

1. The Parties

The Complainant is M/s AXA SA, 25, avenue Matignon, 75008 Paris, France

The Respondent is Mr. Akshay Radia, 4 Oaks Brookshill, Harrow HA36RP, Great Britain

2. The Domain Name and Registrar

The disputed domain name is <www.axai.in>. The said domain name is registered with the Registrar – GoDaddy.com, LL.C., (R101-AFIN), 14455, North Hayden Road, Suite 219, Scottsdale AZ 85260, United States of America.

The details of registration of the disputed domain name (as per Annexure to the Complaint) are as follows:

- (a) Domain ID: D10540711 – AFIN
- (b) Date of creation: February 06, 2016
- (c) Expiry date: February 06, 2021

3. Procedural History

- (a) A Complaint dated February 26, 2018 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure C. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

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- (b) In accordance with the Policy and the Rules, an attempt was made by the National Internet Exchange of India to notify the Respondent about the Complaint. The Complaint could not be served on the Respondent. Hence, the present proceedings have to be ex parte.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

The Complainant is a company incorporated according to the laws of France under the number 572 093 920. The AXA SA is the holding company of AXA Group.

According to the Complaint, the Complainant is engaged in three major lines of business, that is, (i) property and casualty insurance; (ii) life insurance and savings, and (iii) asset management proposed to both individuals and business companies. It is serving 103 million customers worldwide. The Complainant contends that their trademark AXA is traded on Paris Stock Exchange since 1988 and in 1996 it became listed on the New York Stock Exchange. The Complainant is doing business in 64 countries in various parts of the world including Europe, North America and Asia Pacific.

The "AXA" mark has acquired a high degree of public recognition and distinctiveness among customers around the world and symbolizes valuable goodwill for the Complainant. The Complainant is well known to its customers as well as in business circles as "AXA".

Respondent's Identity and Activities

The Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

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In relation to element (i), the Complainant contends that the trademark "AXA" is introduced in the year 1985 and it is commonly known throughout the world. The Complainant extensively promotes its mark "AXA".

The Complainant is also the registrant and proprietor of domain name registrations at international and domestic levels. Some such illustrations of domain names are: <www.axa.com>; <www.axa.fr>; <www.axa.in>, etc.

The trademark "AXA" of the Complainant is registered in many countries, such as, Algeria, Austria, Bosnia, Croatia, Egypt, France, Germany, Hungary, Italy, Morocco, Monaco, North Korea, Portugal, Romania, Russia, Spain, Sudan, Ukraine, Yugoslavia, Switzerland and United States of America.

So far as India is concerned, the Complainant established an Indian subsidiary AXA BUSINESS SERVICES having its registered office at Bangalore, India. Moreover, Bharti AXA General Insurance Company Limited is a joint venture between Bharti Enterprises and AXA.

Further that, in India the mark "AXA" was registered for the first time on November 03, 2003 in Class 36 vide registration No. 1247354. Thereafter, one more trademark "AXA" was registered on the same date, that is, November 03, 2003 vide Registration No. 1247355. Once again the trademark "AXA" was registered on September 29, 2010 in Class 36 vide Registration No. 2030165.

The Complainant contends that the disputed domain name contains the complete trademark, that is, "axa". The letter "i" following the trademark AXA in the disputed domain name makes reference to nothing. The addition of the ".in" gTLD in a domain name is insignificant. It does nothing to distinguish or alleviate confusion between the Complainant's trademark and disputed domain name <axai.in>.

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In support of its contentions, the Complainant has relied on the decisions in the cases of BACCARRAT SA v. DOREEN JUNGNIKEL/HERMANDOMCREATE, (INDRP Case decided on October 06, 2006).

In relation to element (ii), the Complainant contends that the Respondent does not have any legitimate interest in using the disputed domain name. The Respondent (as an individual, business, or other organization) has not been commonly known by the mark "AXA". The Respondent does not own any trademark registration for "AXA". The Complainant has never assigned, granted, licensed, sold, transferred, or in

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any way authorized the Respondent to register or use <axai.in> domain name or the AXA Mark.

Further, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. There is no relationship whatsoever between the Complainant and the Respondent. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public. The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

In support of its contentions, the Complainant has relied on the decisions in the cases of ACCORD v. *Tang Wei*, (INDRP/127) and *Express Scripts, Inc. v. Windgather Investments Limited* (WIPO Case No. D2007-0267) wherein it has been held that,

...before notice of dispute began, the Domain name was not being used by the Respondent in connection with a bona fide offering of goods and services(paragraph 4 (c)(i) of the Policy). The Respondent had apparently “parked” the Domain name until it could be sold and the advertisements on the site were generated by the parking company. In this way, the Respondent allowed the parking company free reign over content.”

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.axai.in> by the Respondent is to mislead the customers of the Complainant and earn undue profits by selling it. The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated or related with the trademark “AXA” of the Complainant.

Further that, according to the Complainant, the Respondent is waiting for a purchase offer from the Complainant or from other buyers of domain names for an amount which is obviously well out-of-pocket cost directly related to the disputed domain name. In reply to the demand letter of the Complainant, the Respondent has replied as follows:

“You are welcome to purchase the domain name from me. I have not used it yet. However, you are welcome to the rights for a fair fee.



Please send me an offer and we can coordinate its transfer immediately'

In support of its contentions, the Complainant has relied on the decision in the case of *Longs Drug Stores Cal., Inc., v. Shep Dog*, (WIPO Case No D2004-1069) wherein it has been held that "Parking of such domain names to obtain revenue through web traffic and sponsored results is a common practice of domain hijackers". Thus, the facts of the case strongly demonstrate that Respondent has registered and used the <axai.in> domain in bad faith.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.axai.in> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

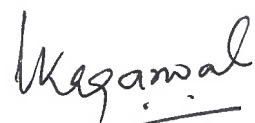
According to the Policy, the Complainant must prove that:

- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <www.axai.in> was registered by the Respondent on February 06, 2016. It will expire on February 06, 2021.

The Complainant is an owner of the registered trademark "AXA" in many countries including India for the last more than 17 years. The Complainant is also the owner of a number of domains as stated above



and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <axai.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "AXA" products in India or elsewhere would mistake the disputed domain name as of the Complainant.

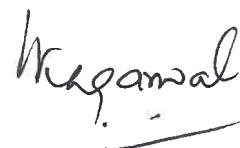
In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <www.axai.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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.


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The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Akshay Radia. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "AXA" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

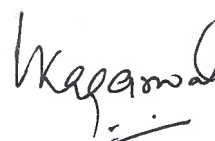
As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <www.axai.in> under INDRP Policy, Paragraph 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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's 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
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.

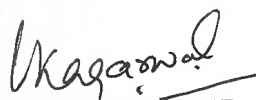
The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The fact that the Respondent offered to sell the disputed domain name to the Complainant for a price also indicates that the domain name was registered by the Respondent in bad faith.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.axai.in> be transferred to the Complainant.



Vinod K. Agarwal

Sole Arbitrator

Date: 02th May, 2018