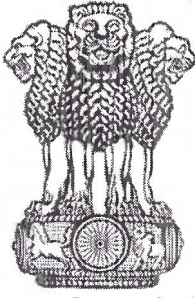


# INDIA NON JUDICIAL

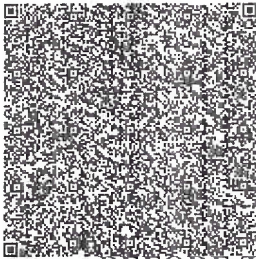
## Government of National Capital Territory of Delhi



सत्यमेव जयते

### e-Stamp

Certificate No. : IN-DL98213707086151Q  
Certificate Issued Date : 31-Oct-2018 02:43 PM  
Account Reference : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH  
Unique Doc. Reference : SUBIN-DLDSLHIMP1701839420814660Q  
Purchased by : JAYANT KUMAR  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : JAYANT KUMAR  
Second Party : Not Applicable  
Stamp Duty Paid By : JAYANT KUMAR  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

Please write or type below this line

IN THE MATTER BETWEEN

Eureka Forbes Limited

Complainant

v.

Ravi Alakatti

Respondent

1

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shciestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## ARBITRATION AWARD

1. The Complainant is Eureka Forbes Limited having its registered office at 7, Chakraberia Road, Kolkata, West Bengal – 700025. The Respondent's details as per WhoIs records are as under:

“Registrant Organization:  
Registrant State/Province: Karnataka  
Registrant Country: IN”

The Respondent's details provided by the Complainant is as under:

Address: 9, Vijaynagar, Bangalore, Karnataka – 560072  
Email: siteravi@gmail.com

The website hosted at the disputed domain name provides [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in) as the contact email address, and the same has also been mentioned by the Complainant in its complaint.

2. The Arbitration pertains to the disputed domain name <aquaguardservicecenter.co.in>, registered on October 2, 2017 by the Respondent. The registrar for the disputed domain name is Godaddy.com.
3. The sole arbitrator appointed in this complaint by NIXI is Jayant Kumar. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence to NIXI.
4. The Complaint was handed over to the Arbitrator by NIXI on August 16, 2018. NIXI send a physical copy of the complaint at the Respondent's address on August 16, 2018; however, the shipment was returned back with the remark “consignee shifted”. There was no other physical address available with the Complainant or in the WhoIs records of the disputed domain name. An electronic

copy of the Complaint was served upon the Respondent at [siteravi@gmail.com](mailto:siteravi@gmail.com) and [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in).

5. An email was received from the Respondent through email [siteravi@gmail.com](mailto:siteravi@gmail.com) who mentioned that he longer holds the disputed domain name and the same has been moved to the account linked with [shashirgowda9336@gmail.com](mailto:shashirgowda9336@gmail.com). No reply was received from the Respondent through [siteravi@gmail.com](mailto:siteravi@gmail.com) or [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in).
6. The Arbitrator then issued Notice vide email dated October 23, 2018 and hold that:

*"As per INDRP Rules of Procedure, "Respondent means the registered holder of .IN domain-name against whom a complaint is initiated.". The WhoIs records, however, does not reveal the name of the Registrant as the name of the Registrant is left blank. The Registrant's address is also not mentioned in the WhoIs records.*

*The website hosted at the disputed domain name provides the contact email address as [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in). The electronic copy of the complaint was served at [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in), [postmaster@aquaguardservicecenter.co.in](mailto:postmaster@aquaguardservicecenter.co.in) and [siteravi@gmail.com](mailto:siteravi@gmail.com).*

*A physical copy the complaint could not be served on the Respondent at the address given by the Complainant in the complaint as the courier agency returned the shipment with remark "consignee shifted". No other address is available.*

*The receipt of the email from is acknowledged whereby the sender stated that the disputed domain name was moved to the account of [shashirgowda9336@gmail.com](mailto:shashirgowda9336@gmail.com) a few months ago. If so, it is the responsibility of the domain name holder to maintain his updated details in the WhoIs records.*

*No reply/response has been received from [info@aquaguardservicecenter.co.in](mailto:info@aquaguardservicecenter.co.in) and [postmaster@aquaguardservicecenter.co.in](mailto:postmaster@aquaguardservicecenter.co.in). A last opportunity is given to the Respondent to file its Reply, if any to the Complaint within five days from today viz. by October 29, 2018. A copy*



*of this email is also marked to [shashirgowda9336@gmail.com](mailto:shashirgowda9336@gmail.com), who is also at a liberty to file its Reply, if any."*

No reply was received till October 29, 2018. The Respondent is therefore proceeded *ex-parte*.

