

INDIA NON JUDICIAL

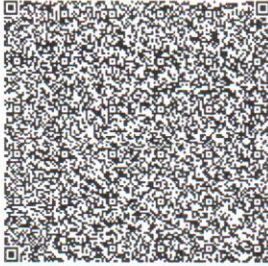
Government of National Capital Territory of Delhi



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e-Stamp

Certificate No. : IN-DL71942133326380N
Certificate Issued Date : 23-Feb-2015 05:44 PM
Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL9213034086965857797N
Purchased by : SONAL KUMAR SINGH
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SONAL KUMAR SINGH
Second Party : Not Applicable
Stamp Duty Paid By : SONAL KUMAR SINGH
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Orange Brand Services Limited,
3 More London Riverside, London,
United Kingdom, SE1 2AQ

... (Complainant)

v.

Hitesh Chavda
Orange Softworld Private Limited
M-2, Madhuban Complex,
Ahmadabad, Gujarat—380006, India

... (Respondent)

82

1

Statutory Alert:

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AWARD

The Parties

The complainant in this proceeding is Orange Brand Services Limited (hereinafter "Complainant"), a company incorporated under the laws of England and Wales, having its office at 3 More London Riverside, London, United Kingdom, SE1 2AQ.

The Respondent is Hitesh Chavda, of the organization Orange Softworld Pvt.Ltd (available through .IN WHOIS)

The Domain Name & Registrant

The disputed domain name orangesoftworld.in is registered with Webiq Domains Solutions Pvt. Ltd (R131-AFIN).

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name orangesoftworld.in.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 22.12.2014, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself I requested the Complainant to supply the copy of the complaint with annexure to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 22.12.2014 with the instructions to file his say within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 23.12.2014, I received an email whereby I was informed by NIXI that the service of the Complaint could not be effected at the address provided by the Claimant in the Complaint.

As per the details available at the Whois database access via the .IN Registry's website the email-id as per the records was hitesh.orangesoft@gmail.com

On 30.12.2014, I called upon the Respondent to provide his recent address by 2nd January, 2015 where the service of the Complaint could be effected, failing

which the Arbitrator may proceed ex parte. The Respondent had been copied on all correspondences till that date and was deemed to be aware of the arbitration proceedings.

On 03.01.2015, I received an email from the Counsels/Representative of the Complainant requesting the Arbitrator to proceed ex-parte as the Respondent had failed to provide his response by the deadline of January 2, 2015.

However, on 14.01.2015, in the interest of justice I directed the Complainant and NIXI both to send a copy of the entire Complaint to the Respondent on all the addresses that I had come across while going through the Complaint. I had found that the Claimant had sent a cease and desist letter dated 18.07.2014 to the Respondent which was delivered on 19.07.2014 on the additional address that the Claimant obtained from the records of the Registrar of Companies.

The said addresses being:

Orange Softworld Private Limited,
S-4, Panchtirth Apartment,
B/H Sukun Apartment,
Nehru Park, Vastrapur
Ahmedabad – 3800015

Hiteshkumar Mahendrasinh Chavda
Nobel Nagar, Naroda E-12-12,
Santosh park Soc, Kuber Nagar,
Ahmedabad, 382340
Gujarat, India

Jigar Kalpeshbhai Shah
S-4 Panchtirth Apartment,
B/H Sukun Apartment,
Nehru Park, Vastrapur
Ahmedabad – 3800015

The copy of the Complaint was to be served by 19.01.2015 and the Respondent was given time for filing the Reply within 10 days of the service of the Complaint.



On 14.01.2015, I also received an email from Respondent wherein he had mentioned that the company Orangesoftwareworld Pvt. Ltd. is not operational and exists only on papers.

On 15.01.2015, I encouraged the Claimant to approach the Respondent for any possibility of Settlement within next 10 days without any prejudice to the earlier directions of the Tribunal to the Respondent to file its Reply within 10 days of the receipt of the Complaint.

On 19.01.2015, I received an email from the Counsels/Representative of the Complainant, informing about the details of the service of the copy of Complaint to the Respondent on the additional addresses. According to this mail copy of the complaint was duly delivered to the suggested postal addresses of the Respondent. Also, I was informed by the Counsels/Representative of the Complainant that the Complainant had already exhausted all chances of Settlement with the Respondent and so the Complainant did not wish to incur any further expenses and expend any more time in initiating negotiations for Settlement.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time i.e. 26.01.2015. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted.

I feel that enough opportunities have been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present ex-parte award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

Complainant:

1. The Complainant is 100% owned by Orange SA, which is a French company. The Complainant is engaged in the business of providing a wide variety of services and associated goods under the trademark Orange

Trade Marks (described below), including but not limited to telecommunications, mobile telephony, fixed line, internet and television broadcasting and transmission services. Separate divisions and subsidiaries of the Orange Group conduct activities in the areas of media, advertising services; healthcare services; financial services; research and development of IT and communications products and services; and charitable services.

