



தமிழ்நாடு தமில்நாடு TAMILNADU
4/11/1
20.12.2009
D. Saravanan
Arbitrator

M 598270
S.S. SHANMUGA SUNDARI
STAMP OFFICER,
L. No. 257 / 109 / 82
HIGH COURT CAMPUS
CHENNAI

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
•IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: www.axa.in

AXA SA
25 Avenue Matignon
75008 PARIS
FRANCE
RCS (PARIS) No. 572 093 920

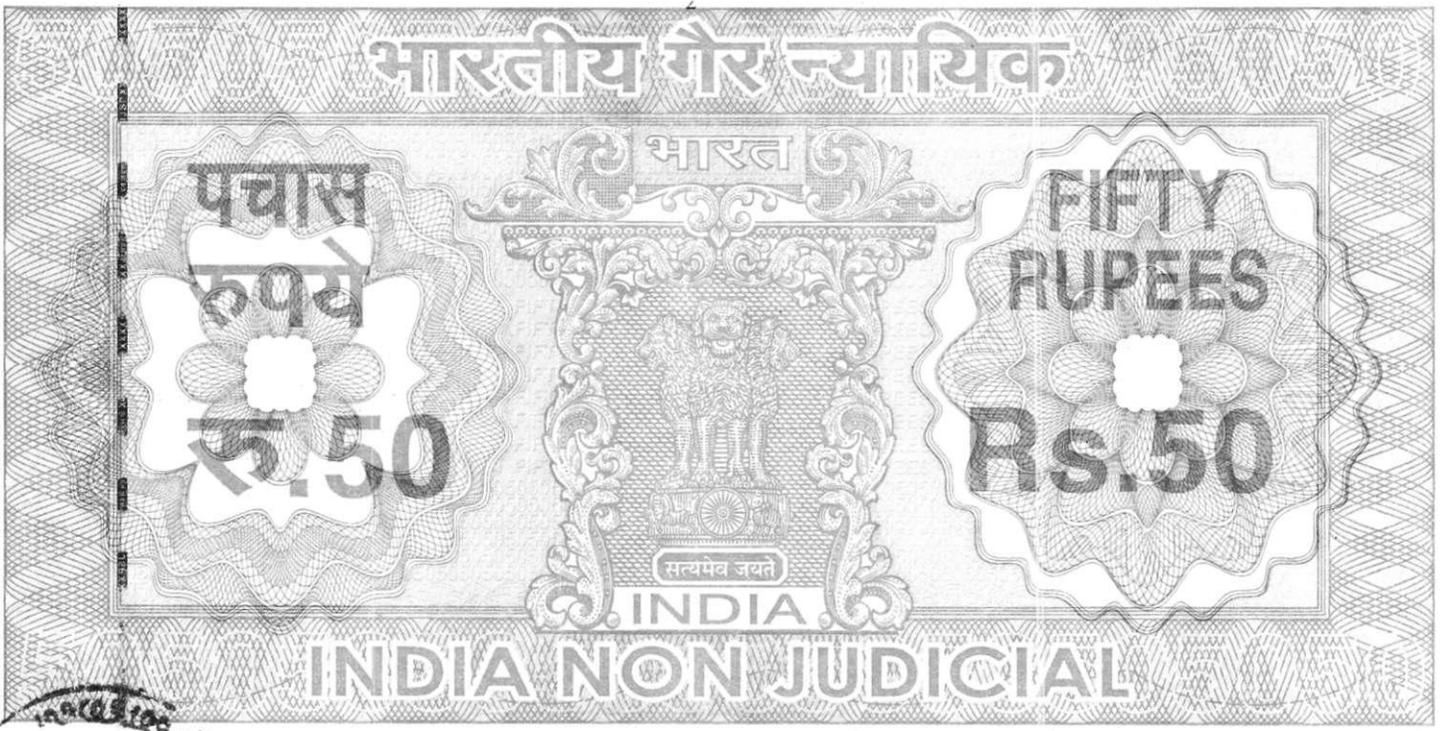
Complainant

Vs.

DRAGON DOMAINS LIMITED
Room 1906
China Insurance Group Building
141 Des Voeux Road
NA Central
HONGKONG

Respondent





TAMILNADU
4142
20.2.2003

D. Saravanan

Arbitrator

L 030562

R. S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L. No. B4/109/88
HIGH COURT CAMPUS,
CHENNAI-600 104. (TAMIL NADU)

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1. The Parties:

The Complainant is AXA SA, 25 Avenue Matignon, 75008 PARIS, FRANCE
RCS (PARIS) No. 572 093 920, Rep. by its Authorised Representative Maitre Patrice
de CANDE.

