

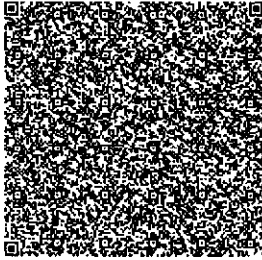
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL75451153836688L  
Certificate Issued Date : 05-Feb-2013 02:44 PM  
Account Reference : SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH  
Unique Doc. Reference : SUBIN-DL DL-SHCIL50525885590833L  
Purchased by : AMARJIT AND ASSOCIATES  
Description of Document : Article Others  
Property Description : NA  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : AMARJIT AND ASSOCIATES  
Second Party : NA  
Stamp Duty Paid By : AMARJIT AND ASSOCIATES  
Stamp Duty Amount(Rs.) : 100  
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*Amari A*

**ARBITRATION AWARD  
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF  
INDIA**

**.IN domain Name Dispute Resolution Policy INDRP Rules  
of Procedure**

**IN THE MATTER OF:**

Star Televisions Productions Ltd.,  
Craigmur Chambers,  
P.O. Box 71, Road Town,  
Tortola,  
British Virgin Islands

..... Complainant

**VERSUS**

Mr. C.Venkatraman,  
M/s. V. India Technologies Pvt. Ltd.,  
New No.682, Anna Salai,  
Nandanam,  
Chennai,  
Tamil Nadu 600035,  
India.

..... Respondent

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1. **THE PARTIES:**

The Complainant in this Arbitration proceedings is Star Television Productions Limited, a company incorporated under the Companies Act, 1956, having its principal place of business at address: Craigmur Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands.

The Respondent is V India Technologies Pvt. Ltd., New 682, Anna Salai, Nandanam, Chennai, Tamil Nadu 600035, India.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <starcricquet.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Internet Solutions Pvt. Ltd.

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. C.Venkatraman, V. India Technologies Pvt. Ltd., New 682, Anna Salai, Nandanam, Chennai, Tamil Nadu 600035, India. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

- 3.1 The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules



(paragraph-6). The arbitration proceedings commenced on **29<sup>th</sup> October, 2012**. In accordance with the rules, paragraph 5(c).

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **29<sup>th</sup> October, 2012**. The parties were notified about the appointment of an Arbitrator on **29<sup>th</sup> October, 2012**.

3.3. The Respondent was granted an opportunity on **29<sup>th</sup> October, 2012**, as aforesaid, to file its response, if any, within ten days.

The Respondent by his e-mail dated 8<sup>th</sup> November, 2012 submitted his response to the Complaint filed by the Complainant.

3.4. The complainant was provided an opportunity to the complainant to file rejoinder to the reply filed by the respondent, if any within seven days time by e-mail dated 9<sup>th</sup> November, 2012. The complainant filed rejoinder on 16.11.2012.

3.5. The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.



#### **4. FACTUAL BACKGROUND**

- 4.1 The Complainant in this Arbitration proceedings is Star Television Productions Limited, a company incorporated under the Companies Act, 1956, having its principal place of business at address: Craigmur Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands.
- 4.2 The Complainant is a wholly owned subsidiary of Star Group Limited (Star Group). The Star Group and its affiliates owns and/or operates various television channels including channels operating under the marks "STAR" and the "STAR Device". The various channels operated by the Star Group and its subsidiaries in India include STAR PLUS, STAR GOLD, LIFE OK, CHHANNEL [V] INDIA, STAR UTSAV, STAR CRICKET, STAR SPORTS, VIJAY, STAR WORLD, STAR MOVIES, STAR Jalsha and STAR Pravah ("STAR Channels"). Each STAR Channel has its own trademark which are all incorporated with the word "STAR and/or STAR Device". The Star Group, through its various STAR channels, broadcasts over 35 services in thirteen languages and offers a comprehensive choice of entertainment, sports, movies, music, news and documentaries. The Star channels have more than 400 million people in 65 countries across the globe and are watched by approximately 120 million viewers every day. The STAR Group and its subsidiaries including STAR India Private Limited, the operation company in India is are engaged in the business of producing and supplying contents to



various channels usually operated under the name "STAR".

