity.co.in> and might also be prepared to pay a substantial sum to acquire it for their own advertising purposes. The Respondent's conduct therefore reflects a deliberate intent to create a nuisance and to interfere with the Complainant's business such that the Complainant or one of its competitors might be persuaded to pay valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name in order to secure its transfer. There is therefore also evidence of bad faith registration and use under Paragraph 6 (i) of the INDRP.

B. Respondent

4.14 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.

Indranand

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

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

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark FIDELITY. Complainant has and its subsidiaries have been using FIDELITY marks internationally for over 40 years. Complainant owns numerous trademark registrations for FIDELITY mark in the United Kingdom and the European Union. The first registration for FIDELITY in the UK under No.2100049 in class 36 dates back to 13.05.1996. The first community trade mark registration for Fidelity Investments under No.3844727 in class 36 dates back to 21.05.2004. The Complainant registered www.fidelity.co.uk before August 1996. The web site is accessible from India. The disputed domain name **<fidelity.co.in>**

Sundaraman

was registered on 28.12.2011. Obviously, the Complainant is the prior adopter and registrant of FIDELITY marks. The above facts have established that the Complainant has both common law and statutory rights in respect of its Fidelity marks.

5.5 The distinctive part of the disputed domain name **<fidleity.co.in>** is "Fidleity". The distinctive element of the disputed domain name **<fidleity.co.in>**, "fidleity", is obviously a common misspelling of the Complainant's trademark FIDELITY and is phonetically similar to the Complainant's FIDELITY marks. The domain name suffix ".co.in" is non-distinctive and its presence does nothing to diminish the confusing similarity of the disputed domain name **<fidleity.co.in>** and the Complainant's FIDELITY trademark. The disputed domain name **<fidleity.co.in>** is phonetically similar to the Complainant's domain name www.fidelity.co.uk.

5.6 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its FIDELITY marks.
- (b) The disputed domain name is **<fidleity.co.in>**:
 - (i) Phonetically similar to the Complainant's FIDELITY marks and
 - (ii) Phonetically similar to the Complainant's domain name www.fidelity.co.uk

Respondent has no rights or legitimate interests in respect of the disputed domain name

Sudhakarans

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the FIDELITY marks. The Complainant's FIDELITY marks are well known in many countries across the globe including India. Its web site is accessible from India also.
- (b) The Complainant's FIDELITY mark was adopted about 40 years back. The first registration for Fidelity in the UK under No.2100049 in class 36 dates back to 13.05.1996. The first community trade mark registration for Fidelity Investments under No.3844727 in class 36 dates back to 21.05.2004. The Complainant registered www.fidelity.co.uk before August 1996. The web site is accessible from India. The disputed domain name **<fidelity.co.in>** was registered on 28.12.2011.

5.8 Respondent did not register the disputed domain name **<fidelity.co.in>** until 2011. It is unlikely that the Respondent was unaware of Complainant's existence of trademark rights before registering the disputed domain name **<fidelity.co.in>**.

5.9 I visited the web site of the Respondent under the disputed domain name **<fidelity.co.in>**. The disputed domain name **<fidelity.co.in>** resolved to a web page providing links to web sites of the competitors of the Complainant. At the top left, there is a tab "Inquire about this domain name". A click on the tab led to a link where the visitor is asked to enter his offer money to purchase the disputed domain name **<fidelity.co.in>**.

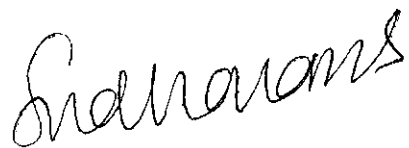
The visitor is also asked to enter his email address. It is obvious that the Respondent never intended to use the disputed domain name **<fidelity.co.in>** in connection with a bona fide offering of goods or services. Respondent's main intention in registering the disputed domain name **<fidelity.co.in>** is to make profit by reason of the well-known reputation attached to the FIDELITY marks of the Complainant.

5.10 In the absence of response from the Respondent, I accept the argument of the Complainant that:

- (a) The Respondent has no rights or legitimate interests in the disputed domain name **<fidelity.co.in>**. The Respondent is not commonly known by the disputed domain name **<fidelity.co.in>**, and is not using the domain name or a name corresponding to it in connection with a *bona fide* offering of goods or services. Nor is the Respondent making any legitimate non-commercial or fair use of the disputed domain name **<fidelity.co.in>**, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant's trademark.
- (b) The Respondent is using the disputed domain name **<fidelity.co.in>** for what appears to be a pay per click ("PPC") landing site offering links to third-party websites, including to commercial websites offering financial and investment-related services that compete with the Complainant's FIDELITY-branded financial services, and from which the Respondent is believed to derive click-through revenue.

