



उत्तर प्रदेश UTTAR PRADESH

EF 591059

BEFORE THE SOLE ARBITRATOR, ANKUR RAHEJA MCA FCS LLB

2.5 JUL 2018

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD – ACCENTURESFTWARE.CO.IN

DATED: JULY 19, 2018

IN THE MATTER OF:

Accenture Global Services Limited

... Complainant

Versus

Vishal Singh

... Respondent

*A. Raheja*

## ARBITRATION AWARD

**Disputed Domain Name: accenturesoftware.co.in**

### 1. The Parties:

**Complainant:** The Complainant in this arbitration proceedings is: **Accenture Global Services Limited**, 3 Grand Canal Plaza, Grand Canal Street Upper, Dublin - 4, Ireland, represented by S.S.Rana & Co, 317 Lawyers Chamber, High Court of Delhi, New Delhi - 110003.

**b. Respondent:** The Respondent in this arbitration proceedings is **Vishal Singh**, Banjara Hills Road No 2, Cyber Heights, Hyderabad, Telangana - 500034, India.

### 2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.accenturesoftware.co.in.
- b. Disputed Domain Name is registered with GoDaddy.com LLC.

### 3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings 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 Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India [“NIXI”], the history of this proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed **Ankur Raheja** as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

The arbitration proceeding in the said matter commenced on 9 June 2018, in terms of INDRP Rules. Relevant Dates are as follows:

Sr No	Particulars	Date
1	Date of Handover of Complaint by NIXI and service of soft copy of Complaint upon Respondent by Nixi	5 June 2018
2	Hard copy of the Complaint received by the Arbitrator	6 June 2018
3	Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	9 June 2018
4	Second Notice to the Respondent	21 June 2018
5	Award Passed	19 July 2018

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 9th June 2018, with the instructions to file his reply / response by 20th June 2018.
- That Legal officer - NIXI informed during the proceedings that the Hard Copy sent to the Respondent through courier could not be delivered due to incomplete/incorrect address and the consignment was returned. The Respondent was asked by the Arbitrator to provide complete/correct address in the next 24 hours but no response was received.



- That on failure of the Respondent to file any response to the first notice, another opportunity was provided to the Respondent on 21 June 2018 but he failed to comply with the same as well.
- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was delivered successfully. NIXI had already delivered Soft Copy of the Complaint upon Respondent on 05 June 2018. Though, the hard Copy of the Complaint also remained undelivered, but INDRP Rules of procedure are deemed to be complied with.
- In the fact and circumstance of the case, an order for ex-parte proceedings was issued on 28 June 2018, as no response was received from the Respondent and the Respondent remained unreachable. Though during the proceedings, further opportunity was granted to the Respondent to make available true contact details, which he failed to comply too and In any case, the WHOIS info was the only contact information available for the Domain name owner as per the WHOIS records and which is assumed to be provided correctly and on which various notices were otherwise served. Therefore, service of notice has deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- No personal hearing was requested / granted / held.

#### **4. Factual Background**

*According to the documentary evidence and contentions submitted:*

1. Complainant is a global management consultancy, technology services and outsourcing company with its corporate headquarters in Dublin, Ireland. Complainant traces its history to the 1950s with the installation of the first computer system for commercial use in the United States at General Electric's Appliance Park facility. Complainant built its reputation primarily as a technology consultant and systems integrator. By the late 1980s, Complainant began offering new types of business integration solutions to clients which align organizations' technologies, processes and people with their strategies. On January 2001, Complainant publicly adopted its name ACCENTURE and was listed on the New York Exchange under the symbol ACN. Thereafter, it changes its name to Accenture Global Services Ltd. on July 09, 2010.
2. Complainant owns and uses, inter alia, the trade marks ACCENTURE, ACCENTURE WITH DEVICE, ACCENTURE (LABEL) and variations thereof, which are associated exclusively with its goods and services. 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. By virtue of such extensive use, advertising and worldwide registrations, exclusively with the

premium quality goods and services of Complainant, which has made it an industry leader. Complainant enjoys a widely known reputation, support and trust amongst the trade and public.

