



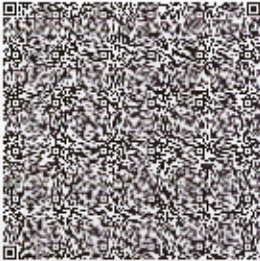
सत्यमेव जयते

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Certificate Issued Date : 20-May-2015 02:14 PM
Account Reference : IMPACC (IV)/ dl712203/ DELHI/ DL-DLH
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Purchased by : DIVYA BALASUNDARAM
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : DIVYA BALASUNDARAM
Second Party : Not Applicable
Stamp Duty Paid By : DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line.

Before the Sole Arbitrator, Divya Balasundaram

C/o National Internet Exchange of India

In the matter of:

Wells Fargo & Co. and Another Vs. SreeDas Kumar of SreeDas Enterprises Limited

Divya Balasundaram

Statutory Alert:

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BEFORE THE SOLE ARBITRATOR, DIVYA BALASUNDARAM

.IN REGISTRY

C/O NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRAL AWARD

1. Wells Fargo & Co.
420 Montgomery St.
San Francisco, California 94104
USA

And

2. Wells Fargo India Solutions Private Limited
Wells Fargo Centre, Building 1-A,
Divyasree Orion (Special Economic Zone),
Sy. No. 66/1, Raidurga, Serilingampalli, Hyderabad, 500032
India

Complainants

Versus

SreeDas Kumar
SreeDas Enterprises Limited
1510 Fig Leaf Apartments Palkalai Nagar
Madurai, 625021 Tamil Nadu, India

Respondent

1. The Parties

- 1.1 The Complainants are Wells Fargo & Co. of the address 420 Montgomery St., San Francisco, California 94104, USA, and Wells Fargo India Solutions Private Limited of the address Wells Fargo Centre, Building 1-A, Divyasree Orion (Special Economic Zone), Sy. No. 66/1, Raidurga, Serilingampalli, Hyderabad, 500032, India represented by their counsel Rodney D. Ryder of SCRIBOARD, Advocates & Legal Consultants, Level 2, Elegance, Mathura Road, Jasola, New Delhi, 110025, India.

Divya Balasundaram

1.2 The Respondent is SreeDas Kumar, of SreeDas Enterprises Limited of the address 1510 Fig Leaf Apartments Palkalai Nagar, Madurai, 625021, Tamil Nadu, India.

2. The Domain Names and Registrar

2.1 The disputed domain name <wellsfargo.firm.in> is registered with Webiq Domains Solutions Pvt. Ltd.

3. Procedural History

3.1 Arbitrator received an email on April 7, 2015 inquiring if NIXI can avail its services as an arbitrator for the dispute pertaining to the domain name "wellsfargo.firm.in". Arbitrator confirmed availability by email of same date. By email of April 8, 2015, Arbitrator sent the signed statement of acceptance and declaration of impartiality and independence as required by the Rules.

3.2 The .IN Registry appointed Divya Balasundaram as the Sole Arbitrator on April 08, 2015 and Arbitrator received soft copy of the Complaint along with Annexures on April 10, 2015. Hard copy was also received by courier.

3.3 Arbitral proceedings were commenced by Arbitrator on April 10, 2015 by issuance of a notice by email to the Respondent directing him to file his reply to the Complaint within 15 days. Copy of complaint and annexures were also sent to the Respondent vide this email.

3.4 Arbitrator has sent notice and documents through email which is the preferred method of communication in these proceedings.

3.5 The Respondent has not entered appearance nor filed any reply.

3.6 Arbitrator sent email on May 11, 2015 to Respondent notifying it of its default.

3.7 The language of these proceedings is English.

4. Background of the Complainant and its rights in the trademark

Divya Balasundaram

- 4.1 The factual background of the Complainant is set out as follows in the Complaint:
- 4.2 Complainant No. 1 is considered as one of the top four largest banks in the US by assets and one of the largest banks by market capitalization. According to the Fortune 500 list for 2014, Complainant No. 1 is the 29th largest company in the US. It was founded by Henry Wells and William Fargo in New York on 18th March 1852.
- 4.3 In 2012, Complainant No. 1 had more than 9,000 retail branches and over 12,000 automated teller machines in 39 states and the District of Columbia in the US. Complainant No. 1 has over 270,000 employees and over 70 million customers worldwide.
- 4.4 Complainant No. 1 has principal offices in 420 Montgomery St., San Francisco, USA. Revenue was US\$86.08 billion in 2012. Complainant No. 1 stock is listed on the New York Stock Exchange.
- 4.5 Complainant No. 1 or its Affiliates has presence in many countries, including but not limited to India where its Affiliate Complainant No. 2 is incorporated and registered as a private limited company carrying on business activities of IT and ITES. Complainant No. 1 in India has about five thousand employees and Complainant No. 2 has been judged as the one of the best employers by Aon Hewitt in a recently conducted survey.
- 4.6 The Complainant/s have spent a huge amount of money on the promotion and advertisement of its services and products under the trade/service name/mark 'Wells Fargo' since its adoption and use. The amount spent on promoting Wells Fargo's services including advertising and producing literature/brochures from 2003 through 2012 worldwide has been approximately \$4,927 million US Dollars. Year wise break up has been provided. Promotional information and brochures have been provided at "Annexure F".
- 4.7 The Complainant/s considers their trade/service name/mark an important and an extremely valuable asset and in order to protect the same, have secured trade mark registration for the mark 'Wells Fargo' globally including India. Copies of trade mark registrations obtained by the Complainant/s in India and world over have been provided at

