



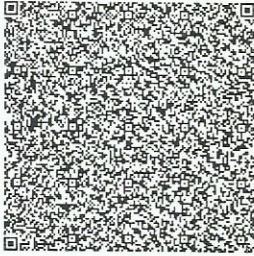
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL81130436071152Q
Certificate Issued Date : 28-Jan-2018 04:46 PM
Account Reference : IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL83540365506525075389Q
Purchased by : ANKUR RAHEJA
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : ANKUR RAHEJA
Second Party : Not Applicable
Stamp Duty Paid By : ANKUR RAHEJA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
PRADEEP MISRA V RADIANTLY LIFE
SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

A. Rahaj

In the matter of:

**PRADEEP MISRA: FOUNDER & DIRECTOR OF:
RUDRABHISHEK ENTERPRISES LIMITED**

... Complainant

Versus

RADIANTLY LIFE

And

JEEVAN DEEP SERVICES PVT LTD ... Respondents

ARBITRATION AWARD

Dispute Domain Name: apanagar.in

1. The Parties:

a. Complainant: The Complainant in these arbitration proceedings is: Pradeep Misra, Founder & Director of Rudrabhishek Enterprises Ltd having registered office at 820, Antriksh Bhawan, 22 Kasturba Gandhi Marg, New Delhi - 110001, represented by Adv. Meenu Sharma Goswami, Sec - 7, Palam Extn, Dwarka, New Delhi, 110077.

b. **Respondent:** The Respondent in these arbitration proceedings are Radiantly Life having office at 950, Silky Avenue, 34th Floor, New York, New Jersey, USA 39568 and Jeevan Deep Services Pvt Ltd having registered office at Gali No 1B, Chaman Garden, Karnal, Haryana 132001.

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is <apanaghar.in>.
- b. Disputed Domain Name is registered with GODADDY LLC.

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings 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 28th June 2005 in accordance with Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of these proceedings is as follows:

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Mr Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

The arbitration proceeding in the said matter commenced on 24 January 2018, in terms of INDRP Rules. Relevant Dates are as follows:

Sr.	Particulars	Date
1	Date of Handover of Complaint by NIXI and service of soft copy of Complaint upon Respondent by Nixi	24 January 2018
2	Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	24 January 2018
3	Second Notice to the Respondent	10 February 2018
4	Award Passed	24 March 2018

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 24th January 2018, with the instructions to file his reply / response by 09th February 2018.
- That NIXI informed on 30 January 2018 that the Hard Copy sent to the Respondent's US address through courier could not be delivered due to incomplete/incorrect address and the consignment was put on hold. The Respondent was asked to provide complete/correct address within 36 hours but no response was received. In the meantime, Complainant informed that the second address provided by the Respondent has been mentioned by respondents in their correspondence before filing of these proceedings and reference could also be found on a social media page.
- Given the facts, it seemed that the WHOIS information for the Domain was incorrectly provided. Accordingly, Nixi provided the status of service upon Respondent No 2 address as well. While no response was received from the Respondent as to correct address, later it was informed by Nixi that the consignment containing the Complaint could not be delivered to the second address, i.e. Respondent No 2 as well, though it forms part of Ministry of Company Affair (MCA) records as well.

- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was delivered successfully. Previously, the hard Copy of the Complaint also remained undelivered, therefore in terms of Rule 2(i)(B) of the Rules of procedure, another notice was re-issued to the Respondent's Email IDs on 10 February 2018, with the time till 17 February 2018 to respond. In the interim, NIXI had already delivered Soft Copy of the Complaint upon Respondent on 24 January 2018.
- In the fact and circumstance of the case, an order for ex-parte proceedings was issued on 19 February 2018, as no response was received from the Respondent and the Domain Registrant remained unreachable. Though during the proceedings, further opportunity was granted to the Respondent to make available true contact details, which he failed to comply too and In any case, the WHOIS info was the only contact information available for the Domain name owner as per the WHOIS records and which is assumed to be provided correctly and on which various notices were otherwise served. Therefore, service of notice has deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.
- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

