

Bond



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Haryana Government



Date :23/11/2016

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Deponent

Name: Rna Ip Attorneys

H.No/Floor : Na

City/Village : Gurgaon

Phone : 9910074336

Sector/Ward : 65

District : Gurgaon

Landmark : Na

State : Haryana



Purpose : OTHERS to be submitted at Any where india

RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Accenture Global Services Limited
3 Grand Canal Plaza,
Grand Canal Street Upper,
Dublin-4, Ireland

....Complainant

Sachin Pandey
Delhi-110002
Ph: +91 9675351436
Email ID: adipriyank@gmail.com

.....Respondent

Disputed Domain Name: **accenturerecruitment.in**

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is Accenture Global Services Limited, Inc. having its corporate headquarters at 3 Grand Canal Plaza, Grand Canal Street Upper Dublin, Ireland. The Complainant is represented by its authorized representatives S.S. Rana & Co. of 317, Lawyers Chambers, High Court of Delhi, New Delhi – 110003, India.

The Respondent in this arbitration proceeding is Sachin Pandey of Delhi-110002, India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is <accenturerecruitment.in>. The Registrar is GoDaddy.com, LLC (R101-AFIN).

The Registrant is Sachin Pandey of Delhi-110002, India

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on October 7, 2016 and the notice was issued to the Respondent on October 14, 2016 at his email address with a deadline of 10 days to submit his reply to the arbitration.
- Vide email dated October 18, 2016, NIXI informed the Arbitrator that the DTDC courier agency could not complete the service of the complaint on the Respondent due to incomplete address & invalid number.
- The Arbitrator directed the Complainant to send a copy of the complaint alongwith annexures to the Respondent at his email addresses. The Complainant completed electronic service of the complaint on the Respondent on October 18, 2016.
- The Arbitrator issued another notice to the Respondent on October 19, 2016 via email addresses granting another opportunity to the Respondent to submit its response on or before October 29, 2016.
- The Arbitrator received response email from the Respondent's email address on 21, October 2016 stating that *"This is to inform you all that this email id: adipriyank@gmail.com belongs to me Priyank Gupta, & there is no one in family or known with the name of Sachin Pandey. I have nothing to do with*



Accenture/Sachin Pandey or your legal notice. Kindly correct your facts with immediate effect."

- The Arbitrator addressed another email dated November 7, 2016 to the Respondent's email address as the last opportunity ascertaining his response to the basis that since he has no connection with the subject domain name, he does not wish to contest the proceedings and has no objection if the subject domain is transferred to the Complainant. The Arbitrator granted final opportunity to the Respondent to submit its response on or before November 17, 2016.
- No response was received from the Respondent within the said timeline.

In the view of the above, the complaint is being decided based on materials and evidence submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the domain name;
- C. The domain name has been registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- a) The Complainant is a global management consultancy, technology services and outsourcing company with its corporate headquarters in Dublin, Ireland. The Complainant traces its history to 1950s with the installation of the first computer system for commercial use in the United States, at General Electric's Appliance Park facility.
- b) The Complainant built its reputation as a technology consultant and systems integrator. By the late 1980s, the Complainant began offering new types of business integration solutions to client- solutions that align organizations' technologies, processes and people with their strategies. Throughout its history, the Complainant expanded its offerings and capitalized on evolving management trends and technologies to benefit its clients. The Complainant pioneered systems integration and business integration; led the deployment of enterprise resource planning, customer relationship management and electronic services; and has established itself as a leader in today's global marketplace.
- c) The Complainant submits that on January 1, 2001, the Complainant publicly adopted its name **ACCENTURE** and was listed on the New York Stock Exchange under the symbol ACN. Thereafter, it changed its name to Accenture Global Services Ltd. on July 09, 2010.
- d) The Complainant delivers its services and solutions through 19 focused industry groups in five operating groups. The five Operating Groups are namely:



- Communications, Media & Technology
 - Financial Services
 - Health & Public Service
 - Products- Air, Freight & Travel Services
 - Chemicals Energy Natural Resources Utilities
- e) The Complainant owns and uses the trade marks ACCENTURE, ACCENTURE with device, ACCENTURE (label), and variations thereof, which are associated with its goods and services. The Complainant has used the name and trade mark ACCENTURE, and variations thereof, for more than fifteen years as the principal identifier of its goods and services. The Complainant contends that by virtue of extensive use, advertising and worldwide registrations, consumers have come to associate this trade mark, and variations thereof, with the premium quality goods and services of Complainant making it as industry leader. The Complainant operates offices globally in more than 200 cities in 56 jurisdictions all over the world, including India, with over 358,000 persons serving its clients worldwide. The Complainant's clients span a full range of industries around the world comprising 89 of the Fortune Global 100 and more than three quarters of the Fortune Global 500 companies.
- f) The Complainant owns several registrations and has applied for the mark ACCENTURE, and variations thereof, in many countries including Australia, Canada, China, European Union, Hong Kong, Japan, Korea, New Zealand, Saudi Arabia, Turkey, UAE, U.K. and USA. It has been contended that Complainant owns more than 1,000 trade mark registrations worldwide for various ACCENTURE marks.
- g) The trade mark ACCENTURE, and variations thereof, were registered for a wide variety of goods and services in various classes in India in the name of the Complainant's affiliate, Accenture Global Services GmbH based in Switzerland. These registrations were assigned via a Deed of Assignment dated August 31, 2010 to another affiliate of Complainant, Accenture International S.a.r.l. based in Luxembourg. These filings were subsequently assigned via a Deed of Assignment dated September 01, 2010 to the present Complainant. The Complainant filed a request for recordal of assignment as the subsequent proprietor on October 13, 2010 with the Registrar of Trade Marks. The Complainant has detailed out several registrations for the mark ACCENTURE and variations thereof in classes 9, 16, 35, 36, 37, 41 and 42. It has been contended that by virtue of such registrations, the Complainant has the exclusive statutory right to use these trade marks for the goods and services in respect of which they are registered.
- h) The Complainant's Indian affiliate company Andersen Consulting Services Pvt. Ltd. was incorporated on July 05, 1999 and on December 05, 2000, it changed its name to ACCENTURE SERVICES PVT. LTD. In India, the Complainant's offices are located in major cities such as Mumbai, New Delhi, Noida, Gurgaon, Bangalore, Chennai, Pune, Hyderabad and Kolkata.
- i) The Complainant registered domain names <Accenture.com> and <Accenture.net>, incorporating the trade mark ACCENTURE, on August 29, 2000 and October 09, 2000 respectively. In India, the Complainant owns domain names <Accenture.co.in>, <Accenture.in> and <Accenture.net.in>. The Complainant claims to operate corresponding websites to other country specific websites on the Internet which showcase Complainant's goods and services and can be accessed by Internet users from anywhere in the world, including India. The Complainant claims that its website receives many thousands of unique visitors on an average per month. The



Complainant claims to have reputation in India through these websites and other forms of media and advertisements.

