

Bond



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Haryana Government**



Date :30/11/2018

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Stamp Duty Paid : ₹ 101
(Rs. Only)

Penalty : ₹ 0
(Rs. Zero Only)

Deponent

Name: Rachna Bakhru

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

District : Gurugram

Landmark : Na

State : Haryana



Purpose : AFFIDAVIT to be submitted at Other

RACHNA BAKHRU

ARBITRATOR

Appointed by the .IN Registry – National Internet Exchange of India

In the matter of:

Equifax Inc.
1550 Peachtree Street NE
Atlanta, Georgia 30309
represented by Douglas M. Isenberg, Esq.

...Complainant

Nikhlesh Kunwar
RDIT Services Pvt. Ltd.
23, Chakrata Road, Rgm Plaza
3rd Floor, Dehradun, 248001
Uttaranchal, India

...Respondent

Disputed Domain Name: <WWW.EQUIFAX.ORG.IN>

AWARD

1) **The Parties:**

The Complainant in this arbitration proceeding is Equifax Inc., headquartered in Atlanta Georgia (USA). The Complainant is represented by its authorized representative, Douglas M. Isenberg, Esq of The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC.

The Respondent in this arbitration proceeding is Nikhlesh Kunwar of RDIT Services Pvt. Ltd. at 23, Chakrata Road, Rgm Plaza 3rd Floor, Dehradun, Uttaranchal - 248001 India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) **The Domain Name, Registrar & Registrant:**

The disputed domain name is <www.equifax.org.in>.

The Registrar is Endurance Domains Technology LLP (R173-AFIN).

The Registrant is Nikhlesh Kunwar of RDIT Services Pvt. Ltd. at 23, Chakrata Road, Rgm Plaza 3rd Floor, Dehradun, Uttaranchal-248001 India.

3) **Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru 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 Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The complaint was produced before the Arbitrator on October 09, 2018 and the notice was issued to the Respondent on October 11, 2018 at his email address with a deadline of 10 days to submit his reply to the arbitrator.
- The Arbitrator received emails from the Respondent on October 09, 2018 and October 12, 2018 stating that he is only the website developer and not the website owner of the disputed domain name and further provided contact details of the website owner.
- The Arbitrator reviewed the records as available on the whois database and noted that the Respondent is the rightful owner of the disputed domain name. This fact was confirmed by NIXI as well. Therefore, the Arbitrator issued another notice to

the Respondent via email dated October 24, 2018 granting another opportunity to submit its response on or before October 31, 2018.

- The Arbitrator received email responses dated October 24, 2018 and November 01, 2018 from the Respondent stating that he is not the owner of the disputed domain name.
- The Arbitrator thereafter granted one last and final opportunity to the Respondent and sent email on November 05, 2018 directing the Respondent to share the Complaint with the alleged owner of the website and submit a response by November 15, 2018.
- The Arbitrator received a response from the Respondent on November 05, 2018 enquiring if the arbitrator is keen to purchase the domain name and enquired about the purchase quote.

In view of the above, since the Arbitrator did not receive any formal written submissions/evidence from the Respondent in support of his claims, therefore, the complaint is being decided based on materials and evidence submitted by the Complainant and contentions put forth by them.

4) **Summary of the Complainant's contentions:**

The Complainant in support of its case has made the following submissions:

- a) The Complainant is a leading global provider of information solutions and human resources business process outsourcing services for businesses, governments and consumers. The Complainant was originally incorporated under the laws of the State of Georgia (USA) in 1913, and its predecessor company dates back to 1899. The Complainant operates or has investments in 24 countries in North America, Central and South America, Europe and the Asia Pacific region. The Complainant employs 10,400 people worldwide.
- b) The Complainant is the registrant of the domain name <equifax.com>, which was created on February 21, 1995. Complainant uses the domain name <equifax.com> in connection with its primary website.
- c) The Complainant has prevailed in numerous proceedings under various domain name dispute policies for domain names that are identical or confusingly similar to the EQUIFAX Trademark, including the INDRP, other ccTLD policies (including for .au, .es, and .us), and the UDRP including transfer of <equifax.in>.
- d) The Complainant or its affiliates own 204 trademark applications or registrations in the United States and around the world for marks that consist of or contain the word "EQUIFAX," which was first used in commerce and registered in 1975 as a trademark in USA. In India, the Complainant is the registered proprietor of the EQUIFAX trademark since October 1996.
- e) The disputed domain <equifax.org.in> was registered in the name of Respondent since April 06, 2016. The said website states that it helps customers "*identify cost*

effective solutions to increase business performance and ensure that you meet and exceed your business needs."