Sidharan

(c) The links on the Respondent's landing page, which relate mainly to financial services, are based on the trademark value of the disputed domain name <fidelity.co.in> which arises from its confusing similarity to the Complainant's distinctive FIDELITY Marks. The word FIDELITY has no descriptive meaning in respect of financial services that would allow it to function as a generic descriptor. The disputed domain name <fidelity.co.in> is likely to be understood by Internet users as a trademark, and in particular as the Complainant's FIDELITY trademark, and it is clear from the Respondent's references to the Complainant's *www.fidelity.co.uk* website on the Respondent's PPC landing page that the Respondent is well aware of the Complainant and its FIDELITY financial services business. Indeed, the Respondent is seeking to capitalize on the confusing similarity of the disputed domain name <fidelity.co.in> with the Complainant's FIDELITY Marks for commercial gain by attracting Internet users seeking the Complainant and then using them to generate pay-per-click advertising revenue. The Respondent's unauthorized use of a domain name that is confusingly similar to the Complainant's registered trademark in order to attract Internet users to a PPC landing page promoting services of third parties in the field of finance and investments, including of competitors of the Complainant, is inherently misleading and is not a *bona fide* commercial use of the disputed domain name <fidelity.co.in>.

A handwritten signature in black ink, appearing to read "Sudhakar" or similar, written in a cursive style.

5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name <fidelity.co.in>.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant is the proprietor of the FIDELITY marks. Complainant and his subsidiaries have been using the FIDELITY marks internationally for the past 40 years. The first registration for Fidelity in the UK under No.2100049 in class 36 dates back to 13.05.1996. The first community trade mark registration for Fidelity Investments under No.3844727 in class 36 dates back to 21.05.2004. The Complainant registered www.fidelity.co.uk before August 1996. The web site is accessible from India. The disputed domain name <fidelity.co.in> was registered on 28.12.2011. Obviously, Complainant's rights in the FIDELITY marks pre-date Respondent's registration of the disputed domain name <fidelity.co.in>. The Respondent could not have ignored, rather actually influenced by, the well-known FIDELITY marks of the Complainant at the time he acquired the disputed domain name <fidelity.co.in>.

5.13 As seen above, Respondent is currently holding the disputed domain name <fidelity.co.in> primarily for sale and gives links to other web sites offered by third parties and not for any other purpose. The Respondent is no way connected with the Complainant. Respondent's adoption of the

Sudhakarans

disputed domain name **<fidelity.co.in>** is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior Fidelity marks.

5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's Fidelity marks.

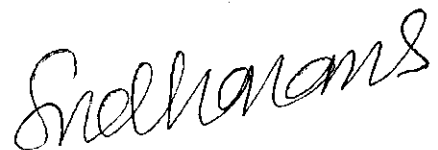
5.15 Respondent registered the disputed domain name **<fidelity.co.in>** with full knowledge of Complainant's trademark. Where a domain name is found to be registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration.

5.16 By using the disputed domain name **<fidelity.co.in>** in respect of a pay per click (PPC) landing page offering links to the Complainant's competitors in the financial services field, it is clear that the Respondent has intentionally set out to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant. The Complainant has been trading under the FIDELITY Marks in the financial services field by itself and through its subsidiaries for over 40 years. The content of the Respondent's PPC landing site makes it quite implausible that the Respondent was not aware of, and seeking to draw commercial benefit from confusion with, the Complainant's FIDELITY Marks at the time it acquired the disputed domain name **<fidelity.co.in>**.

Sudharams

5.17 The Complainant, through its authorized representatives, sent a cease and desist letter on March 7, 2012 notifying the Respondent of the Complainant's trademark rights and requesting transfer of the disputed domain name. In reply, the Respondent sent an email stating simply: "I think we can find a(n) easy way to solve this problem. I'd like to sell it at \$300. Through this way, it could save our time." This conduct strongly suggests that the Respondent acquired the disputed domain name <fidelity.co.in> primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name. It would have been clear to the Respondent that competitors of the Complainant might also encounter the disputed domain name <fidelity.co.in> and might also be prepared to pay a substantial sum to acquire it for their own advertising purposes. The Respondent's conduct therefore reflects a deliberate intent to create a nuisance and to interfere with the Complainant's business such that the Complainant or one of its competitors might be persuaded to pay valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name in order to secure its transfer. This conduct of the Respondent evidences his bad faith registration and use of the disputed domain name <fidelity.co.in>.

5.18 Thus it is clearly established that Respondent registered the disputed the disputed domain name <fidelity.co.in> in bad faith.



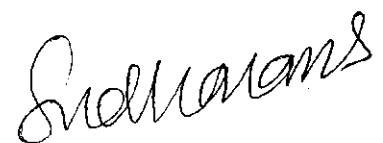
5.19 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <fidelity.co.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <fidelity.co.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards costs of the proceedings.



S.Sridharan
Arbitrator