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BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR  
OF  
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

H 793144

In the Matter of: -

Dated: 03/03/2010

Express Publications (Madurai) Ltd.  
(Through its Authorized Representative  
Mr. T. K. B. Venkataraman)  
Registered office at Express Garden,  
29 Second Main Road, Ambattur Industrial Estate,  
Chennai 600 058 ...

COMPLAINANT No. 1

Express Network Private Limited  
Through its Authorized Representative  
Mr. J. K. B. Venkataraman )  
Registered Office at: Express Garden,  
29 Second Main Road, Ambattur Industrial Estate,  
Chennai 600 058 ...

COMPLAINANT No. 2

VERSUS

Vasavi Communications Ltd.  
Registered Office at: 6-3-4, Prem Nagar, Road no. 1, Banjara hills,  
Hyderabad - 500 034...  
(vcommunications@rediffmail.com)

RESPONDENT No. 1

Andhra Prabha Publications Ltd.  
Office at: 6-3-4, Prem Nagar, Road no. 1, Banjara hills,  
Hyderabad - 500 034 ...([ap@andhraprabha.in](mailto:ap@andhraprabha.in))

RESPONDENT No. 2

1. The Parties :

Complainants are Express Publications (Madurai) Ltd. **And** Express Network Private Limited Registered office at Express Garden, 29 Second Main Road, Ambattur Industrial Estate, Chennai 600 058 and Express Network Private Limited.

Respondent are Vasavi Communications Ltd. **And** Andhra Prabha Publications Ltd. Registered office at 6-3-4, Prem Nagar, Road no. 1, Banjara hills, Hyderabad - 500 034



## 2. The Dispute:

The domain name at issue is **<andhraprabha.in>** (the domain name)  
The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi

## 3. Brief Background :

This Arbitral proceeding commenced in accordance with the .IN Dispute Resolution Policy (INRDP) and rules frame there under.

Complainant submitted his complaint in the registry of the NIXI on dated 06.02.2009 and the respondent did not submit at all his reply.

Ms. Deepa Gupta has been appointed as Sole Arbitrator in this matter

It is alleged in the complaint that the complainant is using the name Andhra Prabha on its publishing's since 15<sup>th</sup> August 1938. It is also revealed from the filed documents that the complainant is in the business of editing, proprietorship, printing, publishing, distributing and marketing as print media under the brand name of Andhra Prabha and Aadivaram Andhra Prabha and regularly hosting information on their websites [www.andhraprabha.com](http://www.andhraprabha.com) & [www.apweekly.com](http://www.apweekly.com). This is also not out of context to mention that ample opportunity has been given to the respondent to represent their case before the tribunal.

## 4. Parties contentions :

Dispute concerns the domain name **<andhraprabha.in>**

Registrar with which the domain is registered is Direct Information Pvt. Ltd. (R5-AFIN)

It is submitted by the Complainants that by adopting the impugned domain name, Respondent no. 1 has not only violated the intellectual property rights as vested with the Complainants but has also committed a breach of contract entered into between EPML and Respondent no. 1 herein. Registration of the impugned domain name by the Respondents is done in bad faith as the same is identical to the Complainant's domain name and website i.e., [www.andhraprabha.com](http://www.andhraprabha.com) hosted on 21<sup>st</sup> November 1998 and that the complainant has been publishing a Telugu daily under the title "ANDHRA PRABHA" in the states of Andhra Pradesh, Tamil Nadu and Karnataka since the year 1938.

It is further submitted that EPML has also been publishing a Telugu Weekly entitled "ANDHRA PRABHA ILLUSTRATED WEEKLY" with effect from 15.8.1952 from Hyderabad, Andhra Pradesh.

