



हरियाणा HARYANA

B 766892

Namrata Agarwal
Arbitrator appointed by the (.IN Registry)
National Internet Exchange of India

ARBITRATION AWARD GIVEN ON 31.08.2007

Disputed Domain Name : www.agencyfaqs.in

In the matter of:

M/s Banyan Netfaqs Pvt. Ltd. ...Complainant
(www.agencyfaqs.com)

VERSUS

Shri Raj Kumar Jalan ...Respondent

I. The Parties

The Complainant is AGENCYFAQS.COM, Banyan Netfaqs Pvt. Ltd. represented by their counsel Shri Rishi Chawla, IPRSecure.in

The Respondent is Shri Rajkumar Jalan of Pragati Infosoft Pvt. Ltd. represented by his counsel Shri Rajeev Singh Chauhan.

Details of the disputed Domain Name

The disputed domain name www.aMnevfiKis.in has the following details:

The particulars of the said domain name are as follows

- a) Name of Registrant : Rajkumar Jalan
- b) Domain Id : U58S132-AFIN
- c) Created on : 17-Feb-2011 11:15:37UTC
- d) Expiration Date : 17-Feb-2016 11:45:37 UTC
- e) Sponsoring Registrar : Net4India (R7-AFIN)
- 1) **Restrict Id** : N4IR-06 | 43497RS7

3. About the procedure adopted in the Complaint

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under-

by registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Rules.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

Until the commencement of the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, sent him a copy of the complaint, and appointed me

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 Name Dispute Resolution Policy and the Rules framed thereunder. I had submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules,

I am giving below the dates of various email and postal interactions with the parties.

02.04.2007	Email received from the .IN Registry' appointing me arbitrator in the present domain name dispute
16.04.2007	Email received from the Respondent in which he submits that he has not received the copy of the complaint because his address has changed and that he had requested NIXI to send copy of complaint to his new address.
20.04.2007	Notice of initiation of proceedings of Arbitration sent giving 10 days time to the Respondent to file his reply to the complaint
24.04.2007	Email received from Respondent in which he submits that he has still not received copy of the complaint despite having given the new address to NIXI
01.05.2007	Email received from Respondent confirming receipt of Complaint on 27.04.2007 and requesting time of 3 weeks to submit his reply
01.05.2007	Email sent to Respondent accepting his request and giving him time upto 17.05.2007 to file his reply
18.05.2007	Email received from Respondent along with soft copy of his reply, but without annexures. In his email he has informed

	that hardcopy of lit complaint along with annexures have been sent by courier.
19.05.2007	Complainant acknowledges the receipt of the soft copy of the reply, however he submits that he is still waiting for the hard copy of the reply. Complainant seeks 15 days time from 08 receipt of the hard copy of the reply.
21.05.2007	email sent to the Complainant advising him to file the reply within 12 days
22.05.2007	Email received from Complainant acknowledging receipt of hard copy of reply and seeking 4 weeks time to file rejoinder giving the reason that the concerned person is not in Delhi
01.06.2007	Email sent to the complainant refusing his request for extension of time to file his rejoinder
08.06.2007	Hard copy of the rejoinder received from the Complainant. He is asked to send softcopy of the rejoinder also. Respondent is given time of 1 week (uptill 15.06.2007) to file reply to rejoinder
11.06.2007	Email received from the Respondent submitting non-receipt of the hard copy of the rejoinder
11.06.2007	Email received from the complainant submitting proof of delivery of courier company depicting 07.06.2007 as the date of delivery of rejoinder to the Respondent and NIXI
13.06.2007	Email received from the Complainant submitting that the

rejoinder has been sent once again to the Respondent on 12.06.2007 by Speed Post

3.06.2007 Kmail received from the Respondent acknowledging receipt of hard copy of rejoinder and requesting for time of 15 days to file reply to rejoinder giving reason that his counsel is out of town

13.06.2007 Received from Respondent the hard copy of written Submissions / Arguments on behalf of the Respondent in continuation to its reply dated 17.05.2007

15.06.2007 Kmail will go to both parties to submit any further material till 30.06.2007

29.06.2007 Reply to rejoinder received from the Respondent

03.07.2007 Another letter received from the Respondent informing me that the arbitration award passed by another INDRP arbitrator in the case 7-1*111 has been challenged in appeal no. 209/Ofi.

4. Following are the Parties' Contentions as taken from their pleadings.

IA) Contentions of Complainant j, its Complaint dated 09.04.2007

The Complainant in its complaint at IV contends as follows:

(a) About the Complaint and its rights in the disputed domain name

In Para 8 of the Complaint the complainant contends that the complainant Banyan Nctfaq Private Limited is the owner and promoter of AOFNCYbAQS.COM which was established in June, 1999 by Mr. Sreekant Khandekar and Mr. Sandeep Vij. The promoters and owners of AC7WCYTAQS.COM have been operating, advertising and popularizing it

since then. The Complainant contends that it had registered the domain name www.agerkylags.com since Inly 1996 and has been using it since dien. The Complainant has annexed with the Complaint the proofs of registration of the domain names www.n^enev_faqs.com, www_aeencyfaos.otsj and www.agencyfnqs.in .

In para 9 of the Complaint the Complainant farther contends that it has been using the mark "AGENCYFAQS" as its trademark ever since June 1999 and have inscribed the name in all their literature, slationeiy, logo, works of art, websites etc.

The Complainant claims that by virtue of the extensive usage of the mark AGENCYFAQS by the Complainant the mark AGENCYFAQS has become synonymous with the complainant and has acquired a high degree of distinctiveness. The complainant has claimed the sole and absolute rights, in conjunction with the advantage of prior usage, envisaged under the Trade and Merchandise Marks Act 1999 and the Indian Copyright Act 1957, the .IN Dispute Resolution Policy of the .IN Registry and other concerned laws and rules governing tire intellectual property rights.

In para 11 of the Complaint the Complainant further claims that its website www.asenevfaqs.com is one of the early movers on India's Internet scene and is among die biggest players in its segment, i.e., advertising, media and marketing not only in India but worldwide. The Complainant claims that its running website AGENCYFAQS COM has thousands of pages of information and is the most comprehensive portal un media, advertising and marketing. In support of its above said claim the Complainant has annexed printouts from its website www.agencyfat5.com as Annexnre (i to its Complain) from page No.

29 to page \n. J6.



In para 12 of the Complaint the Complainant further claims that since its inception in the year 1999, it has promoted and sponsored numerous media, advertising and marketing events including conferences, workshops, seminars, contests etc. and has also partnered with numerous organizers to sponsor international events also. The Complainant in support of its contentions has annexed proofs of some of the events sponsored by it as **Annexure H page No. 47 to 69**. According to the contentions and the proofs submitted by the Complainant the complainant has sponsored or has been associated with the following events:

- a) AGENCYFAQS.COM was the official media partner at the Best of Advertising awards organized by The Advertising Club, Mumbai on Friday 1st February 2006 (page 47)
- b) AGENCYFAQS.COM was the official media partner at the media lecture organized by The Advertising Club, Mumbai on 10th February 2006 (page 48)
- c) AGENCYFAQS.COM was the media sponsorer at the Ad Club Bangalore awards, Bangalore 24th March 2006 (page 49)
- d) AGENCYFAQS.COM supported the Manthan e-conlenl awards 2006 (pages 50 & 51)
- e) AGENCYFAQS.COM supported the international Radio Conference in Dubai held on May 22-24,2006 (pages 52 & 53)
- f) AGENCYFAQS.COM was the official media sponsorer at the India Radio Forum, Mumbai on 13th July 2006, (page 54)
- g) AGENCYFAQS.COM was the associate sponsor at the CII organized Marketing Summit 2006, New Delhi 17th and 18th August 2006 (pages 55 &56)