- 4.3 The trade mark "**STAR CRICKET**" is claimed to have been adopted and used by the Complainant in the month of April, 2007 when the channel under the trade mark "**STAR CRICKET**" was launched.
- 4.4 The Complainant's case is that the channel under the mark "**STAR CRICKET**" is a 24 hour cricket channel targeting Indian audience is owned by the Complainant and its group companies. The channel under the mark "**STAR CRICKET**" broadcasts cricket from around the globe. It broadcasts live and pre-recorded international and regional cricket events as well as programming customized for the Indian audience including cricket news update, magazine and reality shows. It is further the case of the complainant that the channel "**STAR CRICKET**" is operated by an entity namely M/s ESPN Star Sports which is a joint venture between ESPN, Inc (a subsidiary of Walt Disney (ESPN, Inc.) and Yarraton Limited (a subsidiary of Star Group) News Corporation. It is further the case of that the Complainant that it is an wholly owned subsidiary of the News Corporation. The channel under the mark "**STAR CRICKET**" has gained distinctiveness on account of continuous use since its inception. The complainant submits that the use of trade mark "**STAR CRICKET**" in relation to the broadcasting of sports denotes and connotes the Complainant alone. The use of the trade mark "**STAR CRICKET**", apart from being distinctive, has also acquired substantial goodwill and is as an



extremely valuable commercial asset belonging to the Complainant.

- 4.5 The respondent has obtained registration of the impugned domain name starcricket.in and the same is sought to be transferred and or cancelled in these proceedings.

## 5. PARTIES CONTENTIONS

### 5A COMPLAINANT

5A(1) The Complainant submits that the mark star cricket is being used since the year 2007 and an application for the registration thereof along with Star logo is pending in India under no. 01614580 in Classes 9, 16, 38 and 41 since October 2007.

5A(2) The Complainant further submits that the channel under the mark "**STAR CRICKET**" is well known across the world. It is pertinent to note that the Complainant's mark "**STAR CRICKET**" has featured in articles and advertisements in various publications having a circulation and reach in various countries including India.

5A(3) The Complainant further submits that the channel under the trade mark "**STAR CRICKET**" has attained secondary meaning in respect of broadcasting cricket programs including live and pre-recorded.

For promoting, advertising and popularizing the channel, under the trade mark "**STAR CRICKET**", the Complainant commands a formidable presence on the Internet.

5A(4) The Complainant further submits that the Respondent in the present dispute has registered



the domain name **<starcricket.in>**. It is pertinent to note that viewers all across the globe ascribe a certain level of brand value and recognition to the Complainant's trade mark **"STAR CRICKET"**. Hence, the Complainant submits that Respondent is seeking to capitalize on the goodwill associated with the channel under the trade mark **"STAR CRICKET"** and has registered the domain name **<starcricket.in>** not only in bad faith but also without authorization/justification. The Complainant submits that he has never authorized and does not intend to authorize the Respondent to use the trade mark **"STAR CRICKET"**. The domain name at issue, **<starcricket.in>**,

- (i) wholly incorporates the word **"STAR CRICKET"**
- (ii) is identical to the Complainant's trade mark **"STAR CRICKET"** and
- (iii) the Respondent has no right or legitimate interest in the impugned domain name **<starcricket.in>**.

The said domain as per complainant is solely intended for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant, its group companies or to its competitor(s) for a substantial and unjustifiable amount of money. Further, the impugned domain name **<starcricket.in>** is identical to the trade mark of the Complainant, thereby causing the public into believing that there is a connection between the impugned domain and the Complainant, and inevitably making confusion and deception among public.





5A(5)The Complainant further submits that the Respondent's company is engaged in the business of Information Technology providing internet solutions and services to various companies. Although, the Respondent is not at all related/associated with sports/cricket activities, the conduct of the Respondent overwhelmingly suggests that its very business plan is to associate itself with the goodwill and reputation of the Complainant through the Complainant's trade mark "**STAR CRICKET**". It is submitted that the domain name <starcricquet.in>, currently registered in the name of the Respondent is an instrument of fraud and blackmail. It is entirely possible that the domain name <starcricquet.in>, may be sold to the Complainant/ its group companies/ its competitors thereby creating a situation whereby Internet users would get confused and deceived into thinking that a connection/affiliation exists with the Complainant or group company, and whoever controls the impugned domain name <starcricquet.in>. The act of the Respondent in registering the impugned domain name, <starcricquet.in>, which is identical to that of the Complainant's trade mark "**STAR CRICKET**", infringes upon the trade mark rights of the Complainant. Further, the use of a real-world trade mark online serves as the most visible, identifiable and verifiable indicator of the online presence of the entity to whom the trade mark belongs.