3. Complainant operates offices globally in more than 200 cities in 56 jurisdiction all over the world, including India, with over 401,000 persons serving its clients worldwide. Complainant's clients span a full range of industries around the world, and comprise more than 90 of the Fortune Global 100 companies and more than three quarters of the Fortune Global 500 companies. Applicant is a member of the S&P 1000 Index and Fortune Global 500.
4. Complainant owns registration and / or pending applications for ACCENTURE and variations thereof, in many countries including, but not limited to, Australia, Bangladesh, Canada, China, European Union, Hong Kong, India Japan, Korea, Malaysia, New Zealand, Saudi Arabia, Singapore, Thailand, Turkey, UAE, U.K. and USA. Complaint owns more than 1000 trademark registrations worldwide for various ACCENTURE marks.
5. 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 Complainant's affiliate Accenture Global Services GmbH in Switzerland, and there registrations were assigned via s Deed of Assignment dated August 31,

2010 to another affiliate of Complainant, Accenture International S.a.rl. in Luxembourg. These filings were subsequently assigned via a Deed of Assignment dated September 01, 2010 to Complainant. Complainant filed a request for recordal of assignment as subsequent proprietor on October 13, 2010 with the Registrar of Trade Marks.

6. Trademark is registered in India under class 9, 16, 35, 36, 37, 41, 42 and so on. The aforesaid Trademark registrations are valid and subsisting. By virtue of such registrations, Complainant has the exclusive statutory right to use these trademarks for the goods and services in respect of which they are registered. Complainant's Indian affiliate company Andersen Consulting Services Pvt Ltd was incorporated under the Companies Act 1956 on July 05, 1999. On December 05, 2000, the name of this subsidiary company was changed to ACCENTURE SERVICES PVT LTD. A copy of the incorporation certificate of Complainant is annexed.
  
7. Complainant registered generic top-level domain names, such as <ACCENTURE.COM> and <ACCENTURE.NET>, which incorporate the trademark ACCENTURE, on August 29, 2000 and October 09, 2000 respectively. Complainant is also operating the corresponding websites for the aforesaid domain names. Relevant WHOIS results of the aforesaid mentioned domain names as well as the web pages from the website [www.accenture.com](http://www.accenture.com)



are Annexed. As Complainant's business expanded globally, it began operating websites that use Country Code Top-Level Domain names that are specific to individual countries. Complainant has registered many top-level country specific domain names. In India, Complainant also own top-level Indian domain names <Accenture.co.in>, <Accenture.in> and <Accenture.net.in>.

8. Complainant owns and operates corresponding websites in addition 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. On average, Complainant's website receives many thousands of unique visitors per month. The reputation of Complainant and its Trade Marks has reached the shores of India through these websites and myriad other forms of publicity, media, advertisements and uses of the ACCENTURE mark, and variations thereof.
9. 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. Because of the extent and the length of time, Complainant has carried on business, its name and trade mark ACCENTURE, and variations thereof, have become famous in its lines of business and are associated solely with Complainant by the public at large. 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.

10. Complainant has offices located in major cities of India such as Mumbai, New Delhi, Noida, Gurgaon, Bangalore, Chennai, Pune, Hyderabad and Kolkata. The annual worldwide revenue generated under the name and trademark ACCENTURE totals many billions of U.S. Dollars. The details of worldwide revenues for the last few years have been provided in the Complainant as approx \$35 billions in 2017.

11. Complainant has taken numerous steps throughout the years to promote a global reputation. Significant amounts of money, effort and time is spent each year promoting Complainant's trademarks in various countries around the world, including in India, by means of national and international advertising. Complainant advertises on television, in print and in public places, such as Airports around the world. Otherwise also the trademark have been featured in popular trade magazines and newspapers, with circulation in the U.S. and worldwide, including in India.

12. ACCENTURE has been one of the top 100 brands for "business Services" for more than a decade among "Best Global Brands" and its brand value in dollars

has consistently increased. Complainant also has been recognized in many rankings for its business, services and brand recognition. Accenture has appeared in various other top rankings by Fortune, including No 36 in Fortune's 100 World's Most-Admired Companies in 2016.