- h) AGENCYFAQS.COM supported the ALL INDIA PROMO AWARD 2006 awards along with the Economic Times organized by the Kidstuff Promos & Events held in September 2006 (pages 57 to 60)
- i) AGENCYFAQS.COM was the online Media Partner at the e-business summit 2006 organised by the Internet & Mobile Association of India at New Delhi on 30th November 2006 (pages 61 & 62)
- j) AGENCYFAQS.COM was the media partner at the POP ASIA 2007 conference held at Pragati Maidan, New Delhi during 1-3 February 2007. (pages 63 - 65)
- k) AGENCYFAQS.COM is the online partner of The Times Group in supporting the most respectable and prestigious event of Advertising - the Cannes Lions 2007 being organized during 17-23 June 2007 (page 66)

In para 13 of the Complaint the Complainant further claims that its website www.aencyfaq5.com is registered with the Audit Bureau of Circulation Limited, UK (ABC Electronic). The certificate is issued by ABC Electronics only after a comprehensive audit process. As evidence the Complainant has annexed copy of the Certificate of registration issued by the ABC Electronic as Annexure 'I' to its Complaint (page No. 70 of the Complaint). Further the Complainant has also annexed copy of the case study and audit reports published by ABC Electronic (page No. 71 to 79 of the Complaint).

In para 14 of the Complaint, the Complainant further contends that its website www.Aiencyfaq5.com has been featured in numerous international, national and regional newspapers, magazines, websites, television programmes and other print, electronic and broadcasting media, the Complainant has



submitted Copies of such newspaper and magazine clippings as Annexure J (page no. 80 to 121).

In para 15 of the Complaint, the Complainant contends that it has built up so much reputation and goodwill in the website www.agencyfaqs.com and in the mark ACENCYFAQS that it is being highly ranked by the website www.HS16.com which is the authority on ranking the websites on the Internet. The Complainant contends that out of all the websites available on the Internet the Complainant website www.agencyfaqs.com has been ranked at 21, 142 and has been given 5 stars. Not many sites from India have received such an excellent rating. The results obtained from the Alexa website reveal that the Complainant's website is not only popular in India but is also frequently visited by Internet visitors in US, Singapore, UK etc. The Complainant has submitted the printouts of the results obtained from the Alexa website evidence of his contention in Annexure K (page no. 122 & 123) of the complaint. The Complainant claims that due to the popularity of the complainant's website www.agencyfaqs.com another website Leapfish.com has valued the complainant's domain name at US Dollars 1,529,388. The complainant has attached as proof a printout of the said website at page No. 124 of the complaint. The Complainant claims that results from the website www.w3iiv.oru reveal that the Complainant's website www.agencyfaqs.com is being regularly updated (almost daily) from the date of its inception in the year 1999. The complainant has exhibited as proof printouts of the results obtained from the website www.jsywrchivgaig.com page no. 125 to 134 of the complaint. The Complainant contends that a search on the google search engine for the agencyfaqs gives maximum links to the website of the Complainant



www.agencyfaq5.com or link to a website which contains information about the complainants' website. The Complainant has submitted proofs in the form of printouts of google search at page 135 and 136 of the Complaint

The Complainant in para IV 1 h I of its Complaint contends that "The Respondent has no rights or legitimate interests in respect of the domain name and has registered the domain name www.agencyfags.in in BAD FAITH."

In para 16 the complainant has given details about the respondent and has claimed that the Respondent Raj Kumar Man is a habitual Cyberquatter and is engaged in the business of selling and buying domain names in the name and style of www.NAMESELLER.in . The complainant has attached as proofs - Copies of the printouts of the website of the respondent at **Anneire L** (page 137 and 138 of the Complaint). The Complainant further claims that the respondent is engaged in illegal activity of cybersquatting the domain names of genuine trademark owners for illegal profits and gains. The complainant has claimed that the Respondent has previously also suffered an award in the case of the disputed domain name www.IndiaIarenlinu.in and has attached a copy of the said award at **Anneire M (139 to 156 of the Complaint)** in support of his claim.

In para 17 of his complaint, the complainant claims that the Respondent is engaged in buying and selling of domain names which is also evident from the fact that he has listed the domain name www.britaineducation.in on the SEDO.com website. The complainant has submitted copy of the printouts of



the relevant web pages showing that the respondent has put up the above said name for sale at Annexure N (page 157 and 158) of the Complaint

In para 15 of the complaint, the Complainant alleges that the Respondent does not have any interest in the domain name www.aeonicyfaos.in except that of extracting money from the Complainant by blackmailing the Complainant and harassing him. The Complainant further alleges that the Respondent has registered the disputed domain name www.aeonicvla.in in Bad Fofill which according to the complainant is evident from the fact that the Respondent has registered the disputed domain name knowing fully well about the trademark rights and copyrights of the complainant vested in the mark ACrKNCYFAQS. The Complainant claims that the Respondent knew about the popularity and success of the complainant's website as it has been featured in numerous newspapers, websites, magazines etc. According to the Complainant the respondent was in the knowledge of the complainant's website because a simple search on any search engine leads to the website of the complainant. According to the Complainant the Respondent has primarily registered the domain name www.agencyfajijii for the purpose of "Cyber squatting" over the domain name in order to sell it to the complainant in excess of out of pocket costs. The Complainant also alleges that the Respondent has prevented the complainant from using its mark AGb'NCYbACfS on the world wide web.

In para 19 of his complaint (the Complainant alleges that the Respondent had registered the disputed domain name on 17th February 2005, however, he has no intention of using the domain name. According to the Complainant this is clear from the fact that the Respondent is not using the said domain name until the filing of this proceeding. The Complainant alleges in the Complaint that

the Respondent has illegally parked the domain name and is making illegal gains from the domain name at the cost of the Complainant. The Complainant has cited the INDRP case of the domain name >*j.in where the Ld. Arbitrator has specifically held that parking a disputed domain name proves bad faith on the part of the respondent as required by paragraph 11 (iii) of the INDRP. (The Complainant has attached copy of the relevant page 10 of the award as **Anneure O** (page 159 of the Complaint). The Complainant has also attached copy of the printout of the parked domain name as **Anuere P** (page 160 of the Complaint).

In para 20 of its complaint the Complainant alleges that by registering the domain name www.agencyfaqs.in and parking it, the Respondent has also exploited the immense goodwill, reputation and popularity associated with the complainant and its name and trademark AGENCYFAQS to attract internet users to the parking page, by creating a likelihood of confusion with the complainant's name and mark AGENCYFAQS. According to the Complainant such false misrepresentation on the part of the Respondent has caused irreparable damage, loss and injury to the complainant's reputation and goodwill in the market both internationally and in India. Further the Complainant alleges that such a conduct of the Respondent has caused monetary losses, harassment and agony to the complainant. The Complainant goes on to allege in the Complaint that this would continue unabated if the Respondent is not restrained from using the combination of letters "AGBNCYFAQS*" in relation to any activity whatsoever, either on the internet or otherwise, the Complainant in the Complaint alleges that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web page or other online location, by creating a likelihood of confusion with the



complainant's mark as to the source, sponsorship, affiliation or endorsement of its web page or location of products or services.