- j) The Complainant contends that for more than 15 years, commendable efforts have ensured that the ACCENTURE name and trade mark, and variations thereof, are associated with goods and services which are of the highest standards of quality. The Complainant claims that due to their extensive use, advertisement and promotion, the name and trade mark ACCENTURE and variations thereof, command a valuable reputation and goodwill and are distinctive of and identified worldwide exclusively with Complainant's goods and services.
- k) The Complainant's annual worldwide revenue generated under the name and trade mark ACCENTURE has been stated to be 31.0 billion USD in the year 2015.
- l) The Complainant's ACCENTURE has been one of the top 100 brands for Business Services for more than a decade in Interbrand rankings. According to Millward Brown Optimor ("MBO"), a leading market research and brand valuation company, ACCENTURE brand has been ranked in the top 60 of MBO's rankings since 2006. ACCENTURE ranks 36 in "most admired companies" by Fortune. The Complainant claims to have appeared in various world rankings, conferred with awards and has been written about in various news articles, magazines, publications and books which have been substantiated with evidence.
- m) The Complainant has been extensively advertised at major airports in India, sponsoring various conferences and programs, events, workshops. In addition to this, the Complainant states that being socially responsible corporation, it supports social development projects and has been actively associated with the Save the Children program. The Accenture Foundation awarded an additional grant of US\$1.8 million to help the organization provide approximately 7,000 disadvantaged and at-risk young people, including nearly 5,000 young women in Egypt, Indonesia and the Philippines, with business skills that strengthen employment opportunities.
- n) The Complainant claims that goodwill and reputation enjoyed by its marks has spilled over into India by diverse means such as electronic and print media publicity, advertisements on television and in leading international dailies, magazines and journals, which enjoy circulation and readership in India and through its offices located in major cities of India.
- o) The Complainant claims that its trade mark ACCENTURE and variations have acquired substantial reputation and goodwill and are well known and famous in India within the meaning of Section 2(zg) of the Trade Marks Act, 1999 and Article 6 bis of the Paris Convention. It has been stated that Indian courts have recognized the existence of trans-border reputation and the Trade Marks Act, 1999 provides for the statutory protection of well-known and famous trade marks.
- p) The Complainant became aware of the fact that the Respondent registered the top level Indian domain name <accenturerecruitment.in> on September 03, 2015 without the authorization or license from the Complainant. The Complainant viewed the website at <accenturerecruitment.in> and found that there is no corresponding website and the message displayed on the landing page is that "The website has just been created from Website Panel and it is still under construction". Upon information and belief, the Respondent has used the email address



hrmanager@accenturerecruitment.in to send fraudulent recruitment offers to people requesting monetary benefit in exchange for the employment with the Complainant.

- q) The Complainant submits that registrant's domain name <accenturerecruitment.in> is identical to the Complainant's trade mark ACCENTURE, which is registered in numerous countries, including India in different classes. The Complainant claims that the name and the trade mark ACCENTURE qualifies as a well-known mark and is protectable as such under the provisions of the Trade Marks Act, 1999. The domain name completely incorporates Complainant's registered trade mark ACCENTURE which is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with Complainant.
- r) The Complainant states that the addition of the generic term RECRUITMENT enhances the level of deception and confusion and will cause consumers to mistakenly believe that the Respondent is related/affiliated to the Complainant.
- s) The Complainant submits that the Respondent has no rights or legitimate interests in the domain name <accenturerecruitment.in> as the Complainant has not authorized, licensed or otherwise allowed Respondent to make any use of its trade mark ACCENTURE. The Respondent cannot assert that it is using the domain name in connection with a *bonafide* offering of goods and services in accordance with Paragraph 7 (i) of the .IN Policy. Further, the Complainant insists that the Respondent is not using the domain name to sell or offer for sale any products or services and appears to be using an email address associated with the domain name to operate a scam in which it falsely offers consumer jobs with the Complainant in exchange of money.
- t) The Complainant submits that the domain was registered or is being in bad faith. The Complainant contends that its company incorporation, trade mark registrations and domain name registrations are well prior to the Respondent's registration of the domain name. The Respondent had actual and constructive knowledge of Complainant and its rights at the time of registration of the Domain Name and thus registered it in bad faith. The main objective of registering the domain name is to mislead consumers by sending emails posing as the Complainant.

5) Respondent

The Respondent has not filed any official response dealing with contents of the Complaint. The Arbitrator received an e-mail from the email address available in whois records of the Registrant, adipriyank@gmail.com stating that it belongs to Priyank Gupta and that there is no one in family or known with the name of Sachin Pandey (name of Registrant). In the absence of any response to the allegations and submissions of the Complainant and considering several opportunities granted, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the policy.

6) Discussion and Findings:

The submissions and documents provided by the Complainant in support of use and registration of the mark ACCENTURE and its variations leads to the conclusion that the Complainant has superior and prior rights in the mark ACCENTURE and its formatted marks. It has been well established that the Complainant's name and mark, ACCENTURE, is known all across the globe including India based on business



rankings, published articles, awards and recognitions. The Complainant has produced evidence dating back to the year 2000 in terms of registration certificates and various online extracts/magazines/articles/excerpts where the Complainant has been covered in media reports, business articles, print and online advertisements which has been produced/annexed/discussed/referred.