It is further submitted that it also hosts news items and other articles published in Andhra Prabha Telugu Daily and Andhra Prabha Illustrated Weekly in their websites [www.andhraprabha.com](http://www.andhraprabha.com) and [www.apweekly.com](http://www.apweekly.com). Apart from the afore mentioned web sites, EPML also owns various other websites for hosting the news items published in its Newspapers, details of which are as under:



1. [www.expressbuzz.com](http://www.expressbuzz.com)
2. [www.dinamani.com](http://www.dinamani.com)
3. [www.cinemaexpress.com](http://www.cinemaexpress.com)
4. [www.tamilanexpress.com](http://www.tamilanexpress.com)
5. [www.malayalamvarikha.com](http://www.malayalamvarikha.com)

It is submitted that on 16.2.2005 Complainant no. 2 registered a Domain Name [www.andhraprabha.co.in](http://www.andhraprabha.co.in). Registrations of the aforementioned websites are valid and subsisting WHOIS records filed as **ANNEXURE-D**. Website [www.andhraprabha.com](http://www.andhraprabha.com) commenced and is fully operational since 21/11/1998 and said domain name is registered with Network [Solutions.com](http://Solutions.com).

It is submitted that mark ANDHRA PRABHA is the exclusive property of EPML by virtue of its long and continuous use since the time it was adopted in the year 1938. The name ANDHRA PRABHA is the registered title of the Complainant No.1 having been registered with Registrar of Newspapers for India, New Delhi. Copy of Certificate issued Registrar of Newspapers for India dt.30/8/1995 for Hyderabad centre filed as **ANNEXURE-E**. Copy of the Declaration dated 17.09.2009 filed by Complainant No.1 before the Declaration Authority under the Press & Registration of Books Act in respect of Andhra Prabha, is being filed herewith as **ANNEXURE-F**.

It is further reiterated by the Complainants that they have an enviable presence in India since the time of their inception since the year 1998 & that Website [www.andhraprabha.com](http://www.andhraprabha.com) attracts a large number of visitors every month.

And that in Accordance with the .In Domain Name Dispute Resolution Policy, grounds for the complaint are name, title, mark and brand "Andhraprabha" which exclusively belongs to the Complainant. By adopting domain name <andhraprabha.in>, Respondents not only violated the intellectual property rights as vested with the Complainants but have also committed a breach of contract entered into between the parties herein;

- Respondents have no rights or legitimate interests in respect of the domain name <andhraprabha.in>;
- Domain name <andhraprabha.in> has been registered and is being used in bad faith;
- Domain name <andhraprabha.in> is registered only for the purpose of trafficking.

It is submitted that Respondent No. 1, M/s Vasavi Communications is involved with the Entertainment Industry means of television channels and printing and publishing of Newspapers. It is also submitted that Respondent no. 2 is a sister concern of Respondent no. 1 and that Complainants are unaware of the exact relation between the Respondents.

In 2002, EPML entered into an Agreement dated 26.7.2002 with Respondent no. 1, agreeing to sell, a going concern, proprietary rights as Editors, Proprietors and Publishers of the Telugu daily Newspaper "Andhra Prabha", "Aadivaram Andhra Prabha" (Sunday edition) and the Telugu Weekly Magazine "Andhra Prabha Illustrated Weekly" on certain terms and conditions said agreement herewith as **ANNEXURE G**.



Clauses 2 and 3 of the agreement specifically provided rights transferred in favor of Vasavi Communications Ltd. (Respondent no. 1 herein) would be to the extent of print media rights only. Proprietary rights in television as well as the Internet continued to remain vested with EPML. Thereupon, in accordance Agreement dated 26/7/2002, EPML transferred proprietary rights for said publications, only for the purpose of print media.

Submitted that subsequently a second agreement dated 9.1.2003, entered into EPML and Respondent no. 1, by which it was agreed by the parties that according to the terms and conditions, the contents viz., news items, stories, articles etc. gathered by the staff of the respective party would be made available to each other. The relevant clauses are as follows:

PARTY 1 will make available to the news items, stories, articles etc. relating to Andhra Pradesh, gathered by its staff from year 2003 for publication in ANDHRA PRABHA, AADIVARAM ANDHRA PRABHA and ANDHRA PRABHA ILLUSTRATED WEEKLY on all days other than its publishing holidays.