### **Complainant's Submissions**

7. The Complaint states that it is India's leading health and hygiene brand. It had a gross group turnover of INR 29,612 Million for the accounting year 2017-18. It has two flagship brands viz. AQUAGUARD and EUREKA CLEAN.
8. The Complainant has trademark registrations for the mark AQUAGUARD and various AQUAGUARD formative marks including trademark Registration No. 1310241 for the mark AQUAGUARD (Label), Registration No. 1468955 for the mark AQUAGUARD RO (Label), Registration No. 1470453 for the mark AQUAGUARD UV (Label), etc. An exhaustive list of trademark registrations has been provided at page 4-9 of the complaint.
9. The Complainant further states that AQUAGUARD is the flagship water purifier brand of the Complainant and has been conferred with numerous Indian and International awards, which includes Reader's Digest's Trusted Brand, 2012; Bengal's Best, 2011; Business Superbrand, 2011; Superbrand, 2009; UNESCO Water Digest Award; The Frost & Sullivan Environmental Excellence Awards, 2009.
10. The Complainant submits that the disputed domain name <auaguardservicecenter.co.in> is confusingly similar to its mark AQUAGUARD.
11. The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is flagrantly

and prominently using the Complainant's well-known trademarks and is using original photograph, images and other endorsement and marketing material of the Complainant including the images of DR. AQUAGUARD and AQUASURE branded products amongst others and of Ms. Madhuri Dixit, who is the brand ambassador of the Complainant. The Respondent is further alleged to have been using the disputed domain name in connection with services, which are identical to the service provided by the Complainant in respect to its AQUAGUARD branded products.

12. The Complainant submits that the Respondent has adopted and is using the disputed domain name with malafide intention to impersonate itself as an authorized and genuine reseller and service center of the Complainant; misrepresent itself and pass off its unauthorized, spurious and sub-standard products and services as that of the Complainant and to misappropriate the Complainant's reputation, goodwill and customer loyalty for its own wrongful gain.

### **Discussion and Finding**

13. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- a. The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- b. The Respondent has no rights or legitimate interests in respect of the domain name; and



- c. The Respondent's domain name has been registered and is being used in bad faith.

14. The Arbitrator finds that the Complainant has submitted trademark registration certificates for various trademark registrations for the mark AQUAGUARD and AQUAGUARD formative marks, which is a sufficient documentary evidence to establish its rights in the mark AQUAGUARD. The Arbitrator is convinced with the distinctive nature of and the Complainant's ownership in the mark AQUAGUARD. The disputed domain name incorporates the mark AQUAGUARD in entirety and merely adds a descriptive word 'SERVICECENTER' therewith, which is insufficient to differentiate the disputed domain name with the mark AQUAGUARD. The disputed domain name is likely to suggest, to any user visiting the website hosted thereat, that it is authorized/genuine service center of the Complainant. The disputed domain name is therefore held to be confusingly similar with the Complainant's mark AQUAGUARD.

15. Paragraph 7 of the Policy states a Respondent's or a registrant's rights can be found from the material on record, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Complainant has made a strong *prima facie* case that the Respondent has no rights and legitimate interest in the disputed domain, which remains uncontroverted by the Respondent. A perusal of the website hosted at the disputed domain reveals that the Complainant is referring to itself as "AQUAGUARD CUSTOMER CARE AND AQUAGUARD RO SERVICE CENTER". The Respondent is further hosted pictures of the Complainant's products and its brand ambassador and has put all the text hosted thereat with a view of create an impression that the website

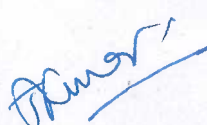


belongs to the Complainant and is an authorized service center of the Complainant. This cannot be construed as a legitimate and *bonafide* offering of services by the Respondent. Based on the above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

16. Bad faith use and registration is therefore evident from the Respondent's attempt to intentionally attract, for commercial gain, internet users to their website and the services offered therein. The Respondent's sole intention appears to be to pass-off its services as that of the Complainant and gain profit by using the Complainant's mark AQUAGUARD and this amounts to bad faith usurpation of the recognition and fame of the Complainant's mark. The Arbitrator accordingly finds bad faith use and registration of the disputed domain name by the Respondent.

### Decision

17. In light of the aforesaid discussion and findings, the Arbitrator directs that the disputed domain name <aquaguardservicecenter.co.in> be transferred to the Complainant.

  
Jayant Kumar  
(Sole Arbitrator)

Dated: October 31, 2018