"Annexure C". The Complainant/s submits that they are the exclusive owner and proprietor of the registrations[s] listed and said registrations are duly valid and subsisting.

- 4.8 The official website <www.wellsfargo.com> is a comprehensive, unique and acclaimed introduction to 'Wells Fargo'. A print out of the home page of Complainant #1's website is provided at "Annexure D".
- 4.9 Google Search of the term 'Wells Fargo' throws up a huge number of results of which, each and every one pertains to the Complainant/s only. A copy of the first page of the Google Search is provided at "Annexure E".
- 4.10 The profile and popularity of the Complainant/s under the trade/service name/mark 'Wells Fargo' has been continuously increasing since the date of adoption and use of the mark. At present, the Complainant/s' trade name/mark is identified by the purchasing public exclusively with Complainant/s and has acquired an enormous goodwill not only in India but in several other countries.
- 4.11 As Internet has become an essential medium to conduct business, the Complainant/s in order to expand their presence decided to obtain a domain name registration. The Complainant/s settled for <www.wellsfargo.com> (along with many other domain name registrations) as a natural extension of their corporate name for the registration of their domain name. The Complainant/s then spent considerable amount of money and skill to develop a website <www.wellsfargo.com>.

5. Respondent and its registration and use of the disputed domain name

- 5.1 As per the Complainant, according to the search conducted on 31st March 2015 in www.registry.in/whois, the Respondent has created the disputed domain name on 21st June 2014. The Respondent is the current registrant of the disputed domain name. Copy of the search report has been provided at 'Annexure - A'. Printout of the web pages pertaining to the disputed domain are provided at 'Annexure - B'. The Respondent is directing the disputed domain name to a parking page containing advertisements. A print out of the home page of the disputed domain name is provided at as "Annexure G".

6. Contentions of the Complainant in establishing the 3 elements required under the INDRP

- 6.1 Element 1 - In support of this element, i.e., the disputed domain name is identical or confusingly similar to Complainant's trademark, the Complainant has submitted that:
- 6.1.1 A mere glance at the disputed domain name gives rise to enormous confusion as to its origin as the domain name used by the Respondent is identical to the corporate name of the Complainant/s. The utmost malafide intention of the Respondent is evident from the fact that not even a single letter differs between the disputed domain name and the corporate name of the Complainant/s. The present case is on an even higher footing as the Respondent has picked up the mark/name of the Complainant/s verbatim without even changing a single letter. Thus, the use of the disputed domain name by the Respondent is a prima facie case of cyber squatting and trade/service mark/name infringement.
- 6.1.2 The disputed domain name contains the entirety of the Complainant/s' trademark. It is well established that specific top level domain, such as ".com", ".in", ".firm.in" ".net" or ".travel", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.
- 6.1.3 The term 'Wells Fargo' has been used by the Complainant/s continuously for a number of years, as it is associated exclusively with the Complainant/s. The use by any other concern of an identical/deceptively similar mark to that of the Complainant/s' mark 'Wells Fargo' is bound to lead to confusion and deception and amounts to passing off, and any person or entity using the mark/name 'Wells Fargo' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant/s.
- 6.1.4 The mark 'Wells Fargo' has been in extensive, continuous and uninterrupted use since the year 1852 in relation to the Complainant/s' business. More specifically, the mark 'Wells Fargo' has been in use by the Complainant/s in relation to all its stationery articles and in relation to sales promotional materials. The mark 'Wells Fargo' has also

been used in relation to advertisements and related business/commercial information disseminated in several print media such as newspapers, magazines etc. both in India as well as abroad. In each of the instances of use, the mark 'Wells Fargo' is prominently displayed and has become the focus of the Complainant/s' entire business.