5A(6)The Complainant further submits that "**STAR CRICKET**" is a well-known trade mark in respect to the cricket channel and one of the most written about brands in the recent times, which is evident

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from the material filed along with the present Complaint. In these circumstances, it is believed by the Complainant that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to a competitor of the Complainant or to the Complainant itself, for an unjustifiable consideration, in excess of the actual costs incurred by the Respondent directly or indirectly, in relation to the domain name.

5A(7) In support of its case the complainant has filed documentary evidence annexed as Annexure C and E.

5A(8) The complainant contacted the respondent by e-mail dated 18.5.2012 and in response to the correspondence, the respondent offered to sell/transfer the impugned domain name for consideration of Rs.50,000. The counter offer of the complainant to pay Rs. 6000 was refused by the respondent by making alternative proposals for the transfer of rights in the impugned domain name. The said negotiations having failed, the present complaint is filed.

**B. Respondent**

5B(1)The respondent submits the company V India Technologies Pvt. Ltd. is the owner / registrant of the domain – “starcricquet.in”.

5B(2)The respondent claims to be in the business of providing web design and web hosting services and as an incidental service the respondent registered domain names, on behalf of and for their clients.



The respondent has more than 4000 clients and amongst them are many prominent establishments including about 20 universities. The respondent case is grossly unfair on the part of the complainant to make such a wild allegations. There are cases, where prominent organisations ask the respondent over phone to check the availability of their domain name, the respondent check them and then register them on their behalf.

If the respondent further submits that they are cyber squatters, then, knowing that the domain is available, they could have registered these domain names under another organisation controlled by them or through some front and could have told gullible clients that the name is not available and could have asked the fronts to approach them and sell the domains at an exorbitant sum. The respondent submits that they don't do such unethical things and are known for their trustworthiness and it is painful that the complainant has chosen to make such a slanderous allegation.

5B(3) The respondent further claims that the domain <"starcricquet.in"> was registered for the bonafide purpose of a local cricket club under the name STAR CRICKET CLUB that they had set up. However, the club did not take off as planned and so the domain name was not used. Therefore, it was not developed into a website, it was just parked. The respondent submits that they have kept reviewing the domain name year after year with the hope that they could resurrect the club.

5B(4) It is further the case of the respondent that as the domain was not in use, it is for a diligent person to



exercise the option of monetizing it when an opportunity emerges and to attribute ulterior motives to such an action which a normal person would exercise under such circumstances is farfetched.

6. **DISCUSSIONS AND FINDINGS**

- 6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.
- 6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.
- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.



- 6.4. The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <starcricket.in> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.5. Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.
- 6.6 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

**A. IDENTICAL OR CONFUSINGLY SIMILAR**

- 6A.1 The Complainant adopted the mark "**STAR CRICKET**" in the year 2007 for the cricket channel is established by the evidence name Exhibit E the application for the registration of the trade mark "**STAR CRICKET**" is pending before the Registrar as of the Trade Marks in respect of goods & services falling in classes 9, 16, 38 and 41. Furthermore, the Complainant has claimed that, since the year 2007, it has been involved in rigorous promotion and extensive advertising and promotion of its brand name through various media and the Complainant



has spent vast sums of money on promotion of the trade mark "**STAR CRICKET**" has neither been disputed nor challenged or denied by the respondent in its response dated 8.11.2012.

6A.2 The claims of the Complainant that its trade mark "**STAR CRICKET**" has not only gained an enviable reputation but, is, today, one of the fastest growing household names with respect to broadcasting services in cricket has not been disputed or denied it is further pertinent to note that the trade mark "**STAR CRICKET**", being a distinctive mark, exclusively connotes and denotes the goods/services of the Complainant. The Respondent's impugned domain name, comprise of the trade mark "**STAR CRICKET**" in its entirety.