In para IV (e) of the Complaint the Complainant has given the following legal grounds in support of his complaint

In para 21 the Complainant submits that Paragraph 3 (b) of the IKDRP makes it the responsibility of the registrant to determine whether the registrant's domain name registration infringes or violates some one else's rights. According to the Complainant in this case the respondent registered the disputed domain name fully knowing the rights of the Complainant in the mark AGF.NCYPAQS. The respondent registered the domain name which is identical to the mark of the Complainant. Therefore he misrepresented to the Registry and has violated the duty cast upon him by the INDRP.

In para 23 of the Complaint the Complainant submits that the Para 6 of the TDRP provides that even if one of the three circumstances given in para 6 are fulfilled it will be proved that the respondent had registered the domain name in bad faith. According to the Complainant in this case all the three circumstances are proved against the respondent.

- a. Para 6(i) - The Respondent has not registered the domain name for his own use. He has nothing to do with the mark AGKNCYKAQS. He knew about the rights of the Complainant in the mark. He has not used the domain name since February 2005 when he registered the domain name. This makes it evident that he has registered the domain



name only to sell it to the Complainant at high value or to the Complainant's competitors. Moreover it is also evident from the records that the respondent is a habitual cybersquatter.

b. Para 6 (ii) The registrant has registered the disputed domain name www.aaienefags.in to prevent the Complainant from reflecting the mark AGENCYFAQS in the .IN ccTLD. The respondent fully knew about the rights of the complainant and still registered the disputed domain name. Moreover it is also clear from the records that the respondent is a habitual cybersquatter and blackmails the genuine trademark owners.

e. Para 6 (id) The Respondent has created a likelihood of confusion with the complainant's mark AGENCYFAQS and is misleading the Internet user to go his parking page from where he is making illegal gains and profits.

(B) The submissions of the Respondent as contained in its Reply

The Respondent has made the following preliminary submissions in its reply to the Complaint:

In para 1 of its reply the Respondent has raised the technical objection that the Complaint has been signed by the Counsel of the Complainant and not the Complainant himself and so the Complaint is liable to be dismissed. Further he has raised some technical objections in the vakalatnama submitted by the Counsel of the Complainant and has alleged that the Counsel of the Complainant is not authorized to file the present Complaint.



In para 2 of its reply the Respondent has denied that domain name www.agencyfaqs.com was established and registered by the Complainant on 21.06.1995 by the Complainant in its complaint. The respondent submits that as per the certificate of registration, the complainant company came into existence only in the year 2000 and it was not in existence in the year 1995. As such, complainant could not have established or got registered the domain name in the year 1995. The Respondent further submits that the complainant cannot be owner of the domain name or mark, when it only came into existence in the year 2000.

In para 3 of its reply the Complainant submits that the complainant has alleged in the complaint that it has been using its trade name or mark "AOENCYFAQS" and the domain name "AGPXCYFAQS.COM". The Respondent further submits in its reply that in all the documents and annexures filed by the complainant it has shown its mark as "agencyfaqs", which according to the Respondent is different from above alleged trademark name or domain name.

In para 4 of its reply the Respondent has submitted in its reply that the alleged mark or trade name of complainant "AGFNCYFAQS" is not registered and that the complainant does not have any exclusive right to use the same. The respondent submits that the above mark is commonly used by others, and to support this contention the respondent has attached the WHOIS details of the domain name www.agencyfaqs.info as Annexure-A of the reply which shows that domain name and mark "AOENCYFAQS.INFO", is used by some other person.



The Respondent further submits in his reply that the word "AGENCY" in "AGENCYFAQS", is a common and generic word and it has a dictionary meaning. The Respondent also submits that word "FAQS" in "AGENCY FAQS", is combination and short form of the words, "Frequently asked questions" and thus the word, "AGENCYFAQS" consist of common and generic words with a dictionary meaning and is commonly and extensively used in internet and otherwise. The respondent submits that the words, "AGENCYFAQS" also contain word, FAQS, which is a form of service provided to internet users. As such the mark, such as "AGENCYFAQS" cannot be used exclusively by anyone and the complainant cannot have exclusive right to use this. According to the Respondent the sections 9 and other provisions of The Trademarks Act 1999, prohibit the registration of generic or common words or words relating to goods or services or their quality.

The respondent has denied its reply that the complainant is exclusively recognized or associated with this mark. According to the Respondent the mark, "AGENCYFAQS" has not acquired secondary meaning or distinctiveness qua complainant. Rather as per the documents filed by complainant, it is stated to have used mark "agency faqs", that too scantily. Even such user does not confer any exclusive right upon complainant to use the mark.

In para 5 of the Reply the Respondent submits that the respondent had got registered his domain name, "agencyfaqs.in", on 17.02.2005, when the complainant was not having any right or goodwill what to say of exclusive



right or exclusive goodwill or reputation, in mark, "AGENCYFAQS", or domain name "AGENCY rAOS.COM". The respondent claims that he has got exclusive right to use his domain name. The Respondent further submits that the Complainant has no right to ask the respondent to stop using his domain name.

In para 6 of the Reply the Respondent submits that the complainant allegedly got registered his domain name, AGENCYFAQS.COM, in 1999. Later on, it also got registered two other domain names, namely, "AGENCYFAQS.NET" and "AGENCYFAQS.ORG". The Respondent submits that the complainant never sought registration of domain name, "agencyfaqs.in". According to the Respondent the Complainant had had ample opportunity for this, during the period of operation of sunrise policy, and after its expiry, during the lenders period, and thereafter immediately on the opening of regular registration policy of .in Registry, on 16.02.2005. According to the Respondent the fact that complainant did not get the domain name, agencyfaqs.in registered in its name shows that the Complainant was never interested in this, as he never wanted to use it.

The Respondent further submits that the respondent took due and reasonable care before he got registered domain name -agencyfaqs.in", in his name. The respondent submits that he did not apply for registration during operation of sunrise policy of .in registry. He also did not apply for registration after lapse of this policy and during lender's period. Respondent also did not apply for registration immediately on 16.02.2005 on opening of regular registration policy of .in registry. The respondent claims that after the

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above period lapsed after taking all due precautions he applied for registration on 17.02.2005, when no one else came forward for its registration.

The Respondent submits that the complainant has not made out any case against the respondent, as is envisaged in paragraph No.4, 6 and 7 of the .INDRP Policy. As such, complainant is not entitled to any relief and his complaint is liable to be dismissed.

In para 8 of his reply the Respondent submits that the complainant has got registered two domain names himself i.e. "agency faqs.net" and "agency faqs.org", which he is not using and has parked the same for trading purpose. The respondent alleges that the Complainant has got registered the domain names in bad faith and also to prevent anyone else from reflecting the corresponding domain name.

In para 6 of his reply the Respondent submits that in view of the clause 10 of the .INDRP policy the Ld. Arbitrator cannot impose any penalty or compensation and he can only impose reasonable cost of proceedings, as required in the said policy in the para under the heading "Remedies".

In para 11 of his reply the Respondent submits that the complainant is allegedly in marketing and advertisement fields. The respondent is mainly in educational field and he intends to provide information about various agencies through his domain name. The complainant and the respondent are doing their business activities in different fields and spheres, without any overlapping of interest. There is no likelihood of deception to customer.



There is no likelihood of diversion **or** their respective customers. There is no likelihood of loss or injuries being caused to the complainant by the respondent by the user of its domain name "agency faqs.in".