- 6.1.5 The use by any other concern of an identical/deceptively similar mark to that of the Complainant/s' mark 'Wells Fargo' is bound to lead to confusion and deception and any person or entity using the service mark 'Wells Fargo' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant/s.
- 6.1.6 In the present case, it is very natural for an internet user, who wishes to reach / visit the website of the Complainant/s to type its corporate / commercial name followed by "<.firm.in>". This will lead the Internet user to believe that the Complainant/s are associated with or owns the web site bearing the domain name <www.wellsfargo.firm.in>.
- 6.1.7 The domain name <www.wellsfargo.firm.in> is identical to the trademark 'Wells Fargo'. A domain name which wholly incorporates a Complainants' registered mark may be sufficient to establish identicalness or confusing similarity, despite the addition of other words to such marks.
- 6.1.8 The Complainant/s have shown that the disputed domain name has become a distinctive identifier associated with the Complainant/s or their goods and services alongwith supporting evidence.
- 6.1.9 In the past, administrative panels have ruled in favour of brand owners even where the mark was not registered.
- 6.2 Element 2 - In support of this element, i.e., the Respondent has no rights claims, or legitimate interests in respect of the disputed domain name, the Complainant has submitted that:
- 6.2.1 The Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name.

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- 6.2.2 The Respondent whose name is Mr. SreeDas Kumar is not commonly known by the disputed domain name nor does he actually engage in any business or commerce under the name 'Wells Fargo'.
- 6.2.3 The Respondent has no active business in the name of 'Wells Fargo'. The Respondent is not a licensee of the Complainant/s, nor has the Respondent ever been authorized by the Complainant/s to use the Complainant/s' trademarks or register the disputed domain name. The Complainant/s have no relationship with the Respondent.
- 6.2.4 The illegality in the registration of the disputed domain name arises from the fact that domain names today are a part and parcel of corporate identity. A domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the internet address of a company.
- 6.2.5 The Respondent cannot have any right or legitimate interest in the disputed domain name because the disputed domain name incorporates the 'Wells Fargo' mark in its entirety, a mark in which the Complainant/s have the sole and exclusive right and that has become well known owing to the Complainant/s' efforts.
- 6.3 Element 3 - In support of this element, that the disputed domain name was registered and is being used in bad faith, the Complainant contends that:
- 6.3.1 The domain name <www.wellsfargo.firm.in> is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant/s' goodwill and reputation. This is an attempt to misuse the domain name by the use of a simple domain name extension variant. The mark 'Wells Fargo' having been extensively used is understood and associated by consumers in India and throughout the world as the mark of the Complainant/s denoting their services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark 'Wells Fargo' is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off. The name/mark 'Wells Fargo' has acquired unique importance and is associated with the

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Complainant/s. A mere mention of the said name/mark establishes an identity and connection with the Complainant/s and none else.

- 6.3.2 The mark 'Wells Fargo', having been extensively used in relation to the business of the Complainant/s, has acquired distinctiveness and is understood and associated by consumers in India as well as abroad as the mark of the Complainant/s denoting their goods, services and business. Any incorporation of the said mark in a domain name is bound to be in bad faith. The Respondent clearly knew of the Complainant/s' prior rights when registering the domain name. This by itself constitutes "bad faith".
- 6.3.3 More specifically, customers would be induced to believe that the Respondent has some connection with the Complainant/s in terms of a direct nexus or affiliation with the Complainant/s and that the Respondent is carrying on activities that have been endorsed by the Complainant/s and the services that are sought to be offered by the Respondent are at the same level of quality and reliability as that offered by the Complainant/s and its group of companies.
- 6.3.4 The Respondent is directing the disputed domain name to a parking page containing advertisements in an effort to generate revenue through consumers who mistakenly visit the site. Such an act by the Respondent constitutes strong evidence of bad faith registration and use.
- 6.3.5 It is inconceivable that the Respondent could have registered the disputed domain name without being aware of the Complainant/s' rights. In light of the Respondent's presumed knowledge of the Complainant/s' rights, it is reasonable to infer that the Respondent could not have registered the disputed domain name without the intention to target these rights in some manner. Furthermore, it would be extremely difficult, if not impossible, for the Respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating the Complainant/s' rights. Thus, the disputed domain name was registered in bad faith.
- 6.3.6 The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Since the trademark of the Complainant/s is so distinctive and famous that the Respondent must

have had actual knowledge of the trademark prior to registering the disputed domain name. The Complainant/s have a long and well-established reputation in the Complainant/s' mark through its exclusive use in the banking and financial sectors. By registering the disputed domain name with actual knowledge of the Complainant/s' trademark, the Respondent has acted in bad faith by breaching its service agreement with the Registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present scenario is the Complainant/s.