The PARTY 2 will make available to the I PARTY, news items, stories, articles etc. relating to State of Andhra Pradesh, gathered by its staff from 2003 for publication in The New Indian Express and its website [www.andhraprabha.com](http://www.andhraprabha.com) on all other days other than its publishing holidays."

On perusal of the said agreement, it is evident that with respect to the online publication of news items etc. under the trademark ANDRHA PRABHA always vested with EPML and that the said fact was within the knowledge of the Respondents. Therefore it is once again emphasized that second agreement only reinforces the fact of the right to publish news items etc. only under the mark ANDHRA PRABHA. Any other media apart from print media was always retained by the EPML. Copy of the Agreement **ANNEXURE H**.

Pursuant to the above Agreement, Respondent no. 1 started publication of the Newspapers w.e.f. 14/1/2003. EPML continued to host the news items and other articles on its websites [andhraprabha.com](http://andhraprabha.com) and [apweekly.com](http://apweekly.com). Arrangement was continuing till the end of July, 2008 though as per the agreement the initial term of three years had expired and there was no written renewal of the agreement dated 9.1.03. It is pertinent that by Agreement dt. 09.01.2003 the exchange of news items between EPML and Respondent no. 1 was by a mutual agreement.

Therefore, is submitted that the said Respondent was fully aware of the fact that EPML alone owned the rights to publish news items etc. under the website [www.andhraprabha.com](http://www.andhraprabha.com).

It is submitted that the impugned website [www.andhraprabha.in](http://www.andhraprabha.in) is registered in favour Respondent no. 1. The server is [HAMARASHEHAR.COM](http://HAMARASHEHAR.COM) & the same expires on 23.02.2012. Impugned website is fully operational and is being updated on a day-to-day basis. On a bare perusal of the website, confusion is inevitable as to the source of origin of the website. Trademark ANDHRA PRABHA is being used with impunity. Screen shots of the websites are annexed **ANNEXURE J**





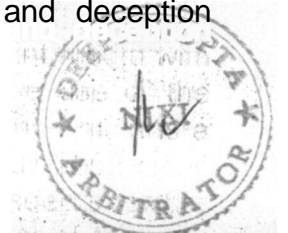
Submitted further that vide letter dated 25.07.2008 it was communicated to EPML that Respondent no. 2, Sister concern of Respondent no. 1 has developed website and that the same would be operational with effect from 01.08.2008 and that in view of the said Respondents would be unable to provide the Complainants with the news from 01.08.2008 onwards. Copy of the said letter dated 25.7.2008 is annexed as **ANNEXURE I**. Upon conducting an enquiry, it came to the knowledge the website as created by Respondents is [www.andhraprabha.in](http://www.andhraprabha.in). The Respondents are not entitled to do so since as per the aforementioned agreements, Respondent no. 1 was permitted to use the title ANDHRA PRABHA only in Print Media. Once again reiterated that pursuant the transfer of the newspaper title "ANDHRA PRABHA" to Respondent no. 1 for limited use in Print Media viz., publishing a newspaper under the title Andhra Prabha, EPML continues to hold the website title [www.andhraprabha.com](http://www.andhraprabha.com).

Further submitted that Complainant no. 1 issued Legal Notice dated 31.07.2008 calling upon Respondents to desist from using the name ANDHRA PRABHA or any variation thereof in respect of any media other than print media as the right over the said Trade Mark as well as the Domain name [www.andhraprabha.com](http://www.andhraprabha.com) vests with the Complainants. Copy of the legal notice 31.07.2008 is **ANNEXURE K**. Despite the Legal Notice, Vasavi Communications Ltd. proceeded to host the website [www.andhraprabha.in](http://www.andhraprabha.in) w.e.f. 5/9/2008 in complete breach of the agreements.