REPLY ON MERITS BY THE RESPONDENT:

After giving preliminary submissions the Respondent has in his reply given reply on merits to the contentions of the Complainant in the Complaint. The Respondent has in various paragraphs denied all the contentions of the Complainant using the above "objections / submissions" in different variations. The respondent has made following new submissions in its reply on merits :

In para 8 the respondent alleges that the complainant is not using mark 'AGENCYFAQS'. Rather complainant is shown to be using a mark agencyfaqs!, that too scantily. Even this mark or she is used only to some extent from late 2005 onwards, i.e. after registration of impugned domain name www.agencyfaqs.in by the respondent. Regarding the Annexure C (page 21 to 46) of the Complaint the Respondent further submits that in all these pages the complainant has not used mark AGENCYFAQS or domain name AGENCYFAQS.COM rather complainant has used mark agencyfaqs!. Thus the Respondent submits that the Annexure G does not depict any alleged extensive users of mark AGENCYFAQS or domain name AGENCYFAQS.COM. Further the Respondent submits that even the mark agencyfaqs!, is scantily and irregularly used and that 'on recently after registration of the impugned domain name by the respondent.

In para 12 of the reply the respondent has denied that AGENCYFAQS and AGENCYFAQS.COM has promoted or sponsored media, marketing and advertisement events or conferences or workshops or seminars or contests in



regard to which the complaint has submitted proofs as Annexure H in its complaint because Annexure H of the complaint show mark agencyfaqs! and not the mark AGENCYFAQS or AGENCYFAQS.COM

In para 16 of his reply the Respondent denies that respondent Raj Kumar Jalan is cyber squatter or engaged in business of selling and buying domain names in the name and of style of www.NAMESELLER.in. The Respondent submits that that Registrars of domain names are authorized to sell them and the respondent is agent of Registrar, Direcri (Reseller Club). In support of his claim of being a reseller the Respondent has attached some printouts at unneiuic B and C of his reply. It is pertinent **10** mention here that Annexure B is a printout of the website www.resellerclub.com/aboutus and gives details of Reseller Club and Annexure C is the printout or some form again printed from the website www.resellerclub.com. The Respondent further submits that being agent of the Registrar he is authorized to reflect various domain names for sale on its website www.NAMESELLER.in. The Respondent submits that there is nothing illegal about this.

The Respondent has denied the allegations of the Complainant that the Respondent is engaged in any illegal activity or cyber squalling of the domain names of genuine trademark owners for illegal profits and again. The Respondent submits that the award passed in respect to domain name www.indiaparenting.in is bad in law and upon facts also. The respondent submits that he has challenged the Award before Hon'ble High Court of Delhi vide OMP No. 2062/2007. The Respondent has attached a copy of the said order as **Annexure-D** of the Reply. The Respondent submits that the findings and observations of the said Award



cannot be read or relied upon in the present proceedings since the said Award is under challenge and has not attained finality.

In para 17 of its reply the Respondent has denied that respondent has reflected the domain name www.britaineducation.info on SIUO.COM website. The Respondent submits that www.britaineducation.info is a running site and above domain name might have been shown on it due to it.

In para 18 of the reply the **respondent** submits that he has various websites and domain names. They have good reputation and goodwill in many fields including education. The respondent submits that he is having a very popular website www.Indiaeducation.in, which provides educational information and services. As a proof of ownership of the above website the respondent has submitted the WHOIS details of the site as Annexure-E of its reply, the respondent submits that he wants to develop website www.agencyfaqs.in so as to provide the information regarding various agencies of goods etc., on this site. The Respondent has attached as Annexure K the temporary page of the website that he has put on the impugned url, i.e., www.agencyfaqs.in. The said printout reads " The website will soon bring you all information about Agency Businesses in India. You will be able to get answers for all agency business related FAQs through this site." For any further information regarding our website please contact us at: services@pauindia.in

(C) The Complainant was given an opportunity to file his rejoinder to the reply of the Respondent. The Complainant submitted its replies and submissions in



its "Rejoinder to the Reply of the Respondent" The Complainant made the following submissions in its rejoinder

The Complainant submits in his rejoinder that the Respondent in his reply to the complaint has merely denied all the allegations and submissions of the complainant without giving any evidence in support of his denials. According to the Rejoinder the respondent has made bald denials and submissions without giving any supporting facts or evidence. On the other hand the Complainant has already submitted sufficient evidences to fill all the requirements of the INDRP. The Respondent has not given any evidence in support of his interest in the mark "agencyfaqs". In his reply he has not given anything substantial but has merely repeated his denials. The Complainant in his rejoinder submits that the Respondent has raised the following major objections in his reply which are being reproduced below along with the Complainant's reply.

- 1. Respondent's objection : The Counsel for the Complainant is not authorized to file the complaint.**

Complainant's Reply : The Complainant has denied that Shri Rishi Tiwala has not been authorized by the Complainant company to file this Complaint. The Complainant submits that the Complaint is accompanied by a vakalnama duly signed by one of the Directors of the company and bears the stamp of the company. The Complainant submits that the INDRP Rules of Procedures does not require any further document in this regard. The Complainant submits that the Respondent does not have anything to say on the merits of the case and is therefore misleading the honorable arbitrator by raising false, frivolous and



irrelevant objections. These are baseless and ground less objections and does not have any significance in the present dispute, To cul short this issue the Complainant has attached an authority letter duly signed by the Director of the company on the letter head of the company and has as attached as Annexure A to the rejoinder.

2. Respondent's objection : The domain name www.agencyfaqs.com was **not** registered on **21.06.1999** by the Complainant.

Complainant's reply : The Complainant in its rejoinder has denied that the domain name www.agencyfaqs.com was not registered by the complainant on 21.06.1999. The domain name was registered by the promoter director of the company when the company was being registered. At that time it was a proprietorship. And later upon the registration of the company the whois details were changed in the name of the company. The Complainant has further submitted that assuming but not admitting the submissions of the Respondent that the domain name www.agencyfaqs.com was registered by the complainant company in the year 2000, the facts and circumstances of the dispute do not change. The Respondent did not have anything to do with the mark "agencyfaqs" in the year 2000 and does not have any right, title or interest whatsoever even today. Instead of submitting about his interest in the mark "agencyfaqs" the Respondent is raising bald objections which do not have any meaning in the present dispute

3. Respondent's objection : The mark of the Complainant is AGENCYFAQS! **and** therefore Complainant does not have rights in the domain name



WTW.agciti-faqs.in and marks AGENCYFAQS and AGENCYFAQS! are different

Complainant's reply : The Complainant submits in his rejoinder that the Respondent has raised the objection in his reply that the trademark of the Complainant is "AGENCYFAQS!" but the domain name is www.agencyfaqs.com. According to the Complainant this is an attempt of the Respondent to confuse and mislead the Ld. Arbitrator, The Complainant submits that "!" is a special symbol and cannot be registered as a part of the domain name. This is also evident from the printout of the Policies page from the website of the NIXI which the Complainant has attached along with his rejoinder as Annexure B, The Complainant has also placed reliance on the WIPO Case No. D2000-1723 (AT&T Corp. v. Ondok Partners) where in para 6.3 page 5 the honorable panel has held that the impugned domain name www.kpla7a.com violates the mark AT&T because there is such similarity in sound, appearance and connotation between AT&T mark and the disputed domain name as to render the said Domain name confusingly similar to Complainant's AT&T mark. The Complainant has attached the relevant page of the decision as Annexure C in the rejoinder. The Complainant has also placed reliance on another WIPO case No. D2000M153.1 where the honorable panel found that the domain names www.attmanasement.com and www.attnarteting.net are confusingly similar to the mark AT&T and transferred them to the Complainant. The Complainant submits that the panel in this case has also observed that special characters are not permitted in web addresses. The Complainant has attached the relevant pages of the decision as Annexure D in the rejoinder, The Complainant has also relied on another WIPO Case No. D 2000-0039 the honorable panel has held the domain name www.budgetsaver.com to be confusingly similar to the mark



