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**VISHESHWAR SHRIVASTAV  
SOLE ARBITRATOR  
IN  
ARBITRATION PROCEEDINGS OF DOMAIN NAME  
"intesa.co.in"**

<b>INTESA SANPAOLO S.P.A.</b>	<b>...COMPLAINANT</b>
<b>AND</b>	
<b>SRIRATREE MEEKHOT</b>	<b>...RESPONDENTS</b>

**AWARD**

1. The undersigned was nominated as an arbitrator vide letter dated 06/07/2009 sent by NIXI. That immediately thereafter this Tribunal notified vide its notice dated 9.7.2009 that the complainants had not filed any vakalatnama or power of

attorney in favour of Sh. Sudhir D. Ahuja and also that the complaint is not paginated. Thereafter a paginated copy of the Complaint was received from NIXI and a notarized power of attorney was also sent in favour of Sh. Sudhir D. Ahuja by the complainant.

2. That this Tribunal found that the email copied to the Respondents were bouncing back and so it called upon the Complainant to effect a service of hard copy of this Tribunal's notice by DHL / FEDEX courier which was complied with and the Tribunal found the endorsement from the courier agency that no delivery could be effected on the respondents. In view of the above this Tribunal called upon the complainant to affirm their complaint by way of an affidavit. The said instructions were complied with by sending a hard copy of an affidavit. This Tribunal now adverts / takes its attention to the complaint.

3. The complainants is Intesa Sanpaolo S.p.A. and is an Italian corporation having it's registered office in Torino, Piazza San

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Carlo, 156 and is represented through its authorized representative Mr. Sudhir D. Ahuja.

. That the Respondent is Sriratree Meekhot and according to the search of the .IN Registry and Who is records its address is Ban Fang Den, Roi-et, (Dist.) ROI-ET 21100, (Thailand) and E-mail is [sriratree@yahoo.com](mailto:sriratree@yahoo.com)

. That this dispute concerns the domain name "intesa.co.in" which is with the respondents and the complainants are aggrieved due to various reasons which are detailed in the following paras.

. It is complained that the domain name is identical or confusingly similar to a name, trademark or service mark of the Complainant.

. That according to the Complainant they are a leading Italian banking group and also one of the protagonists in the European financial arena. Intesa Sanpaolo is the company resulting from

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the recent merger (effective as of January 1, 2007) between Banca Intesa S.p.A. and Sanpaolo IMI S.p.A., two of the top Italian banking groups. Intesa Sanpaolo is now among the top banking groups in the euro zone, with a market capitalisation exceeding 70 billion euro, and the undisputed leader in Italy, with an average market share of approximately 18% in all business areas (retail, corporate and wealth management).

J. The Complainants have further averred that they have a network of approximately 6,500 branches capillary and well distributed throughout the Country, with market shares of more than 15% in most Italian regions, the Group offers its services to approximately 11 million customers. Intesa Sanpaolo has a strong presence in Central and Eastern Europe with a network of approximately 1,900 branches and over 8 million customers. To provide a buttress to their assertions the complainants are relying upon **Annex C collectively**.

3. That the complainants further state that they have a international network specialized in supporting corporate

customers in 34 countries, including in the United States, Russia, China and India.

10. The Complainant have averred that the name "intesa" is directly associated with their business and for the purpose they have fought several legal battles some of which are given at **Exhibit G.**

11. Further it is also stated that the Complainant is the owner of several registrations for the trademark INTESA world wide, a list of which is found in **Annex D.** It is also alleged that the earliest registration for the mark INTESA in the name of the Complainant goes back to 2002 - the Community trademark registration no. 2803773 for "INTESA", filed on 7 August, 2002 and granted registration on 17 November, 2003, in connection with the services of class 36.

12. The Complainant so far as India is concerned is the registered proprietor of the INTESA trademark and its variants (together, "the INTESA marks") since 2003. The Indian

trademark registration no. 1194213 for "INTESA" was filed on 23 April, 2003 in connection with the services of class 36; Indian trademark registration no. 1264095 for "INTESA" was filed on 30 January, 2004 in connection with the products of class 16. Copies of few representative registration certificates of the Complainant's INTESA trademarks in India are annexed and marked collectively as **Annex E.** with the complaint.

13. The Complainants have averred that its trademark INTESA is distinctive and very well known in India as in all other countries world wide and they rely upon copies of articles and news items about the Complainant and its activities published in India and international media which are annexed to this complaint and marked collectively as Annex F.

14. That it is alleged that on 9 June, 2008, the Respondent registered the domain name <intesa.co.in> which is identical to the trademark INTESA of the Complainant.

