



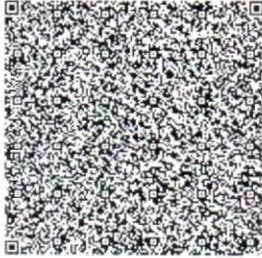
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL45299606696569P
Certificate Issued Date : 06-Feb-2017 03:34 PM
Account Reference : IMPACC (IV)/ dl831103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83110391029149031377P
Purchased by : SUDARSHAN KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SUDARSHAN KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)

COMPLAINANT
3M Company

Vs.

RESPONDENT
Machang

ARBITRATION AWARD

S.K. Bansal

.IN Registry
(NATIONAL INTERNET EXCHANGE OF INDIA)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

COMPLAINANT

3M Company
3M Center
St. Paul, Minnesota 55144-1000

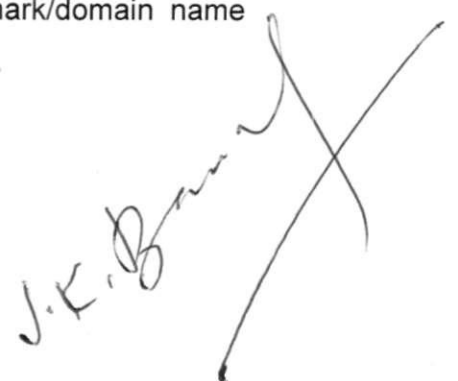
Vs.

RESPONDENT

Machang
Hua An Holdings (H.K.) Ltd.
Room No. 14-05-301, West Block, North,
Hong Kong - 999077

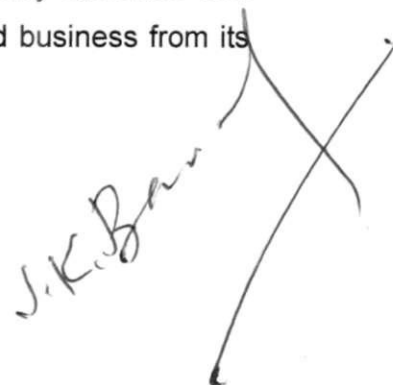
ARBITRATION AWARD

1. The Complainant is aggrieved by the Respondent's registration of the domain name www.futuro.co.in registered through the sponsoring Registrar 'Business Solutions' (R54-AFIN) and has accordingly made this Complaint seeking the relief that the domain name www.futuro.co.in (Disputed domain name in short) be transferred to the Complainant.
2. The Complainant has preferred this Complaint on the basis of its claimed proprietorship and ownership rights in the trade mark FUTURO (word) and (formative as its essential feature) and in the domain names bearing the word/mark FUTURO as its essential feature (collectively referred to as the "trade mark/domain name FUTURO" and/or said "trade mark/domain name").

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3. The Complainant claims to be a company organized and existing under the laws of the State of Delaware, United States of America and claims to be a global diversified technology company serving communities and consumers worldwide with its innovative and unique products and services encompassing Safety, Security & Protection; Healthcare; Display & Graphics; Electronics, Electrical & Communications; Home & Leisure; Manufacturing & Industry; Transportation Industry; and Consumer & Office Products.
4. The Complainant claims to be using its trade mark/domain name FUTURO in relation to a wide range of its products and solutions involved in the healthcare, medical and surgical care industries and areas. According to the Complainant, the brand FUTURO was found by one Mr. George Jung, Jr. in the year 1917 and was acquired by Beiersdorf AG, Germany in the year 1996 and thereafter the Complainant claims to have acquired the trademark FUTURO from Beiersdorf AG in the year 2008.
5. The Complainant claims its trade mark FUTURO to be registered under the Trade Marks Act, 1999 in India in its favour as well as in other countries/jurisdictions including but not limited to Canada, European Union, Switzerland, U.K. and U.S.A. The particulars of such registrations as well as copies of the respective registration certificates have been pleaded in and filed along with the complaint respectively. In addition the Complainant also claims to have acquired a valuable trade, goodwill and reputation under its trade mark/domain name FUTURO being used by it in relation to its said goods and business and which trade mark/domain name according to the Complainant enjoys distinctiveness and duly identifies and distinguishes the Complainants said products and business from its source and origin.