6A.3 The case of the complainant that the mark "**STAR CRICKET**" has no connection/association with the Respondent and there can be no justification for the registration of impugned domain name incorporating the mark "**STAR CRICKET**" is equally not disputed or denied by the respondent.

6A.4 The Respondent's case that the, the impugned domain was registered by him much before the trade mark application was preferred by the complainant with the Trade Mark Registry, is not tenable in law. Rights in a mark are acquired by a person on account of priority in adoption and use and not by priority in filing application for registration or even registration itself under the law. The complainant is claiming legal title and ownership of the trade mark viz. STAR CRICKET, which may yet be pending registrations, but the prior use of complaint not has been disputed by respondent in its reply of 8.11.12. An erroneous trade mark claim over the domain – starcricket.in, made by respondent does not hold water.



6A.5 The Respondent does not dispute the use of the mark on the part of the Complainant under common law, but only objects to the mark not being registered in the name of the Complainant at the time of making the present Complaint. There is no requirement of law for a person, to claim proprietorship in a name only after making an application for registration. Rights are acquired on account of prior adoption and use and not on account of filling an application for registration or obtaining registration.

6A.6 The Respondent also claims that the impugned domain is not in use by it, which was registered for the purpose of developing a local cricket club. It is also alleged by the Respondent that the domain name has been registered by the Respondent before the trade mark application in respect of the mark "STAR CRICKET" has been preferred by the Complainant.

6A.7 The complainant claims to the use the mark "STAR CRICKET" since 25<sup>th</sup> April, 2007, are not disputed or denied by the Respondent in its response.

6A.8 In view thereof, the Panel finds that the Complainant has a right in the mark "STAR CRICKET" under common law and the domain registered by the Respondent is identical and/or confusingly similar to the mark in which the Complainant has a right.

6B. **The Respondents have no interest or legitimate right with respect to the Disputed Domain Name.**

6B.1 The Complainant's case is that the Complainant has never authorized and does not intend to authorize the Respondent to use its trade "STAR CRICKET" nor, in particular, to permit the Respondent to use the aforesaid mark for the registration of the impugned domain name.



6B.2 The Complainant further claims that the Respondent registered the domain name <starcricquet.in> on July 1, 2007 which is subsequent to the launch of the channel under the trade mark "STAR CRICKET" by the Complainant in April, 2007. Therefore the adoption and the use of the name stat cricket on the part of the complainant is prior in point of time. It is claimed that the website bearing the impugned domain name is used to provide links to other sites is reflected by evidence on record. Consequently, the Respondent is not making a *bona fide* offering of goods or services in connection with the impugned domain name <starcricquet.in>. It is further submitted by the complainant that the Respondent, despite being in the business of providing services to various companies in information technology sector failed to show any legitimate association or connection with the impugned domain name, clearly reflecting the *malafides* of the Respondent. Further, it is submitted by the complainant that the only reason for registering the impugned domain name by the Respondent is for the purpose of selling, renting or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration without having any intention of engaging in the non-commercial or fair use of the impugned domain name. The correspondence filed on record as Exhibit F also proves the above facts. The respondent has been offering and negotiating the sale of impugned domain to the complainant for Rs. 50,000 and making different proposals.

6B.3 There is no actual use of the impugned domain name by the Respondent is also admitted by the respondent. Therefore, the Respondent has failed to show that (as an individual, business, or other organization) has been





commonly known by the domain name. The Respondent has also not acquired any trade mark or service mark rights under common law or statutory law.

6B.4 The Respondent further failed to show that it is making a legitimate non-commercial or fair use of the domain name(s), without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

6B.5 The Respondent's claim that the domain – "starcricquet.in" was registered for the bonafide purpose of a local cricket club under the name STAR CRICKET CLUB that it had set up and the club did not take off as planned and so the domain name was not used- and it was not developed into a website, and was just parked renewed year after year with the hope that it could resurrect the club in itself is not sufficient to establish the respondent have any legitimate right or interest in the impugned domain name.

