



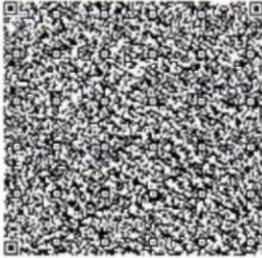
सत्यमेव जयते

## INDIA NON JUDICIAL

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Unique Doc. Reference : SUBIN-DLDSLHIMP1720927777908010N  
Purchased by : SANJAY KUMAR SINGH  
Description of Document : Article 12 Award  
Property Description : NA  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SANJAY KUMAR SINGH  
Second Party : NA  
Stamp Duty Paid By : SANJAY KUMAR SINGH  
Stamp Duty Amount(Rs.) : 100  
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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR.  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY.  
(INDRP)

Entrust, Inc. --- complainant

vs  
Mr. Sergey Kvishal --- Respondent

Sanjay Kumar Singh

#### Statutory Alert:

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**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR**

**IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**IN THE MATTER OF:**

**Entrust, Inc.**

**One Lincoln Centre,**

**5400 LBJ Freeway,**

**Suite 1340, Dallas, Texas 75240,**

**United States of America. . . . .COMPLAINANT**

**VS.**

**Mr. Sergey Krishtal**

**Dobrolyubova Street, 1- 47, APT' 322,**

**Ivanovo, 153000, Russia . . . . .RESPONDENT**

**THE PARTIES:**

**I. THE COMPLAINANT**

1. Entrust, Inc. is a company organized and existing under the laws of the united States of America having its headquarters at One Lincoln Centre, 5400 LBJ Freeway, Suite 1340, Dallas, Texas 75240, united States of America ( hereinafter referred to as the Complainant'). The complainant has submitted that it is inter alia an internationally renowned provider of identity- based security solutions for enterprises, consumers, citizens and websites.
2. The Complainant's authorized representative in the present proceeding are its attorneys, M/s Lall and Sethi Advocates, of the address D-17 South Extension- II New Delhi - 110 049, The contact details are as follow: Telephone number+ 91- 11- 4289-9999, Fax number: + 91-11-4289-9900 and E- mail address is [jkaur@indiaip.com](mailto:jkaur@indiaip.com) ,

*Sanjay Kumar Singh*

3. The Complainant has preferred both the material & electronic method for communications in the said proceedings, ALL the correspondence material including hard copy and electronic copy may be send to its counsel Jyotideep Kaur and G Rahul off and Sethi Advocates, of D- 17, South Extension-II, New Delhi- 110 049 on fax no+91 11 -4289-9999 and at the email addresses [jkaur@indiaip.com](mailto:jkaur@indiaip.com) and [grahul@indiaip.com](mailto:grahul@indiaip.com),

## **II. THE RESPONDENT**

4. The complainant upon the information and belief based upon the WHOIS SEARCH available on the INDRP website and the CHECKDOMAIN DATABASE (hereinafter Collectively referred to as the ,Databases) he domain name, www. Entrust in (hereinafter sometimes referred to as the : Disputed Domain Name) is owned by one Mr Sergey Krishtal (hereinafter the' Respondent) Such belief is based upon information obtained from the Databases by conducting several database queries, which returned consistent results. The complainant has placed reliance on the copies of the same attached as Annexure B. The administrative contact address for the Respondent in the Databases is Dobrolyubova Street, 1- 47, APT 322, Ivanowo, 153000, Russia, A telephone number of + 1, 3056004489 and Email ID- [entrt2014@yandex.ru](mailto:entrt2014@yandex.ru) has been provided the Registrant ID has also been provided as C- 51000,

### **DOMAIN NAME AND TRADEMARK IN DISPUTE:**

Domain name of the respondent is "**WWW.ENTRUST.IN**"

The trademark of the complainant is "**ENTRUST**".

## **III. The Domain Name and the Registrar**

5. The complainant has submitted that this dispute concerns the domain ENTRUST.IN which was registered on May 4, 2014, according to the printouts from the Databases. The complainant has placed reliance on Annexure B.
6. The complainant has submitted that upon information and belief, The Sponsoring Registrar of the Disputed Domain Name is Dynadot LLC(RII7- AFIN), is duly

*Sanyam Kaur*

accredited with the .IN Registry and is listed on the website of the .IN Registry. The complainant has placed reliance on **Annexure C**. The website of the sponsoring Registrar is <http://www.dynodot.com/> and they can be contacted at [info\(5\)dvnodot.com](mailto:info(5)dvnodot.com).

## **V. Factual and Legal Grounds**

### **A. The Complainant's Rights in the Mark:**

7. It has been submitted by the Complainant that Entrust, Inc. is the owner of the trade mark and service mark ENTRUST, and other trademarks and service marks in which the ENTRUST mark appears as component thereof. The Complainant has the exclusive rights to use the aforesaid trademarks inter alia in respect of the goods for which the said trademarks are registered.
8. The Complainant has submitted that it was established in the year 1994 and has been continuously using the trademark ENTRUST since then. The Complainant has been inter alia providing consumers, web sites, financial institutions, enterprises, and government agencies across the globe with award- winning solutions to security challenges, enabling its customers to defend against sophisticated online and internal threats and increase enterprise efficiency. The complainant has placed reliance on print outs from the Complainant website evidencing the same and has annexed the same as Annexure D.
9. The Complainant has submitted that it has established significant fame and goodwill in its trademark ENTRUST. The product and services offered under the trademark ENTRUST have received countless awards and unsolicited media recognition. In 2013, the Complainant was awarded the North America Frost & Sullivan Award for product Leadership whereby complainant was again acknowledged as the second highest ranked SSL certificate provider in the market share. The complainant has placed reliance on the documents evidencing the awards and recognition won by the complainant and has annexed the same as **ANNEXURE E**.

*Sanyarico Singh*

10. The Complainant has submitted that it maintains websites at the domain ENTRUST.COM. The complainant has placed reliance on a copy of the Home page of that website attached as Annexure F and the said websites were used and applied for registration long before the Respondent's registration of the Disputed Domain Name. The Complainant's trademark is featured throughout the websites, and the Complainant clearly claims ownership of the trademark there on, at its 'Terms and Conditions of Use'. The complainant has placed reliance on page attached as Annexure **G**.
11. The Complainant has submitted that the trade mark ENTRUST has been extensively advertised and promoted on the internet inter alia through the Complainant's website ENTRUST.COM. The said website contains extensive information about the Complainant and the products and services marketed and sold under the trade mark ENTRUST. This information is accessible by any person from anywhere in the world. The complainant has placed reliance on print outs from the said website annexed as Annexure H. The Complainant has submitted that the said websites can be accessed from India also.
12. The Complainant has submitted that its customers include 9 of the top 10 global e-governments; 7 of the top 10 global commercial banks; 8 of the top 10 global telecom companies; 7 of the top 10 global top 10 global pharmaceutical companies; 8 of the top 10 global aerospace defence companies and 4 of the top 5 global petroleum companies. The complainant has placed reliance on documents evidencing the same annexed herewith as **Annexure I**.
13. The Complainant is the registered proprietor of the trademark ENTRUST.IN Bearing registration NO, 1883013. Dated November 11.2009 for services under Class 9. The complainant has placed reliance on a copy of the registration enclosed as **Annexure J**. The Complainant has submitted that the registration is valid, and subsisting. The Complainant has submitted that the Complainant's trade mark was used and applied for registration long before the Respondent's registration of the Disputed Domain Name.