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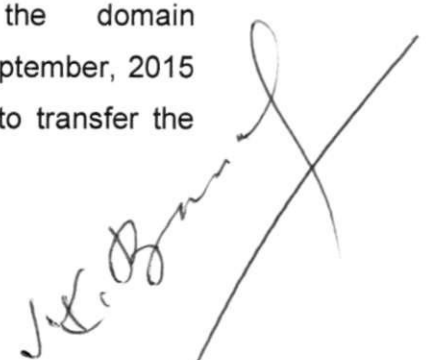


6. The Complainant claims its products under the said trade mark to be available in 42 countries of the world and its sales in the year 2015 itself to be worth USD 92,207,010. The Complainant claims to have spent enormous amount of money, effort and skills in popularizing and advertising its said products and business under its said trade mark FUTURO worldwide and which the Complainant has done through all forms of media. The Complainant claims to have spent a sum of USD 3,878,126 in the year 2016 alone on such publicity/advertisements. The Complainant claims to have been featured in a wide variety of press releases and other media coverage with reference to its trade mark FUTURO and copies of such press/media releases and coverage have been filed with the Complaint.
7. According to the Complainant, its said trade mark FUTURO is well known in India since the year 1999 and which trade mark has been well used, well-advertised, well established and enjoying noticeable goodwill, reputation, distinctiveness and is extremely visible in the market and trade with it in relation to its aforementioned goods and business.
8. The Complainant states that it is also the Registrant of various FUTURO formative Top level domain names and country level domain names such as 3m-tuturo.com, 3m-futuro.info, Futuro.Co.nz, Futuro.us respectively and which it has been using in relation to its goods and business in the course of trade and particulars of some such domain names have been filed with the Complaint.
9. According to the Complainant its said trade mark/domain name is a source and quality indicator of its products and business world over including in India and of it to be carrying on its said business under the said trade mark/domain name in the physical as well as in the

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cyber market. The Complainant claims its said trade mark/domain name to be a well known trade mark and claims that the consumers' at large associate the trade mark/ domain name FUTURO with the Complainant alone.

10. According to the Complainant, the Disputed Domain name www.futuro.co.in is identical with and deceptively similar to the Complainant's registered trade marks FUTURO and its various FUTURO formative domain names and is in violation of the Complainant's rights therein. The adoption of the disputed domain name (www.futuro.co.in) is mala fide and the same is allegedly being used by the Respondent for making illegal gains to trade upon the Complainant's goodwill and reputation attached to the Complainant's said trade marks/domain name FUTURO.
11. The Complainant states that the Respondent has illegally adopted the disputed Domain name bearing the Complainant's said FUTURO trade mark only for the purposes of making monetary gains and misleading the online visitors and the general public into believing that the disputed domain name is an off-shoot of the Complainant or is in some manner legitimately associated with the Complainant, which is not the case. In addition to this, according to the Complainant, the Respondent has also parked the disputed domain name for sale without using or making *any* bona fide use of the same with the mala fide intention of disrupting the goodwill and reputation of the Complainant's said trade mark.
12. The Complainant also claims the Respondent to be a habitual cybersquatter and who has been the subject of other INDRP decisions including those pertaining to the domain morganstanleyiq.in in which an award dated 24th September, 2015 was passed against the Respondent with direction to transfer the



domain name to the Complainant therein (Morgan Stanley). The Complainant has placed on record the aforesaid decision against the respondent along-with this complaint.