6B.6 The Respondent's claim that as the domain – "starcricquet.in" was not in use, it was normal for a diligent person to exercise the option of monetizing it when an opportunity emerges is equally fallacious. The website hosted on the impugned domain name is also parked page. The respondent has also failed to produce any evidence before the panel of his activities or preparedness to use the domain name for the alleged club activities.

6B.7 It is thus clear and established that the Respondent is not using the domain name for any purpose and has been renewing the same for the same purpose of monetising it at appropriate time. The Panel, therefore, conclude that the Respondent has no interest or legitimate right in the disputed Domain name.



C. **Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The Complainant case that the Respondent is not operating a website on the impugned domain name nor is the Respondent associated/related to sports/cricket activities in any manner which indicates the bad faith of the Respondent in registering the disputed domain name is established on record. The Respondent's company is into the business of Information Technology providing Internet solutions and services to various companies having its base in Chennai is bound to be aware of the global reputation of the trade mark "**STAR CRICKET**" of the Complainant and it is for this reason no dispute or denial is made to material facts in its reponse by the respondent. It is submitted that the Respondent has registered the disputed domain name primarily for the purpose of selling and/or transferring the domain name <starcricquet.in> to the Complainant who is the actual owner of the trade mark "**STAR CRICKET**" and this fact is also established by the correspondence exchanged between the complainant and the respondent filed on Exhibit F.

6C.4 The Respondent has no legitimate justification for having registered a domain name incorporating the word "**STAR CRICKET**" and has no apparent use for the domain name other than to profit from squatting on the same.

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6C.5 The Respondent has registered the disputed domain name primarily for the purpose of selling and/or transferring the domain name <starcricquet.in> to the Complainant who is the actual owner of the trademark "STAR CRICKET". In order to ascertain the said assertion of bad faith, a representative of the Complainant contacted the Respondent, from the personal email id sieevsagar@gmail.com, on the Respondent's email id venkat@vindia.net, reflected on the records of "Who.is", on May 18, 2012 and had shown interest in purchasing the disputed domain name <starcricquet.in>. Pursuant to the said email, the Respondent replied vide an email dated May 18, 2012, wherein, the Respondent asked the representative of the Complainant to send an offer for the impugned domain name. The representative of the Complainant sent his offer for an amount of Rs.5000/-. After protracted negotiation between the representative of the Complainant and the Respondent, the final offer settled was of Rs.50,000/- with the discount at 10%. The Respondent also suggested the representative of the Complainant for rental option of the impugned domain name wherein the Respondent offered the impugned domain name at the rent of Rs.10,000/- per year.

6C.6 The specific allegation, that the subject domain name - <starcricquet.in> has been registered with the sole intention of selling it to the Complainant or any of their competitors for an exorbitant sum, stands proved on record counter.

6C.7 The explanation given by the respondent that the domain - "starcricquet.in" was registered for the bonafide purpose of a local cricket club under the name STAR CRICKET CLUB and that the club did not take off as planned and so the domain name was not used- for developing a website,



or it was just parked or respondent kept reviewing the domain name year after year with the hope that we could resurrect the club, is not accepted by the panel being sufficient to show or proof good faith.

The Complainant has produced evidence of one of their employees – Mr. Sanjeev Sagar, posing as an intending buyer of the domain name and respondent interest in selling the same respondent drive home the point we had no genuine interest in the subject domain except to sell it for a premium.

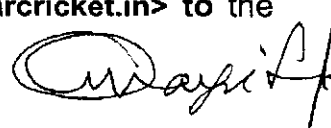
The claim of respondent that as the domain was not in use, is it not normal for a diligent person to exercise the option of monetizing it when an opportunity emerges and to attribute ulterior motives to such an action which a normal person would exercise under such circumstances is farfetched and not tenable in law.

6C.8. In view of the fact the Respondent has indulged himself in monetising the domain name in question by trading upon the goodwill and reputation of the mark “**STAR CRICKET**”, and has also failed to provide an evidence to substantiate its claims, the Panel holds that the Respondent has registered the domain name in bad faith.

7.. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

Transfer of the domain name <starcricquet.in> to the Complainant.



**AMARJIT SINGH**  
Sole Arbitrator

**Dated: 14~~th~~ February, 2013.**