*Sanjay K. Singh*

14. The Complainant has submitted that in addition to the aforesaid registration, in order to fully protect its trademark rights, the Complainant owns trademark registrations for the ENTRUST marks in the United States as well in numerous countries throughout the world. The complainant has placed reliance on a list of countries where these marks stand registered and has enclosed it as **Annexure K** along with few copies of certificates as **Annexure L**.
15. The Complainant has submitted that the Complainant's use of their well-known trademark and prior trademark has been extensive, exclusive and continuous all across the world including India. The complainant has placed reliance on few of printouts of press release showing use of the mark ENTRUST in India by the complainant annexed as **Annexure M**. The complainant has submitted that given the nature of the complainant's use of its trademark, anyone with access to a computer and the internet, has access to the complainant's web site wherein the complainant's trademark is featured throughout this website.
16. The Complainant has submitted that as a result of complainant's marketing and promotion of its goods under its trademark ENTRUST, the trademark has gained worldwide recognition and goodwill and has become very well-known. Moreover, the complainant's trademark has firmly been associated with the complainant prior to the respondent's registration of the Disputed Domain Name.
17. The Complainant has submitted that the complainant has strong rights in its trademark domain name WWW.ENTRUST.COM, and is entitled to get protection from a third party's act of cyber piracy, including that of the respondent.

### **AWARD**

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name www.reebok.in
3. I was appointed as Sole Arbitrator in the matter by NIXI.

*Sangay K. Singh*

The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).

A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.

On 04-10-2014, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within ten days of the receipt of the notice. However the respondent did not file any reply to the complaint nor did he file any supportive document /evidence despite the notice duly served on the respondent at his e-mail address

22-10-2014, I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within ten days from receipt of the notice failing which the award would be passed ex-parte on the merits of the complaint and as per law of the land.

On 03-11-2014 the respondent requested for documents via email.

On 09-12-2014 the NIXI sent the required documents to the respondent.

On 10-12-2014, I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within ten days positively from receipt of the notice.

On 20-12-2014, I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within FIVE days from receipt of the notice failing which the award would be passed ex-parte on the merits of the complaint and as per law of the land without any further intimation to the parties.

On 24-12-2014 the respondent filed his response along with annexures via email.

*Sangeet K. Singh*

13. On 26-12-2014 I informed the complainant about the response of the respondent and directed the complainant to file rejoinder to the response of the respondent within TEN days so as to decide the complaint.
14. On 03-01-2015 the complainant requested for time to file rejoinder.
15. On 06-01-2015 I granted Ten days' time to the complainant to file the rejoinder to the response of the respondent.
16. On 16-01-2015 the complainant filed the rejoinder to the response/counter of the respondent along with the documents.

#### FACTS OF THE CASE

1. The Complainant has submitted that based upon the information and belief, the respondent registered the Disputed Domain Name on May 4, 2014. The complainant has placed reliance on an extract of Databases where the creation date is mentioned which has been annexed by the complainant.
2. The Complainant has submitted that the Disputed Domain Name is identical to complainant's trademark, domain name. The dominant and distinctive feature of the Disputed Domain Name is the incorporation of the Complainant's trade mark, with the addition of only the -top-level country code domain for India, .IN.
3. The Complainant has submitted that at the time the respondent registered the Disputed Domain Name ENTRUST.IN, the Complainant had already been using its ENTRUST mark as a trademark and domain name and had firmly established rights in the said mark. Furthermore, at the time respondent registered the Disputed Domain Name, Complainant's ENTRUST trade mark had acquired the status of a well-known mark. The respondent cannot claim or show any rights to the Disputed Domain Name that are superior to Complainant's rights in its ENTRUST marks, as evidenced by the Complainant's prior well-known use of the mark and registration thereof. Nor can the Respondent demonstrate that it was unaware of Complainant's Mark at the time the Disputed Domain Name was registered. It was used in connection with a parked website, i.e., a one page website containing only pay- per -click (PPC) advertisements. Some of those links were for products

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related to or competitive with the services which the Complainant provides under the trademark ENTRUST. The content of the website was removed after receipt of a letter from the Complainant's attorney to the Respondent dated June 5, 2014. The complainant has placed reliance on a copy of the said letter annexed as Annexure N. The Complainant has further submitted that since the Complainant's Mark is well-known and the respondent has no right in the mark, the only reason the Respondent could have wanted to register a domain name that so prominently features the Complainant's ENTRUST Mark was with the intention to trade upon the fame of the Complainant's Mark by using the Disputed Domain Name for substantial commercial gain, in violation of Section 4(b) of the policy.

The Complainant has submitted that the respondent was trying to make unlawful commercial gain by using the Complainant's trade mark to direct the traffic to its website and then redirecting it to the third parties' websites which are dealing with goods identical to the complainant thus causing loss to its interest. The Complainant has submitted that the content of the website was removed after receipt of a letter from the Complainant's attorney to the respondent dated June 5, 2014, however such attempt by the respondent to draw unlawful gain from the Disputed Domain Name in future cannot be denied as the respondent has refused to transfer the Disputed Domain Name to the complainant and has instead threatened to damage the reputation of the complainant. The complainant has placed reliance on a copy of the respondent's email to the complainant's attorney dated June 5, 2014 evidencing the same and which the complainant has annexed as Annexure O.

Disputed Domain Name is identical to complainant's mark ENTRUST, Bad Faith Registration and Use **by** the respondent and No Legitimate Interest of the respondent.

The Complainant has submitted that the internet users are likely to believe that the Disputed Domain Name is related to, or associated with, or authorised by the complainant. Considering the complainant already uses sites such as

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ENTRUST.COM, the internet users would be confused into thinking that the respondent enjoys authorization of the complainant to do business in India or is in fact their Indian website considering that the country code top-level domain name in the Disputed Domain Name is ".IN". The complainant has placed reliance on print outs of the same attached as annexure H. The Complainant has submitted that it is precisely because of this association with Complainant's Mark that the respondent saw the value in the Disputed Domain Name and registered it. The complainant submitted that, it has satisfied the first ground of the policy, that the Disputed Domain Name is identical or confusingly similar to Complainant's Mark.

6. The complainant has submitted that there can be no evidence presented by the respondent that he has never ever been known by the name ENTRUST. The complainant has further submitted that Likewise, it is reasonable to infer that he has never been commonly known by the Disputed Domain Name when the WHOIS database information for the domain name shows no correlation between the Disputed Domain Name and the respondent. The complainant has further submitted that given the fame of the Complainant's Mark as a trademark and domain name, it is not possible to conceive of a use by the respondent of the Disputed Domain Name that would not constitute an infringement of the Complainant's rights in its Trade Mark, particularly when such use was to intentionally create a webpage containing links to products and services competitive to Complainant.
7. The complainant has submitted that the activities of the respondent to the level of a bad faith usurpation of the recognition and fame of the Complainant's Mark to improperly benefit the respondent financially in violation of applicable trademark and unfair competition laws. The complainant has further submitted that these activities demonstrate bad faith registration and use of the Disputed Domain Name in violation of the policy under paragraph 6 which promulgates that bad faith can be found where there is evidence of:
  - a. circumstances indicating that [Respondent has] registered or [Respondent has] acquired domain name primarily for the purpose of selling, renting, or otherwise

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transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of [Respondent] documented out-of-pocket cost directly related to the domain name; or

- b. [Respondent has] registered the domain name in order to prevent the owner of Trademark or service mark from reflecting the mark in a corresponding domain name, provided that (Respondent) has engaged in a pattern of such conduct; or
- C. by using the domain name, the (Respondent has) intentionally attempted to attract Internet user to the (respondent's) website or other on-line location, by creating a likelihood of confusion with 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 Registrant's website or location.

The complainant has submitted that the respondent registered and has used the disputed Domain name in bad faith as defined under paragraph 6(iii) of the policy, he disputed domain name was used in connection with a parked Website, i.e., a one page website containing only pay- per- click (PPC) Advertisements. Some of those links were for products related to or competitive with what Entrust sells, such as "server security", "Hosting Server", and "Biometric security devices". The respondent was trying to make unlawful commercial gain by using the Complainant's trade mark to direct the traffic to its website and then re-directing it to third parties website who are dealing with goods identical to the complainant thus causing loss to its interest. The content of the website was removed after receipt of a letter from the Complainant's attorney to the respondent dated June 5, 2014, however such attempt by the respondent to draw unlawful gain from the Disputed Domain Name in future cannot be denied as the respondent has refused to transfer the Disputed Domain Name to the complainant and has instead threatened to damage the reputation of the complainant. The facts provided above make it clear that Respondent was taking advantage of the goodwill and fame of the Complainant's trademark ENTRUST for its own substantial commercial profit and gain, and is using the Disputed Domain Name in "bad faith" with the

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intention of diverting traffic by attracting the internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well known Mark as to the source , sponsorship, affiliation or endorsement of its website and services on them.

8. The complainant has submitted that the Respondent can demonstrate no Legitimate Interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the complainant had established its rights in the ENTRUST marks through extensive use and registration. At the outset it should be noted that the complainant's Mark are so well-known and recognised, there can be no legitimate use by the respondent.
9. The complainant has submitted that there exists no relationship between complainant and the respondent that would give rise to any licence, permission, or authorisation by which respondent could own or use the Disputed Domain Name, which is identical to complainant's Mark. The Respondent is not commonly known by the Disputed Domain Name and is not making legitimate non-commercial or fair use of the Disputed Domain Name. It is therefore clear that Respondent's only purpose in registering the Disputed Domain Name was to use it for commercial gain.
10. The complainant has submitted that based upon all the foregoing considerations, it is evident that the complainant has met the requirements of the policy, by demonstrating not only its own Legitimate Interest in its trademark being part of the domain name as evidenced by its use of such marks and the fame associated therewith, but also that Respondent's sole interest in the Disputed Domain Name is to unlawfully profit from it. Accordingly, the complainant believes that it is entitled to the remedy requested under paragraph VI.

#### PRIOR CASES REFFERRED

11. The complainant has relied on Yahoo! Inc. vs. Akash Arora & Anr. (1999 PTC (19)210 Delhi), a single judge of Delhi High Court granted relief on the Yahoo! Inc. petition seeking injunctive relief against the defendants who were attempting to use the domain name 'Yahooindia.com' for internet related services. Yahoo! Inc.,

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which was the owner of the trade mark "Yahoo" as well as the domain name <yahoo.com>, contended that by adopting the deceptively similar domain name, the defendants had copied the source code of the plaintiff's prior created website. Moreover, the defendant's domain name could be perceived as being another one of the plaintiff's.

12. The complainant has relied on **Play boy enterprises International, Inc. Interactional, v. Hector Rodriguez**, WIPO Case No. ID2000-1016 (PLAYBOYCHANNEL.COM AND PLAYBOYNETWORK.COM, people, who manifest an intent to traffic in domain names that incorporate well-known or famous trade mark, as the Respondent dose here, simply do not expend their efforts with the sole intention of relinquishing those domain names for just their out-of- pocket registration cots. The goat of their efforts, simply put, is an expectation of receiving an adequate reward, lc. sufficient profit, from this trafficking" transfer awarded)(Consequently, the Complainant submits that bad faith use of the Disputed Domain Name is quite clear in this case, given the content on the Respondent's web.
13. The complainant has relied on Guerlain S.A, V. Peiking, WIPO Case No. D2000-0055; & verve Clicquotponsardin v. The polygenic group Co, WIPO Case No, D2000- 0163, it was held that bad faith is found where a domain name "is so obviously connection with the product suggests opportunistic bad faith". In Charles Jourdan Holding Ag v. AAIM, WIPO Case No. D2000-0403 it was held that @ given the relative notoriety of the Complainant' mark as well as the case for any user of the Internet to assess on its own whether or not the registration and use of a domain name is likely to encroach on another's rights, the panel is of the opinion that Respondent acquired the Domain Name primarily foe for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complaint or to a competitor of the Complainant, for valuable consideration in excess of his out-of pocket cots directly related to the Domain Name, an act which constitutes bad faith pursuant to paragraph^ (i) of the policy".

*Sayer 12/2/16*

14. The complainant has relied on Caravan club v. Mrgsale, NAF Claim Number: FA000700009314 (THECARAVANCLUB. COM: registration of a well-known Trademark by a party with no connection to the owner or the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith): CBS Broadcasting Inc. v Worldwide Webs, Inc, WIPO Case No D2000-0834 (ILOVELUCY. COM: Respondent sought to profit from the mere registration of the Complainant's trademark and service mark as a domain name, which constituted bad faith within the meaning of paragraph 6(i) of the policy: domain name transferred), the Complainant respectfully submits that it has satisfied the second ground of the policy that Respondent has no rights or legitimate interest in the Disputed Domain Name.
15. The complainant has relied on Bennett Coleman & Co Ltd vs. Steven S Lalwani (Case No D2000-0014) and Bennett Coleman & Co Ltd vs. Long Distance Telephone Company (Case No D2000-0015) decided by WIPO, the complainant, publisher of the daily newspaper "The Economic Times" and "The Times of India" held domain names, <economictimes.com> for publication of their respective newspaper. The two Respondents had registered the sites, <theeconomictimes.com> and <thetimesofindia.com> and the complainant contended that this was use of the identical marks in which it had prior rights. Moreover, the sites <thetimesofindia.com> redirected traffic to the site <indiaheadlines.com> while the site <theeconomictimes.com> redirected traffic to <ifindyourmateperfect.com> without any legitimate interest in respect of the domain names. Hence, the complainant alleged that the respective respondents' registration and use of the domain name was in "bad faith" in the sense that their use amounted to an attempt to intentionally attract, for commercial gain, internet users to their respective websites by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon. The administrative panel held that it is not a sufficient answer to suggest that the defendant will dispel any misleading first impression by use of a different design of the website. The panel

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further held that the necessary implication is that the domains were specifically selected in order to take advantage of the complainant's very considerable reputation the two titles of its publications by misleading internet users into believing that the respondent's sites came from or were associated with the complainant. The panel ordered that the two domain names be transferred to the complainant.

The complainant has prayed for the transfer of the domain name WWW.ENTRUST.IN to the complainant.

**RESPONDENT DENIED THE CONTENTIONS OF THE COMPLAINANT:**

1. The respondent filed his response/counter to the complaint of the complainant.
2. The Respondent has contended that the copy of registration which is marked as **Annexure J** of the Complainant, Indian Mark No. 1883013 was registered in Class 9, which means that the Complainant has exclusive rights to use ENTRUST mark **ONLY** in respect of "COMPUTER SOFTWARE NAMELY PROGRAMS AND ASSOCIATED DOCUMENTATION FOR TELECOMMUNICATIONS FOR PROVIDING PRIVACY, ACCESS CONTROL, INTEGRITY, AND SIGNATURE AND AUTHENTICATION FUNCTIONS ACROSS OPERATING ENVIRONMENTS, MULTIPLE PLATFORMS AND NET PROTOCOLS".