- f) The Complainant sent letters to Respondent regarding the Disputed Domain Name on July 22, 2016, September 01, 2016 and December 07, 2017. The Complainant's legal representative in India spoke with the Respondent telephonically on June 01, 2017 and August 16, 2017. Although, the Respondent stated that it would resolve this dispute, it has failed to do so.
- g) The Complainant contends that the Disputed Domain Name contains the EQUIFAX Trademark (and *only* the EQUIFAX Trademark) in its entirety. The disputed domain name wholly incorporate the prior registered EQUIFAX trade mark of the Complainant. The disputed domain name is identical or confusingly similar to the EQUIFAX trademark for purposes of the INDRP.
- h) The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the EQUIFAX Trademark in any manner. The Respondent has never used, or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. The Respondent is using the Disputed Domain Name in connection with a website stating that it helps customers "*identify cost effective solutions to increase business performance and ensure that you meet and exceed your business needs.*" The Complainant contents that such use is not bonafide under the Policy.
- i) The Complainant contends that the Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name. The Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain misleadingly to divert consumers or to tarnish Complainant's EQUIFAX trademark. The Complainant states that rather Respondent is clearly making a commercial use of the Disputed Domain Name by offering what it describes as "*cost effective solutions*" to its customers.
- j) The Complainant contends that the Disputed Domain Name should be considered as having been registered or being used in bad faith by the Respondent. The Complainant first used the EQUIFAX Trademark 43 years ago and is protected by at least 204 trademark applications or registrations in the United States and around the world, including at least three in India (the first of which was registered in India 22 years ago). Given the long time use and global protection, it is inconceivable that the Respondent was not aware about the popularity of the mark [EQUIFAX] at the time of registration of the impugned domain name, given the popularity of the mark. The Complainant's EQUIFAX trademark pre-dates Respondent's registration of the Disputed Domain name by 41 years including 20 years in India. The registration of the identical Domain Name with actual knowledge of the trademark holder's rights is strong evidence that the domain name was registered in bad faith.



5) **Respondent:**

The Respondent has not filed any official response dealing with the contents of the Complaint despite three opportunities. The complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.

6) **Discussion and Findings:**

The Complainant has produced evidence in the form of Annual report marked as **Annex 2** which mentions that the Complainant began operations in 1899 and became a publicly owned corporation in 1965. The Complainant has supported its statutory rights in the EQUIFAX trademark vide registration details filed as **Annex 7, 8 and 9**. The trademark EQUIFAX stands registered in India since October 16, 1996. Further, the earliest worldwide registration dates back to December 1975 in United States of America.

The Complainant secured the registration of the domain name www.equifax.com on February 20, 1995 which has been substantiated with whois extract filed as **Annex 3**. The official website of the Complainant is accessible to visitors/customers all across the world including India. The website extracts filed as **Annex 4** shows that the Complainant's trademark EQUIFAX is prominently used on every webpage.

The whois extract filed as **Annex 1** shows RDIT Services Pvt. Ltd. of Uttaranchal as the Registrant organization. Therefore, the said entity/person is rightly pleaded as the Respondent for the present case. Further, the Respondent stated in his email dated November 01, 2018 that the alleged website owner was copied in the email correspondences. It is also noted that the Registrant/Respondent has enquired the Arbitrator regarding sale of the disputed domain name vide email dated November 05, 2018. Therefore, ownership of the domain name is construed in its favour.

Annex 5 shows the Respondent's website at www.equifax.org.in wherein the entity goes by the name Equifax Services. The party claims to be formed "2 years ago by bringing together experts from various technology segments in the field of IT, Surveillance and Telecom Deployment solutions. We help you identify cost effective solutions to increase business performance and ensure that you meet and exceed your business needs. Our dedicated team of seasoned professionals and associates ensure you achieve a successful implementation. We have offices in Meerut, Dehradun, Haridwar." Therefore, it is clear that the said website is used on commercial scale for sales of goods/services.

Letters addressed by the Complainant's counsel filed as **Annex 6** shows the Respondent was asked to discontinue use, immediately transfer and refrain from using the trademark EQUIFAX as part of its domain name. However, no written response seems to have been received from the Respondent.

Based on the submissions and documents submitted by the Complainant, I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.



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

The Complainant, EQUIFAX Inc. was founded in 1899 and has been using the mark EQUIFAX as its corporate identity and trademark as well. The Complainant has substantiated its rights in the mark EQUIFAX in various jurisdictions including USA and India. The earliest registration of EQUIFAX trademark dates back to the year 1975 in USA (worldwide) and October 16, 1996 in India. The Complainant secured the registration of the domain name www.equifax.com as early as February 20, 1995 which is more than two decades prior to that of the Respondent's registration of disputed domain name. Therefore, the Complainant has successfully established its statutory and common law rights in the mark EQUIFAX worldwide including in India.