JSUDGETSAVER. The Complainant has attached the relevant pages of the decision as Annexure E. The Complainant submits in his rejoinder that in view of the decisions in the above cases the objection of the Respondent that the marks **AGENCYFAQS** and **AGENCYFAQS!** are different is not tenable. Such objection of the Respondent has no meaning at all. The Complainant further submits that even otherwise the domain name of the complainant is www.agencyfaqs.com and therefore it does not make any difference that in the logo there is an additional "!". The Complainant further submits that **AGENCYFAQS!** is the picture trademark of the complainant and **AGENCYFAQS** is the word trademark of the complainant. Both the marks are being used extensively by the Complainant since its incorporation in the year 2000. These marks were being used by the promoters of the Complainant company even before the incorporation of the company. The Complainant submits that the respondent does not have any interest, rights or titles in the said marks.

4. **Respondent's objection : The Trademark of the Complainant ACF.NCYFAQS is a generic name and is being commonly used. The Complainant has "scantly" used the mark ACF.NCYFAQS or AGENCYFAQS.**

Complainant's Reply : The Complainant in his rejoinder denies that the trademark of the Complainant **AGENCYFAQS** is being commonly used by others. According to the Complainant the respondent has given only one instance of the unauthorised use of the complainant's trademark and has claimed it to be "commonly used". The Complainant further submits that a google search of the word **AGF.NCYTAQS** gives results that refer to the complainant and no one else. According to the Complainant by no extent of imagination can this be termed as



"common". The Complainant has also pointed out that the Respondent has submitted the whois details of ww.agencyfaqs.info as Annexure A to his reply which is as of 01h May 2007. however the ownership of the domain name ww.vv.agencyfaqs.info has changed during the pendency of this case. The Complainant has attached the printout of the new whois details of the domain name www.agencyfaqs.info as Annexure F. The whois details of this domain name reveal that the ownership has changed on 25th May 2007. The complainant has alleged that it has come to know through sources that this domain name www.agencytaqs.info has also been purchased by the Respondent through some associate so as to harass and blackmail the complainant. The Complainant further submits that the content on the website www.agencyfaqs.info has changed during the pendency of this case, which shows that the Respondent is dealing evidence during the pendency of this case to mislead this honorable forum. The Complainant further denies that AGENCYFAQS is a common word or generic word or dictionary word as alleged by the Respondent.

The Complainant has denied in its rejoinder that the marks AGENCYFAQS and AGENCYFAQS! are being used "scantly" by the complainant as has been stated by the Respondent in his reply. The Complainant has attached further evidence of the use of the marks AGENCYFAQS and AGENCYFAQS! as Annexure G & H of the rejoinder. Annexure G is the photocopy of the interview of Sreekant Jclandekar, Director of the Complainant company published by Business Today on June 21, 2001 and Annexure H is an article published in Businessworld on 10th April 2000. The Complainant has submitted in its rejoinder that the well known publisher PUSTAKMAHAL had published a book titled "Business Ideas You can turn into cash" in the year 2004

wherein on page 119, the promoter Director Mr. Sreekant Khandekar of the Complainant Company and the Complainant's website www.agencyfaqs.com had been featured, the Complainant has attached photocopies of the relevant pages as Annexure I.

5. Respondent's objection : Complainant did not have any right on the mark AGENCYFAQS on 17.02.2005 when the Respondent registered the impugned domain name www.agencyfaqs.in

Complainant's Reply : The Complainant submits that a lot of material has been placed on record to prove that the Complainant has been using the marks AGENCYFAQS, AGENCYFAQS! and the website www.agencyfaqs.com since the year 1999. And on the date of the registration of the impugned domain name, i.e., 17.02.2005 the Complainant's marks were so popular that complainant was known by these marks.

- i. Respondent's objection : Complainant could have registered the impugned domain name during the Sunrise period. Respondent had taken due and reasonable care before registering the impugned domain name.

Complainant's Reply : The Complainant submits that the Sunrise policy was only for those applicants whose trademarks had been registered and who have got duly registered certificates from the Registrar of Trademarks. The complainant submits that it takes 4-5 years to get the trademark certificate after applying for the trademark. Therefore the complainant could not apply for registration in the Sunrise period. The Complainant submits that the respondent misused this for grabbing the domain name. The Complainant submits that the registration of the domain names started on 16.2.2005 and the respondent



immediately cybersquatted **the** impugned **domain name** on 17.2.2005. Thus the **respondent prevented** the complainant from registering the domain name. The Complainant further submits **that** the impugned domain name has not been used in any way by the respondent **even** after 2 years of its registration. The Complainant submits that even if the Complainant had not applied in the Sunrise period it does **not** give any right to anyone to violate **his** intellectual property rights and cybersquat **the** domain name to which the Complainant **is entitled** to.

The Complainant denies that the Respondent has **taken** reasonable and due care before registering the impugned domain name. According to the Complainant a simple google search of the word agencyfaqs **gives** links which all lead to the **site** of the **complainant** i.e., www.agencyTags.com. The respondent has never been known by this mark so he did not have any reason to apply under the sunrise policy. The opening of the regular registrations does not mean **that** the respondent could have registered the impugned domain name in violation of the intellectual property of the complainant.

7. Respondent's objection (Complainant has not made out any case against the respondent as is envisaged in para 4, 6 and 7 of the .INDRP Policy)

Complainant's Reply : The Complainant has placed reliance is placed on the INDRP Case case .No. **L-1/0TRI** decided on 5.7.2006 by the Hon'ble Arbitrator **Shri** Rajiv Singh Chauhan. In this case it was held by the M. Arbitrator that the initial burden of proof of the contents of para 4,6 and 7 is on the complainant however **it** is not very strict **and** if the complainant prima facie is able to discharge its burden then the onus of proof **shifts** heavily on **the** respondent. The Respondent has to then prove this by direct positive and cogent evidence. **The** Complainant has attached the relevant pages of the aforesaid decision as



Annexure J of the rejoinder. The Complainant submits that in the present case the Complainant has submitted substantial evidence and facts to prove the contents of the aforesaid para of the INDRP policy however the respondent has failed to submit even a single piece of evidence to rebut the evidences of the Complainant or to prove the contents of the aforesaid para of the policy in his favour. The Respondent has not given any reason as to why he has chosen to register litis domain name only. What is his connection with the domain name. The respondent is admitting in his reply in para 1b that he is a reseller and that he is in the business of selling domain names. So why does he require www.agencyfacts.in. The complainant submits that the respondent does not have interest in the domain name except to black mail the complainant.

- 8. Respondent's objection : The Respondent and Complainant are doing their business activities in different fields and spheres, without any overlapping of interests. There is no likelihood of deception of customers. There is no likelihood of diversion of customers.**

Complainant's Reply : The Complainant has submitted in its rejoinder that the Respondent is in the field of educational activities as has been alleged in the reply. The Complainant submits that the Respondent is in the business of hoarding domain names and doing the business of buying and selling domain names. The Complainant relies on the INDRP Case No. [-1/6, R1] decided on 5.7.2006 by the Hon'ble Arbitrator Shri Rajiv Singh Chaudhan where it was held on page 10 of his decision that : domain name and trademark, which may be used in different manner and different business or field or sphere can still be confusingly similar or identical.



