

महाराष्ट्र MAHARASHTRA

2014

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इस्ताका प्रकार/अनुच्छेद क्रमांक

दस्त नोंदणी करार अस्तव्य

नोंदणी होणार असल्यास पुढील विविध प्रकारचे

मिळकतीचे द्यावे

मोबदला द्यावे

मुद्रांक विकत घ्यावे

दुराग्या पक्षाकडून

हस्तांतरित झालेले

मुद्रांक शुल्क देणे

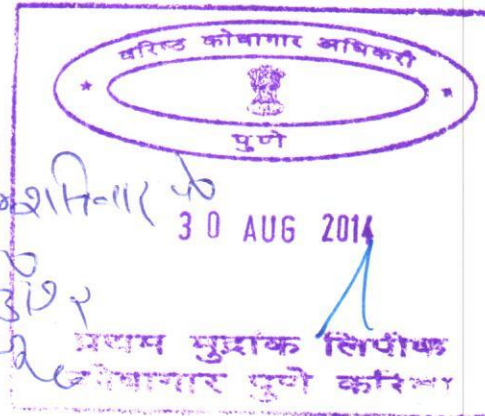
मुद्रांक विक्री सोडून

मुद्रांक विकत घ्यावे

परवानाधार

परवाना क्र. २२०५ ११

नों. जयश्री वि. वेतासरे
परवाना क्र. २२०५ ११
४२५ व, शनिवार पेठ, पुणे-४०



शिरीष चिंतामणी नामदार - पक्षधरिता को
जयश्री वि. वेतासरे
२२/८/२०१४
९०८२ - २२०१
६७३८ - ७१६०२
२२/८/२०१४

AWARD
IN ARBITRATION
'CASIOSTORE.IN'

Casio Keisanki Kabushiki Kaisha t/a
Casio Computer Co. Limited
6-2, Honmachi 1 - Chome, Shibuya-Ku
Tokyo, Japan

THE COMPLAINANT

AND

Casio India Pvt. Ltd.
contact@casio.store.in

THE RESPONDENT /
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'CASIOSTORE.IN'
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

SOLE ARBITRATOR

**DELIVERED ON THIS 6th DAY OF SEPTEMBER TWO THOUSAND
FOURTEEN AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- 01. Names and addresses**
- Of the Complainant: - **Casio Keisanki Kabushiki Kaisha t/a
Casio Computer Co. Ltd.**
6-2, Honmachi 1 – Chome, Shibuya-Ku
Tokyo, Japan
- Through its authorized
representative **August Legal**
S-553 (LGF), Greater Kailash – II
New Delhi. 110148. India
- 02. Name and address of
The Respondent: -** **Casio India Pvt. Ltd.**
contact@casiostore.in

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	07.08.2014
02	Hard copy of complaint received & Notice of Arbitration issued with the instructions to file reply latest by 31.08.2014	20.08.2014
03	Upon failure on Notice reaching the Registrant, views were solicited of the Complainant	20.08.2014
04	Notice of closure of arbitration	01.09.2014
06	Award passed	06.09.2014

I] PRELIMINARY: -

- 1) Casio Keisanki Kabushiki Kaisha is a Japanese company trading as Casio Computer Co. Ltd. in India which is a limited company registered under the provisions of the Companies Act, 1956. The holding Japanese company has its office at 6-2, Hon-Mach 1 – Chome, Shibuya-Ka, Tokyo, Japan. **(The Complainant)** has filed complaint with National Internet

Exchange of India (NIXI) disputing the registration of domain name **CASIOSTORE.IN** (the disputed domain name / domain name), through its authorized representative **M/s August Legal, S-553 (LGF), Greater Kailash – II, New Delhi. 110 048.**

- 2) The Complainant has disputed registration of domain name '**CASIOSTORE.IN**' in the name of **Casio India Pvt. Ltd.(The Respondent / Registrant)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 20th August, 2014 with the instructions to file his reply / say latest by 31st August, 2014.
02. The Notice of Arbitration was sent to The Registrant on its registered email id, which was bounced as the said email id did not exist. The postal address is not provided by the Registrant.
03. Due to very peculiar situation, the views of the Authorised Representative of the Complainant were called for on 20th August 2014 who accordingly submitted thier views.
04. On 1st September 2014 notice of closure of arbitration procedures was issued.
05. No personal hearing was requested / granted / held.

III] PECULIAR ISSUES INVOLVED IN THE PRESENT ARBITRATION CASE: -

1. According to the whois data available till July 15, 2014 on which the original complaint was filed by the Complainant with NIXI, the disputed domain name was registered in the name of one **M/S MAGNETIC RETAIL PVT. LTD.** However prior to the NIXI locking the aforesaid data on 21st July, 2014 the said company (**PREVIOUS REGISTRANT**) of the said domain name managed to manipulate the whois data by changing the name of Registrant to '**CASIO INDIA PVT. LTD.**' and furnished only email id as '**contact@casiostore.in**'. No postal address was given for this new company.
2. Upon taking search on **mca.gov.in**, a website maintained by the Ministry of Corporate Affairs, Government of India, it was revealed that no such company in fact exists. I have personally visited the website and found that no such company exists.
3. It is observed that this manipulation was done by the Previous Registrant only to prevent / derail the arbitration proceedings.

4. Due to above, all efforts to reach the present registrant have failed, and even Notice of Arbitration sent by email has bounced back.