13. Accenture has extensively advertised in India and accordingly, the brand has acquired transborder reputation. It has also become more prominent in India through Accenture's support of a number of conferences and programs. Further, as a socially responsible corporation, Accenture supports social development projects. Accenture 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 approx 7000 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.

14. It is a matter of common knowledge that, in these days of extensive use of the global communications network, the reputation of a trade mark is not limited by geographical or political boundaries. Communications, people and reputation travel around the world crossing such boundaries as if they did not exist. As such, Internet users worldwide, including those in India, are exposed to and aware of the reputation and goodwill of such trademarks. The goodwill and reputation enjoyed by Accenture's 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 such as Mumbai, New Delhi, Noida, Gurgaon, Bangalore, Chennai, Pune, Hyderabad and Kolkata.

15. Complainant company makes every effort to protect its trade mark rights internationally. Protection of its trademarks extends beyond registration activities to enforcement actions, which range from operating trade mark applications, rectification of the names of infringing companies, applications for cancellation of domain names and sending cease and desist letters to infringers of its trademarks, among other means. It has already been involved in India and UDRP actions as well for protection of its rights.

16. The Complainant's mark has acquired substantial reputation and goodwill and are well known famous in India within the meaning of Trade Marks Act, 1999 and Article 6 bis of the Paris Convention. The 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. Article 7 of the Paris Convention provides that a trade name shall be protected in all countries of the Union without the obligations of filing or registration, whether or not it forms part of a trade mark. Both India and USA are signatories to the Paris Convention.

## **5. The Dispute**

- A. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- B. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- C. The disputed Domain Name has been registered or is being used in Bad Faith.

## **6. Parties Contentions**

### **I. Complainant contends as follows:**

1. Complainant has secured registrations for the trademark ACCENTURE, and variations thereof, in various countries throughout the world, including in India, in different classes. The name and the trademark 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 trademark ACCENTURE. The Domain Name is bound to cause confusion and deception in the minds of the public that Respondent has some connection, association or affiliation with Complainant, when it is not so.

2. The addition of the term SOFTWARE to the Domain Name does nothing to materially distinguish it from Complainant's ACCENTURE mark, and, in fact, exacerbate the likelihood of confusion in light of Complainant's various information technology services provided under the ACCENTURE mark. Prior various information technology services provided under the ACCENTURE mark. Prior panels deciding before WIPO have generally found that a domain name differing from a mark by a single general term does not escape the grasp of confusing similarity.
  
3. Respondent has no rights or legitimate interests in the domain name <accenturesoftware.co.in>. Complainant has not authorized, licenced or otherwise allowed Respondent to make any use of its trade mark ACCENTURE. Respondent cannot assert that it is using the domain name in connection with a bonafide offering of goods and services in terms of INDRP. Respondent also cannot assert that it has made or that he is currently making a legitimate or fair use of the domain name, without the intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, in accordance with INDRP. It is impossible to conceive of any plausible use of the domain name <accenturesoftware.co.in> by Respondent that would not be illegitimate,



as it would inevitably create a false association and affiliation with Complainant and its well known trade mark ACCENTURE.

4. Moreover, while the website at <accenturesoftware.co.in> is active, the Respondent does not appear to actually advertise or provide any products and services on his website. Therefore, it is submitted that Respondent has no rights or legitimate interests in respect of the Domain Name.
  
5. Complainant's company name, trademarks, domain name were all registered well prior to the Respondent's registration of the domain name <accenturesoftware.co.in>. Respondent had actual and constructive knowledge of Complainant and its rights at the time of registration of the Domain Name, and thus, registered the same in Bad Faith. Moreover, the Respondent is intentionally preventing Complainant from registering the Domain Name and intentionally attempting to attract or commercial gain internet users to his website by creating a likelihood of confusion with Complainant's trademark ACCENTURE in accordance with INDRP. It is likely that internet users will expect that the Domain Name is related to or affiliated with the Complainant, when it is not so.

