

दिल्ली DELHI

P 820377

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME
"speakasiaonline.co.in"

SPEAKASIA ONLINE PTE. LTD.
MR. GAGAN

AND

...COMPLAINANT
...RESPONDENTS

A W A R D

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Sole Arbitrator in the aforesaid proceeding vide communication by NIXI. This Tribunal while checking the records of the proceedings, found that there was nothing on record to show that a copy of the complaint has been supplied to the Respondents. Accordingly vide its

communication dated 20/06/2011 this Tribunal directed the Complainants to send a copy of their complaint with Annexure(s) to the Respondents by Courier. The Respondents were given time of seven days after receipt of the complaint to send their Statement of Defense.

2. That the Tribunal in response to its communication received email dated 23/06/2011 from the Complainants stating that they have sent the hard copy of the complaint via Blue Dart Courier and sent the courier receipt having Waybill No.12971028604. This Tribunal also received an email dated 23/06/2011 from the Respondent acknowledging the receipt of the Complaint and also giving their Statement of defense.
3. This Tribunal received another email from the complainant that they would like to file their Rejoinder to the statement of defense filed by the respondent. Hence this Tribunal vide it's order dated 25/06/2011 directed the Respondents to send a duly signed hard copy of their response/ Statement of Defense within 5 days of receipt latest by 30th June 2011 and the Complainant were given time of another 5



days i.e. till 5th July,2011 to file their Rejoinder. Both the Parties were also directed to file their Evidence by way of Affidavit so as to reach this Tribunal by 10th July, 2011.

4. This Tribunal did not receive any response from the side of the Respondent till 30/06/2011 but received Rejoinder of the complainant on 04/07/2011. The Evidence by way of affidavit from both the parties was also not received by this Tribunal, hence vide order dated 12/07/2011 gave one more opportunity to both the parties to file their evidence by way of affidavit by 19/07/2011 which was complied by the parties.

5. This Tribunal noted that the Affidavit filed by the complainants was by one Mr. Arunav Chaliha, but there were no authorization in his name, hence the Tribunal vide order dated 20/7/11 & 23/07/11 directed the Complainants to send Board Resolution of Speakasia Online Pte. Ltd authorizing Mr. Arunav Chaliha. The complainants in response to the aforesaid directions vide email dated 26/07/11 sent a soft copy of Board Resolution authorizing one Mr. Tarak Bajpaye from Speakasia Online Pte. Ltd. who in turn authorized Mr. Arunav Chaliha to depose for and on behalf of the Company Speakasia Online Pte Ltd. The



hard copy of the same was also received by this Tribunal on 28/07/2011.

6. The above process having been completed and the parties having filed their respective pleadings and evidence, this Tribunal now proceeds to ascertain the controversy at hand.

DISPUTE

The dispute at hand concerns the domain name "speakasiaonline.co.in" that is registered with the .IN Registry through the sponsoring Registrar Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com

CLAIM

The complainants claim a right in the said domain name based on the following assertions as given in their complaint which are broadly as under:

- A. It is asserted that the Complainant is a company by the name of Speakasia Online Pte. Ltd. (SAOL) which is registered and operating from Singapore since 15th December, 2006 and owns a Consumer Empowerment portal www.speakasiaonline.com which is broadly an



integrated online survey group for the Asian Sub Continent. It is claimed that this activity was the brain child of Ms. Haren, who made Speak Asia first inroad into the Online Market Research which was backed by a well-planned and strategic presence in Malaysia, Indonesia, India, Vietnam and Singapore. It is claimed that the complainant over the years aspire to cross the benchmark of USD 115 million by 2010-2011. Reliance is placed on as Annexure "B".

B. The Complainant also claims that various trademark registration applications are pending in different countries including India the details of which are Annexure "C" to this Complaint.

C. It is also claimed that the complainant has over 1.5 million panellist who are attached with it and are integral part of companies business activities. It is further averred that the Complainant has been advertising about its business activities and functions through various modes of advertisements including advertisements through T.V. channels and are identified and known among the public being the owner and user of the name "Speakasia." It is also claimed that the



complainants have deployed huge financial expenditures on popularising their presence and name.

