



दिल्ली DELHI

**BEFORE SHRI A.K.SINGH, SOLE ARBITRATOR**

B 228654

In Re:

Complaint:

ShriJadgishPurohit@JadgishPurohit,118/134OldHanumanLane,  
Kalbadevi Road,  
Mumbai-400 002

Email: [adarshgh@rediffmail.com](mailto:adarshgh@rediffmail.com) . . . Complainant

Versus

Christoph Hartmann  
Street 1, Parkstrasse-1.,  
City Brounschweig,  
State/Province-NI,  
Postal Code-D-38102  
Country D.E.


Email: [info@orange8.de](mailto:info@orange8.de) . . . Respondent

## A W A R D

**SUBJECT:- DISPUTE IN RESPECT OF DOMAIN NAME**

**BUSINESS.IN**

Delhi  
Date: 14.07.2006

  
A.K. Singh  
Sole Arbitrator

## **BEFORE SHRI A.K.SINGH, SOLE ARBITRATOR**

In Re:-

Complaint:-

Shri Jagdish Purohit @ Jagdish Purohit,  
118/134 Old Hanuman Lane,  
Kalbadevi Road,  
Mumbai-400 002  
Email: [adarshgh@rediffmail.com](mailto:adarshgh@rediffmail.com) . . . Complainant

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Email: [info@orange8.de](mailto:info@orange8.de) . . . Respondent

**Subject:- Dispute in respect of domain name**  
**Business.in**

### **BRIEF FACTS AS GIVEN IN THE COMPLAINT:**

The complainant Jagdish Purohit filed a complaint to .in registry, National. Internet Exchange of India under INDRP with the request to submit his complaint to arbitration in accordance with the .IN Dispute Resolution Policy and the Rules framed by the .in registry.

The case of the complainant Jagdish Purohit in brief is that he got a trade mark Business registered vide an application bearing trademark no.1183315 dt.17.03.2003 whereupon the Registration



Certificate was issued on 23.08.2005, in Class 34 in respect of the tobacco, raw or manufactured smokers' article, matches, all being goods included in Class 34. He has also stated in his complaint that he,

- (a) Jadgish Purohit has been using his trademark from two years and
- (b) that the respondent has registered domain name, business.in which is confusingly similar to his trademark and
- (c) that the respondent has no trademark on the said domain name and has no affiliation with India
- (d) and that the respondent is well known speculator and has registered the various domain names in the .in registry for which respondent has no right or trademark.

In support of his averments, and to show that the respondent is a speculator, the complainant has given number of domain names, which are stated to have been got registered by the respondent.



The complainant has further alleged that the respondent has no plans to develop the domain names into the business, as his intentions are to sell the domain name either to him or to another organization for profit.

He has further alleged on the strength of Annexure 2A filed along with the complaint that respondent has put up the domain name on parking and is making money by luring customers to the website and tricking them into clicking on Ads.

The complainant has also filed Annexure 2B to show the website that respondent has put up on all the other .in domains registered by him and that the respondent's intentions are to lure customers to his website for profit.

The complainant has thus sought the transfer of domain "business.in" to him.

RESPONSE OF THE RESPONDENT:

The respondent has submitted his response through his attorney Mr. Paul Raynor Keating Esq.

A handwritten signature in black ink, appearing to read 'P. R. Keating', is written over the text of the respondent's response.

The respondent has stated in his reply that to prevail, the complainant must establish all of the following:

i) the Registrant's domain name is identical or confusingly similar to a name, trademark or services mark in which the complainant has rights;

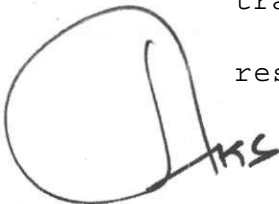
ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

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

The respondent has also submitted that the burden of establishing each of the above fact is on the complainant.

The respondent case is that the complainant has failed to establish the appropriate grounds under any of the above requirements.