6. Respondent's refusal to answer Complainant's letter regarding the Registration of the Domain Name also suggest that the Domain Name was registered in bad faith.

**II. Respondent contends as follows:**

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 09 June 2018 and 21 June 2018 respectively.

B. However, Respondent is unreachable and/or failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification and several opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the matter and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

**7. Discussion and Findings:**

**I. Procedural Aspects**

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

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

(ii) The Registrant has no rights or legitimate interests in respect of the domain name; and

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

C. The Complainant has exclusive ownership and right, title and interest to the mark '**ACCENTURE**'. The same have been protected by over 1000 registrations as Trademark world-wide, including India, claiming its use since 2001. Otherwise also, the Complainant's mark is a well-known mark

and acquired a secondary meaning, which is quite evident through its continuous use and the huge popularity.

D. Further, prima-facie the Respondent does not have any relationship with the business of the Complainants or any legitimate interest in the trademarks or trade name. Moreover, the Complainant has neither given any licence nor authorized the Respondent to use the Complainant's mark.

## **II. Respondent's Default**

Several UDRP decisions have established that once a complainant has made a prima facie case that a Respondent lacks legitimate interest or right, the burden shifts to the Respondent to prove its right or legitimate interest in the domain name (F. Hoffman-La Roche AG v. Steven Pratt, WIPO Case No. D2009-0589 and Canadian Tire Corporation Limited v. Swallowlane Holdings Ltd., WIPO Case No. D2009-0828). That is, it is well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this presumption. But the Respondent has failed to come forward with a Response and moreover has provided false WHOIS for the domain name in violation of

terms and conditions of registration of Domain Names. Therefore, in light of Complainant's unrebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

In the matter of Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067], it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because three notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of Talk City, Inc. v. Robertson, WIPO Case No D2000-0009, it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

**III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:**



The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

**(i) Identical or confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]**

The Complainant traces back his history to 1950s, though adopted the mark ACCENTURE in 2001 and also at the same time listed on the New York Stock Exchange. Complainant owns trademark ACCENTURE and variations thereof, which are associated exclusively with its goods and services. Trademark is registered in India under class 9, 16, 35, 36, 37, 41, 42 and so on, which includes Accenture (*wordmark and device mark as well*), Accenture Digital, Accenture Technology, Accenture Outsourcing Delivered and so on. By virtue of such registrations, Complainant states it has the exclusive statutory right to use these trademarks for the goods and services in respect of which they are registered.

It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] that trademark registration constitutes prima facie evidence of the validity of trademark rights. [See: Backstreet

Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case No: D2001-0654]. While the disputed Domain Name <accenturesoftware.co.in> incorporates the said Trademark in combination with a generic term SOFTWARE. The Complainant Company has been rendering services as to Information Technology and has been accordingly registered, inter alia, under class 42 as well, which covers Computer Software services. Therefore, suffix of such term into the disputed domain name is likely to definitely cause confusion in light of Complainant's similar services provided under the ACCENTURE mark.

UDRP Overview 2.0, Para 1.2, states that panels would typically assess this risk having regard to such factors as the overall impression created by the domain name, the distinguishing value (if any) of any terms, letters or numbers in the domain name additional to the relied-upon mark, and whether an Internet user unfamiliar with any meaning of the disputed domain name seeking the complainant's goods or services on the world wide web would necessarily comprehend such distinguishing value vis-à-vis the relevant mark.

Complaint owns more than 1000 trademark registrations worldwide for various ACCENTURE marks. Further, it has been using the ACCENTURE Trademark for the last 15 years, having offices globally, with over 4,00,000 persons serving its clients worldwide. 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.

Complainant registered top level domains <accenture.com> and <accenture.net> in year 2000. But with the global expansion, it registered country specific domain names as well like <accenture.co.in>, <accenture.in> and <accenture.net.in>. Accenture has appeared in various other top rankings by Fortune, including No 36 in Fortune's 100 World's Most-Admired Companies in 2016. The Complainant's mark has acquired substantial reputation and goodwill and are well known famous in India within the meaning of Trade Marks Act, 1999 and Article 6 bis of the Paris Convention. This include considerations like knowledge or recognition among relevant section of public, duration, extent and geographical area of use, promotion and publicity of mark, etc. [Yahoo! Inc. v. Jorge O. Kirovsky, D2000-0428; Kabushiki Kaisha Toshiba v Shan Computers, D2000-0325; Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, D2000-0226; Nike, Inc. v. B. B. de Boer, D2000-1397].