- A. The Complainant Company namely, Rudrabhishek Enterprises Ltd, a Company incorporated under the Companies Act, 1956, having registered office at 820, Antriksh Bhawan, 22 Kasturba Gandhi Marg, New Delhi – 110001 is an established brand in the domain of Infrastructure and Real Estate Consultancy for the last 25 years in providing expertise in varied range of Services such as Fund raising & Financial Advisory, Urban Planning, Architectural Designing, Structural Designing, Services Designing, Project Management Consultancy, Geographic Information System (GIS) and Sales & Marketing.
- B. The Complainant Company along with its Founder & Director Mr Pradeep Misra are the Registered proprietor of the Trade Mark “APNA GHAR” along with the original domain name <apnaghar.co.in> in India, which are being continuously used in the Day-to-Day Business Affairs & Activities since 2005 vide the requisite Statutory Registrations. APNA GHAR as a device mark has been registered under classes 35 and 36 since 2007 and 2015 respectively, while the Domain Name <apnaghar.co.in> was registered on 18 August 2005.

C. It in September 2017 the Complainant learnt about the User of the Respondent's Disputed Domain <apanaghar.in> which was not only confusingly and deceptively similar to the registered Trademark "APNA GHAR" of the Complainant, but was also a mis-leading replica of the Complainant Company's Domain Name <apnaghar.co.in>. The Complainant on investigation came to know that the owner of the disputed domain is Respondent No. 2. This included display of name of Respondent No 2 upon a Facebook Page titled "APANA GHAR" along with the disputed domain. Facebook page of the Respondent showing that the Respondent No.2 is the owner of the website is annexed with the Complaint.

D. The Complainants have coined, conceived and adopted the Trade Mark/ Trade Name "APNA GHAR" in the Year, 2005 and since then has been openly, continuously & extensively using the same for its Business. The True Copy of the Social Media Literature relating to the Business Activities, Social Benevolence, Contributions, etc. in support of the Claim of the Complainant has been annexed.

E. Accordingly, with an objective to firmly protect the Intellectual Property Rights vested in the Complainant Company by virtue of being a Prior User of the Registered Trade Mark/ Trade Name/ Brand Name/ Logo "APNAGHAR" and

Domain Name <apnagar.co.in> a Legal Notice of Demand was issued on 23.09.2017 to the Respondent No. 2 for the purpose of requesting them to immediately restrain from continuing the arbitrary & illegal Misuser. The aforesaid requisition issued qua the Respondents warranted the forthwith withdrawal of the entire unauthorized Registrations claimed by the Respondents in terms of the Misuser under the Trade Mark & the Disputed Domain Name.

F. That vide a Reply Notice issued on 14.10.2017 by the Counsel of the Respondents No. 2 an Offer for Settlement has also been made. The Complainant had positively responded to the said Settlement Offer vide the Rejoinder Notice dated 28.10.2017. However, the said exercise has ended in futility. However, despite having being served with the said Legal Notice via Speed Post on the Respondents No. 2, the Respondents have still chosen to continue with the Wrongful Gains by wrongfully misappropriating the Intellectual Property of the Complainant.

5. The Dispute

a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.

- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant contends as follows:

- A. The Disputed Domain Name **<apanaghar.in>** contains the Complainant's Original Registered Trade Mark/ Trade Name/ Domain Name "APNA GHAR" and is confusingly similar to the domain name of the complainant **<apnaghar.co.in>**.
- B. The Disputed Domain Name is both visually & phonetically identical and/or also confusingly and deceptively similar to the Complainant's Registered Trademark and is infringement of Intellectual Property Rights of the Complainant.
- C. The Registration of the Disputed Domain Name by the Respondents is a clear violation of the Paragraph-3 of the INDRP, for the reason of

having caused failure of the Mandatory Terms by seeking Registration in violation of the Intellectual Property Rights vested in the Complainant Company.

D. The Complainant's Domain Name has become synonymous in the Business World with a High Quality & Unique Services Reputation in the Construction Industry, which is the result of a high level of Financial & Intellectual Contribution. The Website of the Complainants have thousands of Hits daily not only from India, but also from the entire World.