In respect of his submission that the domain name is not identical or confusingly similar to a trademark in which complainant has right, the respondent has kept his line of arguments as under:



The certificate is not issued in the name of the complainant, the certificate is issued in the name of Jagdish Purohit while the complainant is Jagdish Purohit and there is nothing on record to show that both the names are of the same persons.

The certificate filed as Annexure 1 (a) by the complainant refers to Annexure which has not been filed by the complainant and that same is required to find out whether the mark is a word mark or a graphical or design mark. The respondent case is that, if it is graphical or design mark, it is to be seen how it is confusingly similar to the domain name, which is only depicted in words.

The certificate has endorsement that it shall not be used in legal proceedings or for obtaining registration abroad in view of the provisions of Rule 62 framed under the Trademark Act.

The trademark held by the complainant is not a word mark but is rather stylized, as the certificate describes it as "Business" and thus the trademark in question is a graphical or design mark and not a mark plain text; format.

A handwritten signature or initials 'KS' is written inside a hand-drawn circle. The signature is in black ink and appears to be 'KS'.

It is also the case of the respondent that fanciful marks like Xerox or Cocacola are strong marks and generic or descriptive terms are extremely weak and the weak marks entitle the holders to very few, if any rights.

The rights granted to the holder of the registered trademark are limited by the Section 28 of the Indian Trademark Act and the trademark may be used only in relation to the goods or services in respect to which the trademark is registered and in this case the complainant trademark is limited to tobacco, raw or manufactured, smokers' article, matches.

Relying upon to the Annexure-1, filed along with the response, a decision of Administrative Panel of WIPO Arbitration Mediation Centre in case, "Gorstew Limited Vs. Worldwide websales.com", the respondent has submitted that the comparison between the domain names and the complainant's marks must be based on the overall impression given by the marks and the domain names. The respondent has thus stated that there is a difference between the word "Business" and the simple word "business" and thus complainant has miserably failed to prove that the



domain name is identical or confusingly similar to a trademark in which complainant has right.

The second submission of the respondent is

- (a) It is the duty incumbent upon the complainant to establish that the respondent does not have rights or a legitimate interest in the domain name.
- (b) The term business is generic and is widely used in its descriptive sense.
- (c) The Respondent registered domain name because of its generic nature and has constant interest in it.
- (d) He has established business involving other generic terms that do not serve as trademarks but rather are used in a manner consistent with the definitional of such domain names.
- (e) The respondent is not using the domain name as a trademark but rather in furtherance of its many descriptive meanings, a use which is expressly protected under Section 35 of the Act

*Dihs*



and which actually precludes obtaining trademark protection.

(f) Relying upon the judgements filed as Annexure "5", Annexure "6", Annexure "7" and Annexure "8" with the response, the respondent has submitted that the mark is more generic and descriptive than the domain name and thus respondent's use is also generic and non-infringing.

(g) The domain name portrayed an "under construction" notice, does not support a conclusion that respondent has no legitimate interest in the domain names.

(h) The respondent on the strength of few decision of the WIPO has tried to project that common words and descriptive terms are legitimately subject to registration as domain name on a "First come, first serve" basis and that the respondent has been undertaking substantial efforts to develop into a portal for business interest providing relevant references and information to internet users.

The respondent in support of its contentions that there is no evidence of "bad faith", has



submitted that assertions of the complainant are mere speculation and unworthy of consideration. He has tried to show on the strength of few decisions of WIPO that holding of generic domain names for sale has long been recognized as a legitimate right and cannot be considered as act of bad faith. The respondent has also referred to the decision of WIPO filed as Annexure 1 based upon the UDRP wherein it was held "cyber squatting is a peculiar behaviour, cyber speculating clearly is not".

The respondent has not disputed that he owns the domain names as given by the complainant in his complaint but states that he does not have the interest in selling the domain name to complainant or anyone else. The respondent case is that the complainant has not provided any finding of bad faith or the complainant's statement does not establish that the respondent has registered or acquired the domain name in violation of Rule 6 of INDRP.