Further, numerous courts and UDRP panels have recognized that “if a well-known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant’s registered mark.” [ITC Limited V Travel India (INDRP Case No. 065); Boehringer

Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMEQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)]. Further, it has been held in the matter of Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol [WIPO Case No. D2001-0489] that “domain names that incorporate well-known trademarks can be readily confused with those marks”.

Furthermore, in Living Media, Limited v. India Services, D2000-0973, it has been held that “trademark registration is itself prima-facie evidence that the mark is distinctive”. Similarly, in eAuto, LLC v. Triple S Auto Parts, D2000-0047, the Panel decided that when a domain name wholly incorporates a Complainant’s registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy.

Besides it is also well-established that the extensions such as ‘**.CO.IN**’ in a disputed domain name do not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain “.co.in” in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant’s mark [INDRP/289 - Hersheys.co.in]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and

thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213].

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

**(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]**

The circumstances have been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

*Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name*

*Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):*

- (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; or*
- (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.*

The mark '**Accenture**' was first put to use by Complainant in 2001, when no such mark was in use and there is no indication that Respondent is commonly known by such name, though disputed domain name hosts a website. But Respondent has not come forward to justify its adoption of Complainant's reputed/inventive mark ACCENTURE. The only apparent reason could be to ride on the goodwill and reputation of the Complainant and attract internet users to its website. Since the Complainant's main domain names <accenture.com> and <accenture.net> are registered since 2000, while Indian country level domain names <accenture.in> and <accenture.co.in> are registered since 2005 and 2004 respectively. Further another Indian country level domain name <accenture.net.in> was acquired by Complainant through .IN Domain Name Dispute Resolution proceedings (INDRP) in 2013.



Further, Google Search for keywords “ACCENTURE SOFTWARE” provide search results that of Complainant on the top. The Complainant also has a YouTube Channel by the name “ACCENTURE SOFTWARE” since 5 years, while the Disputed Domain was registered by the Respondent since July 2017 only.

Complainant denies of having assigned, granted, licenced, sold, transferred or in any way authorized the Respondent to use the distinctive mark ‘**ACCENTURE**’ or to register the disputed domain name. Complainant submits it is thus highly improbable that the Respondent has any rights or legitimate interests in the impugned domain name. [Kelemata S.p.A. v. Mr. Bassarab Dungaciu, D2003-0849; Telstra Corporation Limited v. Nuclear Marshmallows, D2000-0003].

It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]. Also

Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the domain names [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

The use of the Domain Name does not seem to be legitimate or in good faith. In the WIPO matter of Paris Hilton v. Deepak Kumar [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill."

Further, it appears that the postal address provided is incomplete and misleading as well, for the same reason, the hard copy of Complaint could not be served upon the Respondent. This clearly indicates that the Respondent does not have any legitimate rights in the disputed domain name. Moreover, by providing inaccurate and unreliable information, as Complainant rightly contends, the Respondent has violated Section 2 of the 'Terms and Conditions for Registrants' issued by the .IN Registry.

Further, there is no evidence that the Respondent is commonly known by the disputed domain name or a corresponding name, though it uses a corresponding name in a business, which is visible at the disputed domain name <accenturesoftware.co.in> but it is not supported by any further evidence to be held as commonly known. Neither any such Company name appears in Ministry of Company Affairs ([www.mca.gov.in](http://www.mca.gov.in)) with Respondent's WHOIS name as director or address as registered office address nor any result as to Respondent is available through Google search, except for Disputed Domain Name. Further, the WHOIS also does not indicate that Respondent has ever been or is commonly known by the '**Accenture**' trademark or there has been. In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy paragraph 4(c)(ii) does not apply. Also in the matter of Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) "finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that Respondent is not commonly known by the disputed domain name under Policy paragraph".