Submitted that the reply dated 27.12.2008 to the afore mentioned legal notice was received by EPML Respondents acceded to the fact that agreement dated 26.07.2002 restricted the Complainants' rights to print media, they however contended that the same was bad in Law and hence void. They also aver that the term of the second agreement was only for a period of three years, since the same has expired, it is not binding on either of the parties. It is pertinent to note that the agreement dated 09.01.2003 was merely an agreement to share news items etc. and the same did not pertain to the transfer of any proprietary rights. It is pertinent that arrangement under the Agreement dt.9/1/2003 continued till the end of July, 2008 as is made clear by the letter of the 2nd Respondent dated 25/7/2008. It is once again reiterated that the transfer of proprietary rights was governed by Clauses 2 and 3 of the agreement dated 26.07.2002. Copy reply dated 27.12.2008 annexed **ANNEXURE L**.

It is most respectfully reiterated that Clause 3 of the agreement dated 26.7.2002 clearly stipulated that Respondent no. 1 would be entitled only to the exclusive use of the titles in dailies, weeklies, journals, books and other publications, which as per clause 2 would be constrained only to the print media. Thus, the proprietary rights other than print media with regard to ANDHRA PRABHA are vested with EPML herein. Therefore, the use of the name ANDHRA PRABHA by the Respondents for the website [www.andhraprabha.in](http://www.andhraprabha.in) is a clear violation of the terms and conditions of the Agreement dated 26.07.2002. It is submitted that the adoption of the mark ANDHRA PRABHA by the Respondents for the website is dishonest and has been done with malafide intentions. In respect of the said violation, the present Complaint is being filed for cancellation/transfer of the domain name [www.andhraprabha.in](http://www.andhraprabha.in).

Respondents in the present dispute have registered the domain name <andhraprabha.in>. Complainants submit that the Respondents are seeking to capitalize on the goodwill associated with the trademark of Complainants and have registered in bad faith and without authorization, the domain name in issue <andhraprabha.in>, which (i) wholly incorporates the word ANDHRA PRABHA and (ii) is identical to the Complainant's trademark ANDHRA PRABHA. Domain name <andhraprabha.in> is identical to the trademark/trading style of the Complainants, thereby making confusion and deception inevitable.

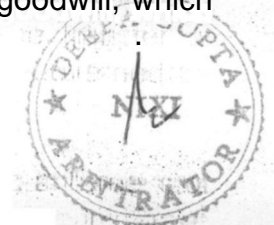


URL of the Respondents, [www.andhraprabha.in](http://www.andhraprabha.in), is identical and confusingly similar to the trademark forming part of the Complainant's URL / website located at [www.andhraprabha.com](http://www.andhraprabha.com). Internet user who wishes to visit the Complainant's site, namely, [www.andhraprabha.com](http://www.andhraprabha.com) for information regarding the Complainant's services, not being completely familiar with the exact web address of Complainant's site, can enter into the address toolbar of his Internet browser, the URL "[www.andhraprabha.in](http://www.andhraprabha.in)" and might be taken to the website of the Respondents instead. Any Internet user who carries out a WHOIS search for <andhraprabha.in> will find that the domain name <andhraprabha.in> stands registered in the name of the Respondents and this would further result in considerable confusion in the mind of such user that the Respondents are in some way connected to or affiliated with the Complainants or that the Respondents are being endorsed/promoted by the Complainants. Domain names and URLs form part and parcel of the 'online' identity of an entity and serve the function of its trade/service mark upon the Internet. In view of this, act of the Respondents in registering a domain name, <andhraprabha.in>, which is identical to and/or deceptively/confusingly similar to that of the Complainant's domain name and URL, severely impinges upon the rights of the Complainants and is, thus, in contravention of the intellectual property rights vesting in the Complainants in respect of its mark ANDHRA PRABHA. In view of this, Complainant's domain name, located at the URL <http://www.andhraprabha.com/>, functions as trademark in the Internet world, as the Complainants provide exhaustive information, advertisements of its services through its said website. No entity other than the Complainants, therefore, has any right or justification to use the word "ANDHRA PRABHA" or a deceptively similar mark, in respect of its domain name/URL.