Thus it can be said that:

- a) The Complainant has been delivering its services and solutions under the name and mark ACCENTURE to its worldwide clientele covering varied industry groups for many years. It is clear that the incorporation of the Complainant's predecessor dates back to the year 1998 whereby the name ACCENTURE was publically adopted in the year 2000.
- b) Based on the evidence placed on record, the earliest registration for the mark ACCENTURE dates back to October 2000 secured in Australia under Registration No. 855248 in Classes 9, 16, 35, 36, 37, 41 and 42 which has been filed in Annexure C-5.
- c) The Complainant has secured various domain registrations for ACCENTURE and its formatted marks as early as the year 2000 and the domain www.accenture.com was registered on August 29, 2000.
- d) The web users are likely to associate the word 'ACCENTURE' with the goods and services of the Complainant and based on the worldwide presence and expansion of the Complainant Company, any use of the generic term especially "recruitment" will be conceived as to be associated with the Complainant.

Based on the elaborate submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

1) **The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**

According to consensus view of WIPO Panellists, if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights. The Complainant has successfully established its statutory and common law trademark rights in the mark ACCENTURE and its variations. As a next step, it has to be ascertained if the domain name <accenturerecruitment.in> is identical to or confusingly similar with Complainant's mark.

The threshold test for confusing similarity involves visual or aural comparison between the Complainant's trademark and the domain name itself to determine likelihood of Internet user confusion. For a domain name to be regarded as confusingly similar to the complainant's trademark; there must be a risk that Internet users may actually believe there to be a real connection between the domain name and the complainant and/or its goods and services. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the domain name, with the addition of common, dictionary or descriptive terms.



The addition of merely generic, descriptive terms to a trademark in a domain name would normally be insufficient in itself to avoid confusing similarity. In such instances, trademark is generally perceived to constitute the dominant or principal component of the domain name.

The applicable top-level domain like ".com" ought to be disregarded and ".in" being the Internet country code top-level domain (ccTLD for India) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration). In addition to this, the content of a website (whether it is similar to or different from the business of a trademark holder) would usually be disregarded too, however, such content may be regarded as highly relevant to assessment of intent to create confusion.

In ***Research in Motion Limited v. One Star Global LLC Case No. D2009-0227***, the disputed domain name was <unofficialblackberrystore.com> wherein the Complainant established its rights in the BLACKBERRY marks. The Panelist observed that *"the Complainant owns a large number of registered trade marks that incorporate the term "blackberry". This includes marks for the term "blackberry" alone. It is also clear that the Domain Name can only be sensibly understood as the term "blackberry" combined with the words "unofficial" and "store" and the ".com" TLD. The Panel accepts the Complainant's contention that the use of term "unofficial" does not prevent the Domain Name from being confusingly similar to the Complainant's BLACKBERRY mark"*.

In the present case, domain name <accenturerecruitment.in> contains the Complainant's mark ACCENTURE in entirety alongwith the generic term Recruitment. Such use of the domain name for sending out fraudulent emails for customers seeking out employment opportunities with the Complainant will definitely cause confusion to the internet user who will assume that the domain name is extended services of the Complainant. Therefore, I find that the second level domain name in <accenturerecruitment.in> is confusingly similar to the Complainant's mark since the mark ACCENTURE forms the key part of the disputed domain name. Therefore, the requirement of the INDRP Policy paragraph 4(i) is satisfied.

2) **The Registrant has no rights or legitimate interests in respect of the domain name;**

According to consensus view of WIPO Panelists, while the overall burden of proof rests with the Complainant, a complainant is required to make out only a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP [corresponding paragraph 4(ii) of the INDRP Policy.]