13. In support of its rights and use the Complainant has made numerous pleadings and filed numerous documents which would be dealt with in so far as they are relevant, in the course of this award.
14. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 9th January, 2017.
15. Thereafter, I issued a notice to the Respondent vide email dated 13th January, 2017 with a copy of the Complaint and documents wherein the Respondent was notified about my appointment as the Arbitrator and was also given an opportunity to submit its written response to the Complaint stating its defense together with documents supporting its position within ten days thereof. No reply was received to the said notice and the Respondent did not submit its response and documents within the stipulated time. In the interest of justice, the Respondent was given a further opportunity of ten (10) days to file its response along with documents vide my notice dated 24th January, 2017 wherein it was stated that in the event of the Respondent not so filing, the Complaint would be decided on the basis of the material on record filed by the Complainant. The copies of the aforesaid notices dated 13th January, 2017 and 24th January, 2017 were also sent to the authorized representative of the

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Complainant. The Respondent never filed any response or documents.

16. Consequently I proceed to adjudicate this Complaint on the basis of the material available on the record.
17. The Trade Mark FUTURO is duly registered in India under the Trade Marks Act, 1999 (the Act for short) as per the following particulars:

S.No.	Registration No.	Class	Trademark	Date of application	Status
1	884267	10	FUTURO	29.10.1999	Registered

The above registration covers the following goods in class 10 of the then applicable Fourth Schedule to the Trade Mark Rules framed under the Act as under-

CLASS	GOODS
10	braces and elastic supports for the body, elastic bandages and elastic support hosiery all being goods included in class 10.

18. The copy of the registration certificate of the aforementioned Indian registration has been placed on record by the Complainant as **Annexure C.** As per the online records of the Indian Trademark Registry, this registration was initially in the name of M/s Beiersdorf SA and was subsequently brought by the Trade Mark Registry in the name of the Complainant as its subsequent proprietor. This registration consequently stands in the name of Complainant. This registration is valid/renewed upto 29.10.2019.

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19. The Complainant has placed on record particulars and certificates of its Registration for the trade mark FUTURO in various countries/jurisdictions namely Canada, European Union, Switzerland, U.K. and USA as **Annexure B** and particulars of some such Registrations can be noticed as hereunder:

S.NO.	Country	Registration Number	Date of Registration
1	Canada	210918	29.01.2007
2	European Union	001036805	07.01.1999
3	Switzerland	268899	30.10.1973
4	United Kingdom	2363180	13.05.2004
5	USA	435147	30.06.1947

20. The afore noticed Indian Trade Mark Registration in the name of the Complainant confers valuable rights in the registered trade mark upon the Complainant and has a presumptive validity in favour of the registration attached to it as also is a presumptive evidence of title in the trade mark involved in favor of the Complainant. **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. &Anr. reported in AIR 1986 SC 137; National Bell Co. Vs. Metal Goods Mfg. Co (P) Ltd. &Anr. reported in AIR 1971 SC 898; Section 2(i) (v), 28 and 29 of the Act].**
21. As per the search result placed on record by the Complainant as **Annexure F** from the Whols database available on the INDRP website the disputed domain name www.futuro.co.in, is registered in the name of the Respondent with the sponsoring registrar "Business Solutions" with the date of creation as 22.05.2012.
22. The afore noticed Indian Trade Mark Registration under No.884267 in favour of the Complainant predates the creation of the disputed domain name in the name of the Respondent. This Indian trade

mark registration in the name of the Complainant dates back to the year 1999 while the creation of the disputed domain name is only of the year 2012. Thus it can safely be taken that the trade mark FUTURO with the Complainant is a prior mark.