The Complainant has attached the relevant page 19 of the said decision as **Annexure K.**

9. **Respondent's objection :** The impugned domain name www.agencyfaqs.in is not identical or confusingly similar to the complainant's website www.agencyfaqs.com or his admitted picture trademark www.agencyfaqs!

Complainant's Reply : The Complainant places reliance on various decisions in this regard. The foremost being INDRP case No. L-1/6/R] decided on 5.7.2006 by the Hon'ble Arbitrator Shri Rajiv Singh Chauhan. In the said case on page 15 the Arbitrator had decided that "the domain name www.internet.in and trademark "internet" are phonetically similar and they both consist of similar "letters or words" except that in the domain name letters ".in" are added. The domain name also contains trademark in entirety. They are also similar in appearance. As such they both are identical and confusingly similar".

The Complainant has also placed reliance on the case M/s Satyam Infoway Ltd. Vs. M/s Sillynet Solution (P) Ltd. JT. 2004 (5) SC 541, where it was held that domain name has all characters of trademark. As such principles applicable to trademark are applicable to the domain names also, in the said case the words "Sify" and "Siffy" were held to be phonetically similar and addition of the word "net" in one of them would not make them similar. The Complainant submits that the same principle applies to the present case also. The Complainant submits that it is unimaginable to think by any stretch of imagination that the impugned domain name www.agencyfaqs.in is not identical and confusingly similar to the complainant's well known marks AGENCYFAQS and AGENCYFAQS! and to the complainant's well known website www.agencyfaqs.com. The Complainant has attached the relevant page 18 of the said decision as Annexure L of the



rejoinder. The Complainant has also placed reliance on the case Rediff Communications Ltd. vs Cyber tooth & Another (AIR 3/00 Bom 27), in which the Bombay High Court has held the domain name www.radiIT.com to be confusingly similar to myw.rcdiff.com. It was held that when both domain names are considered there is every possibility of internet user being confused and deceived in believing that both domain names belong to one common source and connection although the two being two different persons. The Complainant submits that in the case Yahoo! Inc. Vs. Akash Arora and Another (1999 (19) PTC201) the Delhi High Court while applying the doctrine of passing off granted an interim injunction restraining the defendants from dealing in sendees or goods on the Internet or under the trademark domain name <yahooindia.com>. It was held that a domain name is entitled to equal protection against passing off as in the case of a trademark. In the case Aqva Minerals Ltd. Vs. Pramod Borse (AIR 2001 Del 413) the Hon'ble Delhi High Court while decreeing the suit in favour of the plaintiff has held: "Unless and until a person has a credible explanation as to why did he choose a particular name for registration as a domain name or for that purpose as a trade name which was already in long and prior existence and has established its goodwill and reputation there is no other inference to be drawn than that the said person wanted to trade in the name of the trade name he has picked up for registration or as a domain name because of its being an established name with widespread reputation and goodwill achieved at huge cost and expenses involved in the advertisement". In the case Info lidgc India Pvt. Ltd. & Anr. Vs. Shailesh Gupta & Am. (2002 (24) PTC 355), The Hon'ble Delhi High Court has held that the Plaintiffs domain name TsAUKRI.COM , was deceitfully adopted by the defendants as "NAUKARI.COM" . The Delhi High Court has held, that the plaintiff was entitled for the injunction as both the



domains were considered to be same , and defendant's adoption was considered as malafide by the court . In the case Dr. Roddy's Laboratories Ltd. Vs. Manu Knsuri (2001(21) PTC 859) The plaintiff had registered the domain name www.drTeddys.com. The Defendants adopted the domain name drrcddyslab.com. The Court held that the defendant's acts of adoption of similar domain name were dishonest and malafide , and as such the defendant was liable for an action of passing off, since the domain name serves the same function as a trade mark. The Complainant also places reliance on WIPO Case No **D2W4-L072** Cavinkarc Private Limited vs. La Pone Holdings Inc. and Horoshiy Inc. and all the cases referred therein.

After giving the above submissions the Complainant has in his rejoinder given additional repdes to the "reply on merits" of Respondent in his reply

In para 18 of the Rejoinder the Complainant submits that the Respondent has still not given any evidence to show his rights over the mark AC.P.KCVFAQS or the domain name www.agencyfaqs.in . He has merely put a bald statement that he wants to develop the website www.agencyfaqs.in He has not given any reasons as to why he has chosen only this particular domain name for his website, knowing fully well that this is identical to the trademark of the complainant. The complainant further submits that till the filing of this complaint the impugned domain name www.agencyfaqs.in was parked and there was no content. After the filing of this complaint the Respondent has changed the homepage of the domain name. The complainant submits that this is contempt of court and is gross violation of the law. The Complainant further submits that the present home page has been put up by the Respondent in so much hurry and merely to mislead and confuse the honorable arbitrator that on the homepage the respondent has mentioned the [email id services@panindia.in](mailto:email_id_services@panindia.in) but if the link is clicked it leads to



services@ipamindia.in. This further reveals the bad faith of the respondent. The respondent does not have any intention to develop any website as has been alleged. The Complainant alleges in the rejoinder that the present borne page at www.agencyfaqs.in asks the visitors to write to the email of the respondent. This may lead Internet users to the belief that Complainant is not presently active on the Indian market. This is untrue and is thus likely to disrupt the business of Complainant. The Complainant points out that the respondent has admitted in the para 16 of his reply that he is a reseller for selling domain names by the name NAMtSiLLJiR.nl. Now he is saying that he is in the business of educational services. The respondent himself is confused and does not know his own business because the respondent is not in a legal and ethical business. The Complainant alleges that the Respondent is in the illegal and unethical business of cybersquatting the domain names of the original trademark owners to blackmail and harass them to extort money from them.

In para 20 of the complainant submits that the respondent has made bald denial of the complainant's contentions without any supporting evidence. The complainant submits that the submission of the respondent that the mark AGENCYFAQS is not registered has no meanings as there are numerous decisions of domain name disputes where the mark is not registered but has been protected under the trademark laws. The Complainant has reiterated that the respondent has caused losses to the complainant by preventing the complainant to register its mark as Indian domain name and also by causing mental torture and harassment. The Complainant further submits that from the home page that has been placed on the impugned domain name it is very clear that the respondent is diverting visitors who wants to have information about AGENCIES in India to its website / email_services@paniudia.in. The complainant submits that the records



available from the website www.archive.org regarding the respondent's domain name www.pamndia.in shows that as of Dec 30, 2005 the said domain was put up for sale by the respondent. The Complainant has attached the relevant printouts as Annexure 1,

Para 23(a). The Complainant submits that the respondent has just given a bald submission that he wants to develop a website on the impugned domain name without giving any supporting facts or evidence. The Complainant submits that the Respondent has not shown any rights or interests that he has in the domain name www.agencyfaqs.in or the mark AGHNCYFAQS. The Complainant relies on the INDRP case No. L-1/6/R1 decided on 5.7.2006 by the Hon'ble Arbitrator Shri Rajiv Singh Chauhan. In the said case the Hon'ble Arbitrator has emphasised on page 15 as follows :

Thus the Combined effect of para no. 4(1) and para no. 7 is that, the initial burden of their contents, is on the complainant, which should not be very strict and if he is prima facie able to discharge this burden, then it, would heavily shift upon the respondent, who has to prove the positive assertions made in para no. 7, that he has right and legitimate interest in domain name. He can prove this by direct and cogent evidence, which is in his special knowledge and power.

