

தமிழ்நாடு தமில்நாடு TAMILNADU

20885
12 MAY 2016

D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor.
No. 90 / 73, Armenian Street:
Chennai - 600 001.

AR 617695
P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L.No: B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600104. (TAMILNADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA

Disputed Domain Name: <www.gmirecruitment.in>
in
INDRP Case No. 799

1. General Motors India Private Limited
IFFCO Complex, Plot No.3, Sector 32,
Institutional Area, Gurgaon- 122001.
Haryana, India

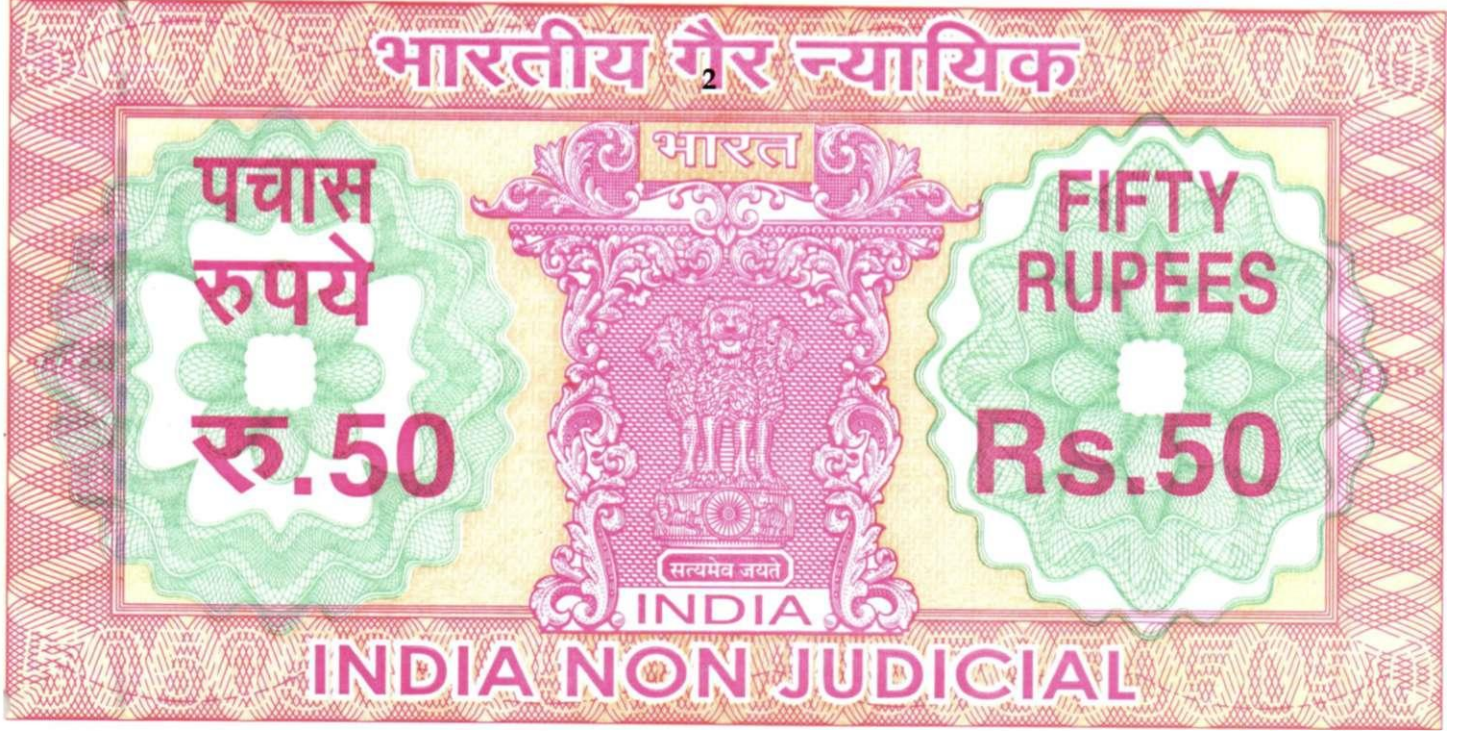
And

2. General Motors LLC
300, Renaissance Centre, Mail Code
482-C23-D24, Detroit, MI 48265, USA.

.. Complainants

Versus





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-2-

Anish Sharma
Delhi, Delhi, Delhi
Delhi- 110002.