IV] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

Despite the fake name and email id of the present Registrant this panel has gone through the Complaint which is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant states that the domain name registered by the Respondent includes the word CASIO which is both similar and identical to 'CASIO MARKS', of which it is the registered owner. A list of such registered trademarks is provided in Annexure to the Complaint, by the Complainant.
2. The Complainant is one of the renowned and leading manufacturers of several electronic items worldwide and has trading relationships and business in several countries, including in India. The Complainant is manufacturer of, inter-alia, calculators, wrist watches, keyboards, headphones etc.
3. The group has been spending considerable amounts on advertising expenses every year. It also owns various domain names like www.world.casio.com, www.casio-europecom, www.casio-projectors.eu, www.casio.co.uk and many more in several countries including U.S.A., Mexico, U.K., China, Hongkong and so on.

(B) GROUNDS OF COMPLAINT ACCORDING TO INDRP RULES: -

1. The Registrant's domain name contains the word CASIO which is an integral part of the brand and trade / service mark of the Complainant and also identical to that of the Complainant's name in which the Complainant has right and it would confuse the customers in India due to this similarity. The Trademark 'CASIO' has acquired tremendous fame, recognition and goodwill worldwide and is exclusively associated with the Complainant only.
2. The Complainant became aware of the registration of the disputed domain name in January 2014. The website stated that it was dealing in watches of the Complainant. It was also stated that MRPL (previous Registrant) was the sole authorised online and institutional distributor for casio products in India which was totally lie. The Registrant states that it had never authorised the previous registrant nor the present registrant to use the name casio in any way or to deal in the products of the Complainant. Hence it constitutes trademark infringement.
3. The adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself. The Registrant was aware of the trademark of the Complainant when it produced the registration of the domain name in November 2013.

4. The Registrant is not making any legitimate non-commercial or fair use of the domain name. The Registrant has no right or legitimate interests in respect of disputed domain name.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the Registrant's domain name to it.

V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

Since the present registrant is a fake company no reply has been filed to the Complaint.

VI] REJOINDERS OF THE PARTIES: -

In view non-filing of any reply by the Registrant no rejoinders were called for.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

S. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	Yes
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IX] BASIS OF FINDINGS: -

Admittedly, the previous Registrant / Respondent – M/s Magnetic Retail Pvt. Ltd. had registered the disputed domain name and was using the same in illegal manner to profit from the same, by pretending to be authorised dealers in India for the Complainant. The said previous Registrant, upon having information about the Complaint being filed by the Complainant, and after receiving the copy of the Complaint on 17th July 2014, managed to transfer the disputed domain name in the name of Casio India Pvt. Ltd. on 21st July 2014, which is imaginary and non-existing company, to stall the arbitration proceedings or to derail the same, before NIXI could get the domain locked for transfer, alter or delete purposes. Immediately the website was down purportedly for maintenance purposes.

On 8th August 2014, one Mr. Swikar Chopra, wrote an email to NIXI stating that they had surrendered the domain name and asked the details of account where 'it needed to be done'. This implies that previous Registrant had intentionally and knowingly registered the disputed domain name, with the knowledge that they were doing it by breaching the legal rights of the Complainant created by registered trademarks.

Since the new Registrant is fictitious entity without any proper email id or postal address, notice of arbitration could not be served upon it. Resultantly, in response to the Complaint / Notice of Arbitration there was no submission of any nature, by / from the new Registrant.

Due to above reasons, the previous registrant should have been the Respondent to the present arbitration proceedings, but for legal and technical reasons, this arbitration panel had to treat Casio India Pvt. Ltd. as the Respondent as its name is appearing as the Registrant on whois data base.

In any case, the Previous Registrant / Respondent had no good title, interest or legal propriety in the disputed domain name and hence it could not have passed the same legally and beneficially to any real or truly existing registrant also. Due to above all reasons, the following findings should be considered as applicable to both the previous as well as present Registrant / Respondent.

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant has stated that it owns the brand CASIO and its subsidiary / affiliate companies. It has attached Annexure detailing all such trade / service marks registered in its name.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'CASIO' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its national presence as also its strong presence on the internet it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'CASIO'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Present Registrant, as on the Whois records is Casio India Pvt. Ltd. Factually No such company exists. The previous registrant was Magnetic Retail Pvt. Ltd. which has no nexus to the word CASIO in any manner. As such neither of the Registrants is commonly known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'CASIO'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He is not authorised / permitted by the Complainant to use the said name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain name was previously registered by one Magnetic Retail Pvt. Ltd. which was blatant enough to claim as the only authorised dealer of Casio products in India, without any authority, agreement or arrangement between the Complainant and the previous Registrant. It was dealing in casio products and making money online.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides in registering the disputed domain name. Therefore it is established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

While it was operated by the previous Registrant, the website was active and claiming to be the only authorised dealer's official website for Casio Products in India. This was being done without any agreement, arrangement or authority by the Complainant in this behalf. This is obvious act of intentionally attempting to attract internet users by creating likelihood of confusion with the Complainant's name / mark.

Therefore my finding on this issue is affirmative.

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

There is no express demand of money made by either of the Registrants to the Complainant. However the previous Registrant has profited from selling goods through the disputed domain name and in all probability it could have been sold for valuable consideration.

Therefore my finding on this issue is positive.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name includes the word CASIO which is an integral part of the registered marks and registered domain names of the Complainant. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.
2. Both the Previous and present Registrants / Respondents do not have any registered trade mark / service mark in his name containing the words 'CASIO' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
3. The Registrants are not commonly known by the disputed domain name.
4. The Registrants were / are not making bona fide and fair use of the disputed domain name, much less for non-commercial purpose.
5. The Respondents / Registrants have failed to establish any nexus, rights or interests in or with the disputed domain name in any way.

From all findings on the issues framed, it can be concluded that the Registrant(s) has / have registered domain name without any legitimate interests in it.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – 'CASIOSTORE.IN' and hence the same be transferred to the Complainant.**

Dated: - 06.09.2014
Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR