

भारतीय गैर न्यायिक

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ONE  
HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

हरियाणा HARYANA

H 665975

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry - National Internet Exchange of India

In the matter of:

Emirates  
Emirates Group Headquarters,  
P.O Box 686, Dubai,  
United Arab Emirates

.....Complainant

Zhao Yun  
DomainStore Inc.  
Wangfujing Street 1000  
Beijing - 100001, China

..... Respondent

Disputed Domain Name: [www.airemirates.in](http://www.airemirates.in)

**AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Emirates, Emirates Group Headquarters, P.O Box 686, Dubai, United Arab Emirates. The Complainant is represented by its authorized representatives Mr. Tarvinder Singh & Mr. Anshuman Sharma of Kochhar & Co, Advocates & Legal Consultants, Technopolis Building, 3<sup>rd</sup> Floor, Tower B, Sector - 54, DLF Golf Course Road, Gurgaon - 122002 (NCR) India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Zhao Yun DomainStore Inc. Wangfujing Street 1000, Beijing - 100001, China as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is www.airemirates.in. The Registrar is Webiq Domains Solutions Pvt. Ltd. (R131 -AFIN) also t/a PDR Limited d/b/a publicdomainregistry.com

The Registrant is Zhao Yun DomainStore Inc. Wangfujing Street 1000, Beijing - 100001, China.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on May 19, 2014 and the notice was issued to the Respondent on May 24, 2014 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On June 09, 2014 the Arbitrator granted further opportunity to the Respondent to submit its response on or before June 16, 2014. However, no response was submitted by the Respondent within the stipulated



time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions**

- a) The Complainant is a Dubai Corporation established by Decree No. 2 of 1985 (as amended) by the Government of Dubai. In the same year as the corporation was established, on October 25, it launched its first flight. Since then the international airline of the United Arab Emirates has become an award-winning, world class carrier and is the world's largest long haul airline.
- b) The Complainant adopted the trade mark EMIRATES as early as the year 1985 with respect to its goods/services and it has become distinctive of the Complainant's goods/services in commerce. The Complainant is the owner of the mark EMIRATES and various other marks containing the word EMIRATES.
- c) The Complainant was founded on October 25, 1985 and flew its first routes out of Dubai with just two aircraft – a leased Boeing 737 and Airbus 300 B4. Since then the Complainant has evolved into a globally influential travel and tourism conglomerate and is known to the world over for its commitment and high standards.
- d) The Complainant has incurred a significant amount of money in promotional expenses worldwide. As a result of Complainant's efforts they enjoyed tremendous reputation and goodwill in the minds of consumers as well as members of the trade all over the world including India. At present, the Complainant's trade mark is a formidable brand and has acquired an enormous goodwill not only in the UAE or India but in many countries across the globe.
- e) Further, the complainant has been sponsoring many events, seminars, exhibitions, conferences etc., where the trade mark / trade name EMIRATES is displayed through banners, hoardings, or online displays. The



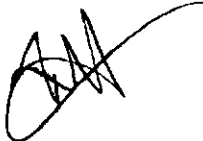
Complainant has been committed to sports sponsorship in both the UAE and around the world, beginning with the first powerboat race held in Dubai, in 1987.

- f) In addition to the extensive portfolio of sports sponsorships, the Complainant is also dedicated to the growth of global arts and culture through a number of sponsorships around the world. For example: Australian Symphony Orchestra, San Francisco Symphony, Dubai International film festival etc.
- g) The Complainant was also the Team Sponsor of Deccan Chargers Cricket Team in the IPL. The Complainant in partnership with the ICC, sponsors the Emirates Elite Panel of ICC Umpires and Referees, an agreement which sees the fly Emirates logo prominently displayed on the umpires clothing at all ICC events.
- h) The name/mark EMIRATES is distinctive, unique and has an established reputation both in India and throughout the world.
- i) In addition, the Complainant owns several trade mark registrations/ pending applications as follows:
- Indian trademark registration no. 1291824 for Emirates and Device in class 39
  - Indian trademark application no. 2311713 for Emirates stylized in classes 16, 18, 25, 28 and 39
  - Community trademark registration no. 000022137 for Emirates Word and Device mark in class 39
  - Community trademark application no. 000022137 for Emirates filed on November 21, 2013 in class 39
  - UK registered trademark 2023709 for Emirates in class 39
  - In addition to the above the complainant also has trade mark registrations in US, Canada, Mexico, Cyprus, France, Germany, Singapore, Taiwan, Lebanon, Morocco, Australia, New Zealand, Oman, Qatar, China, Hong kong, Bahrain, Vietnam, African Intellectual Property Organisation (OAPI), for either the Emirates Word or device mark or EMIRATES.
- j) The Complainant has also registered/acquired a number of domain names containing the word EMIRATES such as [www.theemiratesgroup.com](http://www.theemiratesgroup.com), [www.emirates.in](http://www.emirates.in), [www.emiratesholidays.biz](http://www.emiratesholidays.biz), [www.emiratesgroupcareers.com](http://www.emiratesgroupcareers.com), [www.emiratesholidays.info](http://www.emiratesholidays.info), [www.emiratesholidays.co.uk](http://www.emiratesholidays.co.uk), [www.emiratesholidays.us](http://www.emiratesholidays.us), [www.emiratesholidays.asia](http://www.emiratesholidays.asia), [www.emiratesholidays.com](http://www.emiratesholidays.com), [www.emirates-holidays.info](http://www.emirates-holidays.info), [www.emiratesindia.com](http://www.emiratesindia.com), [www.emirates-holidays.org](http://www.emirates-holidays.org), [www.emirates-holidays.in](http://www.emirates-holidays.in), [www.emirates-holidays.co.uk](http://www.emirates-holidays.co.uk), [www.emirates-holidays.us](http://www.emirates-holidays.us), [www.emirates-holidays.co.in](http://www.emirates-holidays.co.in),