The respondent has contended that in India the Complainant has no exclusive rights to use trade mark "ENTRUST" in respect of goods and services for which the said mark is not registered by the Complainant, i.e. for goods and services not included in Class 9. The respondent has contended that use *inter alia* of trademarks, service marks, .IN domain names, in which "ENRUST" appears as a component thereof, is legitimate for any third party, if it is not related to the business of the Complainant. Regarding the Disputed Domain Name, its use should not be related to the goods and services included in Class 9.

The respondent has contended that the Complainant presented no proof that the use of the Disputed Domain Name by respondent was related to the goods and

*Surya K. Singh*

services included in Class 9. In the letter received from the Complainant's attorney dated June 5, 2014, there was no such proof as well.

The respondent has contended that Annexure K of the Complainant contains only 12 entries, which looks strange in respect with "numerous countries throughout the world" as well as "full protection" of Complainant's trademark rights claimed by the Complainant. The Annexure K of the Complainant *inter alia* shows that the Complainant has relatively limited worldwide support of its "ENTRUST" mark.

The respondent has contended that he categorically denied his engagement in any acts of cyber piracy. Rather, Complaint submitted by the Complainant is an act of cyber piracy, known as Reverse Domain Name Hijacking, which was attempted by the Complainant.

The respondent has denied that he was aware of Complainant's Mark at the time the disputed Domain Name was registered. The respondent also claimed that he was even unaware of the existence of the Complainant at the time the disputed Domain Name was registered. Further he has/had no relationship/business with the Complainant whatsoever. He did not buy any goods/services from the Complainant. He never ever visited Complainant's website [WWW.ENTRUST.COM](http://WWW.ENTRUST.COM) before receipt of the letter from the Complainant's attorney dated June 5, 2014. Moreover, according to Complainant's website [WWW.ENTRUST.COM](http://WWW.ENTRUST.COM), the Complainant even has no office in Russia, the country of the residence of the respondent. The respondent also claimed that Complainant cannot claim that the respondent was aware of Complainant's Mark at the time the disputed Domain Name was registered.

The respondent has contended that the Complainant cannot demonstrate that respondent has/had relationships/business with the Complainant whatsoever or that respondent bought any goods/services from the Complainant or that the respondent ever visited Complainant's website [WWW.ENTRUST.COM](http://WWW.ENTRUST.COM) before June 5, 2014.

*Swamy for Singh*

The respondent has contended that the Complainant has established website does not necessarily mean that every Internet user is aware of its existence. The respondent has submitted that taking into account specifics of the products and services selling by the Complainant, it is evident that an ordinary person not engaged in business with the Complainant, such as me, is more likely to be unaware of the very existence of the Complainant, not to mention its trademarks and service marks.

The respondent has contended that the Complainant has not presented any documentary proof for a single link which was referring to the products related to or competitive with the services which the Complainant provides under the trade mark "ENTRUST". Nor the Complainant presented such proof in the letter received from Complainant's attorney dated June 5, 2014.

The respondent has contended that he claimed his full unawareness of Complainant's Mark at the time the Disputed Domain Name was registered. The only reason he registered the Disputed Domain Name was its well-established generic meaning as an English word recognized worldwide. The respondent has not received any commercial gain by using the Disputed Domain Name. The Complainant has not presented any proof that the respondent received substantial, or any, commercial gain by using the Disputed Domain Name.

The respondent has contended that he has not received any commercial gain by using the Disputed Domain Name. Moreover, the Complainant presented no proof for the opposite.

The respondent has contended that he was not directing the traffic to my website by any means (SEO optimization, registration in online directories, purchasing of the traffic from third parties' websites, performing marketing activities such as e-mail marketing, etc.). Moreover, the Disputed Domain Name is not even indexed in search engines, such as Google, which means that the website ENTRUST.IN was even not accessible from Google, Yahoo, etc. Few print-outs from Google website [WWW.GOOGLE.CO.IN](http://WWW.GOOGLE.CO.IN) regarding information on the Disputed Domain Name has been attached by respondent as **Annexure A.**

*Sanjay Kumar Singh*

The respondent has contended that the Complainant presented no proof that I was re-directing the traffic, if any, coming to respondent's website to third parties' websites selling goods and services which are identical or competitive to the Complainant. Further the Complainant has not demonstrated any proof for any loss to its interest caused by using the Disputed Domain Name by respondent.

The respondent has acknowledged that he removed the content of the website after receipt of the letter from the Complainant's attorney dated June 5, 2014. The respondent has submitted that it was done in order to prevent any possible attempts of the Complainant to intentionally change the content of my website in such a way that the website would show the links related to the products that are identical or competitive to the products offered by the Complainant under its "ENTRUST" mark, and thus, to get documentary proof for Complainant's claims regarding using the Disputed Domain Name in a bad faith. The respondent has submitted that he was concerned that the Complainant could do that because the respondent refused to transfer the Disputed Domain Name to complainant.

The respondent has submitted that the website was not showing any links related to the products that are identical or competitive to the products offered by the Complainant under its "ENTRUST" mark.

The respondent has submitted that deactivating the Disputed Domain Name by him was a legitimate move, as the Complainant's claims regarding appearance on the respondent's website of the links related to the products and services that are identical or competitive to the products and services offered by the Complainant under its "ENTRUST" mark are unsupported by any proof from the Complainant.

The respondent has submitted that it does not mean that his website contained links to Complainant's competitors (the Complainant presented no documentary proof for that) and that he removed them from his website and rather, it means that possible attempts, if any, by the Complainant to change the content of respondent's website after respondent refused to transfer the Disputed Domain Name to complainant were unsuccessful.

*Surya K. Singh*

The respondent has submitted that he acknowledged that he has refused to transfer the Disputed Domain Name to the Complainant. At the same time, he denied the claim that he has threatened to damage the reputation of the Complainant. The respondent has contended that in fact, it is the Complainant that is damaging its own reputation by unlawful attempt of Reverse Domain Name Hijacking via filing the present Complaint. In the response to the letter of Complainant's attorney dated June 5, 2014 the complainant wrote: *"/ registered this domain name only because of its widely recognized generic meaning. Like you, I hope to resolve this dispute quickly and amicably. However, I consider this domain name pretty important to me so I must be vigilant about policing unlawful attempts of Reverse Domain Name Hijacking of my domain name. Therefore in case of further Reverse Domain Name Hijacking attempts I will have to do anything I consider important to defend my domain and to seek all damages/expenses. Please be aware and let your client know that I, among other things, could contact the owners of the website [www.HallofShame.com](http://www.HallofShame.com) that is devoted to publishing the information regarding Reverse Domain Name Hijacking attempts. Please review this website carefully in order to prevent your client Entrust, Inc. from unnecessary considerable reputation losses/*

The respondent has referred to "Paragraph 15(e) of the UDRP Rules defines reverse domain name hijacking as the filing of a complaint in bad faith, resulting in the abuse of the UDRP administrative process."

Circumstances which have been cited by WIPO panels as justification for a finding of reverse domain name hijacking includes:

- \*When the registration of the domain predates any trademark rights of the Complainant.

- \*When the complaint has provided no evidence of bad faith registration or use directed towards the Complainant.

- Where the Complainant has used the UDRP as a Plan "B" option to attempt to secure the domain after commercial negotiations have broken off.

*Sanjay K. Singh*

\* Where the Complainant has attempted to deceive the domain owner or makes misrepresentations or fails to disclose material information to the panel.

The respondent has relied on findings of WIPO cases: Ron Paul vs. [RonPaul.org](#) (2013), Webpass, Inc. v. Paul Breitenbach (2010), Urban Logic, Inc. v. Urban Logic, Peter Holland (2009), David Robinson v. Brendan (2008), Decal v. Gregory Ricks (2008), Hero v. The Heroic Sandwich (2008), Poker Host Inc. v. Russ "Dutch" Boyd (2008), FCC Fomento de Construcciones y Contratas v "[FCC.COM](#)" (2007), Liquid Nutrition v. [liquidnutrition.com](#) (2007), Rohl, LLC v. ROHL SA (2006), Her Majesty the Queen (Elizabeth II) v. Virtual Countries, Inc.,<sup>[12]</sup> and Deutsche Welle v. DiamondWare (2000). A list of over one hundred reverse domain name hijacking decisions is available at [RDNH.com](#)."

The print-out of Wikipedia page related to the Reverse Domain Name Hijacking has been attached by the respondent as **Annexure B**.

The respondent has submitted that the Complainant is engaged in unlawful attempt of Reverse Domain Name Hijacking, since:

- a. It has provided no evidence of bad faith registration or use directed towards the Complainant;
- b. The Complainant makes misrepresentations or fails to disclose material information to the panel.

The respondent has submitted that the Complainant claims that respondent's website contained links related to the goods and services which are identical or competitive to the goods and service selling by the Complainant, but it provides no material information to the Panel in order to prove this claim. Furthermore, the Complainant claims that "the only reason the Respondent could have wanted to register a domain name that so prominently features the Complainant's ENTRUST mark was with the intention to trade upon the fame of the Complainant's mark by using the Disputed Domain Name for substantial commercial gain...". At the same time, the Complainant provides no material information to the Panel that respondent received substantial, if any, commercial gain. Furthermore, the

*Gregory Ricks*

Complainant claims that "the Respondent was trying to make unlawful commercial gain by using the Complainant's mark to direct the traffic to its website and then re-directing it to third parties' websites which are dealing with goods identical to the Complainant thus causing loss to its interest." At the same time, the Complainant provides no material information to the Panel that I was trying to direct the traffic to my website and re-directing it to third parties' websites that are the competitors of the Complainant. Furthermore, the Complainant provides no material information to the Panel that the use by respondent of the Disputed Domain caused loss to its interest. The respondent has relied on few print-outs from the website [WWW.HALLOFSHAME.COM](http://WWW.HALLOFSHAME.COM) and has attached it as **Annexure C**.

**C. Disputed Domain Name is Identical to the Complainant's mark ENTRUST, Bad Faith Registration and Use by the Respondent and No Legitimate Interest of the respondent.**

The respondent in his counter/reply to the complainant acknowledged that the Disputed Domain Name is identical to Complainant's Mark, the Internet users in India are **unlikely** to believe that the Disputed Domain Name is related to, associated with, or authorized by the Complainant, for the following reasons:

"ENTRUST" is widely recognized generic English word, which meaning is, for instance, "to give someone the responsibility of doing something or of caring for someone or something". According to the Merriam-Webster online dictionary, the word "ENTRUST" has been known since 1593. It is therefore evident that the Complainant is using the word "ENTRUST" for its business activities because of the generic meaning and fame of the word "ENTRUST" which have been formed hundreds year before the Complainant ever physically existed. The corresponding print-out from the Merriam-Webster dictionary has been attached by the respondent as **Annexure D**;

The respondent has submitted that the Complainant has not provided any proof that the English word "ENTRUST" has got a secondary meaning related to the Complainant in India. Therefore, the Complainant cannot claim that the Internet

*Jayraj K. Singh*

users are likely to believe that the Disputed Domain Name is related to, associated with, or authorized by the Complainant;

The respondent has submitted that the Internet users **would not** be confused into thinking that "the Respondent enjoys authorization of the Complainant to do business in India or is in fact their Indian website considering that the country code top-level domain name in the Disputed Domain Name is ".IN". The respondent has relied on the print-out of the page from the Google Adwords website attached as **Annexure E**.

The respondent has submitted that he was unaware of Complainant's Mark at the time the Disputed Domain Name was registered. Taking into account the data from Google Adwords website reported above, it is evident that most of Internet users in India searching for "ENTRUST" do not associate this English word with the Complainant. They mainly search for the meaning "ENTRUST", whereas only very small part of Google search queries is related to the Complainant. Moreover, taking into account that the Disputed Domain Name is even not indexed by the major search engines, such as Google etc., it is evident that he did not try to direct any traffic to my website. Regarding "links to products and services competitive to Complainant", the Complainant has not presented any proof that respondent's webpage contained such links. The respondent has submitted the following:

- a. He was unaware of Complainant's Mark at the time the Disputed Domain Name was registered;
- b. He had no relationship/business whatsoever with the Complainant. He resides in the country (Russia), in which the Complainant even does not have an office;
- c. The Complainant presented no proof that respondent was aware of Complainant's Mark at the time the Disputed Domain Name was registered.
- d. he has not received any commercial gain by using the Disputed Domain Name;
- e. The Complainant has not presented any proof that respondent received substantial, or any, commercial gain by using the Disputed Domain Name;

*Sargun Singh*

- f. The Complainant has not presented any proof that respondent's website contained the links to products and services competitive to the Complainant.

The respondent has submitted that the use of the Disputed Domain Name by him did not violate any rights of the Complainant.

Regarding sub-paragraph (a) of the paragraph 6 of the Policy the respondent has submitted the following:

- a. he never offered to sell the Disputed Domain Name to the Complainant;
- b. His website did not contain any links to products and services competitive to Complainant, and the Complainant failed to show any proof for the opposite;
- c. he acknowledged that my website contained PPC advertisements of products and services not related or competitive to the products and services selling by the Complainant. It is well-known and widely accepted practice to put parked webpage to recently registered and undeveloped domain names. The purpose of putting a parked page containing PPC advertisements is to pay off a registration fee paid by me to register the Disputed Domain Name, and consequent renewal fees that must be paid annually. He paid \$4.99 USD to register the Disputed Domain Name, and will have to pay around \$10 USD on the annual basis as a renewal fee.

Sub-paragraph (a) of the paragraph 6 of the Policy does not consider the effort to compensate out-of-pockets costs directly related to the domain name as a bad faith use. The respondent has submitted the documented out-of-pockets costs related to the Disputed Domain Name in form of **Annexure F**.

*Sergey K. Smith*

- d. The respondent has denied bad faith registration/use of the Disputed Domain Name as defined under sub-paragraph a of the paragraph 6 of the Policy.