The Complainant has attached the relevant page of the decision as annexure 1 to the rejoinder.

The Complainant submits that the respondent has failed to produce any evidence or facts to prove his association with the mark AGENCYFAQS or his

interest in the impugned domain name www.agencyfaqs.in leave aside producing direct and cogent evidence as required in the above mentioned decision. The Complainant on the other hand has been using and is known by the marks AOFNCYFAQS, AGTINCYFAQS! and the website www.agencylaqs.com. The complainant has submitted considerable proofs of his rights in these marks and his rights in the impugned domain name www.agencyfaqs.in.

(D) Thereafter Written Submissions / Arguments on behalf of the Respondent continuation to its reply dated 17.11.2007 was received on 13.06.2007 the contents of which have been duly considered for deciding this case. Most of the contents of the Written arguments / submissions are same as that in the reply of the Respondent. The additional submissions are being reproduced below :

In para 2 of its written submissions the Respondent has raised the objection of procedural irregularity in filing and representing of the complaint. In support of this averment he has attached copies of the cases at page no. 260 to 286 of the written submissions cited. These cases relate to the procedural irregularities relating to the filing of suits and other proceedings under the Civil Procedure Code.

In para 3 of its written submissions the Respondent has submitted that the word "agencyfaqs" is a generic word or a combination of generic word as thus does not get protection under the trademarks Act, 1999. In support of his averment he has attached WIPO case no. D-2001-0083 at page nos. 288 to 290 of its written submissions. The Respondent has also attached several cases decided by the Delhi High Court and other courts under the Trade Marks Act. These cases have been attached at page no. 291-335 of the written submissions.



The Respondent further contends that "Even otherwise as per .INDRP Policy one cannot use marks such as "!" in its domain name or trade name. If complainant has used mark "agencyfaq!" with mark "!" in contravention of policy, then cannot claim protection of his alleged mark in .INDRP Policy.

In para 10 the Respondent contends that the complaint is not maintainable, as huge amount as compensation and penalty has been claimed in it, in gross disregard to mandatory provisions of clause 10 of .INDRP Policy. The IA Arbitrator cannot impose penalty or compensation and he/she can only impose reasonable cost of proceedings, as required in the said policy in the para under the heading 'Reedics'

In para 22 the Respondent submits that the respondent has at least 46 websites on education etc. The Respondent has attached the details about the said websites as Annexure E1 to E4 at page no, 90 to 259 of its written submissions.

In para 25 of his written submissions the Respondent contends that "claim of passing off cannot be adjudicated under .INDRP policy and as such compensation, penalty or damages cannot be awarded in arbitration proceedings.

(MI hereafter another letter was received from the Respondent informing me that the arbitration award passed by another INDRP arbitrator Shri Rajiv Singh Chauhan in the case L-I/6/R1 has been challenged in appeal no. 2119/06.

A handwritten signature in blue ink, appearing to be 'Rajiv', is written below the text.

-V Discussion and Findings of IIn Arbitrator

Miscellaneous findings

The Complainant while filing the complaint submitted to the arbitration under the .IN Domain Name Dispute Resolution Policy and the rules framed thereunder in terms of paragraph 3 (b) of the .INDRP Rules and Procedures. The Respondent has also submitted to the mandatory arbitration proceedings in terms of the Para 4 of the .IN DRP Policy.

Paragraph 10 of IN DRP Rules provide (hat there shall be no in-person hearings (including hearings by teleconference, videoennference, and web conference), unless (be Arbitrator determines, in his sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the Complaint.

Paragraph 12 (a) of the IN DRP Rules requires an Arbitrator lo decide the Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, lules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable.

In the present case I am of the opinion that the cose can be decided on the basis of the pleadings, evidence and other documents submitted by the Complainant and Respondent, hence there is no requirement of personal hearing in the present case.

Under Section 19 of the Arbitration & Conciliation Act, 1996 the Arbilral Tribunal is nol bound by the Code of Civil Procedures, 190S or Indian Evidence Act, 1872 Subsection 3



of section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence. It is therefore appropriate to examine the issues in the light of the statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

The delay in the giving of the award if any is due to sufficient time given to the parties on their request for submitting the pleadings and evidence and because of the voluminous nature of the pleadings.

The Respondent has raised the technical objection in his reply and written submissions that the complaint and the vakalatnama accompanying the complaint is not in accordance with the Civil Procedure Code and other procedural rules of the Delhi High Court. The Respondent has submitted in its written submissions at page 260-286 a copy of the judgments cited as AIR 1991 Delhi 25 and 84 (2000) DLT 804. These judgments relate to the procedural irregularities while filing civil suits in the Delhi courts. In my opinion these judgments do not apply in the present facts and circumstances because of various reasons, foremost of them being that as stated above this arbitration proceeding is not bound by the Civil Procedure code or the Delhi High Court Rules. This proceeding is governed by the INDRP and the Rules and Procedures framed thereunder, INDRP and the rules framed thereunder do not require any such procedural requirement. Moreover the counsel of the Complainant has also submitted again along with his rejoinder an authority letter on the letterhead of the company, duly signed and stamped giving him the power to file and represent the case on behalf of the Complainant. The vakalatnama accompanying the Complaint and the authority letter both are duly signed and stamped. Therefore in my opinion I do not see any irregularity on this ground.



The decision in the case ww.mdiaparentig.iii submitted by the Complainant is not being considered in this case in view of the submissions of the Respondent, in para 16 of his reply, that the decision has been challenged in the Delhi High Court.

The decision in the case No. L-1/IVR1 decided on 5.7.2008 by the Hon'ble Arbitrator Shri Rajiv Singh Chohan, which has been submitted by the Complainant is not being considered in view of the submissions of the Respondent that the decision has been challenged.

(a) **The real issues involved in the dispute**

The Complainant in its complaint has invoked paragraph 4 of the JNDRP which reads

"Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the ICANN Registry on the following premises:

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

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the IC Registry, in compliance with this Policy and Rules diereunder."

Thus Paragraph 4 of die INDRP envisages *i* elements that the complainant must prove to get a finding that the domain name of the respondent be transferred to the complainant or cancelled. It is important to note that in the above para the policy makers have used the word "and" after every element making it mandatory for the complainant to prove all of diem. In view of the pleadings of the parties and the documents submitted lei us examine, whether the complainant has discharged its onus to prove each of the ihree above elements.

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

First of all we will have to examine whether the Complainant has established its rights and interests in die impugned mark. From die submissions and evidences submitted by the Complainant in the Complaint and the additional submissions and evidences in the rejoinder. I am of the opinion that die Complainant has discharged his onus in establishing its proprietary rights in the mark -'agencyfaqs'. -'agencyfaqs!' and **byw.agencyftqs.com** on aecounl to priority in adoption and extensive use. The submissions and the evidences have already been reproduced in the above paragraphs 4 (AJ and (C) of this award.