Complainants submit that the Respondents have no legitimate justification for having registered a domain name incorporating the word ANDHRA PRABHA. Complainant no. 1 issued a Legal Notice dated 31.07.2008 calling upon the Respondents to desist from using the name ANDHRA PRABHA or any variation thereof in respect of any media other than print media as the right over the said Trade Mark as well as the Domain name [www.andhraprabha.com](http://www.andhraprabha.com) vests with the Complainants. Reply dated 27.12.2008 to the afore mentioned legal notice was received by EPML in which though the Respondents acceded to the fact that the agreement dated 26.07.2002 restricted the Respondent's rights to print media, they however contended that the same was bad in Law and hence void. They, inter alia, also aver that the term of the second agreement was only for a period of three years, and since the same has expired, it is not binding on either of the parties. However it is pertinent to note that the agreement dated 09.01.2003 was merely an agreement to share news items etc. between the parties and the same did not pertain to the transfer of proprietary rights. It is reiterated that the transfer of proprietary rights was governed by Clauses 2 and 3 of the agreement dated 26.07.2002

The registration of the domain name <andhraprabha.in> is clearly in bad faith and reeks of mala fide. Bad faith registration is writ large from the fact that the Respondents could have no justification for seeking registration of a domain name of which the word ANDHRA PRABHA is a part. The domain name <andhraprabha.in>, registered in the name of the Respondents is an instrument of fraud and deception, which is causing considerable damage to the Complainants' business interests, apart from prejudicing substantial public interest.

Complainants submit that the unlawful registration of the domain name by the Respondents is resulting in the dilution of the Complainants' trademark/trading style ANDHRA PRABHA. The illegal registration of the above-mentioned domain name is causing irreparable damage and injury to the Complainants' reputation and goodwill, which is unascertainable due to the intangible nature of the goodwill.



## Respondent

Not responded to the Complaint

### Opinion:

#### I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in the domain name in question is identical or confusingly similar to a trademark or service mark in mark in which the complainant has rights.
  2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
  3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint This tribunal is of confirmed opinion that the Complainant has been using the name Andhra Prabha since year 1938 in one form or the other and has made sincere efforts to promote the brand name andhraprabha by consuming various resources available at his end and word andhraprabha has certainly acquired a popular Brand name in the process.

On the basis of the records submitted by the complainant it's proved that the domain name andhraprabha.in is related to the business of Complainant, is being used for purpose and related to his work.

It is confirmed that Complainant is user of name Andhra Prabha and owner of website [www.andhraprabha.com](http://www.andhraprabha.com)

The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

Furthermore, if a trade name is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered name.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Had the full knowledge of pre existence of the domain name he was wishing to be registered. Had the duty to check or understand whether he has rights to register such a name or not when [andhraprabha.com](http://andhraprabha.com) and similar domain names were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes profusely empowers them with the First right to the domain name andhraprabha.in and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.



This tribunal holds that such misuse of the names should be checked in most efficient manner the complainant has tried to prove his good faith and right on the domain name in question should be considered as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he has been is in the business of printing, editing, selling, distributing, of the newspaper under the brand of Andhra Prabha much before the respondent presently.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the media and services provided by the Complainant make this complaint a plausible case of action.

### **Domain name hijacking**

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the compliant was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misrepresentation of the facts related to allegation against the respondent. Further, in support of this the Complainant submitted documents marked as Annexures which amply demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is un colourable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

### **III. Conclusion**

On the basis of the available records produced by the parties, their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove all the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name andhraprabha.in be and is hereby transferred to Complainant with immediate effect.

Given under my hand and seal on this day of 3<sup>rd</sup> day of March 2010.



Deepa Gupta  
Arbitrator