Complainant also submits that in the light of the uniqueness of the domain name <accenturesoftware.co.in>, which is completely identical to Complainant's trademark, it is extremely difficult to foresee any justifiable use that the

Respondent may have with the disputed domain name. On the contrary, registering this domain name gives rise to the impression of an association with the Complainant, which is not based in fact. [Telstra Corporation Limited v. Nuclear Marshmallows Case No. D2000-0003; Daniel C. Marino, Jr. v. Video Images Productions, et al. Case No. D2000-0598]

The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark '**Accenture**' with competitive services, wherein most of the content displayed has been copied from another website Cognizant.com, a Complainant's competitor. No doubt, there is no legitimate interest for the respondent but an intent for commercial gain to misleadingly divert consumers and to tarnish the complainant's trademark.

Given the long and widespread reputation of the Complainant's trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant's widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant's trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant's site, or the site of official authorized partners of the Complainant, while in fact it is neither of these

[Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com].

The Complainant has adopted and used the **Accenture** trademark for over 15 years prior to the registration of the disputed domain name and it has invested substantial amounts for publicizing its mark. Under the facts and circumstance of the case, it can be inferred that the similarity of the disputed domain name to the Complainant's trademark Accenture is not a coincidence. The Respondent has intentionally acquired the disputed domain name for exploiting its value as a phonetically similar variant and as a misspelling of the Complainant's trademark. [Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER, WIPO Case No. D2010-0858]. Such an act by the Respondent clearly indicates that the Respondent does not have legitimate rights or interests in the disputed domain name.

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (ii) of the Policy.

**(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]**

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: 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.*

The disputed domain name was registered by Respondent on 19 July 2017, while the Complainant's mark has been in extensive, continuous and uninterrupted use since the year 2001. Also the Complainant's TLDs and ccTLDs have been registered since year 2000 and 2004 respectively. Complainant has over 1000 registrations for Trademark and its variations worldwide, including India. Its offices in India are located in major cities of India such as Mumbai, New Delhi, Noida, Gurgaon, Bangalore, Chennai, Pune, Hyderabad and Kolkata and one of the top management consultancy company in India as well. Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's mark 'Accenture' in Indian jurisdiction as well, it is quite obviously as an Internet User would likely mistakenly believe that a website accessible by the disputed Domain Name <accenturesoftware.co.in> is managed or endorsed by Complainant. And no doubt, Respondent's Infringing Domain Names are confusingly similar to Complainant's Marks.

Complainant submits that Respondent had actual and constructive knowledge of Complainant and its rights at the time of registration of the Domain Name. Indeed, it is inconceivable that the Respondent was not aware about the

popularity of the mark 'Accenture' at the time of registration of the impugned domain name, given the popularity of the mark. Registration of Domain Name that is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith [ITC Limited v Travel India, INDRP Case No 065; American International Group, Inc. v Walter Busby d/b/a AIG Mergers and Acquisitions, NAF Claim No FA030400156251].

In the matter of PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov, WIPO Case No. D2002-0562, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy. Under the Policy as well, it is evidence of bad faith registration and use that by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement or your web site or location of a product or service on your web-site or location.

In the matter of Educational Testing Service v. Atak Teknoloji Ltd. Sti. [WIPO Case No. D2010-0479] it was held "the Respondent must have known of the Complainant's trademark TOEFL when registering the disputed domain names. This is particularly likely as an English language education service was offered



under the disputed domain names. It appears that the Respondent has registered the disputed domain names solely for the purpose of creating an association with the Complainant's well known TOEFL tests. The Panel believes that the Respondent has intentionally registered the disputed domain names for use with educational English language services in order to mislead users who may search for official TOEFL test related information provided by the Complainant. The Panel is convinced that the Respondent was aware that a legitimate use of the domain names would not have been possible without infringing the Complainant's trademark rights, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. This assessment is supported by the fact that the Respondent must have known the Complainant's TOEFL trademarks at the time of registration of the disputed domain names, in particular as both disputed domain names have been registered well after the Complainant's TOEFL trademark has become widely known in the world.”