His submissions are that domain names got listed by him are to provide informations in various fields and each of these uses is legitimate and in accordance with the definition of the generic term.

A handwritten signature or set of initials, possibly "JMS", enclosed within a hand-drawn circle.

The respondent has further submitted that there is no trickery or subterfuge. He has submitted that he earns money from advertisers who provide the informational links and it is not evidence of bad faith. His case is that if such were a policy, no .IN domain name webpage could offer advertising. According to him WIPO has recognized that the use of generic domain names to provide advertising is a legitimate use.

He admits that out of use of generic domain names he earns profit but claims that it could not be treated a finding of bad faith as businesses are intended to generate profit. The respondent case is that the essence of INDRP is to protect trademark holders from illicit use of their trademark by third party. To establish it, only existence of trademark is not sufficient. Other conditions like bad faith on the part of the respondent should also be proved. According to him it would require some attempt by the respondent to profit from the trademark owner's use of its trademark. The respondent further states that he had no prior knowledge of complainant or its mark and he registered the domain name after it became available for registration by members of the public and after the exclusive registration period for trademark holders had lapsed and there is no obligation on his part to perform a trademark



search. The respondent has relied upon a decision of WIPO passed in a case filed by him Annexure 11.

The respondent further submits that there is no evidence that by using the domain name he has intentionally attempted to attract internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source sponsorship, affiliation or endorsement of the registrant's website etc. The respondent has given the reference of Rule 7 of INDRP and has claimed that the evidence noted above establishes demonstrable preparation of use.

The respondent on the strength of above submissions has claimed that the proceedings should be decided in his favour.

He has also brought to the notice of the arbitrator that the complainant has initiated similar INDRPs against the third party. In each such instance, the complainant has claimed that a generic and descriptive domain name infringes upon the trademark rights. He has brought to the notice of the arbitrator that the complainant has got registered a trademark, "JOBS", for tobacco, raw or manufactured (SIC), smoker's articles, matches



included in Class-34. His case is that complainant conduct indicates:

- a) Either he is amongst the foremost manufactures of tobacco products bearing generic names
- b) Or he has actively engaged in reversed domain name highjacking using clearly fraudulent means to obtain domain name to which he is not entitled.

His allegation is that the complainant is engaged in reversed domain name highjacking. He has relied upon a decision passed by WIPO in case of "Asphalt Research Technology .Inc. Vs. National Press and Publishing, Inc." The respondent has alleged that there is no requirement for him to affirmatively state the matter set forth in INDRP procedure Rule 3(b)(3).

REJOINDER FILED BY THE COMPLAINANT:

The rejoinder to the response was submitted by Mr.Jagdish Purohit. In the rejoinder the name of the complainant is given as Mr.Jagdish Purohit. On the



bottom of the rejoinder in the hand writing the name Jagdish Purohit is mentioned and he has also signed as Jagdish Purohit.

In para no.2 of the rejoinder he has mentioned the name of the complainant as Jagdish Purohit He has also stated that it was typographical mistake in the complaint. It can be safely presumed that the complainant name is "Jagdish Purohit" and the word "Jadgish" as mentioned in the complaint was a typographical mistake.

In the rejoinder the complainant has given his background as a politician, social worker. He also claims to maintain various reputed online Indian Websites.

The complainant has submitted that the respondent has not acquainted himself with the INDRP, the Rules and policy of the NIXI and the Rules and policy of the Registrars and is relying upon certain cases and the policies wh:ch have no relevance to this case.