E. The Complainant submits that the Large Business Turn-Over based upon the said Intellectual Marks, Domain Name, etc. is the direct consequence of the substantial Funds dedicated for promotion of the Trade Mark & Brand Promotion.

F. A perusal of the Disputed Domain Name reveals a blatant Fraud having being committed on behalf of the Respondent's not only qua the Complainants, but also to the Public-at-large. Such a mis-representation from the end of the Respondents shall also be an impediment in the Social Growth of the Country.

- G. The Complainants submit that they have a legitimate interest in the “APNA GHAR” Registered Trade Mark in India, which has been openly, continuously & extensively used in advertising to make the same a well known mark. The subsequent adoption & registration of the Disputed Domain Name is inconsequential.
- H. The Complainants submit that the Respondents are neither commonly/ popularly known in the Public Domain nor have applied for any registration of the Mark “APNA GHAR OR APANAGHAR” or any similar mark or have registered the Business under the said Name with the Ministry of Corporate Affairs: India.
- I. The Complainants submit that the Disputed Domain Name has been intentionally created by the Respondents with the non-existing entity Respondent No.1 for Wrongful Commercial Gains. Further, the Respondents have caused failure of the Mandate enunciated in the Paragraph - 7 of INDRP, wherein the onus is on the Registrant to prove that he has a right or a legitimate interest in the Domain Name.

- J. The Use of the Disputed Domain Name to conduct suspicious activity related to MLM and cryptocurrency and wrongfully showing connection with APNA GHAR is not a bonafide Offer of Goods or Services and cannot confer any Rights or Legitimate Interest upon the Respondents.
- K. The Complainants state that the Respondent's User after having received the Caution vide the Legal Notices dated 23.09.2017 & 28.10.2017 is not only rooted in falsehood, but is also an irreparable loss & injury.
- L. The Complainant submits that by using the disputed domain name the Respondents have intentionally attempted to attract Internet Users to its Website by creating a likelihood of confusion with the Complainant's Name & Mark as to the Source or Sponsorship or Affiliation or Endorsement of the Respondent's Website or the Products or Services offered/ available on the Respondent's Website thereby violating Para 6 of INDRP.
- M. Further, the Complainants submit that the Respondents have deliberately registered the Disputed Domain Name with the Intention of cheating the customers of the Complainants by showing some

connection with APNA GHAR and trapping them into suspicious activity related to MLM and cryptocurrency.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 24 January 2018 and 10 February 2018 respectively.

B. However, Respondent is unreachable and/or failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification and several opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the matter and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

(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.

C. The Complainant has ownership and right, title and interest to the mark "APNA GHAR". The same have been protected by registration as Trademark in India since 2007. Whereas the Respondent has a legitimate website displaying

various services offered by them upon the disputed domain name, to which Complainant is claiming rights under this INDRP matter.

II. Respondent's Default

The INDRP Rules of Procedure requires under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged.

The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:

The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) Identical or confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]

A. The Complainant has shown that it has rights in the Trade Mark '**APNA GHAR**'. Complainant has secured the registration of Trademark in India since 2007 and 2015 respectively under different classes. It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] that trademark registration constitutes prima facie evidence of the validity of trademark rights. [See: Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case No: D2001-0654.]. While the disputed Domain Name **<apanaghar.in>** incorporates the said Trademark in it's entirely with little variation as to spelling.

B. The Respondent has registered the Disputed Domain Name **<apanaghar.in>** on 13 April 2016, it entirely comprised of Complainant's mark. In fact, the WIPO Arbitration & Mediation Centre in cases such as Reuters Ltd. v. Global Net 2000 Inc., D2000-0441; Altavista Company v. Grandtotal Finances Ltd., D2000-0848; Playboy Enterprises v. Movie Name Company, D2001-1201 has held that the mere omission of one letter of a trade mark has no effect on the determination of confusing similarity between a trademark and a domain name. Similarly, in eAuto, LLC v. Triple S Auto Parts, D2000-0047, the Panel decided that when a domain name wholly incorporates a Complainant's

registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy.