The Respondent is DRAGON DOMAINS LIMITED, Room 1906, China
Insurance Group Building, 141 Des Voeux Road, NA Central, HONG KONG.
Neither the Respondent represented themselves nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name:
<axa.in>

The domain name registered with .IN REGISTRY



3. Procedural History:

- March 19, 2009 : The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- March 23, 2009 : The Arbitrator has submitted Statement of Acceptance and Declaration of Impartiality And Independence to the .IN REGISTRY.
- March 23, 2009 : Arbitral proceedings were commenced by sending notice to Respondent: through e-mail as per Paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant, Complainant's authorised representative and .IN REGISTRY.
- April 03, 2009 : Due date for filing Response by Respondent.
- April 06, 2009 : Arbitrator sent an e-mail to Respondent notifying their default, a copy of which marked to Complainant, Complainant's authorised representative and the .IN REGISTRY.
- : The language of the proceedings in English.

4. Factual Background:

4.1 The Complainant:

The Complainant is AXA SA, 25 Avenue Matignon, 75008 PARIS, FRANCE RCS (PARIS) No. 572 093 920, Rep.by its Authorised Representative Maitre Patrice de CANDE.

4.2 Complainant's Activities:

Complainant AXA SA is the holding company of the AXA Group, whose main business is in the field of insurances and financial services which is widely known under the trade name AXA. The AXA Group has numerous subsidiaries in many countries around the world and the complainant nowadays a worldwide reputation. In India AXA's distribution network counted 77 agencies and more than 13,000 agents and advisers in 2007 as per **Annexure 3**. The AXA Group is famous for its numerous activities in services like finance, real estate, telecommunications or insurance proposed both to individuals and to business companies.



4.3 Complainant's Trade Marks and Domain Names:

According to the Complainant AXA is the owner of the following trade marks in India and in Asia Pacific, viz., 1) Indian Trade Mark 'AXA' under clauses 35, 36 and 38 as per **Annexure 4**; 2) Singapore Trade Mark 'AXA' under clause 35 as per **Annexure 5**; 3) Hongkong Trade Mark 'AXA' in clause 36 as per **Annexure 6**; 4) Chinese Trade Mark 'AXA' under clause 36 as per **Annexure 7**; 5) Indonesian Trade Mark 'AXA' under clause 36 as per **Annexure 8**; 6) New Zealand Trade Mark 'AXA' under clause 36 as per **Annexure 9**; 7) Australian Trade Mark 'AXA' under clause 35, 36 and 38 as per **Annexure 10**; and 8) International Trade Mark 'AXA' under clause 35, 36 and 39 designating Algeria, Ostrich, Bosnia, Croatia, Egypt, Spain, Hungary, Italy, Morocco, Monaco, Portugal, North Korea, Romania, Russia, St. Martin, Slovakia, Slovenia, Sudan, Ukraine, Viet-Nam, Yugoslavia, Benelux, Switzerland and Liechtenstein as per **Annexure 11**; 9) Community Trade Mark 'AXA' under clauses 35 and 36 as per **Annexure 12**; 10) American Trade Mark 'AXA' under clauses 35 and 36 as per **Annexure 13**; 11) French Trade Mark 'AXA' under clauses 12, 14, 16, 18, 25, 28, 34, 35, 36 and 39 as per **Annexure 14**; 12) Danish Trade Mark 'AXA' under clause 36 as per **Annexure 15**; 13) UK Trade Mark 'AXA' under clause 36 as per **Annexure 16**.

According to the Complainant that their registered trade marks, all over the world, contains the word AXA and their registration are prior to the registration of the disputed domain name on May 16, 2006. The registered trade marks of the complainant are widely used by them and its licensees notably in connection with clauses 35, 36 and 38 of the International classification i.e., insurance services, financial services and telecommunications services.

According to the complainant, they or its subsidiaries is also the owner of the generic Top Level Domains (gTLDs) viz., AXA.COM, AXA-INSURANCE.BIZ, AXA.INSURANCE.INFO, AXA-FINANCIAL.COM, AXA-ASSISTANCE.COM and country code Top Level Domains (ccTLDs) viz., AXA.FR, AXA.COM.HK, AXA.DE, AXA-INSURANCE.COM.HK, AXA.US, AXA.CH, AXA.COM.MX, AXA.PT and copies of the WHOIS of the aforesaid domain names which are all prior to the registration of the disputed domain name, found in **Annexure 17**.



4.4 Respondent's Identity and activities:

The Respondent is the registrant of the Domain Name <axa.in> which is registered with .IN REGISTRY, National Internet Exchange of India, New Delhi. The name of the registrant is referred to as DRAGON DOMAINS LIMITED, Room 1906, China Insurance Group Building, 141 Des Voeux Road, NA Central, HONG KONG as found in **Annexure 1**.