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15. That on the same date, the Respondent also registered the domain name <intesa.in>, which too is identical to the trademark INTESA of the Complainant.
16. The Complainant has initiated separate proceeding against the Respondent with regard to the domain name <intesa.in>.
17. The Complainant have also stated that they have not licensed or otherwise permitted the Respondent to use the Complainant's marks or any of the Complainant's family of marks, nor has the Complainant licensed or otherwise permitted the Respondent to apply for or use any domain name incorporating those marks. Thus the Respondent has no rights to the domain name at issue, since no part of the respondent's name corresponds to or has a similarity with the complainant's trademark INTESA. It is also alleged that the Respondent does not carry on any commercial or non-commercial venture/enterprise under the name and style "Intesa". The Registrant Respondent is known as "Sriratree Meekhot" and not



by the domain name <intesa.co.in>. Therefore, the Respondent cannot have any legitimate reason for adopting "Intesa" as the disputed domain name.

18. It is also alleged that the domain name has been registered and is being used in bad faith as by using the domain name, the Respondent has intentionally attempted to "attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark by indicating that the respondent is connected to the complainant." It is further alleged that the respondent has not hosted a website from the domain name <intesa.co.in>. as the search for the website returns the HTTP 404 error - *'file not found.* Reliance is placed on **Annex H**. Further the respondent had registered the domain name on 9 June, 2008 and incase the respondent had a bona fide reason or intention to register the said domain name, it would have proceeded to host a website with the domain name. The fact that the respondent has chosen not to do so implies malafide intentions on his part to sell the name to a third party or to use the domain name for a



fraudulent purpose. To fortify their contentions reliance is placed on (*Bayer Aktiengesellschaft vs Henrik Monssen; WIPO Case No. D2003-0275 and Telstra Corporation Limited vs Nuclear Marshmallows; WIPO Case No. D2000-0003*).

19. It is stated that the Complainant's trademark is distinctive and is well known around the world. The fact that the Respondent has registered a domain name that is identical to it, indicates that the Respondent had knowledge of the Complainant's trademarks at the time of registration of the disputed domain name.

20. The complainants allege that the contested domain name is not used for any *bone fide* offerings. In fact, the Respondent, within few months of obtaining the disputed domain name, had offered the Complainant to sell the said domain at a substantial price, which was refused by the complainant. This would show that the respondent never had any bona fide intention to use the domain name and registered it only for wrongful commercial gain. The complainants have enclosed relevant



correspondence relating to the offer made by the respondent to the complainant relied upon as Annex I.

21. Thus it is clear that the Respondent has acquired the domain name at issue to attract Internet users for commercial gain by trading on the goodwill associated with the Complainant's trademark, while seeking substantial compensation from the Complainant for release of subject domain name.

22. That as specified supra this Tribunal despite repeated efforts could not serve copy of it's notice by e-mail and also through DHL but the delivery of the same could not be effected. Thus this Tribunal has given its anxious thought and perused the documents given by the complainant and there after has come to an un-escapable conclusion that the name "intesa" is associated and is also a trade mark of the complainant and the respondent name "Sriratree" does not show as to how it is connected with the word "intesa" whereas on the other hand the complainant's have filed documents namely **Exhibit A - J** and



shown beyond doubt that they have a right to the name intesa and especially to **Exhibit G** where they have established beyond doubt that the name is precious for them and in case it remains with any one and anybody else like the Respondent it will only cause confusion in the mind of the people at large and in view it can also hamper their business prospects.

23. This Tribunal has also noticed that the Exhibit I is in Italian Language and hence no reliance can be placed on the same. Hence it is difficult to establish the allegation based on the said document.

24. As detailed earlier this Tribunal had tried to serve notice to the Respondents to no avail and in view of non supply of statement of defense from the side of Respondents this Tribunal gives its findings as under:

### **Finding**

25. This Tribunal is unable to agree with the allegations made in Para C of the complaint that the Respondents have tried to



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"attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark by indicating that the respondent is connected to the complainant."

Because in the same para they are stating that there is no website hosted by the Respondents. Both these statements are contradictory to each other hence the contention of the complainants fails.

26. Same way the Complainants allegation of Respondents demanding a price for sale of the disputed domain name is not sustainable as the correspondence relied upon in Annexure I is in Italian language and the Complainants did not supply English Translation thereof. Hence, this Tribunal is unable to persuade itself to agree with complainants based on Annexure I due to language discrepancy.

27. However, the Tribunal agrees with the complainants that the Respondents do not have any interest in the name "intesa" nor have they hosted any website and also that the name


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intesa is precious to the complainant and it would be in the interest of justice that the same is transferred to them.

28. In view of the above, this Tribunal directs that it would be expedient in the interest of justice that the domain name "intesa.co.in" is transferred to the complainants. However, the complainants will file an appropriate application for transfer of the name before the concerned authorities/registry. This award is delivered in terms thereof.

New Delhi

Date :25.08.2009



(V. (SHRIVASTAV)  
ARBITRATOR