- 6.3.7 The Complainant/s' trademark has a strong reputation and is widely known on a global basis.
- 6.3.8 Taking into account the nature of the disputed domain name, which would inevitably associate the disputed domain name closely with the Complainant/s' group of domains and companies in the minds of consumers, no plausible actual or contemplated active use of the disputed domain name by the Respondent would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant/s' rights under trademark law.
- 6.3.9 There is nothing in the act of the Respondent in pointing the disputed Domain Name to a parking page containing advertisements which can be considered to be a good faith use.
- 6.3.10 The Respondent may also be engaging in other similar cyber-squatting activities.
- 6.3.11 On account of the high degree of inherent and acquired distinctiveness which the mark 'Wells Fargo' is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade.
- 6.3.12 The domain name could be used by the Respondent to extract huge sums of money from the Complainant/s who have legitimate interest in the said domain name. This is evident as the Respondent is not running any legitimate website on the disputed domain name.

- 6.3.13 The Respondent is generating revenue through consumers who mistakenly visit the parking page containing advertisements.
- 6.3.14 The Respondent can transfer or sell the domain name to some competing interest of the Complainant/s who may damage the goodwill and reputation of the Complainant/s by inserting prejudicial material in relation to the Complainant/s' companies. This will lead to complete tarnishment of the Complainant/s' image if valuable property like this domain name falls into the hands of competing interests.

7. Discussions

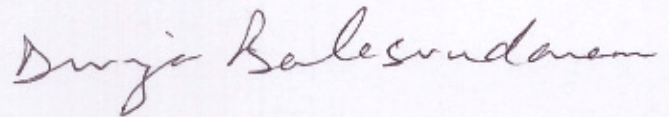
- 7.1 At the outset, it is to be mentioned that the Arbitral Tribunal has been properly constituted. Under paragraph 4 of the INDRP, the Complainant must prove each of the following three elements of its case - the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondent has no rights, claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith. From a detailed reading of the Complaint and supporting annexures, the Arbitrator finds that the Complainant has established all the three elements. The finding is made keeping in mind these specific aspects:
- 7.2 Complainant No. 1 was founded by Henry Wells and William Fargo in the year 1852;
- 7.3 The trademark Wells Fargo is coined from the names of the founders of the Complainant No. 1, being Henry Wells and William Fargo;
- 7.4 The Complainant No. 1 owns registrations for its trademark 'Wells Fargo' globally including India;
- 7.5 The Complainant/s have spent a huge amount of money on the promotion and advertisement of its services and products under the trademark 'Wells Fargo' since its adoption and use;
- 7.6 The Complainant/s' trademark is identified by the purchasing public exclusively with Complainant/s and has acquired enormous goodwill in India and several other countries;

- 7.7 The Complainant owns the domain name wellsfargo.com (along with many other domain name registrations) and operates a website www.wellsfargo.com;
- 7.8 The official website <www.wellsfargo.com> is a comprehensive, unique and acclaimed introduction to the Complainant No. 1;
- 7.9 The disputed domain is identical to the corporate name of the Complainant/s and contains the entirety of the Complainant/s' trademark;
- 7.10 Not even a single letter differs between the disputed domain name and the corporate name of the Complainant/s - which shows the malafide intention of the Respondent;
- 7.11 The Respondent is not commonly known by the disputed domain name;
- 7.12 The Respondent does not actually engage in any business or commerce under the name 'Wells Fargo';
- 7.13 The Respondent has no statutory or common law rights in the disputed domain name;
- 7.14 The Respondent is not a licensee of the Complainant/s, nor has been authorized by the Complainant/s to use the mark Wells Fargo or register the disputed domain name. The Complainant/s have no relationship with the Respondent;
- 7.15 Given the fame of the Complainant, it is deemed that the Respondent knew of the Complainant/s' prior rights when registering the disputed domain name, which constitutes bad faith;
- 7.16 Respondent's use of the disputed domain name is bound to lead to confusion and deception in the minds of the public that its product or service has an association or nexus with the Complainant/s and amounts to passing off;
- 7.17 The Respondent is directing the disputed domain name to a parking page containing advertisements in an effort to generate revenue through consumers who mistakenly visit the site - this is evidence of bad faith registration and use;

- 7.18 The Respondent is not running any legitimate website on the disputed domain name;
- 7.19 The domain name could be used by the Respondent to extract huge sums of money from the Complainant/s who have legitimate interest in the said domain name or to transfer the same to a competitor;
- 7.20 The Respondent was given sufficient time to reply to the Complaint, however, Respondent has chosen not to submit any response.

8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <wellsfargo.firm.in> be transferred to the Complainant No. 1.
- 8.3 The Parties shall bear their own costs.



DIVYA BALASUNDARAM

ARBITRATOR

Dated - June 05, 2015 at New Delhi, India