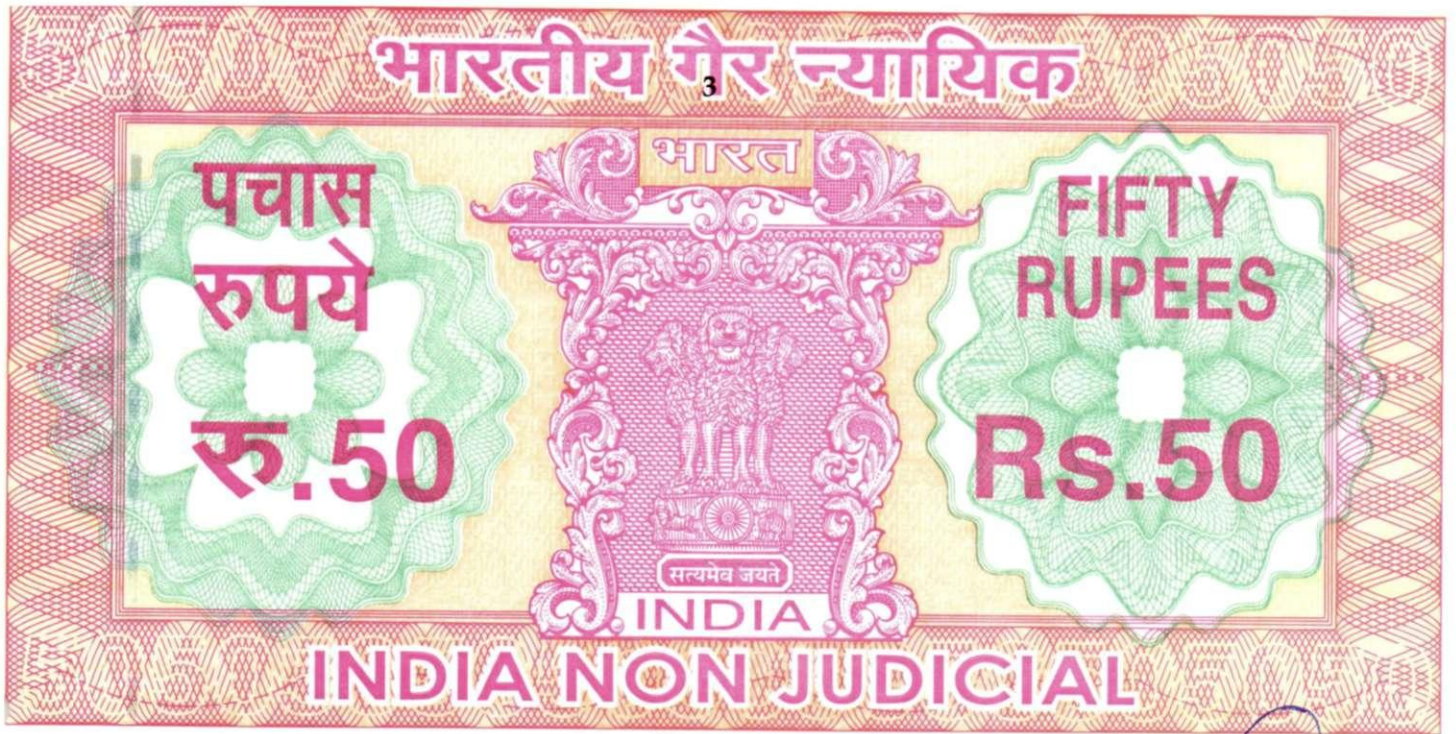
.. Respondent

1. The Parties:

The 1st Complainant is **General Motors India Private Limited.**, is having its address at IFFCO Complex, Plot No.3, Sector 32, Institutional Area, Gurgaon- 122001, Haryana, India and the 2nd Complainant is General Motors LLC having its address at 300, Renaissance Centre, Mail Code, 482-C23-D24, MI 48265, USA.