D. That it is also averred that www.speakasiaonline.com is the official website of the Complainant and it offers a wide range of information about the Complainant and their various activities and working. The complainant relies upon "Annexure D" to support their contentions.

E. It is averred that there are large number of visitors to the Complainant's website, and thus the website is generating business, goodwill and reputation.

F. It is also averred that the Complainant has also organised various events and functions in different parts of the country and abroad which has also generated a substantial reputation and goodwill in the name of Speakasia and it relies on "Annexure E" filed with the complaint.

G. The Complainant assert that as per Alexa ranking (Amazon based Company) the Complainant's domain name, <Speakasiaonline.com> has a three-month global Alexa traffic rank of 1,099 and the fraction of visits to the site referred by search engines is roughly 11% of



which approximately 93% of visitors to this site come from India, where it has attained a traffic rank of 41. Further, visitors to Speakasiaonline.com view an average of 16.1 unique pages per day for this. Reliance is placed on "Annexure F".


H. The Complainant allege that the Respondent has registered the disputed domain name on 11th April, 2011, with intention and motive to create a deceptively similar website which is not associated with the Complainant in any manner whatsoever. It is also pointed out that earlier the website of Respondent's domain name www.speakasiaonline.co.in redirected to the parking page of "Chandigarh Classified" and later, it was discovered by the Complainant that the www.speakasiaonline.co.in took to a website which is identical and similar to the Complainants website and working. Thus the Respondent copied almost the entire website of the Complainant which shows his malafide and bad intentions. The complainant relies upon the hard copy of the website of the Respondent downloaded on 21.04.2011 as Annexure "G" and enapehote taken from the Respondent website as Annexure "H" to support their contentions.

I. It is also alleged that the Respondent has been constantly changing the structure and layout of the website on the daily basis which clearly shows his malafide intention to take undue advantage of the Complainants goodwill and reputation.

J. It is also alleged that the Respondent by its act has committed various criminal offences for which Complainant is contemplating to take separate legal action. The complainant points out that there is another complaint regarding www.speakasiaonline.in domain name taken with ulterior and malafide intentions by Mr. Gagandeep Randhawa, which is pending.

K. In the end the complainants to buttress these allegations complainants have alleged as under (quote)

- *"contends that the disputed domain name <spekasiaonline.co.in> is identical to its domain name <spekasiaonline.com>, in which the Complainant has rights on account of prior registrations and use all over the world and that the Respondent's domain name is nothing but an imitation of the Complainant's prior domain name and has been created with malafide intentions and ulterior motives to deceive the public.*



On opening the website of the Respondent <speakasiaonline.co.in>, it shows that the Respondent is misrepresenting to the public at large that he is the panelist of the Complainants Company.

Further to deceive the public at large and to misguide and cheat them the said website also mentions "visit speakasiaonline.com in case of any enquiry".

Complainant has also discovered that on 19th April 2011, Respondent had altered the details of the registrant and the registrant name which was now mentioned as "speakasia" and the email Id was changed to info@speakasiaonline.com to misrepresent to public at large that the Respondent is related to the Complainant.

The website has been created with a deceptively similar structure and same content except the tagline "get paid for your opinion" instead of the Complainant's website tagline which reads as "value your opinion" and any person visiting this website would at the first instance be induced to believe that this is also the official website of Complainant.



- *On the subsequent pages, the Complainant's logo, colour scheme and contents of Complainant's website are copied as it is.
(Unquote)*

L. The Complainant has placed reliance on some awards to fortify their contentions which find place as Annexure "I" to the Complaint.

M. It is alleged that the Respondent has registered the domain with a malafide intention and is riding on the goodwill associated with the Complainant's website www.speakasiaonline.com and this is bound to result in conflict and confusion and lead to dilution of the reputation associated with the Complainants business and further the same will affect the complainants search engine rankings thereby directly resulting in drop in reputation and revenue of the complainants.

N. It is also alleged that the Respondent's domain name is phonetically, visually and conceptually identical as that of the Complainant and its existence would cause the public to believe that the respondent and his domain name is sponsored or affiliated by the Complainant and thus he would take unfair advantage which shall be detrimental to the



distinctive character and reputation of the Complainant's corporate name and domain names.

