



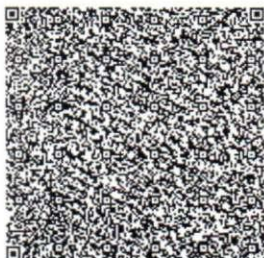
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate Issued Date : 23-Jun-2016 01:55 PM  
Account Reference : IMPACC (IV)/ dl700303/ DELHI/ DL-DLH  
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Purchased by : DEEPA GUPTA  
Description of Document : Article Others  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
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First Party : DEEPA GUPTA  
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BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF  
NATIONAL INTERNET EXCHANGE OF INDIA  
IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure



**Statutory Alert:**

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ARBITRATION AWARD

DATED: 23 June 2016

In the matter of:

DELHIVERY PRIVATE LIMITED  
B-244, Okhla Industrial Area  
Phase-I, New Delhi-110020, India

Through It's Attorneys  
YASH & ASSOCIATES  
ADVOCATES & IP ATTORNEYS  
Suite No. 505, Perarls Business Park  
Netaji Subash Place  
Pitampura, New Delhi-110034  
E: [info@yashandassociates.com](mailto:info@yashandassociates.com)  
E: [mahir@yashandassociates.com](mailto:mahir@yashandassociates.com)

Complainant

VS

Alex Wang  
995, Shangchuan Road,  
Pudong, Shanghai-210016, China  
E: [foodgaga@gmail.com](mailto:foodgaga@gmail.com)

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant is **DELHIVERY PRIVATE LIMITED, B-244, Okhla Industrial Area Phase-I, New Delhi-110020, India.**
- (b) Respondent is Alex **Wang, 995, Shangchuan Road, Pudong, Shanghai-210016, China.** It has presence on internet with domain name of [www.delhivery.co.in](http://www.delhivery.co.in) which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is [www.delhivery.co.in](http://www.delhivery.co.in) registered with the **.IN Registry** through Webiq Domains Solutions Pvt. Ltd
- ii. The Registry Operator **.IN Registry c/o NIXI is at Flat no. 6B, 6<sup>th</sup> Floor Uppals M6 Plaza, Jasola District Centre, New Delhi-110025.** The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iii. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
  - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
  - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
  - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. **BRIEF BACKGROUND**

**FACTUAL AND LEGAL GROUNDS**

Delhivery Private Limited is a duly incorporated Company dated 22.06.2011 under Companies Act 1956 having its registered office at B-244, Okhla Industrial Area, Phase 1, New Delhi-110020, India. Its a logistics conglomerate in the arena of logistics.

Initially Company was incorporated under the name of 'SSN Logistics Pvt. Limited' and a name change took place on 8<sup>th</sup> December 2015 changing it to 'DELHIVERY PVT. LTD'. Incorporation Certificate, copy of Memorandum of Association & Articles of Association attached. (Annex-B&C)

In the year 2011 company launched itself successfully by providing express logistic services with a large team catering to the logistics needs of e-commerce clients leading to many shipments daily. The Company expanded exponentially & reached International Horizons.

The Company provides e-commerce services, fulfilment & logistics and unified Platform for outstanding buyer services under the mark/Label 'DELHIVERY' and is predominantly working for Retail Sector.

The trade mark DELHIVERY due to aggressive marketing and in course of time has attained goodwill and reputation. The Company has invested considerable time, capital, effort and resources for advertisement and promotion of its trade mark DELHIVERY in various forms of media such as print, internet, magazines etc. Which as on date have wide spread circulation.



Registrant has registered more than 100+ domains without hosting active contents on those websites. Registrant has not developed any active website in respect of the said domain and has only listed weblinks pertaining to third party websites/entities including those selling products identical to those of the Complainant. Registrant is misusing Complainant's well-known trade mark/domain **DELHIVERY** to gain illegal benefits.

- ii. Registrant registered domain name knowing fully well of the Complainant and its business and with the sole aim to monetize from the same. Registration of the domain name **delhivery.co.in** by the Registrant has resulted in the Complainant being prevented from reflecting the trade mark/domain(s) **DELHIVERY** in a corresponding domain name with the .INRegistry, Complainant has several gTLD's comprising **DELHIVERY** owned and managed by it.
- iii. Complainant submits that the conduct of the Registrant only ' proves its *mala fide* to attract internet users to its website by creating a likelihood of confusion with the mark(s) or domain name(s) of the Complainant as to the source, sponsorship, affiliation, or endorsement of the Registrant's website and/or of the products/services. Further, internet users desirous of accessing the Complainant's website may get attracted to the impugned website, thereby creating confusion in their minds.

**B. RESPONDENTS CONTENTIONS:**

Respondent has not responded at all.