23. In my considered view the trade mark FUTURO is an arbitrary and fanciful trade mark in relation to the health care, medical and surgical care products, goods and businesses of the Complainant and has no descriptive, suggestive or generic connotation with these products and as such the trade mark FUTURO enjoys inherent distinctiveness and is a consequent strong trade mark.
24. The trade mark FUTURO has been well reported upon, has been covered and featured in media and several press releases and is well advertised. The Complainant has placed on record as **Annexure-D (Colly.)** copies of some such press releases and media coverages featuring the trade mark FUTURO. Such media coverages forming part of **Annexure-D (Colly.)** includes articles published on the website www.theitmom.com ; on social network sites like Facebook ; on the websites of the Complainant ; a news report dated 23.11.2008 by one Michael Johnsen ; surveys on the trade mark FUTURO conducted by Wakefield Research ; product profiles under the trade mark FUTURO uploaded on the website www.fastcodesign.com ; news articles on the website www.fibre2fashion.com.
25. The Complainant in Para No.5 of the complaint has mentioned of 36 rankings received by it in relation to its products and activities in leading international business publications. Some such rankings are the "1955 Fortune 500 – America's Largest Corporation, Fortune (rank 131)" ; "The Global 1000, Business Week (July 2003) (rank 65th)" ; "The Complainant's Indian subsidiary to be honoured with the

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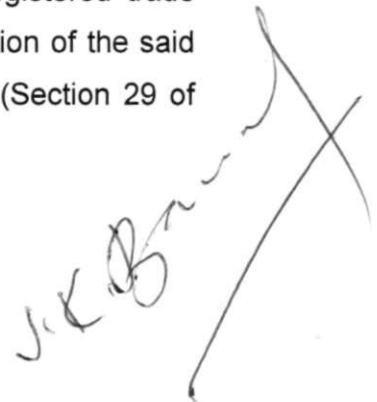
"Best Corporate Sustainability Endeavor Award 2013" from the Federaton of Indian Chambers of Commerce and Industry".

26. Consequently it can be taken that the Complainant's said trade mark in relation to its said goods enjoys visibility in the market and trade in addition to being well advertised and well reported upon. The market and trade can be taken to be aware of the Complainant, the Complainant's business activities and the Complainant's said FUTURO trade mark/domain name and the Complainant's products and usages thereunder.
27. The Respondent has not contested the Complainant's rights and use including the Complainants claim of its said trade mark/domain name FUTURO to be well known, enjoying noticeable distinctiveness, goodwill, presence and visibility in the commercial market.
28. In my considered view the disputed domain name in the name of the Respondent bears the Complainant's registered trade mark FUTURO as its essential and memorable feature. It is the word/trade mark FUTURO that the disputed domain name (www.futuro.co.in) would be remembered by the general internet user(s) who would access the internet services being offered by the Respondent. Consequently, an average consumer exercising average caution would remember and associate the disputed domain name with the Complainant's trade mark. **[K.R. Chinna Krishna Chettiar Vs. Sri Ambal and Co.& anr. (AIR 1970 SC 146) ; Ruston & Hornby Ltd., Vs. Zamindara Engineering Co. (1970 (2) SCR 222) ; B.K. Engineering Co. v/s U.B.H.I. Enterprises (AIR 1985 Delhi 210)]**
29. Having regard to the complete similarity/identity between the Complainant's trade mark/domain name FUTURO and the disputed

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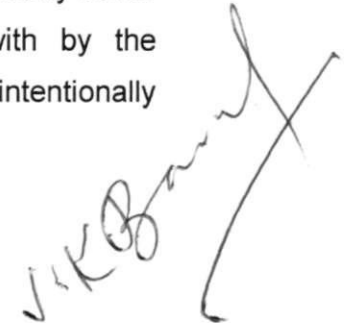
domain name www.futuro.co.in of the Respondent I am of the considered view that an average consumer with imperfect memory would be led into the belief of a possible nexus between the Complainant and the Respondent or of the disputed domain name. A consumer may also believe the disputed domain name to be sponsored, licensed or affiliated with the Complainant or to be an extension of the Complainant's business, while in fact it is not so. Such a similarity in addition to being qualified as deception also qualifies as an act of mis representation, deceit as also acts as evidence of bad faith and malafide intention on the part of the Respondent to gain illegal monetary benefit. **[Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 PTC (16) 142 Del (DB) ; (McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03)Marks & Spencer Vs. One-In-A-Million (1998 FSR 265)].**