The complainant has stated that the respondent in his reply has not quoted the actual wording of Rule 4 of INDRP. His case is that the burden of proof as per Rule 4 is not upon the complainant. The



complainant submits that respondent is not referencing the INDRP but is referencing to UDRP. His case is that INDRP does not put the burden of proof of any of the clauses of Rule 4 upon the complainant and on the contrary it is respondent who must prove that it does not violate any of the above and must present evidence and convincing arguments to support the same. His case in nutshell in the rejoinder is that it is not the responsibility of the complainant to prove the non-compliance but rather the responsibility of the respondent to prove that they are compliant. He has submitted that the references given by the respondent of WIPO cases are governed by UDRP and they reference rules, which do not exist in the INDRP. The complainant has given the reference of Rule 3 of INDRP and has stated that it provides that it is registrant's responsibility to determine whether the registrant domain name registration infringe or violate someone else rights.

The complainant thus relying upon the Rule 3 of INDRP has submitted that the registrant is responsible while registering the domain name to ensure that they are not infringing upon the rights of any third party.



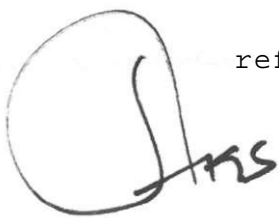
Relying upon the Clause (d) of Rule 3, the complainant has submitted that the registrant was knowingly in violation of INDRP and .IN domain registration regulations and Indian Trade and Merchandise Act.

The complainant has further submitted that the respondent has violated the above rule and as such it is a ground for cancellation of the domain name as per .IN Registry guidelines.

The complainant has further submitted that Clause 8.1 of General Representation and Warranties of Domain Registration Services Agreement, specifically provides that the direct or indirect use of registered domain name should not violate or infringe any right of any third party.

The complainant has drawn my attention to Section 15 of the said agreement, which empowers Registrar to suspend, cancel or transfer the registered domain name and any services in the event of any breach of the agreement.

The complainant has further submitted that the respondent is trying to confuse the matter by referring to the policies relating to .com.





The complainant has submitted that UDRP is different from INDRP and INDRP policy is the only guiding document that must be referred while deciding a .IN domain disputes.

The complainant has further referred to the policy on the registry website at <http://www.inregistry.in/policies/advisory/LA01> and has tried to project the relevant portion of the advisory issued by the .IN registry whereby the Registrar were advised to resist involving themselves or through there resellers in any way in the squatting, grabbing, hoarding, auctioning or selling of the .IN domain name at a higher price then they are regularly charging from the public.

The complainant has submitted that the respondent has clearly registered several .IN domain name for the sole purpose of selling them.

The complainant has further submitted that reference of other arbitration proceedings by the respondent should be treated as "Bad Faith".

The respondent has stated that there were typing mistake in the complaint regarding his name which Is Jagdish Purohit.

A handwritten signature consisting of a large, stylized letter 'J' followed by the letters 'K' and 'S' in a cursive script.

The complainant has further submitted that the argument of the respondent that the Annexure attached to the certificate is not provided is baseless and without a certificate copy how the respondent proceeded with the argument in his reply.

At this juncture, it was appropriate to point out that the respondent plea is that the Annexure is not attached but only copy of certificate of trademark is supplied. The complainant has supplied the copy of the certificate of trademark and not Annexure even as per the documents supplied to the Arbitrator.

The complainant has further submitted that the plea of the respondent that the certificate of registration shall not be used in legal proceeding or for obtaining registration abroad is of no help to him.

The complainant has further stated that Annexure 04 shows the word as "Business".

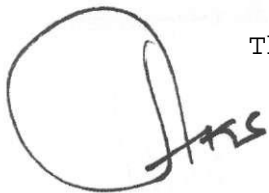
However perusal of Annexure 04 shows that the word mark is "Business". So as the search was made for the word mark "Business".



The plea of the complainant is that .IN sunrise policy rules do not make any difference between the graphical mark and textual mark. His submission is that for the purpose of domain name registration, owning a registered trademark is sufficient and in this regard he has relied upon Annexure 5, (WIPO over view of WIPO Panel views of selected UDRP questions).

The complainant has further submitted that graphical logo does not in any way impede the rights of the party on the textual representation of the trademark. He has also submitted that allegations of the respondent that the mark is stylized and the letters are intentionally mishappen is baseless. The complainant has further submitted that any lay person looking at a graphical version of the logo will clearly see that it spells out the word "business" and thus there is no scope of confusion.