Respondent registered the disputed domain name on 19 July 2017, long after Complainant's Marks became well known, and long after Complainant registered its marks in India as well. And it is impossible that the Respondent was not aware of the Complainant's rights to the trademarks as the Complainant's trademarks are famous and registered globally further they have active and official websites on various other extensions. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known

trademark '**Accenture**', in order to capitalize / profit from the goodwill associated with the famous mark. Only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar [Barney's Inc. v B N Y Bulletin Board: WIPO Case No D2000-0059].

Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. [LEGO Juris AS V. Robert Martin - INDRP/125 - 14 February 2010]

Also in terms of INDRP Rules of procedure, the Registrant represents that the registration of the Domain Name will not infringe upon or otherwise violates the rights of any third party. And given the above facts, Respondent is thus guilty of willful misrepresentation and providing inaccurate / incorrect information to the Registry as well. The Complainant has a long and well-established reputation in the Complainant's mark through its exclusive use in the Information Technology industry. By registering the disputed domain name with actual knowledge of the Complainant's trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a

domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant. [Relevant Decisions: Ray Marks Co. LLC v. Rachel Ray Techniques Pvt. Ltd., INDRP/215 (July 9th 2011); Kenneth Cole Production Inc. v. Viswas Infomedia, INDRP/93 (April 10, 2009)].

In the UDRP matter of Giorgio Armani S.p.A. Milan Swiss Branch Mendrisio v. Lizhen Ye [WIPO Case No. D2013-0808] the Panel found that there is beyond all doubt that the Respondent has registered the disputed domain names in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain names and that the Respondent may have engaged in a pattern of such conduct. The Panel accepts the Complainant's arguments that the worldwide fame of the trademarks leaves no question of the Respondent's awareness of those at the time of the registration of the disputed domain names which wholly incorporate the Complainant's trademarks, as even recognized by numerous previous UDRP panels (Ga Modefine, Giorgio Armani S.p.A. v. Kim Hontage, WIPO Case No. D2007-0851, etc).

The Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark 'Accenture' with competitive services, wherein most of the content displayed has been copied from another website Cognizant.com, a Complainant's competitor. The domain name is indeed been used in bad faith as well. And given the popularity of the

Trademark, Respondent's use of the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online 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.

On account of inherent and acquired distinctiveness which the well-known mark '**Accenture**' is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person malafide would result in immense confusion and deception in the trade. That any use of the impugned domain name by the Respondent would necessarily be in bad faith. [See Xpedia Travel.com, D2000-0137 and Goodfoodguide.net, D2000-0019 wherein it was held that owing to a wide public knowledge of the Complainant's mark, the Respondent cannot be said to have a legitimate interest in the concerned mark since he ought to have known of the Complainant's mark.]

In cases such as Guerlain S.A. v. Peikang, D2000-0055 and Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., D2000-0163 it has been held that bad faith is found where a domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith".

Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the Complainant's rights. Thus, the disputed domain name was registered in bad faith. [Relevant Decision: The Ritz Carlton Hotel Company LLC v. Nelton! Brands Inc., INDRP/250 (December 30, 2011)].

In a similar NDRP matter of Accenture Global Services Limited V Sachin Pandey <accenturereruitment.in>, it was held: "domain name contains the Complainant's mark ACCENTURE in entirety along with a generic term Recruitment. Such a 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."

In the circumstances, the Arbitrator concludes that the Complainant has established the final requirement of paragraph 4 (iii) of the Policy also as to both registration and use of the Domain Name in bad faith.

## **8. Decision:**

In the lights of the circumstances and facts discussed above, Arbitrator decides, “The disputed domain name is identical and confusingly similar to the registered trademark ‘**Accenture**’ and also the trade name of the Complainant in which Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Name and the Respondent’s Domain Name has been registered and is being used in Bad Faith”.

Consequently the Arbitrator orders that **the Domain Name <“accenturesoftware.co.in”> be transferred from the Respondent to the Complainant** with no orders as to costs.



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Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 19th July 2018

Place: Agra, UP