2. The Complainant is part of the Group of Companies known as the Orange Group, (currently ranked as the 6th largest telecommunications company in the world) and the Orange Brand is the international flagship brand of the Group.
3. The Complainant is the proprietor (worldwide including India) of the mark 'Orange' and its variants in all forms in multiple classes (including classes 9, 38 & 42 for a broad specification of goods in classes 9, 38 & 42 as per NICE classification). The word ORANGE also forms an integral part of the company name and trading style of the Complainant i.e., ORANGE BRAND SERVICES LIMITED.
4. The Orange Trade Marks have been in continuous use by the Complainant since the launch of the Orange Brand in the UK on 28 April 1994. Their international use has expanded year on year since 1999 and, since June 2006, they have been in continuous use in over 200 territories worldwide, including in India, and have been registered throughout the world. The Orange Brand trade mark portfolio also includes many marks registered and used internationally which include the word "Orange" such as "ORANGE ADVERTISING", "ORANGE BUSINESS", "ORANGE BUSINESS SERVICES", "ORANGE LABS", "ORANGE INSTITUTE", "ORANGE FOUNDATION", "ORANGE MONEY", "ORANGE MUSIC", "ORANGE STORE", "ORANGE PARTNER", "ORANGEWORLD", "ORANGEPAGES", "ORANGEMAIL" "THE ORANGE SHOP" and reflects the activities of the Complainant's international licensees.
5. The Complainant makes significant use of the Orange Trade Marks in relation to goods and services peripheral to the core business, including software development and applications development for



telecommunications and IT products; IT and IT related goods / services; telecommunications services goods/accessories such as handsets, SIM Cards, media storage cards/devices, computer hardware and software etc. The Complainant's ORANGE PARTNER division encourages third party developers to develop software, products and applications compatible with its telecommunications and IT networks. The Complainant has also established a network of research and development centers, known as ORANGE LABS, which are dedicated to innovation, including but not limited to the development of products and services based on new technologies, including rich interfaces, open APIs (Application Programming Interfaces) and mobile browsing systems. The Complainant also established a charitable organization in 1991, now known as ORANGE FOUNDATION, which operates in a variety of different jurisdictions to support charities, educational initiatives, disability and health care programs as well as cultural and community events.

6. The launch of the Orange Brand in the United Kingdom in 1994 received a large amount of publicity, not only in the United Kingdom, but also internationally. The ORANGE brand was subsequently expanded around the world and launched in India in February 2000. The Complainant, maintained a commendable presence in India, with telecommunication goods and services being launched under the ORANGE brand in Mumbai, Navi Mumbai and Kalyan in February 2000. The India business, including the managed and enterprise services business, has over 750 people across Bangalore, Mumbai, Delhi, Gurgaon, Chennai, Hyderabad, Kolkata and Pune. ORANGE branded retail outlets selling mobile phone goods and services operate throughout India and were highly successful.
7. The Orange Group has sponsored a large number of international events for example sponsorship of the British Association of Film and Theatre Awards (BAFTAs) from 1997 to 2012 and the Orange Prize for Fiction, an internationally recognized annual literary award.
8. The total amount spent on advertising and promotion under the Orange Brand for the years 1997 to 2001 has been in excess of £50 million per year worldwide. Between the years 2002 to 2006, this sum was in excess of £150 million per year worldwide. During the past 5 years the Orange



Group has spent over 700 million Euros annually on global promotion of the Orange Brand through advertising, sponsorship and marketing activities.

9. The Complainant has also been the recipient of numerous and prestigious accolades such as:

- Listed in Business Week Global 1000, which lists the top 1000 businesses of the world.
- In 2006, the Complainant's ORANGE Brand was adjudged the 62nd most powerful business brand in the world by an independent brand consulting practice Millward Brown Optimor in its internationally recognised study entitled BRANDZ. As per the publication, the ORANGE Brand has been valued at US \$ 9,431 million.
- The 2010 BRANDZ study shows that the value of the Complainant's ORANGE Brand has continued to increase and it was valued at US \$ 14,018 billion with a ranking of 50th most powerful business brand in the world above other well-known brands such as Nike and Sony. This value had increased to US\$15.351million by the end of 2011 according to the 2012 BRANDZ study.
- Winner of the World Communications Awards – Best Cloud Service, Best Global Operator and User's Choice Award 2012.
- Orange has been ranked at 82 in the Economic times as the best companies to work for in India.