The Respondent is **Anish Sharma**, having his address at Delhi, Delhi, Delhi, Delhi- 110002, India.





தமிழ்நாடு தமில்நாடு TAMILNADU



2089
2 MAY 2016

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2. The Domain Name and Registrar:

The disputed domain name : <www.gmirecruitment.in>

The disputed domain name is registered with National Internet Exchange of India (NIXI) through its Registrar GoDaddy.com, LLC (R101-AFIN)

3. Procedural History:

- May 11, 2016** The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- May 11, 2016** Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.



- May 13, 2016** The .IN Registry sent an email to the Arbitral Tribunal stating that the courier agency has not accepted to consign the shipment to be sent to the respondent for the reason that the address is not sufficient.
- May 14, 2016** The Arbitral Tribunal directed the complainants to send the scan copy of the complaint and annexures to the respondent through email and the complainants have acted upon the same.
- May 17, 2016** Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainants' representative and .IN Registry.
- May 28, 2016** Due date for filing response.
- May 31, 2016** Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background

4.1 The Complainants:

The 2nd Complainant is **General Motors LLC.**, an American Multinational corporation and the 2nd Complainant is the Affiliate of the 1st Complainant and an IT/ITES company registered and incorporated in India to provide back office services to its Affiliates. The authorized representative of the Complainants is M/s Rodney D. Ryder/ Ravi Goyal, Scriboard, Advocates & Legal Consultants, having their office at Level 2, Elegance Towers, Mathura Road, Jasola, New Delhi, 110025, India.

4.2 Complainants' Activities:

1. The complainants are General Motors, commonly known as GM. The 2nd complainant is an American Multinational corporation headquartered in Detroit, Michigan and designs, manufactures, markets and distributes vehicles and parts and sells financial services. General Motors produces vehicles under ten brands in 37 countries.



2. The 2nd complainant has number of joint ventures in various countries and in India, that is complainant no.1 is selling passenger vehicles under the trade name of "Chevrolet"
3. The complainants have been ranked amongst top ten companies by Fortune 500 for past five years. The complainants have been leading global vehicle sales since 1931. The complainants have spent huge amount of money in promotion and advertisement of its services and products under the trade name of GM.

4.3 Complainants' Trading Name:

1. The marks "GM" and "General Motors" are very important and valuable trade/ service name/ mark for the complainants and in order to protect the same, the complainant have registered the said trade marks in India and all over the world. The complainants have marked the copies of trade mark registrations in **Annexure-"C"**.
2. The complainants have also registered domain names such as www.gm.com, www.generalmotors.com, www.gmc.com, etc.

5. Respondent's Identity and activities:

The Respondent is **Anish Sharma**, having his address at Delhi, Delhi, Delhi, Delhi- 110002, India.

6. Dispute:

The dispute arose when the Complainants came to know about unauthorized registration of the domain name www.gmirecruitment.in by the Respondent through WHOIS database search. The registrar for the disputed domain name is GoDaddy.com LLC. The disputed domain name registration is a duplication of the complainant/s' trade mark/ service mark followed by the generic word "recruitment" and has not been obtained in faith.

7. Parties contentions:

A. Complainants:

- (1) The Domain Name www.gmirecruitment.in is confusingly similar to the complainants mark GM and GM INDIA:



(i) A mere glance at the disputed domain name gives rise to enormous confusion as to its origin as the domain name used by the respondent is identical to the corporate name of the complainants. The malafide intension of the respondent is evident from the fact that the respondent has suffixed the term 'recruitment' after the term GMI which stands for "General Motors India". The respondent has picked up the mark / name of the complainants verbatim without even changing a single letter. Thus, the use of the disputed domain name by the respondent is a *prima facie* case of cyber squatting and trade / service mark / infringement. The domain name www.gmirecruitment.in is identical to the marks GM and GM India.

(ii) The disputed domain name contains the entirety of the complainants' trademark. It is well established that the specific top level domain, such as ".com", ".in", ".co.in", ".net" or ".travel" does not affect the domain name for the purpose of determining whether it is identical or confusing the similar.