For adjudicating the fulfilment of mandatory ground under paragraph 4(i) of the INDRP, it has to be ascertained if the domain name <www.equifax.org.in> is identical to or confusingly similar with the Complainant's mark.

A simple side-by-side comparison of the domain name and the textual components of the relevant trademark can be done to assess whether the mark is recognizable within the disputed domain name. In the present case, the disputed domain name <www.equifax.org.in> is identical to the Complainant's EQUIFAX trademark as it is solely made of the Complainant's mark with no additions/deletions/substitutions with any other component.

Owing to identical domain name, there is enhanced risk of association and affiliation of the disputed domain name with the Complainant's goods and services. Any use of identical domain name will make Internet user/s to believe that such domain hosts/displays the actual website of the Complainant dedicated to Indian customers/visitors. Since the disputed domain name is identical to the Complainant's EQUIFAX and applicable ccTLD in a domain name is viewed as a standard registration requirement and is to be disregarded, I find that the requirement of the INDRP Policy paragraph 4(i) is satisfied.

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

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such prima facie case, the burden of proof shifts to the Respondent to contend and provide appropriate evidence to demonstrate rights or legitimate interests in the domain name.

At the outset, the Arbitrator notes that no formal submission/response was received in response to the Arbitrator's emails dated October 11, 2018, October 24, 2018 and November 05, 2018. Further, the Complainant's contentions were not denied by the Respondent. Such inaction on part of the Respondent suggests that he does not have any legitimate rights in the disputed domain name. Paragraph 7 of INDRP Policy deals with Registrant's Rights to and Legitimate Interests in the Domain Name:

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall

demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii) :

(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) ...

(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.

Keeping in mind instances covered in Paragraph 7 (i) and (iii) of INDRP Policy, the Arbitrator notes that the disputed domain name is not being used in connection with a bona fide offering of goods or services. A simple perusal of the website at the disputed domain name proves that the website is developed for business purposes and sales of various goods and services i.e. for monetary gains. The business displayed therein includes IT Infra, Telecom, Networking solutions and CCTV and Surveillance Solutions which is a commercial activity. There seems to be no bonafide offerings of services and there is a definite intent for commercial gain on behalf of the Respondent. It cannot be construed at this point that there is fair use of the domain name either.

Further it has been claimed that the Respondent is neither a licensee or has obtained authorization from the Complainant to use the complainant EQUIFAX trademark. Since there is no business relationship or authorization or license between the Respondent and the Complainant, I find the requirement of the INDRP Policy paragraph 4(ii) satisfied.

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

Paragraph 6 of the INDRP policy contains the inclusive instances which are "evidence of registration and use of domain name in bad faith". It states that:

"For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 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 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."

The Complainant started its operations in 1899. The first trademark registration for EQUIFAX was secured way back in the year 1975 in USA and in the year 1996 in India. It is seen that the disputed domain name was registered on April 06, 2016 and the website states that the Respondent was formed 2 years ago. It is evident that the Complainant's dedicated domain name www.equifax.com was registered on February 20, 1995 which is more than two decades prior to Respondent's first domain registration. Based on prior adoption, worldwide use, domain name registration, several trademark applications/registrations in favour of the Complainant in respect of trademark EQUIFAX, it is believed that the Respondent was well aware of the Complainant's business and services while registering the disputed domain name constituting only the mark EQUIFAX.

Therefore, based on constructive knowledge of the Respondent and subsequent adoption of an identical domain name, it is presumed that the Respondent registered the disputed domain name in order to prevent the Complainant from reflecting the EQUIFAX mark in a corresponding domain name in India. Further, identical domain name of the Respondent will attract Internet users to the said website and create confusion in the minds of internet users who may believe that it is the source of the Complainant's services in India which is not the case.

The bad faith is also evident from the fact that the Respondent approached the Arbitrator vide email dated November 05, 2018 stating that

"Question- you want take this domain your own? How much you will pay if we give you"

This proves that the Respondent has no legitimate interest in the disputed domain name and is willing to relinquish its rights in the domain name against monetary compensation. This indicates bad faith registration.

Based on the above, it can be concluded that the disputed domain name was registered and is being used in bad faith, thus fulfilling condition laid down under paragraph 4(iii) of INDRP Policy.

7) Decision:

In my view, the Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.EQUIFAX.ORG.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
December 06, 2018