Regarding sub-paragraph (b) of the paragraph 6 of the Policy the respondent has submitted the following:

- a. he registered the Disputed Domain Name only because of worldwide recognized generic sense of the English word "ENTRUST". Generic words, such as "ENTRUST", cannot be usurped by trademark owners, especially in countries where such generic words have not got any secondary meaning related to trademark owners. In the present case, the Complainant cannot usurp English generic word "ENTRUST", especially in India, where most of the Internet users do not associate the word "ENTRUST" with the Complainant.
- b. There are also other domain names under .IN country code in which "ENTRUST" appears as a component thereof. An example is domain name ENTRUST.CO.IN. According to WHOIS databases, this domain name had been registered on February 14, 2013, i.e. after the Complainant has established its rights in its "ENTRUST" mark. The Respondent has relied on the print-outs of the WHOIS data related to the domain name ENTRUST.CO.IN attached as **Annexure G**. The Respondent has submitted that Nevertheless, to best of his knowledge, the Complainant has not filled any complaints against the owner of ENTRUST.CO.IN, despite the fact that domain name ENTRUST.CO.IN was registered well before the Disputed Domain Name was. The Respondent has submitted that as such, it is evident that the Complainant does not consider registration of domain name ENTRUST.CO.IN as an attempt to prevent the Complainant from reflecting its "ENTRUST" mark in a corresponding domain name. Moreover, despite Complainant's "ENTRUST" mark was registered

*Sujay K. Singh*

well before February 14, 2013, it is evident that the Complainant did not care to register ENTRUST.CO.IN by itself.

- c. The Respondent has submitted that the Complainant claims that it was known in India by the name "Entrust India" (Annexure M of the Complainant). At the same time, domain name ENTRUSTINDIA.IN and ENTRUSTINDIA.CO.IN are not registered and available for registration at the moment. . The Respondent has relied on the print-outs of the WHOIS data related to the domain names ENTRUST.CO.IN attached as Annexure H. The Respondent has submitted that the as such, it is evident that the Complainant even did not care to reflect its "ENTRUST INDIA" name in a corresponding domain name, i.e. that the Complainant did not registered domain names ENTRUSTINDIA.IN and ENTRUSTINDIA.CO.IN. The Respondent has further submitted that the Complainant considers only registration of the Disputed Domain Name as bad faith registration, violation of its rights, and attempt to prevent the Complainant from reflecting its "ENTRUST" Mark in a corresponding domain name.
- d. the respondent has denied bad faith registration/use of the Disputed Domain Name as defined under sub-paragraph *b* of the paragraph 6 of the Policy.

Regarding sub-paragraph (c) of the paragraph 6 of the Policy the respondent has submitted the following:

- a. The Complainant has not presented any proof that respondent's website looked confusingly similar to its website WWW.ENTRUST.COM.
- b. The Complainant has not presented any proof that respondent intentionally attempted to attract the Internet users to my website. The Disputed Domain Name is even not indexed by Google, which means that Google

Sanjay Kr Singh

"knows nothing" about it. Nor the Complainant can demonstrate that respondent intentionally was trying to attract the Internet users to his website by any other means (purchasing traffic from third parties, registering the Disputed Domain Name in online directories, performing any marketing activities etc.)

- c. The Complainant has not presented any proof that respondent's website contained links to the product or services competitive to the complainant.
- d. Thus, the respondent has denied bad faith registration/use of the Disputed Domain Name as defined under sub-paragraph c of the paragraph 6 of the Policy.

The respondent has denied that he registered and have used the Disputed Domain Name in bad faith as defined under paragraph 6(iii) of the Policy.

The respondent has submitted that while he acknowledged that his website contained PPC advertisements, it was done in hope to compensate my out-of-pocket costs related to the Disputed Domain Name (domain registration fee, annual domain renewal fees).

The respondent has submitted that he was not intentionally driving any traffic to his website (SEO optimization, purchasing traffic from third parties, registering the Disputed Domain Name in online.

The respondent has submitted that:

- a. The content of the website was removed in order to prevent any possible attempts of the Complainant to intentionally modify the content of the website in such a way that it can give the Complainant proof of its claims on bad faith registration/use.
- b. He has not received any commercial gain by using the Disputed Name, nor he was even compensated for his out-of-pockets costs related to the Disputed Domain Name (domain registration fee, annual domain renewal fees);
- c. The Complainant showed no proof that respondent received substantial, or any, commercial gain by using the Disputed Domain Name;

*Sanjay K. Singh*

- d. The respondent acknowledged his refusal to transfer the Disputed Domain Name to the Complainant. The respondent has cited reason for that is that he considered and am considering all Complainant's activities related to the Disputed Domain Name as unlawful attempt of Reverse Domain Name Hijacking;
- e. The respondent has denied the claim by the Complainant that he "threatened to damage the reputation of the Complainant." Since the Complainant made an unlawful attempt of Reverse Domain Name Hijacking, respondent's intention to report details of this case to the owners of the website WWW.HALLOFSHAME.COM (they publish information on Reverse Domain Name Hijacking attempts brought against domain owners) is a legitimate way to defend his domain name from the act of cyber piracy performed by the Complainant. The respondent has contended that in fact, it is Complainant that is damaging its own reputation by trying to unlawfully take the Disputed Domain Name away from me.

The respondent has submitted that since "ENTRUST" is a generic English word recognized worldwide and known to be in use since 1593, anyone can register domain names, in which "ENTRUST" appears as a component thereof, such as ENTRUST.IN.

The respondent has submitted that while the Disputed Domain Name was indeed registered after the Complainant has established rights in its "ENTRUST" mark, it should be noted that the Complainant has the exclusive rights to its "ENTRUST" mark only for goods and services included in Class 9. As such, the Complainant cannot usurp English word "ENTRUST" and cannot prohibit the use of domain names, in which "ENTRUST" appears as a component thereof, for activities not related to goods and services for which the Complainant's Mark is registered.

The respondent has submitted that, there are other domain names under .IN country code in which "ENTRUST" appears as a component thereof, such as ENTRUST.CO.IN. This domain name has been also registered after the Complainant

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has established its rights in the "ENTRUST" mark, but, to the best of my knowledge, the Complainant filled no cases against the owner of ENTRUST.CO.IN, despite the fact that ENTRUST.CO.IN was registered well before the Disputed Domain Name was registered.

The respondent has submitted that the Complainant presented no proof that English word "ENTRUST" has got any secondary meaning in India related to the Complainant. In fact, the Internet users in India do not associate "ENTRUST" with the Complainant which means that Complainant's Marks are **not** as well-known and recognized in India as the Complainant is trying to claim. In fact, the Internet users in India mostly search for the very meaning of the English word "ENTRUST", and only very small part of search queries is related to the Complainant.

The respondent has submitted that the Complainant presented no proof that "Some of those links were for products related to or competitive with what Entrust sells, such as "Server Security", "Hosting Server", and "Biometric Security Devices." While the Complainant mentions these "mystical" links many times in this Complaint and even cites some of them ("Server Security", "Hosting Server", "Biometric Security Devices"), for some reason the Complainant has not provided any material information in order to support this claim, unlike numerous print-outs of its certificates, websites, etc. It shows, taking into account all the foregoing, that the Complainant acts in a bad faith, attempting Reverse Domain Name Hijacking of my domain name by filling this Complaint and trying to make the Panel to believe in one of Complainant's critical arguments, for which the Complainant has not presented any proof.

The respondent has submitted that he has not received any commercial gain by using the Disputed Domain Name. Moreover, he has not received a single penny by using the Disputed Domain Name, i.e. his out-of-pocket costs related to the Disputed Domain Name remain uncompensated.

The respondent has submitted that the Complainant presented no proof that he received any substantial or commercial gain.

*Sanyam 120 Singh*

The respondent has opposed the transfer of the disputed domain name to the Complainant.