(iii) The term GM and GM INDIA has been used by the complainants continuously for a number of years, as it is associated exclusively with the complainants. The use by the any other concern of an identical / deceptively similar mark to that of the complainants' mark "GM" and "GM India" is bound to lead to confusion and deception and amongst to passing off and trademark infringement, and any person or entity using the mark GM and GM India in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the complainants.

(iv) The mark "GM" and "GM INDIA" has been in extensive, continuous and uninterrupted use since the year 1908 in relation to the complainants' business. More specifically, the mark "GM" has been in use by the complainants in relation to all its stationary articles including letter heads, visiting cards, order forms, bill books, envelops, applications forms and in relation to sales promotional material, such as, brochures, catalogues, etc. The mark "GM" has also been used in relation to advertisement and related business / commercial information disseminated in several print media such as newspapers, magazines etc. both in India as well as abroad. In each of the instances of use, the mark "GM" is prominently displayed and has become the focus of the complainants' entire business. The promotional information and brochures are marked as **Annexure F** to



the complaint. The terms GM and GM India has been complainant No.1's corporate name and has been used extensively over the years.

(v) In the present case, it is very natural for an internet user, who wishes to reach / visit the recruitment/ careers website of the complainants to type its corporate /commercial name followed by "<recruitment>". This will lead the internet user to believe that the complainants are associated with or owns the website bearing the domain name www.gmirecruitment.in.

(vi) The impugned domain name is identical to the trade mark "GM" and GM INDIA. As numerous UDRP panels have held in so many decisions that a domain name wholly incorporates a complainants' registered mark may be sufficient to establish identity or confusing similarly, despite the addition of other words to such mark. The complainant has shown that the disputed domain has become a distinctive identity associated with the complainants or its goods or services.

(2) The respondent has no rights or legitimate interest in respect of domain name www.gmirecruitment.in:

(i) The respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name. Furthermore, the respondent whose name is Mr.Anish Sharma is not commonly known by the disputed domain name nor does the respondent actually engaged in any business or commerce under the name "GM or GM INDIA or GENERAL MOTORS". The respondent has no active business in the name of "GM" or "GM INDIA". The respondent is not a licensee of the complainant, nor has the respondent ever been authorized by the complainant to use the complainant's trademarks or registered the disputed domain name. The complainant has no relationship with the respondent.

(ii) The illegality in the registration of the disputed domain name is arising from the fact that domain names today are a part and parcel of corporate identity. A domain name acts as the address of the company on the internet and can be termed as a web address or a web mark just like a trademark or service mark. It is also the internet address of the company.



(iii) The respondent cannot have any right or legitimate in the disputed domain name because the disputed domain incorporates the "GM" mark in its entirety in which the complainants has the sole and exclusive right and that has become well-known owing to the complainants' efforts.

(3) The respondent registered the domain name in bad faith:

(i) The disputed domain name being held by the respondent which is in bad faith and a clear attempt to take advantage of the complainants' goodwill and reputation. This is an attempt to misuse the domain name by the use of the simple domain name extension variant. The marks "GM and GM INDIA" having been extensively used is understood and associated by consumers in India and throughout the world as the mark of the complainants denoting its services and business. On account of the high degree of inherent and acquired distinctiveness, which marks "GM and GM INDIA" is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off. The marks "GM and GM INDIA" has acquired unique importance and is associated with the complainants. A mere mention of the said name / mark establishes an identity and connection with the complainants and none else.

(ii) The respondent and its associates are misrepresenting themselves as representatives of the complainants' and are using the disputed domain name to send emails to the job seekers inducing them to pay a certain amount of money on the pretext of paying registration money for recruitment. The copies of such mails are annexed in **Annexure G**.

(iii) The respondent have also furnished incomplete information in WHOIS contact details. As per section 2 of the Terms and Conditions for Registrants, domain name registrants are mandated to provide complete and accurate contact details. Thus, the blatant disregard and violation itself constitutes the bad faith of the respondent.