5. Parties contentions:

A. Complainant:

(a) **The Domain Name is identical or confusingly similar to a Trademark or service mark in which the Complainant has rights:**

The disputed domain name wholly incorporates the complainant's distinctive trade mark AXA, which has no particular meaning and is therefore highly distinctive, and as such creates sufficient similarity to be confusingly similar according to paragraph 4(i) of the policy. In this respect, the complainant states that, numerous panels held in previous decisions that confusing similarity is established when a domain name wholly incorporates a complainant's trade mark in its entirety, as per **Annexure 18** in INDRP case No. 18 of 2006. In addition, the complainant states that it must be underlined that the likelihood of confusion is also ascertained because of the notoriety of AXA and its trade marks as per **Annexure 3**. By which, the complainant states that it is undoubtedly established that the disputed domain name is identical or at least confusingly similar to the trade mark and domain names over which the complainant has rights.

(b) **Respondent has no rights or legitimate interests in the domain name:**

According to the Complainant, the respondent does not have any legitimate interest in respect of the domain name in reference on two counts. Firstly, it is crystal clear that the registrant does not have any legitimate interest in using the disputed domain name since the names 'John' and 'DRAGON DOMAINS' do not review any relationship with the word 'AXA' directly or indirectly in any form and that the respondent has consequently neither prior right nor legitimate interest to justify the use of the already well-known and world wide trade mark AXA.



Secondly, the complainant has never licensed or otherwise permitted the respondent to use its trade marks or to register any domain name containing the above mentioned trade marks, therefore there is no relationship whatsoever between the complainant and the respondent and that the respondent has clearly adopted the complainant's trade mark for its own use and incorporated them into their domain name without complainant's authorization. In these circumstances, the complainant states that the absence of any permission by the complainant proves that the respondent has no right or legitimate interest in respect of the disputed domain name.

(c) Respondent has registered and is using the domain name in bad faith:

According to the complainant, the domain name has been registered for the purpose of attracting internet users to the respondent's website, by reproducing the AXA' trade mark and creating a likelihood of confusion between the AXA's trade marks and domain names and www.axa.in. It is obvious that the respondent has registered the disputed domain name having fully aware of the complainant's rights and in fact the complainant is also very well known in Hong Kong where the respondent apparently resides and is the owner of the domain name www.axa.com.hk. Therefore, the respondent must have undoubtedly been aware of the risk of deception and confusion that would inevitably follow when registering the disputed domain name since it could give the impression that its website and the respondent were somehow endorsed by the complainant. The respondent is deliberately trying to divert internet users to a parking website belonging to him as per **Annexure 19**. By clicking on this website's sections, apparently dedicated to job searches, the internet user is diverted to pages which contain various commercial links with no relation to job searches as shown in **Annexure 20**. By which, it is crystal clear that the respondent gains unfair benefits of AXA's reputation, considering that a parking website based on a pay-per-click system. In this regard, WIPO panel constantly found that a domain name which reproduces a well known trade mark which leads to a parking website is being used in bad faith as found in **Annexure 21** in WIPO case No.D2005-0377. As far as the parking websites are concerned, the panel has also qualified the bad faith as per **Annexure 22** in WIPO case No.D2007-0779. Further more, some of these links are related to insurance or financial field as it appears in the website containing disputed domain name as per **Annexure 23**. These commercial links lead to



several AXA's competitors' websites providing insurance services, in which field AXA's trade marks and products are well known. According to the complainant, by clicking on the 'sponsored link' ASSURANCE VIE, one is directed to AXA's competitors' page as found in **Annexure 24**. Further, according to the complainant, there is no doubt that by using the disputed domain name as a parking website, the respondent is intentionally attempting to attract for financial gain, internet users to above mentioned website or other online location by creating a likelihood of confusion with the complainant's trade marks and domain names as to the source, sponsorship, affiliation or endorsement of the registrant's website or location or of a product or service on the respondent's website or location. For these reasons, the complainant states that the respondent registered the domain name having fully aware of the complainant's right on it. The complainant further states that the act of respondent by leading the internet users to the complainant's competitors' website, resulting in deception of the complainant's business and hence the disputed domain name has been registered intentionally and is being used with bad faith by the respondent.

B. Respondent:

The Respondent did not submit any response.

6. Discussion and Findings:

It has to be asserted as to Whether the Constitution of Arbitral Tribunal was proper? and Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on April 06, 2009.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:



- (i) The Respondent's domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trade mark, through out the world including in India being AXA.IN. The Respondent's domain name, <axa.in>, consists of entirely Complainant's trade mark, except ccTLD. Thus, this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <axa.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in this proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does



draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trade mark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trade marks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trade mark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.



iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <axa.in> be transferred to the Complainant.

Dated at Chennai (India) on this 20th day of April, 2009.


(D.SARAVANAN)
Sole Arbitrator