It is also a case of the complainant that granting of trademark by the registry establishes his right in that particular brand name. He has further submitted that only because the registered trademark is an English word it has not in any manner weaken the rights of the complainant therein. The complainant has alleged that he has been using



the mark since 01.03.2001 and applied for it on 17.03.2003 and after all formalities, mark was got registered.

The complainant submits that he wants his own country domain to run the website of his product. The complainant has relied upon the Annexure-6, 7 Annexure-7, Annexure-8, Annexure-9, the decision passed by arbitrators of WIPO wherein the .domain name were adjudged confusingly similar to a trademark.

The complainant has thus submitted that registrant domain name is identical or confusingly similar to the trademark of the complainant.

The complainant has further stated that as per the INDRP, the burden is not upon the complainant to prove that respondent does not have rights in the domain name. The complainant has stated that respondent has failed to prove any legitimate interest in the domain name "BUSINESS.IN".

The complainant has further submitted that simply because it is a word in dictionary does not mean that it becomes Generic. He has further submitted that the respondent assertion that the word "business" is a Generic word has no



relationship or relevance with the INDRP rules. He has referred to Rule-7 of INDRP policy to show the tests that should be applied to determine whether registrant has right to the domain name.

The complainant has further submitted that the word "business" with .in represent annexed with India and as such cannot be taken to be a Generic word. He has further submitted that the respondent as on the date does not have any online website that has any business interest with India.

The complainant has further alleged that though the domain name is registered for last about one year, the website had only a page that listed domain name for sale.

The complainant has brought to the notice of the arbitrator that through their vendors he corresponded with the respondent for the purchase of various domain names. The said communication he states to have annexed as Annexure-10 and further states that the intention of the respondent is to sell the domain name for profit.

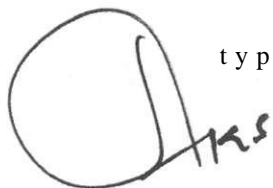


The complainant states that respondent had registered over fifty (50) .IN domain names on the first day of opening of registry and intends to sale ail of them for more than 10,000 euro each. The complainant has given the details of the various domain name which are stated to be got registered by the respondent on the first day of the launch of the .IN registry in para no.47 of the rejoinder and has mentioned that except one domain name while the respondent has sold, these domain names have been parked for selling them.

The complainant has brought to the notice of the arbitrator Annexure-11 a conversation, which took place between few of German Nationals who have been speculating how to sell the domain names. It is stated that one of them is respondent.

The complainant has also brought to the notice of the arbitrator Annexure-I2 to show that respondent is actively engaged in the business of buying and selling domain names.

The complainant has referred to a decision of WIPO and has filed Its copy as Annexure-13 wherein it was held that the respondent history as a strong typo-squatter creates a strong presumption that the



respondent registered and used the disputed domain name in bad faith.

The complainant states that the current action pertaining to "BUSINESS.IN" clearly demonstrate respondent intentions and all his actions demonstrate bad faith.

The complainant submits that simply because domain name is registered on "first come first serve basis" does not mean that the person who is registering them has right to them.

The complainant case is that it is not ability to register domain name which is to be looked into but as to whether the respondent has right to domain name is also to be looked into.

The complainant submits that parking a domain name and putting automated advertisement on the same is not considered as a legitimate usage of the domain name. The complainant has relied upon four decisions of WIPO annexed as Annexure 13, 14, 15 and 16 in support of his contention. He has further stated that in view of the rule 7 of INDRP, the respondent has failed to prove the usage of the said domain name or that the respondent is commonly known



by the said domain name and thus has stated that respondent domain name "business.in" is confusingly similar to the trademark of complainant "Business" and as such the complaint be adjudged in his favour with cost.