(iv) It is inconceivable that the respondent could have registered the disputed domain name without being aware of the complainants' rights. In the light of the respondent's presumed knowledge of the complainants' rights, it is reasonable to infer that the



respondent could not have registered the disputed domain name without the intention to target this rights in some manner. Furthermore, it would be extremely difficult, if not impossible, for the respondent to use the disputed domain name as the name of any business, product or service for which it would be commercially useful without violating complainants' rights. Thus, the disputed domain name was registered in bad faith.

B. Respondent:

The respondent has failed to submit any response.

8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent had received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent had been notified of the complaint of the Complainants.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainants must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainants has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

- (i) The Arbitral Tribunal finds that the disputed domain name www.gmirecruitment.in contains the trade mark i.e., "GM" and "GM INDIA" of the complainants in entirety. The domain name has the term 'recruitment' in addition. The respondent has added the trade name of the complainants "GMI" which stands for General Motors India to the term



'recruitment'. The complainants heavily relies upon the decisions in **Reuters Ltd v/s Global Net 2000 Inc. (WIPO Case No. D2000-0441)**, **Altavista Company v/s Grandtotal Finances Ltd (WIPO Case No. D2000-0848)** and **Playboy Enterprises v/s Movie Name Company (WIPO Case No. D2001-1201)** wherein it has been held that mere omission of one letter of a trademark has no effect on the determination of confusing similarity between a trademark and a domain name. In this case, the respondent has squatted the mark/ name of the complainants verbatim without even changing a single letter. Thus this Tribunal holds that the respondent has used the complete trade name of the complainants to constitute the domain name .

(ii) The Arbitral Tribunal in its various decisions categorically held that mere addition or substitution of descriptive suffix or prefix like '.com' or '.co' or '.in' does not make a trade mark distinctive. This Tribunal also finds that incorporation of the trade name in complete is sufficient to establish that the domain name is identical and confusingly similar to the trade name.

(ii) The Arbitral Tribunal concludes that the Complainants have established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Right or Legitimate Interest:

(i) The Complainants contend that the Respondent had no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. On perusal of trademark certificates in **Annexure C** and on perusal of **Annexure D, E and F**, the complainants have established that it is the lawful owner of the trade / service name / mark "GM" and "GM India".

(ii) Based on the records filed by the Complainants and the WHOIS Database Search in **Annexure A**, the Arbitral Tribunal is satisfied that the respondent had registered the domain name without any authorization. As stated by the complainants, the respondent does not



have any business with the complainants and that the respondent is in no way associated or linked or authorised by the complainants.

(iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location.

(ii) The Arbitral Tribunal finds that the respondent is trying to take advantage of the goodwill and reputation of the complainants. On perusal of the mails in **Annexure G**, it is found that the respondent is misrepresenting himself as representative of the complainants and are using the domain name to send mails to job seekers on the pretext of offering job opportunities and alluring them to deposit money for registration fee for recruitment.

(iii) The bad faith of the respondent is also evident from the fact that the respondent has not provided complete and accurate contact details in WHOIS .

(iv) This Tribunal also holds that owing to the popularity of the trade name GM, GM India, General Motors in India as well as in whole world, it is presumed that the respondent is also in possession of the knowledge of the existence of the trade name. In spite of this knowledge, registering such a domain name amounts to bad faith. Registration of the domain name also infringes the intellectual property rights of the complainants.

(v) Thus, this Tribunal finds that the respondent is impersonating the complainants, cheating the innocent job seekers by sending mails, extracting amount of money, trying to




cash in the reputation and goodwill of the complainants and tarnishing the complainants name. Also on perusal of **Annexure I** it is found that the respondent is not using the domain name.

In the light of the above, this Arbitral Tribunal finds that the Complainants have established that the disputed domain name was registered and is being used in bad faith.

9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal finds that the trade mark "GM and GM INDIA" constitutes a valuable intellectual property right owned by Complainants, which is entitled to protection in law against misuse, misappropriation as well as dilution and thus orders that the disputed domain name <www.gmirecruitment.in> be transferred to the Complainants.


D.SARAVANAN
Sole Arbitrator
Chennai, 2nd June, 2016