- O. It is alleged that the Respondent is not the bonafide owner, honest adopter or true/actual user of the disputed domain name <speakasiaonline.co.in> and has created it being fully aware of the Complainant's domain name <speakasiaonline.com>, so as to take undue benefit of the Complainant's repute and goodwill.
- P. It is further alleged that the Respondent's registration and use of the disputed domain name is a clear case of cyber squatting and other allied offences and his intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the internet and thereby to confuse the public by offering similar services as that of the Complainant, so as to divert business and tarnish the reputation and goodwill of the Complainant to the detriment of the Complainant.
- Q. It is alleged that the Respondent has not been authorized, licensed by the Complainant to use the mark Speakasiaonline or to seek any sort of registration incorporating the said marks and domain name of the Complainant and that the sole purpose and motive of the



Respondent is to merely sell off the disputed domain name www.speakasiaonline.co.in and not use the same for any lawful purpose. Reliance is placed on Annexure "J".

RESPONDENTS CONTENTIONS

R. The Respondents have given their statement of defense stating interalia that he is a panelist registered under speakasia and the same was declared on speakasiaonline.co.in. Further there were no bad intensions behind using the domain name www.speakasiaonline.co.in and the purpose was just to promote speakasia's business and to get more and more people associated with speakasia.

S. The Respondent asserts that the nature of speakasia business is such that it requires marketing and advertisement to get people joined and if it does not connect with people it cannot make money out of speakasia. Further, the respondent suggest that in the present day scenario there are different ways to promote a business and internet marketing is one of them. It is also alleged that there are many people promoting speakasia via different means like Social Networking (Facebook, Orkut, Twitter), Blogs, Websites



(www.whyspeakasiaonline.com, www.speakindiaonline.com etc). The respondent asserts that when he came in touch with speakasia, he thought of doing the marketing via internet as he belongs to software line and that he has not misguided or have joined a single person that contacted him through www.speakasiaonline.co.in. The respondent further states that he even asked the persons who contacted him from website, to deposit the money to company's registered franchisees but unfortunately no one joined him.

T. The Respondents states that he never received any financial benefit from the domain name www.speakasiaonline.co.in nor harmed the reputation of speakasia in any way. He also states that as soon as he came to know that complainant has published a public notice qua the website he removed all the contents and put the domain name for sale.

U. The Respondent alleges that in case speakasia has problem with people promoting or marketing their business, then they should get all the content removed from all the social networking websites, Blogs and similar sites posted by different people.



ORDER

This Tribunal has perused the complaint, statement of defense and the affidavits filed by the parties and has given an anxious consideration to the same and has come to the following findings:

This Tribunal sees that the Respondent's Statement of Defense does not give any para wise reply to the allegations made in the Complaint, be it that as it may, the Respondents main contentions are:

- i. That he is a panelist of Speak Asia.
- ii. That the intention of the Respondent was only to get more and more people to join Speak Asia and that was only the reason why he registered the domain of Speak Asia.
- iii. That he has not harmed the reputation of Speak Asia.
- iv. That he never had any bad intentions and his intention was only to promote the business of Speak Asia so that Speak Asia prospers.

Though not supported by any documentary proof even if the above assertions of the Respondent are taken on their face value they get severely tarnished by his admission of having put his website for sale



which act shows that all his contentions are far fetched and unsustainable. A person even with best intention cannot without any authorization use someone's name and reputation. In case the respondent was forthright he ought to have on his own notified that the domain name registered by him be given to Speakasia which he did not do, instead he put the disputed domain name for sale this casts a doubt about his intentions. This Tribunal also notices that the Respondent could not refute any contentions/ assertions of the complainants including documentary evidence filed by them.

In view of above this Tribunal has no hesitation to rejecting the contentions of the Respondent and in view of the weighty documentary evidence given by the complainants this Tribunal is propelled to hold that the respondents did not have any claim on the domain name "Speakasiaonline.co.in" and his act of getting the website registered was in bad faith to derive undue profits, hence this Tribunal directs the Registry to transfer the domain name "Speakasiaonline.co.in" to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name.



The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIX!) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 6th day of August, 2011

NEW DELHI
06/08/2011



V. SHRIVASTAV
ARBITRATOR