The respondent has not reverted the averments of the complainant made from para no.45 to 50 of the rejoinder wherein the complainant has stated and brought to the notice of the arbitrator that respondent is indulged In selling the domain name for profits.

The respondent has only sent "Whois" information regarding generic names held by the complainant. By these documents placed on record by the respondent, it is brought to the notice of the arbitrator that the domain name car.in, hotel.in, gold.in, webhosting.in, chat.in, server.in, mumbai.in, hyderabad.in, bombay.in, adult.in, adults.in are got booked by the complainant and they are also the Generic word.

The complainant has also not placed anything on record to revert to these documents.





INDRP in its clause 4 describes as to which types of dispute may result into domain name conflicts. The complaint may be filed, if in respect to the domain name registered, following is found:

- i) the Registrant's domain name is identical or confusingly similar to a name, trademark or services mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- iii) the Registrant's domain name has been registered or is being used in bad faith.

The clause 6 of the said policy prescribes as to what constitutes evidence of the registration and use of a domain name in bad faith. The same is reproduced below:

- i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service



mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket directly related to the domain name; or

ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or

iii) by using the domain name, the registrant has intentionally attempted to attract internet users to the registrant's website or other on-line location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

Clause 7 of the said policy indicates the circumstances to show registrant's rights to and legitimate interests in the domain name. The same are given infra:



- i) before any notice to the registrant of the dispute, the registrant' use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide 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
- iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Initially the stand taken by, the complainant was that decision given by the WIPO Arbitration and Mediation Centre are not applicable as they are based on UDRP and are not in accordance with INDRP. However, in the rejoinder, he himself has relied upon the decisions passed by the WIPO Arbitration and Mediation Centre and has also relied upon the



WIPO overview of WIPO views of selected UDRP questions.

In view of the material placed before me by the respective parties and law settled from time to time my observations are as follows:

The domain name "business.in" is similar to the word business in respect of which complainant holds a trademark.

The respondent has got registered number . of domain names, at the time of opening of .IN registry. This has been done obviously by taking benefit of the fact that .IN registry being in its initial stage, couldn't presume such practice would be adopted by the people and as such did not make any rule to restrict registration of the domain name especially generic in nature. It was the duty incumbent upon the respondent to prove on record that it has right or legitimate interest in respect of the domain name especially when the complainant has made specific assertion in his rejoinder, that the registrant is indulged in the business of parking and selling the domain name. Instead of denying categorically or giving any explanation to the averments made in para no. 45, 46, and 47 of the rejoinder, the respondent came forward with the



documents to show that the complainant had also got registered number of domain names, which are of generic nature.

Thus, the respondent has failed to prove that he has legitimate interest in respect of the domain name.

The /Annexure filed, as Annexure 10, 11 and 12 with the rejoinder, would show that the respondent is engaged in the business of buying and selling domain names. Despite, the specific assertion and these documents on record, respondent has failed to place anything on record to prove contrary.

The respondent has failed to fulfill the requirements of Clause 7 of INDRP.

Thus, it is clear that the respondent is neither having any legitimate interest in the domain name nor have brought on record the material to show that it was not got registered in bad faith. On the contrary, the complainant has brought on record the documents to show that the domain name was got registered in bad faith and is confusingly similar to a name/trademark in which the complainant has right.



The next question for determination arises, whether the said domain name should be transferred to the complainant as has been requested in the complaint. The trademark "Business" is got registered by the complainant in Class-34 for tobacco, raw or manufactured smokers' article, matches, ail being goods included in Class 34.

The respondent in its reply has brought to the notice of the Ld.Arbitrator that the complainant has also got registered another trademark "jobs" for tobacco, raw or manufactured smokers' article, etc.

It has also come to the notice of the arbitrator that the complainant has got registered another trademark by the name "Internet" for tobacco, raw or manufactured smokers' article, etc.

The complainant has made a request in the complaint to reverse the domain name.

It is the settled law that mere filing an application for registration of a trademark, its advertisement in trademark journal and other formalities confirms no right on the applicant

(2002) II AD (Delhi) 223.