Paragraph 7 of INDRP Policy lists three non-exhaustive factors by which the Respondent may show that it has rights or legitimate interests in the Disputed Domain Names which includes

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding



to the domain name in connection with a bona fide offering of goods or services;

- (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Based on Complainant's contentions and evidence placed before me, it is not disputed that the Complainant's mark ACCENTURE was used on worldwide basis since the year 2000 including in India, garnering goodwill and reputation amongst people of trade. The Respondent goes by the name of Sachin Pandey and in view of no response filed by the Respondent, it cannot be believed that he, as an individual or business has been commonly known by the domain name. In my view, the Respondent registered the confusingly similar domain with a fraudulent intention to offer employment opportunities with the Complainant in exchange of money. This act doesn't constitute use of the disputed domain name with a bona fide offering of goods or services. In fact, the Respondent seems to be making illegitimate use of the domain name with dishonest intention for commercial gain by defrauding consumers at the cost of the fame of the Complainant's prior existing mark.

In ***Advance Magazine Publishers Inc. v. Vanilla Limited/ Domain Finance Ltd./Minakumari Periasany Case No. D2004-1068*** where the Respondent has registered 23 Vogue formative domain names, the panel was of the view that "*a legitimate interest cannot be established where the evidence suggests that registration was for the purpose of benefiting from the Complainant's trade mark, even where that trade mark can also be used as a common term. In the Panel's view, the Respondent has failed to rebut the Complainant's assertion that it registered the Disputed Domain Names for the purpose of taking advantage of the Complainant's established rights in the VOGUE mark.*" The panel directed that all the disputed domains be transferred in favour of the Complainant.

It is the Complainant's case that it has not authorised the Respondent to register or use the 'ACCENTURERECRUITMENT' domain name. The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. The domain name is currently inactive.

Based on the above, I find that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3) **The Registrant's domain name has been registered or is being used in bad faith.**

Paragraph 6 of the INDRP policy explains "**Evidence of Registration and use of Domain Name in Bad Faith-** For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:



(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Based on prior adoption, use and various trademark and domain name registrations of ACCENTURE and its formatted marks, it is believed that the Respondent was well aware of the Complainant's business, its products and services, its reputation and rights in the trade mark ACCENTURE on worldwide basis. It is not disputed that the Respondent had sent out fraudulent emails promising employment to the consumers in the Complainant's company. Such proactive steps prove that the Respondent has been actively taking actions engaging in this pattern of conduct i.e. pose as the official Complainant's representative claiming association with the Complainant's company, thus attracting Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark. Further, such act also prevents the Complainant from registering the domain in its name. Therefore, in my opinion, the circumstances provided in Paragraph 6(ii) and (iii) are present.

The Respondent has not contested the allegations and no evidence was filed to show that the mark <accenturerecruitment> and disputed domain name <accenturerecruitment.in> was bonafidely adopted. Therefore, it seems that it was registered with a view to attract web traffic. Further, use of the corresponding domain with email address hrmanager@accenturerecruitment.in seems to be in bad faith as it appears to have been made to make monetary gain by showing association and affiliation with the Complainant.

As the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. Furthermore, the Respondent provided incomplete address to hide its identity and had not come forward to explain its adoption of the domain name. Further, I believe that the actual owner of the disputed domain has used alternate email address which belongs to a third person. It seems that the actual owner might have registered the domain name with a mock email address in order to avoid being traced.

Based on the documents filed by the Complainant, and considering the conduct of the Respondents, it can be concluded that adoption of the domain name/mark www.accenturerecruitment.in shows 'opportunistic bad faith'.



7. Decision:

In view of the foregoing, I am convinced that the Complainant has made its case and the complaint is accordingly allowed. The Respondent's domain name www.accenturerecruitment.in is confusingly similar to the Complainant's trademark ACCENTURE in which it has statutory and common law rights. In addition, the Respondent provided incomplete address at the time of registration, which is evident from non-delivery of courier containing the Complaint. The Respondent has therefore violated clause 3 (a) of .IN Domain Dispute Resolution policy.

The registration of the disputed domain name in which the Respondent has no legitimate rights was registered in bad faith. In accordance with the Policy and Rules, it is directed that the disputed domain name www.accenturerecruitment.in be transferred to the Complainant.



**RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
NOVEMBER 28, 2016**