**5. OPINION:**

**I. Issue:**

- A) In order to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
  2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
  3. Why the domain name in question should be considered as having been registered and being used in bad faith.



**PARTIES CONTENTIONS:**

**A.COMPLAINANTS CONTENTIONS:**

**1. The Domain name is identical to a trademark/ tradename or service mark in which the Complainant has rights:**

Complainant submits that disputed name Delhivery.co.in is identical to and comprises in entirety the Complainant's well-known trade mark DELHIVERY, which is filed in numerous Applications in India.(Details of Registration Provided).That Registrant registered the impugned domain name on September 30, 2013 whereas the Complainant's earliest domain 'delhivery.com' was created on 16<sup>th</sup> March 2011.That Complainant has prior rights in the trade mark/domain DELHIVERY *vis-a-vis* the Registrant.

**2. The Respondent has no rights or legitimate interests in respect of the Domain name:**

Complainant submit that Registrant is not offering any goods/services under the domain name '**delhivery.co.in**'. Rather website is not operating at all, the website is inactive under the impugned domain **delhivery.co.in** & hence Registrant cannot demonstrate any use relating to *bona fide* offering of goods or services.

Complainant submits that Registrant is not commonly known by the said domain name and is not authorized or licensed by the Complainant to use its mark. Registrant has no association with the domain name whatsoever whereas complainant is a global leading logistics services brand and the mark '**DELHIVERY**' is inextricably interwoven and identified exclusively with the Complainant.

**3. The Domain name was registered or is being used in Bad Faith:**

- i. Complainant submitted that Registrant has registered the impugned domain name **delhivery.co.in** with the sole purpose of blocking the Complainant from registering the said domain in its name, and has done so with the intention of selling/transferring the same for excessive consideration.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 2011 and is using the brand 'DELHIVERY' since 2011, has a big customer base worldwide and has made extensive efforts to promote the brand name 'DELHIVERY' by consuming various resources available at its end and got National, International visibility, big internet presence and wide publicity and created a place of its own in the Logistics world.

Word 'DELHIVERY' has certainly acquired a popular Brand name across the length and breadth of internet and other platforms and being predominantly a ecommerce support Company the brand name has huge ramifications. It has created a reputation and goodwill for itself.

On the basis of the records submitted by the complainant it's proved that the domain name 'delhivery.com' has been with the Complainant since the year 2011 and in commercial use on internet by it. It also proved amply that its operations started in India and spread from there to other countries.

.in is country (India) specific domain and Complainant has been conducting business in India with that name and by the name of 'delhivery.com' on internet which is owned and operated by the Complainant leads towards the conclusion that delhivery.co.in is related to the Complainant's business and is derived from the operations of the Complainants Company, whereas, the same cannot be said about the respondent.

It is confirmed that Complainant is extensive user of word 'delhivery' which due to the same has acquired importance, relevance and a name. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is not correct and similar web names lead to confusion among web surfers cannot be denied.

That word 'delivery' has been registered in various tld's e.g. .com, .io, .net, .pw etc Respondent's registration of the Domain 'delhivery.co.in' seems to be done with the knowledge of the fame and public recognition of the word 'delhivery'. Establishes



Infringement, and that Respondent has registered the Infringing Domain Name without performing the required due diligence. Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglia or illegality of its operation and to ensure that knowingly or unknowingly no illegalities are committed. Registrant failed to have fulfilled its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner or not.

The respondent has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to trade on 'delhivery.co.in', incorporated in its reputation, goodwill and trademarks. Respondent has not shown any fair or legitimate non-commercial use, but instead has just remained silent and non responsive and seems to be accumulating domain names with a purpose of misuse. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with word and name 'delhivery' and its reputation and services to an inactive portal site leading to confusion to the users and constitute bad faith use under the policy. It cannot be ruled out that the Respondent registered the domain name with the purpose of later selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results is a common practice of domain hijackers constitutes bad faith. It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with Complainant or permission from the complainant for use of its marks.



Respondent cannot have ignored the fact that 'delhivery.com' is a registered and popular domain name of the Complainant. It cannot be ruled out that Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the name and word 'delhivery', Internet users will apparently and reasonably expect it as an offer of the Complainant or authorized or affiliated enterprises under 'delhivery.co.in'. The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's rights of the domain name.

The logo 'delhivery' and similar domain names ,i.e., 'delhivery.com', 'delhivery.asia', 'delhivery.co' etc. were legally registered at the various registries of internet by the Complainant and some much before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'delhivery.co.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner. That the complainant efforts to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

## **II. Domain name hijacking**

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.







As enumerated in Para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

### III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name 'delhivery.co.in' be and is hereby transferred to Complainant with immediate effect.

Given under my hand and seal on this day of 23<sup>rd</sup> day of June 2016

  
 **Deepa Gupta**  
Arbitrator