10. The Complainant incurs vast expenses in protecting its Intellectual Property Rights in the Orange Trade Marks and also in promoting its services and products under the said marks in various countries by way of, inter alia, worldwide trademark registrations, enforcement measures, monitoring of infringement and passing off, branding, advertisements in newspapers, journals, publications, billboards, promotions, periodicals and television having wide circulation / viewership throughout the world and also through its websites, over 900 of which contain the word ORANGE, all of which are widely accessible. These domains like www.orange.com and www.orange-business.com are visited by a vast number of people who are able to view online various products and services offered by the Complainant and as a result clearly associate the ORANGE Mark with the Complainant.



11. The Complainant has extensively and consistently marketed, promoted, advertised and labeled its products and services together with the Orange Trade Marks for a significant period of time and keeping in fact of the exhaustive worldwide chain of business of the Complainant, the said marks have been able to acquire cross-border reputation and has become radically distinctive to the Complainant's products and services. Through the efforts of the Complainant, the Complainant's Orange Trade Marks are now associated throughout the world with quality and reliability for such services offered by the Complainant.
12. The Complainant exercises extreme vigilance in protecting its intellectual property rights and guards the Orange Brand zealously.

Respondent

The Respondent in the present proceeding is an individual named Hitesh Chavda, of the organization Orange Softworld Pvt.Ltd

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical and / or confusingly similar to the Complainant's ORANGE Trade Mark(s).
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent was registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.



Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions, and evidence and inference drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "ORANGE".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has stated in its complaint that domain name of Respondent orangesoftwareworld.in is confusingly similar and identical to his name/mark ORANGE.

It is further stated that the Complainant has also previously prevailed in the proceedings before the WIPO Arbitration and Mediation Centre in the Case No.

D2011-2012 titled *Orange Brand Service Limited v. Orange Telematics Private Limited/Naveen* and WIPO Case No. D2013-1326 titled *Orange Brand Service Limited v Orange Softworld Pvt Ltd*. The surrounding facts in the mentioned cases were similar to the present matter wherein the Respondent was trying to use a deceptively similar domain name in order to derive benefits of the goodwill and reputation earned by the Complainant over many years.

The complainant has established its prior adoption of the mark /name orange. The complainant has filed sufficient evidence to show the Orange Brand trade mark portfolio also includes many marks registered and used internationally which include the word "Orange" such as "ORANGE ADVERTISING", "ORANGE BUSINESS", "ORANGE BUSINESS SERVICES", "ORANGE LABS", "ORANGE INSTITUTE", "ORANGE FOUNDATION", "ORANGE MONEY", "ORANGE MUSIC", "ORANGE STORE", "ORANGE PARTNER", "ORANGEWORLD", "ORANGEPAGES", "ORANGEMAIL" "THE ORANGE SHOP" and reflects the activities of the Complainant's international licensees

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*



- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or make use of its Orange Trade Marks.

The complainant also submits that, upon its information and belief, the Respondent has never used or made preparations to use, the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. The Respondent appears to be using the term Orange for undertaking business with a malafide intention and offering of goods/services.

It is further submitted by the Complainant that additionally, the addition of the words "SOFTWORLD" to the word ORANGE in the Disputed Domain Names clearly reflects that the intention of the Respondent is to deceive the public into believing that some association exists between the Complainant and the Respondent, which consequently is tarnishing the goodwill and reputation enjoyed by the Complainant worldwide with respect to its ORANGE branded products and services, and thereby diluting the Orange Trade Marks of the Complainant.

Also, to the Complainant's knowledge, the Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trademark or service mark rights in the Disputed Domain Name and, therefore, the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Complainant further submits that Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant's Mark, and, therefore, has no rights or legitimate interests in the Disputed Domain Name

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts



and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii)

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has acted in bad faith since it has intentionally attempted to attract internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or other location.

That as such, the Respondent's reservation of the Disputed Domain Name was clearly and purposefully made in order to unduly benefit from the confusion with the Complainant's Orange Trade Marks and activities to the Respondent's benefit.

The complainant further alleges that there can be no doubt as to the Respondent's knowledge of the Complainant's mark at the time of Registration of the Disputed Domain Name, which clearly evidences their bad faith and that the Complainant's rights in the Mark pre-date the Respondent's registration of the Disputed Domain Name.

It is also submitted by the complainant that the Complainant tried to establish contact with the Respondent to inform them of Complainant's rights in the Mark and the domains thereof.

The Tribunal is of the view that the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name.

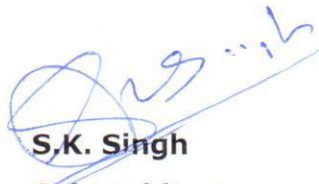
The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise, the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).



Decision

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has got registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <orangesoftwareworld.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 23rd day of February 2015.



S.K. Singh

Sole Arbitrator

Date: 23rd February, 2015