C. Besides it is also well-established that the extensions such as **‘.IN’** in a disputed domain name do not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain “.co.in” in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant’s mark [INDRP/289 - Hersheys.co.in]. Also in the matter of Compagnie Générale des Etablissements Michelin Michelin Recherche et Technique S.A. V Artemio Garza Hernandez [WIPO Case No D2015-0257], the Panel observes that the extension “.com” is typically not taken into consideration when examining the identity or similarity between a complainant’s trademarks and a disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in at least one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes 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; or*
- (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- (iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

- A. That the Complainant claims that they have coined, conceived and adopted the TradeMark / Name "Apna Ghar" in the year 2005 and also states that it has been misleading replica of the Complainant Company's Domain Name <apnaghar.co.in>. In evidence to the later statement they provide screenshots of previous version of the website upon the Disputed Domain Name, which read as '**Apna Ghar**' as a part of previous version of the logo. But the Arbitrator finds that not only the mark is descriptive/generic but also the logo used at the Disputed Domain has been inspired from another third party website APNAGHAR.org. The said other .org domain with which neither the complainant nor the Respondent has any relation is operated from USA and seems to have been registered since 1998, that is well before Complainant first started using the said trade name and is well known US based website dealing in social causes. Therefore, the Respondent's claim of having coined and conceived the term is untenable and not accepted.
- B. Furthermore, the term APNA GHAR (*a hindi term, means OWN HOUSE*) is a generic term and no one needs a licence or permission to use the term. In McCarthy on Trademarks and Unfair Competition Vol. 2 3rd Edition in para 12.5 (2) it is stated that in order to obtain some form of relief on a "passing off" claim, the user of a generic term must prove some false or confusing

usage by the newcomer above and beyond mere use of generic name. The said keywords “Apna Ghar” has already been registered for many different top TLDs like .com, .net, .org, .info, .biz, .in and so on since 2001 when .com was registered first and www.apnaghar.com is owned by a Pakistan National. Further, ApnaGhar.org website has been active since 2001 as per Archive.org. Therefore, it cannot be accepted that the Complainant were the first one to coin or use this term. Though, the Respondent has been using similar term with addition to a letter ‘A’ as **APANA GHAR**, but the same still sounds the same phonetically, as mark is an Hindi Language word and has the same meaning, if used either ways.

C. In response to the Legal Notice as annexed with the Complaint: “the Respondent contended that no person can claim any exclusive right on such common words your and denied of any infringement of Complainant’s right. Respondent further contended, that they have made the domain name with the word APNA being a common word to be used in combination with various other common words to be used in combination with various other common words to denote the kind of services provided by the Respondent. The disputed domain is descriptive of the services provided by our client. No person can have any proprietary right over such common descriptive words.

Complainant has no exclusive right on the word “APNA GHAR” or stop Respondent from use of such descriptive words”.

D. Further, the Complainant has annexed as Annexure E, which it claims to be Social Media Literature relating to the Business Activities, Social Benevolence, Contributions, etc. in support of the Claim of the Complainant. Though, on close scrutiny of those documents, Arbitrator finds that these majorly support their Company Name REPL rather than the mark in disputed domain name ‘Apna Ghar’. Complainant was asked very specifically during the proceedings to point out the documents which refer to their mark “Apna Ghar”, to this they replied “**Media Coverage is with regards to awards and big projects, achievements of REPL wherein architectural consultancy is provided by the APNA GHAR**”. Further, they pointed out Annexure Page Nos, which makes reference to their mark “**APNA GHAR**” as follows:

<u>Annexure Page #</u>	<u>Description</u>
13	“APNA GHAR” Logo seems to be provided on own website REPL, though no footer included as to URL.
22	REPL Standee, maybe having “APNA GHAR” logo ... which is though not visible due to poor quality of document.
23	Another REPL Standee, maybe displayed at some exhibition (<i>details not provided</i>), having “APNA GHAR” logo.
36	Graphic banner provided from Complainant’s Wordpress.com Blog, showing “APNA GHAR” as knowledge partner at

	UTTARAKHAND Property Expo Feb 2014, seems to be sponsored by the Complainant. But there is no media coverage it seems, when searched in Google about the event, only results are from Complainant's website.
40	APNA GHAR Banner from Wordpress.com blog, maybe for Advertising somewhere.
41-42	Uttarakhand Property Expo 2014 banner from WordPress.com blog - already discussed above.
43 - 71	Blog posts from Complainant's website at ApnaGhar.co.in and Wordpress.com and Pinterest posts including articles, designed graphics, etc.
80 - 87	Screenshots from Twitter, Google+ and YouTube, that is own social media channels.