30. A consumer or internet user seeking to access the Complainant would not only be misled with reference to the trade mark FUTURO in case they come across the Respondent's website by erroneously or inadvertently suffixing the "second level" domain name i.e., FUTURO with the gTLD (generic top-level domain) **.co.in** instead of gTLD (generic top-level domain) **.com**. The said internet user/consumer would be deceived by being led to somewhere else or in not reaching the Complainant's website thus causing loss and injury to the Complainant.
31. As noticed above the trademark FUTURO is duly registered in India under the Trademarks Act, 1999 in the name of the Complainant. The disputed domain name bearing the identical registered trade mark of the Complainant would be in complete violation of the said registered trade mark FUTURO of the Complainant (Section 29 of

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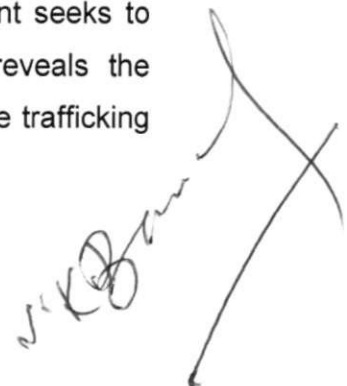
the Act) **[Lt Foods Limited Vs. Sulson Overseas Pvt. Ltd. 2012(51)PTC 283(Del)]**.

32. A right in the trade mark/domain name can be violated even by the use of the trade mark/domain name as a part of a rival domain name and that a probability/likelihood of consumer deception is the test and not actual consumer deception. A right in the trade mark and especially in the registered trade mark has to be protected even if it is being used as a material part of a rival domain name. **[See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & anr - 2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited Vs. Manu Kosuri & Anr.-2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee &Ors.- 2003 (26) PTC 60 (Del)]**.
33. In my considered view should a consumer reach the Respondent under the disputed domain name grave injury would be caused to the Complainant as it can be inferred that such a consumer may believe that the word/mark FUTURO is no longer the sole preserve of the Complainant as it could be so used even by businesses/legal entities not associated with the Complainant and thus shaking his confidence in the products and business of the Complainant. Such a consumer who is otherwise attracted to the products and business of the Complainant for the exclusivity in the trade mark/trade name FUTURO may turn away from the Complainant. Consequently the strength and value of the goodwill attached to the Complainants FUTURO trade mark/domain name would depreciate.
34. The respondent can even sell the disputed domain name to any other business/legal entity. The Complainant would invariably suffer by any sub-standard business or products dealt with by the respondent or its assignee, licensee or affiliate, whether intentionally

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or otherwise, or which fails to meet the quality and standards of the Complainant. In such an event the business and reputation of the Complainant under its said trade mark/domain name would be at the hand and mercy of the Respondent or its assignee, licensee etc., over whom the Complainant may have no control or access or who would be immune from the direction and command of the Complainant. All these violative acts of the Respondents would perpetually and irreparably not only tarnish the business of the Complainant but also diminish, erode and eclipse the standing and distinctiveness attached to the Complainants FUTURO trade mark/domain name.