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On the contrary the Respondent has not been able to provide any evidence of its rights or interests in the mark. It has in its pleadings only submitted that " The Respondent wants to develop the website www.agencyfaqs.in so as to provide information regarding various agencies of goods etc." The Respondent has not given any further evidence in this respect. It is pertinent to mention here that the impugned domain name was registered by the Respondent on 17.2.2005 and till the filing of the complaint (i.e., 2 years after registration) there was no content on the impugned domain name

The Respondent has raised certain objections to the rights of the Complainant on the impugned mark and that the impugned domain name is not confusingly similar and identical with mark of the complainant. The main objections of the Respondent are : -

1. **That the Complainant is not using the website www.agencyfaqs.in since 21.06.1999 as alleged by the Complainant in his Complaint**
2. **That the mark of the Complainant is AGENCYFAQS! which is phonetically and visibly different from the Complainant's mark AGENCYFAQS**
3. **That the word AGENCYFAQS is a generic term and is being commonly used. Therefore the mark is not protected by the Trade marks Act.**

The Respondent has not given any evidence to show any rights or interests in the impugned mark except a bald submission to use the impugned domain name if in the future. As a result it can not be said that AGENCYFAQS or www.agencyfaqs.in is the mark of the Complainant in any way. Therefore in my opinion there is no need to go into the depth of these objections. Even otherwise I find strength in the replies of the Complainant to the above objections which have been given in the above paragraph 4 (C) of this award and have been taken into account from the Rejoinder submitted by the Complainant.

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From the evidences submitted by the Complainant it is evident without doubt that the complainant has been using the mark "agencyfaqs" and the website www.agencyfaqs.com much before the registration of the impugned domain name by the Respondent.

Furthermore I do not find any strength in the argument of the Respondent that AGENCYFAQS is different from AGENCYFAQS! in any way. The cases submitted by the Complainant clearly show that "!" is a special mark and the deletion or addition of the same from the complainant's mark does not create any innovation or does not give any right to the respondent in any way. In my opinion the "-agencyfaqs" and "-agencyfaqs!" are in no way dissimilar. Moreover it is also clear from the policies of NIXI that there is no provision that the special characters such as "!" can be included in the domain name. This means that someone who has a special character in his trademark has to compulsorily register a domain name without the special character. This is a special requirement of the system of internet domain name system. Thus even if the objection of the Respondent is assumed to be correct that the Complainant's mark is "agencyfaqs!" the complaint can in no way have registered www.agencyfaqs.com or www.agencyfaqs.in because of technical restrictions and policies of internet domain name system.

By the evidence submitted by the Complainant and of my own investigations by surfing the Internet I am of the opinion that agencyfaqs is not being commonly used as alleged by the Respondent. On the Internet it is being referred to the Complainant's website. The Respondent has referred to only one instance of registration of www.agencyfaqs.info. It is pertinent to mention that upon investigation I have found that the domain name www.agencyfaqs.info is not currently being used. It is landing on the standard landing or parking page of the registrar Network solutions. Moreover the Complainant has also

submitted the evidence that during the proceeding of this case the domain name www.atencyfaos.info has changed hands.

(it the Registrant has no rights or legitimate interests in respect of the domain name, i.e., www.agencyfaqs.in) and

The second element required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

The burden of proof on a complainant regarding the second element is necessarily light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

Paragraph 7 of the INDRP lists the following methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (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

(fit) 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 Complainant has categorically contended that the Respondent bears no
relationship to the business of the Complainant. The Respondent is neither a
licensee of the Complainant, nor has it otherwise obtained authorization of
any kind whatsoever, to use the Complainant's mark. The Respondent has
nothing to do even remotely with the business of the Complainant. The
Respondent has never been commonly known by the domain name in
question. The Respondent is not at all making a legitimate, non-commercial
or fair use of the domain name.

The Respondent has in its pleadings, evidences and other arguments have no
where claimed to be known by the name "agencyfaqs" nor has it been able to
establish any rights or interests in the mark "agencyfaqs". The only interest in
the impugned domain name that the Respondent has attempted to show is in
para 19 of its reply. In para 19 the Respondent claims that the respondent
wants to develop the website to provide information regarding the agencies of
goods etc. The Respondent has not given any further evidence in this regard.
It is important to note that till the filing of this complaint there was no content
on the impugned domain name and the url www.agencyfaqs.in was forwarded
to the standard webpage of the Registrar Net4. This is evident from the



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Annexure P (page 160) of the Complainant which has not been denied by the Respondent, the webpage has now changed to a different webpage allegedly put up by the Respondent after the filing of the Complaint and has been exhibited at Annexure P of the reply by the Respondent. No other evidence has been submitted by the Respondent to support its intention of using the impugned domain name. It is also pertinent to mention here that along with the written submissions / arguments dated 11.06.2007 the Respondent has attached Annexures E1 to E4 (at page 91 to 259) which gives details about the various domain names held by the Respondent (approximately 50 different domain names), however none of them relates to the present disputed domain name, i.e., www.agencyfaqs.in or the mark agencyfaqs.

The Respondent has not been able to establish any one of the provisions of Paragraph 7 of the INDRP in his favour.

In the above facts and circumstances and because of the reasons explained above, I find that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) the Registrant's domain name, i.e., www.agencyfaqs.in has been registered or is being used in bad faith.

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the [TSDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

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Paragraph 5 of the Rules provides that any one or the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

(i) Circumstances indicating that the registrant has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its 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, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service offered on its Website or location."



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In view of the pleading; and evidences submitted by the parties, I am in the opinion that all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent Registrant is a registration in bad faith.

It is clear from the pleadings, evidences and the discussions and findings above that the Respondent has not registered the domain name for his own use. He has nothing to do with the mark AGKNCYFAQS. There are all evidences and circumstances to prove that he knew about the rights of the Complainant in the mark. He has not used the domain name since February 2005 when he registered the domain name. This makes it evident that he has registered the domain name only to sell it to the Complainant at high value or to the Complainant's competitors.

There are all circumstances and evidence to show that the registrant has registered the disputed domain name www.agencyfans.in to prevent the Complainant from reflecting the mark AGENCYFAQS in the .IN ccTLD. The respondent really knew about the rights of the complainant and still registered the disputed domain name. Further it has already been established that the Respondent has created a likelihood of confusion with the complainant's mark AGFNCYFAQS and is misleading the Internet users for making illegal gains and profits.

Therefore I am of the opinion that the impugned domain name www.agencyfans.in has been registered in bad faith by the respondent.



8. Decision

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name. Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.

As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith and 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.

In view of the facts and circumstances of the case :

- (a) I direct NIXI to immediately transfer the impugned domain name www.agencyfaqs.in from the Respondent to the Complainant

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(b) The Complainant has in its Complaint at para VI (24) has prayed for a compensation of Rs. 75 Lacs to be awarded and further penalties imposed upon the Respondent. The Complainant has also at para VI (25) prayed for costs of Rs. ~~1,00,000/-~~ (Rs. One Lac) towards legal proceedings. However, the Respondent in para 10 of its reply has pointed out that "in view of clause 10 of INDRP Policy the I.d. Arbitrator cannot impose any penalty or compensation and he can only impose reasonable cost of proceedings, as required in the said policy in the para under the heading "Costs" ". I have gone through the relevant provision of the policy and I am in agreement with the Respondent. Therefore I am not going into the aspect of awarding damages and compensation. The Complainant is at liberty to approach appropriate forum to seek the damages and compensation in this regard. As to the costs sought by the complainant I direct the Respondent to pay to the Complainant legal costs of **Rs.30,000** (Rupees **Thirty** Thousand) which have been paid by the Complainant to NIXI for the adjudication of this case and the lawyer's fees upto Rs. 20,000 (Rupees Twenty Thousand) upon production of the evidence thereof.



Namrau Aharvin
Arbitrator appointed by the (.IN Registry)
National Internet Exchange of India