**CONTENTION OF THE COMPLAINANT IN REJOINDER:**

The complainant submitted that the Respondent has failed to give a valid reason for registration of the Disputed Domain Name ENTRUST.IN and has not produced any cogent documentary evidence to show that the Respondent had any genuine interest in registration of the Disputed Domain Name. The complainant submitted that the domain name was first registered by the Respondent on May 4, 2014. The Respondent listed his address as 840, SW 105 Avenue, Apt. 322, and Miami, Florida 33174 USA. The Respondent then created a website that displayed pay-per-click advertisements only for categories of products and services competitive to those offered by the Complainant. The complainant submitted that the Respondent has failed to demonstrate any legitimate interest in the Disputed Domain Name.

The complainant submitted that the Respondent has failed to establish that the use of the Disputed Domain Name domain name is not likely to cause confusion in the minds of the internet users in India and worldwide. Additionally it is evident that the Respondent's act of registration of the Disputed Domain Name is dishonest and with the sole intention to gain unlawful profits from the Complainant and their well-known trade mark ENTRUST.

The complainant submitted the Respondent has not produced any evidence to show that he has ever been known by the name ENTRUST or has any connection with the said name. Moreover, such is the immense fame of the Complainant's mark ENTRUST as a trade mark and domain name, that any use by the Respondent of the Disputed Domain Name would constitute infringement of the Complainant's rights in its trade mark, particularly in light of the fact that the Respondent has intentionally created a webpage containing links for products and services which are competitive to the Complainants products and services.

The complainant submitted, the respondent purported to be located in the United States when he registered the Disputed Domain Name. Under the United States trademark statute, the Lanham Act, 15 U.S.C.A § 1072, provides that registration

*Sanyam Singh*

of a trademark on the principal register is constructive notice of the registrant's claim of ownership. This statutory concept eliminates lack of knowledge as a defence. As shown in its Complaint, the Complainant is the owner of a registration for the mark ENTRUST in the United States among many other countries.

5. The complainant submitted that the respondent's act of placing/featuring pay-per-click advertisement itself is in bad faith with an intention to cause damage not only to the Complainant and its business but also to the character of its well-known trade mark ENTRUST. The Respondent has not demonstrated any use of the Disputed Domain Name other than placement of pay-perclick advertisements which itself shows that the Respondent has no valid reason for registration the Disputed Domain Name other than to draw unlawful benefits from it.
6. The complainant has denied all the statements/allegations/submissions by the Respondent in its reply which are not specifically admitted by the Complainant in this rejoinder and which are contrary to what is being put forward on behalf of the Complainant in this case as set out in seriatim and denied individually.
7. The Respondent's reply to the Complainant's submissions under Para 17 has been denied by the complainant. The complainant has submitted in its rejoinder that by virtue of such extensive and long use in India and worldwide, the Complainant has acquired common law rights in addition to the statutory rights in respect of its mark ENTRUST and hence is entitled for protection of the same. Further, due to its vast and extensive use in India and worldwide, the Complainant's mark has acquired the status of a well-known trade mark as defined under Section 2(1) (zg) of the Trade Marks Act, 1999 and hence is entitled for protection of the same for all goods and services. Hence the Complainant is entitled for reliefs prayed under the Complaint.
8. the complainant has submitted that it has registered its trade mark ENTRUST in a number of countries including a Community Trade Mark registration which covers all European countries in classes such as class 9 and 42. Hence the trade mark of

*Sanjay K. Singh*

the Complainant has obtained statutory rights in India and worldwide and therefore the Complainant is entitled to the reliefs prayed for.

9. The Complaint has denied that the Complaint submitted by the Complainant is an act of cyber piracy or is Reverse Domain Name Hijacking whereas it has submitted that it is the Respondent who has dishonestly registered the domain name ENTRUST.IN which contains the registered trade mark of the Complainant and is indulging in the act of cyber piracy.
10. The complainant has denied that the Respondent was not aware of the Complainant's mark or the existence of the Complainant at the time when the Disputed Domain Name was registered. Assuming but not conceding that the Respondent was unaware of the Complainant at the generic meaning in English or that the Respondent has not received any commercial gain by using the Disputed Domain Name. The fact that many different countries trademark offices have allowed the mark ENTRUST to be registered conclusively establishes that the mark is not generic and capable of serving as trademark. If the Respondent's arguments were to be accepted, then any number of well-known brands' marks could be registered and used (as did the Respondent did) to acquire click-through revenue, e.g., APPLE.IN (with links to consumer electronics) or GENERAL MOTORS.IN (with links to automobiles).
11. The complainant has denied that the Respondent has not received any commercial gains by using the Disputed Domain Name whereas the Respondent has admitted that he has been using the Disputed Domain Name for placing pay-per-click advertisements. The complainant has submitted that No doubt the Respondent was trying to make unlawful commercial gains by using the Complainant's mark to direct the traffic to its website and then re-direct it to third party websites which are dealing with goods and services identical/similar to the Complainant thereby causing loss to the business and interest of the Complainant. The complainant has submitted that the document annexed as Annexure A to the Respondent's reply cannot be relied upon as the same is without any date and the complainant further denied that the Respondent removed the contents to prevent attempts by the

*Sanjay Kumar Singh*

Complainant to change the content of the Respondent's website whereas it is submitted that the same was removed as it was apparent from the website that the Respondent was intentionally misusing the Complainant's mark. Further it is not possible for the Complainant to modify the Respondent's website without admin access to the same hence the same is an afterthought by the Respondent. The complainant has denied that the Respondent had not threatened to damage the reputation of the Complainant. Further the Respondent's claim that the Complaint filed by the Complainant is Reverse Domain Name Hijacking is wrong, misleading, concocted and imaginary and the same has been raised to defeat the purpose of this Complaint and therefore should be rejected outright.

The complainant has submitted that at the time the Respondent registered the Disputed Domain Name ENTRUST.IN, the Complainant had already been using the mark ENTRUST as a trademark, corporate name and domain name and had firmly established prior rights in the said mark. Furthermore, at the time the Respondent registered the Disputed Domain Name, the Complainant's ENTRUST trademark had acquired the status of a well-known mark. The Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to the Complainant's rights in its ENTRUST marks, as evidenced by Complainant's prior and well-known use of the mark and registration thereof.

The Complainant's response to the Respondent's reply to sub-paragraph *a* of the paragraph 6 of the Policy are as herein under:

The Complainant has denied that the purpose of uploading a parked page containing pay-per-click advertisements was to pay off the registration fee by the Respondent to register the Disputed Domain Name or for any consequent renewal fees. It is submitted that the only purpose of the Respondent to register the Dispute Domain Name was to exploit it commercially and the same has been admitted by the Respondent. The Respondent has admitted that he placed pay-per-click advertisements on its website.

*Sayar K. Singh*

The Complainant *vide* its submissions under preceding paragraphs and under the Complaint has already demonstrated that the Respondent registered and used the domain name in bad faith.

The Complainant's response to the Respondent's reply to sub-paragraph *b* of the Paragraph 6 of the Policy are as herein under:

- (a) The complainant has denied that the Respondent registered the Disputed Domain Name only because of worldwide recognized generic sense of the English word "ENTRUST". It is submitted that the mark ENTRUST by virtue of its extensive use in India and worldwide has acquired a distinctive character and is recognized and associated with the Complainant and no one else. The Respondent registered the Disputed Domain Name containing the Complainant's mark in bad faith in order to exploit it commercially.
- (b) The complainant has submitted that the Respondent is attempting to mislead the learned Arbitrator by referring to the domain name which is not in question at all i.e. ENTRUST.CO.IN and reference to the same will not accrue any benefit upon the Respondent. The Respondent registered the Disputed Domain Name containing the Complainant's mark in bad faith in order to exploit it commercially.
- (c) The complainant has submitted that the Complainant decided to take action against the Respondent because of its unlawful adoption. And Complainant is not attempting Reverse Domain Name Hijacking by filing this Complaint.