35. The Complainant has placed on record as **Annexure- I & J**, copy of the webpages of the website pertaining to the impugned domain name of the Respondent evidencing its availability for sale by displaying the words "The domain future.co.in may be for sale. Click here to inquire about this domain". (Emphasis supplied). Such an incorporation and placement would give rise to an impression in the mind of any internet user who is misled into reaching the Respondent while trying to reach the Complainant by the use of the rival domain name into believing that the Complainant has no rights or business under its domain name or is a cyber-squatter seeking to make illegal money by way of sale or is suffering in business. This would invariably and irreparably tarnish the goodwill, reputation, standing of the business of the Complainant and its said FUTURO trade mark/domain name. Such an internet user would obviously be disappointed with the outcome from the Respondent's website and relate it to the Complainant.
36. A perusal of **Annexure-I and J** wherein the Respondent seeks to sell the disputed domain name, as noticed above, reveals the Respondent to be a cyber-squatter/cyber pirate and to be trafficking

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in the disputed domain name and whose only interest in the disputed domain name is to derive illegal money from its sale. "Cyber-piracy" has been defined as "the act of registering a well-known name or mark" (or one that is confusingly similar) as a website's domain name, usually for the purpose of deriving revenue" **[See The BLACKS LAW DICTIONARY 444 (9th ed. 2009)]** while trafficking has been recognized by the Hon'ble Supreme Court of India in its decision of **American Home Products Corporation vs. Mac Laboratories Pvt. Ltd. reported in AIR 1986 SC 136** as a "cardinal sin" of Trade Mark law. In the very same judgment the Hon'ble Supreme Court has held trafficking to involve obtaining registration of Trade Marks without any intention to use it in relation to any goods but merely to make money out of it by selling it to others the right to use it.

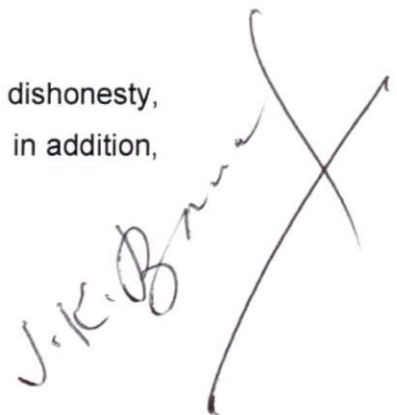
37. All the aforesaid acts of the Respondent, in my considered view clearly establish the Respondent's very adoption of the disputed domain name and its registration with the sponsoring Registrar to be actuated in bad faith, malafide and fraud. The Respondent thereby is also guilty of cyber piracy & cyber-squatting which in itself is a facet of bad faith and that the Respondent has no legitimate right or interest in the disputed domain name.
38. While considering the concept of malafide the Hon'ble Supreme Court in its celebrated case of **Parbodh Sagar v/s The Punjab State Electricity Board and Ors reported in 2000 (5) JT 378** has held – ".....that the expression "malafide" is not a meaningless jargon and it has its proper connotation. Malice or malafide can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set of guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances." **The Oxford dictionary of law 6th**

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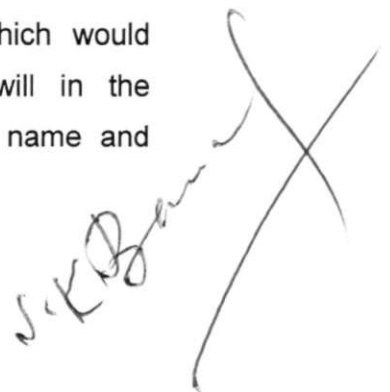
Edition 2006 defines malafide as - [Latin: bad faith] Describing an act performed fraudulently or dishonestly. **In GramaxPlasticulture Limited V/s Don & Low Nonwovens Limited 1999 RPC 367 at page 379** bad faith has been defined to include dishonesty and dealings which fall short of the standards of acceptable commercial behavior observed by reasonable and experienced men in the particular area being examined. In **Road Tech Computer Systems Limited v/s Unison Software (UK) reported in 1996 FSR 805 at page 817** bad faith has been defined to mean dishonest, lack of good faith : not necessarily for a financial motive but still dishonesty.