E. Arbitrator has analyzed the documents very closely and did not find any evidence that may prove the goodwill/popularity acquired by their mark "APNA GHAR". Though in such cases of generic/descriptive terms, there is an even greater onus on Complainant to present compelling evidence of secondary meaning or distinctiveness, when there are various other entities using the similar mark. Some entities had registered the exact same mark since 1970s under different classes. In the matter of Booking Group SIA V. Daniel Chestnut [Case No. 101650 - ADR.EU; Domains - ECONOMYBOOKING.COM, ECONOMY-BOOKINGS.COM], the Panel finds that there is a much greater onus on the Complainants to present compelling evidence of secondary meaning or distinctiveness.

F. Therefore, the Complainant need to prove "Secondary Meaning" in respect of the said name/mark in specific, which includes length and amount of sales under the trademark, the nature and extent of advertising, consumer surveys, media recognition and so on (*UDRP Overview*). "Secondary Meaning" has been aptly defined in the case of Charcoal Steak House of Charlotte, Inc. v. Staley, 263 N.C. 199, 139 S.E.2nd 185, 144 USPQ 241 (1964) as "When a particular business has used words public juris for so long or so exclusively or when it has promoted its product to such an extent that the words do not register their literal meaning on the public mind but are instantly associated with one enterprise, such words have attained a secondary meaning. This is to say, a secondary meaning exists when, in addition to their literal, or dictionary, meaning, words connote to the public a product from a unique source."

G. Therefore, the Complainant need to have proved that their mark/name has acquired secondary meaning, to give them the exclusive right to use the said mark "APNA GHAR". The secondary meaning has already been discussed in the matters of Gaadi.in [INDRP/712] and HuntNews.in [INDRP/782] under INDRP, it was held that word/mark is suggestive if it requires imagination, thought, reasoning process and perception to reach a conclusion as to the nature of the services involved while in case of a descriptive trademark to

reach such a conclusion is immediate and instant. While the basic difference between a descriptive mark and a generic mark is that a descriptive mark describes the services/goods while a generic mark names a particular services/goods involved. The word/mark 'Gaadi' is descriptive in relation to the services involved. It is well settled law that the descriptive words/marks can be protected only on their acquisition of secondary significance for the consuming public.

H. Importantly, Honorable Delhi High Court, in the matter of Info Edge (India) Pvt. Ltd. vs Shailesh Gupta [98 (2002) DLT 499] has laid down the following principles in respect of "Secondary Meaning":

- a. It is a settled law that the distinction between the generic word and descriptive word is very thin and such word could also assume a secondary meaning by its long user by a person, who establishes his reputation in the market.
- b. The nature of reputation and goodwill that the plaintiff has been able to generate in the market by adopting and establishing a domain name and carrying on their business activities on the basis of the same. Thereby the trademark/domain name of the plaintiff has assumed significance and a secondary meaning.

- I. Further Honorable Supreme Court in the matter of Marico Ltd V. Agro Tech Foods, FAO (OS) No 352/2010, where the issue was as to use of the mark “Low Absorb”, which never acquired a Secondary Meaning. The Honorable Supreme Court said there are no survey reports of the consumers or any other evidence which would even prima facie point to the fact that “LOW ABSORB” has attained secondary distinctive meaning of a standard which has the ability to source the origin of the goods to the plaintiff. Further, Hon’ble Court held that there can be no dispute that even a descriptive word can be used as a trade mark provided it becomes - well known and acquires secondary distinctive meaning. The test is of likelihood of deception and not as to whether there was any intent to deceive. A perusal of the rival labels clearly demonstrate that except for the usage of the words... there is no commonality between the two. The colour scheme, the font, the trade dress and get up is completely different... therefore, Court said prima facie, in my opinion, there is no case even for passing off made out.
- J. In the matter of AOL LLC v. DiMarco, FA 1275978 (Forum Sept. 9, 2009) ‘Secondary meaning’ is acquired when ‘in the minds of the public, the primary significance of a product feature... is to identify the source of the product rather than the product itself.’ As per UDRP consensus view 2.0, relevant evidence of such **"secondary meaning" includes length and amount of**

sales under the trademark, the nature and extent of advertising, consumer surveys, media recognition and so on. [INDRP/782 - HuntNews.in].

K. Given the consensus view and other precedents on the subject and lack of evidence in support of the mark “APNA GHAR” in specific, does not support the case of the Complainant. To analyze the complete Annexures provided as evidence in particular as to recognition, annexed by the Complainant as Annexure E (*pages 13 to 87 of the Annexures*):

- a. Pages 13 to 21 are print outs from some official website, (*though no URLs have been included in the footer by the Respondent*), including brief and newspaper clippings, later are not properly readable except the titles and none of the titles of the news make any reference to ‘APNA GHAR’, which also was admission of the Complainant on seeking clarifications.
- b. Further, there are awards received by Complainant Company - REPL, also Banners, Event participation, ISO Certificate and so on. Some of them not readable though. During the proceedings, clarifications were sought from the Complainant as to the reference contained therein to their mark “APNA GHAR”, to which they replied “Media Coverage is

with regards to awards and big projects, achievements of REPL wherein architectural consultancy is provided by the APNA GHAR”, that is, it has no direction relation with the mark in question.

- c. Also annexed are print outs from the self written blog at ApnaGhar.co.in website, which also does not help the case of the Complainant, as this is not a third party recognition.
 - d. Lastly, prints from social media accounts of the Complainant referring to Apna Ghar including Pinterest, WordPress.com, Twitter.com, YouTube and Google Plus. These also does not support the case of the Complainant to prove the popularity of the mark **APNA GHAR** to have gained secondary meaning.
- L. The Complainant also argues that the mark “APNA GHAR” which has been openly, continuously and extensively used in advertising to make the same a well known mark. The Arbitrator finds, given the evidence that APNA GHAR is not a well known trademark as Complainant was unable to prove material amount of sales under the trademark, the nature and extent of advertising, consumer surveys, media recognition and so on, in terms of UDRP Consensus view. Moreover, they were not the first one to adopt the said mark in relation to their business.

- M. Further, the Complainant states that their website <apnaghar.co.in> has thousands of hits daily globally and has large business turnover based upon the said Intellectual Marks, but Respondent has not produced any evidence in support of these contentions.
- N. Above all, the website upon the Disputed Domain Name existed since November 2016, that is, even before the time any notice was served upon the Respondent and they seem to have been rendering different kind of services. Though, the logo used upon the Disputed Domain is a copy of APNAGHAR.org website logo but has no relation in the current matter, except that it can be concluded the logo or content is not in any way similar to Complainant's website <apnaghar.co.in>.
- O. Further, Complainant argues that the Use of the Disputed Domain Name to conduct suspicious activity related to MLM and cryptocurrency cannot be said to be bona-fide use. Arbitrator finds that prima-facie there is nothing objectionable at the domain disputed website as to the nature of services rendered, in the introduction part itself, the Respondent refer themselves as Real Estate and E-commerce company. And any company has a right to use use such a generic words like 'Apna/Apana Ghar'. In the matter of **Knud Jepsen A/S v. Rick Schwartz, Virtual Dates Inc**, it was held the Disputed

Domain Name consists of a common term and the Respondent has used the Disputed Domain Name in a way which corresponds to one of the common meanings of that term. The Complainant has failed to give the Panel any reason to think that the Respondent registered the Disputed Domain Name to capitalize on the alleged fame of the Complainant's trademarks in any way, rather than in connection with one common meaning of the Disputed Domain Name. [Case No. D2017-0679].

P. Also it is important to understand, "the UDRP is a special purpose arbitral regime designed for trademark owners to challenge domain name registrants allegedly infringing their rights to exclusive use of their trademarks on the Internet. The Complainant does not have to prove Trademark Infringement, only that the domain name was registered and is being used in bad faith. This gives rise to an anomaly that a Complainant may fail to prove abusive registration of a domain name that would otherwise be condemned under trademark law" [*source: Domain Name Arbitration - Pg 75 by Mr Gerald M. Levine 'Domain Name Arbitration' - UDRP is not a Trademark Court*].

Q. In the matter of Audi AG v. Stratofex [WIPO Case No. D2012-1894] it has been held that if the Complainant considers that the Respondent's present (or future use) of the **Domain Name infringes its trademark rights then it is**

free to commence proceedings against the Respondent in a court of competent jurisdiction. This case illustrates the widely recognised principle that the Policy is designed to deal with clear cases of cybersquatting, Further in Clockwork IP LLC, One Hour Air Conditioning Franchising, LLC v. Elena Wallace, WIPO Case No. D2009-0485, it was laid down that **UDRP proceedings are for clear cases of cybersquatting, not for resolving trademark infringement and/or trademark dilution disputes or other matters more appropriately dealt with through the courts.**

R. Lastly, the Complainant has provided two INDRP decisions as precedents in the matter on which they rely in support of the Complaint, which are unrelated to the current matter under consideration due to the following reasons:

- a. QIGO.in - The term QIGO is not a generic term and has no meaning in any language, further domain name was put for sale at \$29,117. Therefore, the facts are not similar to the current matter.
- b. Midea.in - Similarly, MIDEA is not a generic term and there was no legitimate use of the said domain name and it was put up for sale.

In the circumstances, the Arbitrator concludes that the Complainant has not been able to establish the requirement of paragraph 4 (ii) of the Policy. More specifically, the Respondent is protected under clause (i) of Para 7 of the Policy, which elaborates legitimate interests, the Respondent may have.

Therefore, no relief can be granted here in terms of the facts and circumstances, as it is necessary for the Complainant to satisfy each of the three condition provided under Para 4 of the IN Dispute Resolution Policy (INDRP).

(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain

Name in Bad Faith:

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

A. In the matter of Inpact S.A. V Inpactme SpA DME 2016 - 001 (inpact.me), it was held that given that second condition has not been met the requirements of the Policy to order for the transfer of the Disputed Domain, it is not

necessary to analyze third element in the policy in any case, given the facts and circumstances of the case.

B. In the UDRP matter of Saltworks, Inc. v. Gary Pedersen, Salt Works [Case No. D2013-0984], it was similarly held that the evidence of continuous and substantial usage by Respondent of the term 'Salt Works' in identifying its business and services establishes that Respondent has been commonly known by the disputed domain name, whether or not Respondent has established common law trademark rights in that term. The Panel determines that Complainant has failed to establish that Respondent lacks rights or legitimate interests in the disputed domain name. Because Complainant has failed to establish an element necessary for a finding of abusive domain name registration and use, the Panel need not address the element of bad faith registration and use. Complainant's request for relief is denied."

Accordingly, the Arbitrator need not address the element of bad faith registration and use, as the Complainant has failed to prove the second / previous clause as to legitimate use by the Respondent.

C. Though, in brief, the Disputed Domain Name is based upon Generic Term, which has been in use since decades and the Domain name seems to be

registered in it's generic sense. Therefore, given the facts and the discussion above, none of the conditions provided under Para 6 of the INDRP policy are otherwise proved, while Respondent has legitimate website upon the disputed domain since November 2016. And it is not possible for the Arbitration process to go into the details of kind of MLM being operated, whether it is in terms of legal norms or not.

D. Though, keeping in mind, WHOIS information of the Disputed Domain is unreachable and false. Therefore, the domain name can be subject of suspension of Domain Name in terms of .IN Registrant Agreement with .IN Registry (Nixi), through complaint made in this respect to the Domain Registrar.

8. Decision:

Complainant has failed to establish that the Respondent has no legitimate interest in the <apanaghar.in> Domain Name. Accordingly, the Complainant's request that the Domain Name be transferred is DENIED.

Consequently, the Arbitrator orders that **the Domain Name <apanagar.in> to remain with the Respondent**, hence Complaint is denied with no orders as to costs.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 24th March 2018

Place: New Delhi