[www.emiratesaviationcollege.com](http://www.emiratesaviationcollege.com), [www.emirates-airline.com](http://www.emirates-airline.com),  
[www.emirates-airline.ru](http://www.emirates-airline.ru), [www.emirate-airlineservices.com](http://www.emirate-airlineservices.com),  
[www.emiratesairlines.ae](http://www.emiratesairlines.ae), [www.emiratesairline.at](http://www.emiratesairline.at),  
[www.emiratesairline.com](http://www.emiratesairline.com), [www.emiratesliveevents.com](http://www.emiratesliveevents.com),  
[www.emiratesairline.co](http://www.emiratesairline.co), [www.emiratesairlinefoundation.org](http://www.emiratesairlinefoundation.org) etc.

- k) The Complainant submits that it has come to their attention that someone has obtained a domain name registration for [www.airemirates.in](http://www.airemirates.in). The Complainant immediately searched the WHOIS database for the disputed domain name and found that the disputed domain name is registered in the name of Zhao Yun in China. The registrar for the disputed domain name is Webiq Domains Solutions Pvt. Ltd. also t/a PDR Limited d/b/a PUblicdomainregistry.com.
- l) The Complainant further submits that the Respondent is using the identical famous registered trade/service mark of the Complainant. The disputed domain name [airemirates.in](http://airemirates.in) consists of the Complainant's registered trademark EMIRATES in combination with the descriptive term 'air'. The use of the Complainant's trademark EMIRATES does not distinguish the disputed domain name from the Complainant's trade mark.
- m) The Complainant submits that the Respondent apparently, is in the business of holding domain names and selling them whereas the Complainant is an established business entity doing business under the mark/ name EMIRATES. The Respondent further submits that the disputed domain name is parked for sale for EUR 3188 which is adequate evidence to show that the Respondent has no legitimate interests in the disputed domain name and is merely holding the same without doing any business from it.
- n) It is further submitted that the Respondent is not authorized or licensed by the Complainant to use its trade mark/ trade name or to use the disputed domain name. The Respondent may misuse the domain name by hosting an unauthorized website.
- o) The disputed domain name incorporates the whole of the Complainant's mark/name EMIRATES and the disputed domain name on its face suggests that it is affiliated with or otherwise connected to, the Complainant. Such a registration cannot be considered bona fide in nature or otherwise performed in good faith. The Respondent may have registered the disputed domain name with a view to reaping a significant financial windfall by selling it.
- p) The Respondent has registered the disputed domain name for the purpose of disrupting the Complainant's business. The disputed domain name only offers pay-per-click links to various websites. The Respondent has been earning pay-per-click revenue from the sponsored links/ads on the Respondent's website. In doing so, the Respondent has been attempting to attract internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's trade/service mark.



- q) It is further submitted that the Respondent registered the disputed domain name years after the registration of the Complainant's domain name [www.emirates.com](http://www.emirates.com) is prima facie evidence of malafide intentions and bad faith.
- r) The disputed domain name could be used by the Respondent to extract huge sum of money from the Complainant who has legitimate interest in the domain name. This is pretty much evident as the Respondent is not running any website on the disputed domain name.
- s) Through the disputed domain name by activating a website [www.airemirates.in](http://www.airemirates.in), the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some innocent party by entering into transactions or contracts with them under the grab of being associated with the Complainant. This can be extremely dangerous and prejudicial to public interests as well.
- t) Further, the Respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant.
- u) The Respondent is not using the website associated with the disputed domain name [airemirates.in](http://airemirates.in) since its creation for any apparent purpose. It is a settled law that non-use and passive holding is evidence of bad faith use.

#### **5) Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy. The attempt to serve them hard copy of complaint by NIXI via courier was also not successful.

#### **6) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'AIREMIRATES' leads to the conclusion that the Complainant has superior and prior rights in the mark 'EMIRATES' which used in conjunction with the word AIR refers to services provided by the Complainant. Thus it can be said a) the web users are likely to associate the word 'AIREMIRATES' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.airemirates.in](http://www.airemirates.in) and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the



policies which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incomplete address at the time of registration, which is evidence from non-delivery of courier containing the Complaint (as per the report provided by NIXI dated May 28, 2014 from Blue Dart Express), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'EMIRATES'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'EMIRATES' trademark in its entirety. The mark EMIRATES which forms key part of the disputed domain name, and is being used by the Complainant to identify its products. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'airemirates.in' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services and their purpose for registration appears to be purely for monetary gain. The domain name has been allegedly offered for sale which amply proves the Respondent has no legitimate interest in the domain name.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to explain its adoption or show interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. The Respondent has simply parked its domain for sale.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.airemirates.in'.

- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interest in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further offering the domain for

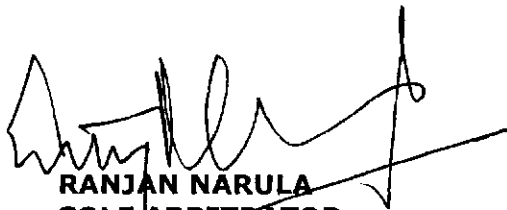


sale in excess of reasonable cost incurred in registering and maintaining the domain name shows bad faith.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'AIREMIRATES' which as EMIRATS as the most distinctive element is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

**7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name [www.airemirates.in](http://www.airemirates.in) is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name [www.airemirates.in](http://www.airemirates.in) be transferred to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**25 June 2014**