39. The concept of or what amounts to bad faith, malafide or dishonesty is not one that lends itself to an exhaustive definition and for the determination of which there can be no rigid strait jacket formula and nor prescribed hard and fast rules or set guidelines. They have to be judged with reference to the facts and circumstances of each case. Bad faith and dishonesty can be discerned from a number of factors like what the person charged with bad faith actually knew and then an assessment as to whether a reasonable person would regard such a persons behavior, given that knowledge as "conduct following short of acceptable commercial behavior". In such an enquiry the view of such a person as to whether his behavior is dishonest is of no consequence and the issue of dishonesty is to be judged by the "ordinary standards of honest people". **[See Intellectual Property Law by Lionel Bently and Brad Sherman, Third Edition (Page 851 – 852)]**. Acting in reckless disregard of others' rights or possible rights can be a tell-tale sign of dishonesty. **[See Ajit Weekly Trade Mark reported in 2006 R.P.C. (25) 633]**.
40. The respondent's bad faith malafide, fraud, conscious dishonesty, lack of rights and interest in the disputed domain name, in addition, is also apparent from the following:-

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- (a) The Respondent has not furnished any explanation on its adoption of an identical prior Trade Mark FUTURO belonging to the Complainant. This is more so as the Complainant said FUTURO trade mark is duly registered on the Indian Register as also it is an arbitrary and fanciful trade mark in relation to the nature of the goods/services being dealt with in the course of trade by the Complainant and the Complainants said trade mark enjoying visible commercial presence on the internet.
- (b) The Respondent was well aware of or ought to have been aware of the Complainant's said trade mark/domain name before its alleged adoption and registration of the disputed domain name using a deceptively same/similar mark, as is the case. The Respondent must have possessed prior knowledge and interest in the internet and awareness of the concepts of E-commerce and online markets actuated through the internet medium triggered through domain names. The Complainant's said business and products and the Complainant's said FUTURO trade mark and the Complainant's activities thereunder have been widely reported upon and have been the subject of media coverage on accredited platforms and enjoying noticeable commercial visibility. It is impossible to believe that the respondent would not have been aware of the same.
- (c) By adopting and registering the disputed domain name the respondent has exhibited a reckless dis-regard as to the obvious confusion, deception and detriment which would result to the Complainant and to the goodwill in the Complainant said FUTURO trade mark/domain name and

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such acts of the respondent fall short of the standards of acceptable commercial behavior.

- (d) The Respondent's impugned conduct speaks for itself (*res ipsa loquitur*) and the very adoption of the impugned domain name by the respondent is tainted at inception. The motive of the Respondent is/was to derive unjust benefit from the Complainant's trade mark FUTURO.
- (e) The Respondent is a habitual cybersquatter and has been subject of INDRP decision pertaining to the domain morganstanleyiq.in wherein an award dated 24.09.2015 has been passed against him with a direction to transfer the domain name (being the subject matter of the said proceedings) to the Complainant therein (Morgan Stanley). The copy of the said award dated 24.09.2015 is on record as **Annexure-G** to this Complaint.
41. The Courts have repeatedly held the basic principles of Trade Mark law as also the laws of passing off to apply to disputes in respect of internet domain names **[See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)]**. Consequently the ratio of the various decisions cited above even if rendered with reference to trade mark law would be applicable to the present domain name dispute.
42. In my considered view the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its Trade Mark/Domain Name FUTURO. The wrongs of the Respondent is also apparent from the fact that it has not traversed nor challenged the Complaint facts against him. Such a non-traverse has to be taken against the Respondent (**Uttam**


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**Singh Dugal & Company Limited V/s Union Bank of India & Ors –
reported in AIR 2000 SC 2740).**

43. Trade Marks have been accepted to be valuable business assets to be protected against their wrongful adoption and use even as part of a rival domain name and such violations have to be removed in the interest of the right holder as also of the consumers.
44. In the aforesaid view of the matter I have no reservation against holding that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name www.futuro.co.in be transferred to the Complainant.

Signed at New Delhi, India on this 6th day of February, 2017.



Sudarshan Kumar Bansal
Sole Arbitrator