The above trademarks which the complainant has got registered are common words, dictionary meaning and are extensively used. They are generic words meaning thereby that they are available to anyone and cannot be a right exclusively on an individual.

The section 9 and 32 of the Trademark Act prohibits use and registration of trademark consisting common and/or generic word. To acquire exclusive right to use generic words like "business", "jobs" or "internet", the complainant must show that the words had acquired secondary meaning before registration or after registration and he has acquired reputation or goodwill in them or that he is known or recognized by that in or outside market. He must show that he has acquired these by using them extensively. He should also prove the length and extent of sales, advertisement, consumer services areas, media recognition.

There is nothing placed on record in this regard. It is strange as to why these generic words which have no relationship with products of trade mark chosen by the complainant.

Delhi High Court in the matter World Cup ICC Development (International Limited) Vs. Arvee Enterprises, reported in 2003(7)AD Delhi 405 held



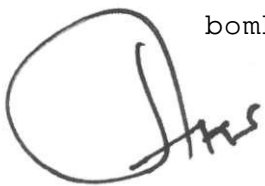
that the generic word have dictionary meaning and are neither specific nor special, they are neither brand name and nor have any protection or trademark.

Same principle is adopted by Delhi High Court in the case titled as Shri Vijay Ahuja and Smt.Lalita Ahuja, 2002(95)DLT-3 and 2002(97)DLT-1.

The only stand of the complainant in support of his case is that he has legitimate trademark in India. Interestingly, the complainant in the rejoinder has given his background. He is a "Hotliar" and a "Politician". He does not anywhere say that he is running a business for tobacco or like product. Holding of three "Trade Marks" for tobacco and like products by the complainant presupposes that he should be a big businessman of these products. However, there is nothing on record.

Not only this the respondent has informed that the complainant has got registered the following domain names, which consist common and generic words:

car.in, hotel.in, gold.in, webhosting.in,  
chat.in, server.in, mumbai.in, hyderabad.in,  
bombay.in, adult.in, adults.in





The above shows that the complainant is not as clear as he claims.

It appears to be a case where both the complainant and the respondent floats in the same boar. There is no reason assigned as to what tempted complainant to get these domain names registered especially when he alleges that the respondent is a squatter and has got registered number of domain names for the purpose of selling them in the market. The complainant conduct also does not appear to be above the board.

It appears to be a case where both the parties are taking benefit of the drawbacks in the policy formed for National Internet Exchange of India (NIXI) and have got registered number of domain names of generic nature for the purposes which are apparent. The complainant's registration of trademarks for three generic names, "business", "internet", "jobs" for the "tobacco products" without even a single averments either in the complaint or in rejoinder that he is a businessman dealing in these products shows that the trademarks were got registered with a planning, using common and generic words for obvious reasons.



In view of above, I hold that the respondent is not entitled to continue with the domain name, "business.in" and the NIXI is directed to immediately cancel it and forfeit it.

The prayer of the complainant to transfer this domain name to him is rejected in view of the discussion made above.

At this stage, it is my duty to bring to the notice of the NIXI what I have observed during these proceedings. Taking benefit of loopholes in policies of NIXI, a practice has been adopted by such registrants to get registered the domain name using generic and common words. They know about their value and as such are playing havoc with the system. Registration of more than 50 domain names, that is too by using all common and generic words by the respondent on the first day and number of other domain names using generic words by the complainant, project alarming situation. They have taken benefit of drawbacks in the policies of NIXI. Such persons who got booked number of domain names using generic and common words deprive those who actually require them. NIXI is formed to help to public at large and not to provide platform for earning easy money to squatters.



NIXI should immediately take steps to stop squatters to defeat objects for which it was constituted and given responsibility of managing affairs of .in. Rules in this regard may be made immediately and their compliance may also be ensured.

Reference is decided accordingly.



A.K. Singh

Sole Arbitrator

Delhi

Date: 12.07.2006