The Complainant's response to the Respondent's reply to sub-paragraph C of the paragraph 6 of the Policy are as herein under:

- (a) The complainant has submitted that the Respondent registered and has used the Disputed Domain Name in bad faith. The Disputed Domain Name was used in connection with a parked website, i.e., a one page website containing only pay-per-click advertisements. Some of those links were for products related to or competitive with the Complainant's

*Sanjay Kumar Singh*

products such as "Server Security", "Hosting Server", and "Biometric Security Devices".

- (b) The complainant has submitted that the Respondent has placed pay-per-click advertisements on its website and thus attempted to derive unlawful commercial gains from the Disputed Domain Name.
- (c) The Complainant has submitted cogent proof that the Respondent's website contained links to the products or services competitive to the Complainant in the preceding paragraphs and are not being repeated here for the sake of brevity.
- (d) The complainant has submitted that the Respondent registered the Disputed Domain Name containing the Complainant's mark in bad faith in order to exploit it commercially.

The Complainant has submitted that as a result of the Complainant's marketing and promotion of its goods and services under its trade mark ENTRUST, the same has gained worldwide recognition and goodwill and has become very well-known. The Complainant's trade mark has firmly been associated with the Complainant prior to the Respondent's registration of the Disputed Domain Name. The Respondent has registered the disputed domain name in bad faith and failed on its part to give any valid reason for the registration of the said domain. Given the identical nature of the Disputed Domain Name, the Internet users are likely to believe that the Disputed Domain Name is related to, associated with, or authorized by the Complainant. Considering the Complainant already uses sites such as ENTRUST.COM. The internet users would be confused into thinking that the Respondent enjoys authorization of the Complainant to do business in India or is in fact their Indian website considering that the country code top-level domain name in the disputed domain name is ".IN". It is precisely because of this association with Complainant's Mark that Respondent saw the value in the Disputed Domain Name and registered it. The submissions made above and in the Complaint and documents produced therein make it clear that Respondent was taking advantage of the goodwill and fame of Complainant's well-known

*Sanjay K. Singh*

trademark ENTRUST for its own substantial commercial profit and gain, and is using the disputed domain name in "bad faith" with the intention of diverting traffic by attracting internet users for commercial gain to its website by creating a likelihood of confusion with the Complainant's well-known mark as to the source, sponsorship, affiliation or endorsement of its websites and the services on them. The Respondent can demonstrate no legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the Complainant had established rights in the ENTRUST marks through extensive use and registration. At the outset it should be noted that the Complainant's Marks are so well known and recognized, there can be no legitimate use by Respondent. In the circumstances, and in response to the Respondent's prayer, the Complainant has prayed that the Disputed Domain Name be either cancelled or immediately transferred to Complainant and Cost of these proceedings be awarded to the Complainant.

#### **DISCUSSION AND FINDING:**

I have perused the records and have gone through the contents of the complaint and the documents annexed with the complaint and counter of the respondent. I have also perused the rejoinder of the complainant. The present complaint is being decided on the pleadings of the parties and as per law of the land.

As mentioned above the Complainant has prayed that the Disputed Domain Name be either cancelled or immediately transferred to Complainant and Cost of these proceedings be awarded to the Complainant.

**Rule 12 (a) of the INDRP Rules of procedure provide 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.

*Surya K. Singh*

In these circumstances the decision of the arbitrator is based on the pleadings of the parties and the assertions and evidences of the parties.

A perusal of the submissions and evidence placed on record by the parties, it is proved that complainant has statutory and common law rights in the trademark "ENTRUST" and its other variations.

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.

**The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights- (policy, para, 4 (i); Rules, paras.3 (b) (vi) (1))**

The complainant has submitted that the domain name WWW.ENTRUST.IN registered by the respondent is identical or confusingly similar to the name, trademark or service mark ENTRUST in which the Complainant has statutory and common law rights in India and abroad.

The complainant has further submitted that the respondent has used the name and trademark ENTRUST without complainant's permission & authorisation.

In the view of the tribunal, it is prima facie obvious that the disputed domain name WWW.ENTRUST.IN is identical or confusingly similar to the name, trademark or service mark ENTRUST.

The complainant has provided ample documentary evidence of its ownership rights in the trademark. The complainant has also demonstrated its prior use in

*Sanyam K. Singh*

the world market. The complainant has therefore has undoubtedly established its unassailable rights in the ENTRUST domain name and trademark.

It is well recognised that incorporating a trademark in its entirety. (Particularly if the mark is an internationally well-known mark) is sufficient to establish that the domain name is identical or confusingly similar to the complainant's registered mark.

Further, at the time of the registration of the disputed domain name WWW.ENTRUST.IN, the complainant has been already been using the marks ENTRUST as its trademark and in its domain names with firmly established rights in the same.

Also at the time of the registration of the disputed domain name by the respondent, the Complainant's trademark had already acquired the status of well-known trademark. The respondent can neither show any rights superior to that of the complainant in the trademark "ENTRUST" nor can the respondent state that he was unaware of the complainant's mark while registering the disputed domain name.

The arbitrator therefore comes to the conclusion that the disputed domain name is identical or confusingly similar to trademark of the Complainant.

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 Registrant's rights or legitimate interests 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;

*Singh*

- (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
- (i) 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 has contended that the respondent has no rights or legitimate interests in the impugned domain name. The complainant has further submitted that the respondent has not been making legitimate or fair use of the said domain name.

The tribunal is of the view that complainant's mark is well-known and it has gained rights based upon prior use. Therefore the use of the disputed domain name without any permission from the complainant is an act done in bad faith, and confers no rights or legitimate interests in favour of the respondent. The tribunal therefore comes to the conclusion that the respondent has rights or legitimate interests in the disputed domain name.

**The Registrant domain name has been registered or is being used in bad faith:**

The complainant has alleged that the Respondent has registered and used the disputed domain name in bad faith and the respondent registered or acquired the disputed domain primarily for the purpose of misleading the general public and trade by creating and using emails with the WWW.ENTRUST.IN.

A perusal of the pleadings and the documentary evidence makes it clear that respondent was taking advantage of the goodwill and fame of the complainant's well-known trademark for his own substantial commercial profit and gain and the use of the disputed domain name in bad faith.

It has been held in Indian decision M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of

*Satyam Infoway*

trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar. It is held in above case that in modern time's domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching. Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still confusingly similar or identical.

Thus the conclusion is that the domain name "WWW.ENTRUST.IN" is identical and confusingly similar to the trademark of complainant "ENTRUST" and the complainant has established that he has right in the trademark and further the respondent has got registered his domain name "WWW.ENTRUST.IN" in bad faith.

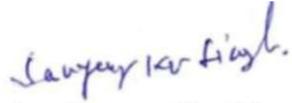
#### RELIEF

The domain name "WWW.ENTRUST.IN" of respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "WWW.ENTRUST.IN" as complainant has established its bonafide rights in trademark. In facts and circumstances of the complaint and in view of law discussed herein above I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 03-06-2015

  
(Sanjay Kumar Singh)  
Arbitrator