

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.gosport.in

between

GROUPE GO SPORT

...COMPLAINANT

AND

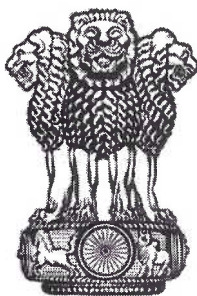
VINIT SAXENA

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



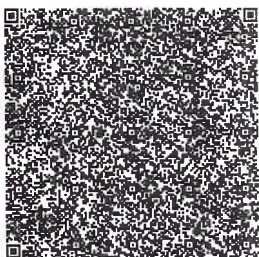
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL00569244959647Q
Certificate Issued Date : 05-Nov-2018 01:07 PM
Account Reference : IMPACC (SH)/ dlshimp17/ SAKET/ DL-DLH
Unique Doc. Reference : SUBIN-DLDSLHIMP1706299758078482Q
Purchased by : VISHESHWAR SHRIVASTAV
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : VISHESHWAR SHRIVASTAV
Second Party : Not Applicable
Stamp Duty Paid By : VISHESHWAR SHRIVASTAV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



Please write or type below this line

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.gosport.in

between

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...COMPLAINANT

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AWARD

1

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 01/10/2018. This Tribunal was in receipt of an email from NIXI dated 26/09/2018 showing the dispatch of the complaint vide Overnite Express Courier. On tracking the said courier this Tribunal found that it had been delivered. Accordingly vide the aforesaid communication this Tribunal directed the Respondents to send their Statement of Defense by 10/10/2018.
2. This Tribunal on 03/10/2018 received an email of the Respondent that they have not received the Complaint sent by NIXI through courier hence, vide order dated 04/10/2018 this Tribunal directed the Respondents to send their complete postal address.
3. This Tribunal vide order dated 07/10/2018 directed the Respondent to file their SOD by 16/10/2018 as they were in receipt of the complaint on 05/10/18. This Tribunal vide the



same order also directed the Complainants to comply with the orders dated 01/10/2018 & 04/10/18.

4. This Tribunal having received both hard and soft copy of the SOD on 14/10/18 directed both the Complainants and Respondents to file their Evidence by way of Affidavit in support of their Complaint and SOD respectively by 22/10/2018.
5. The Respondents vide email dated 17/10/18 requested for extension for filing their affidavit hence vide order dated 18/10/18 this Tribunal granted time till 27/10/18 to the Respondents for filing their Evidence by way of Affidavit.
6. The Complainants on 17/10/2018 sent the soft copy and the hard copy of their Evidence by way of Affidavit was received on 01/11/2018 and the Respondents sent the soft copy on 24/10/18 and hard copy on 25/10/18. The award was reserved vide order dated 03/11/ 2018. This Arbitral Tribunal proceeds to examine the claim statement of the Complainant and the

Statement of Defense of the Respondents and their Evidences including documentary evidence filed in the present proceeding.

CLAIM

7. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the complainant which is a French company was founded in the year 1979 and specialized in the distribution of sporting goods under name and style of GO SPORT.
 - B. The Complainant while relying on **Annex 2** claim that they have developed into one of the leading sporting goods stores. The Complainant in the year 2018 have purportedly announced that they would open between 20 and 40 stores in India and Sri Lanka in 2018.
 - C. By relying on **Annex 3** it is claimed that in 2017, GO SPORT recorded a revenue of €1 billion and is growing 5% on an annual basis.

D. The Complainant by relying on Annex 4 claims to be the owner of numerous trademarks GO SPORT® such as:

Trademark	Registration Territory	Registration Number	Registration Date	Classes
GO SPORT	International	523820	1988-02-29	09,25,28
GO SPORT	International	1221297	2014-06-19	35
GO SPORT	International	1221790	2014-06-20	25,28,35
GO SPORT	India	2175849	2011-07-15	25,28,35

E. By relying on **Annex 5** the Complainant claims to have registered numerous domain names including the distinctive wording GO SPORT®, such as the official domain name <go-sport.com>, registered since September 28th, 1997.



F. It is alleged that the disputed domain name <gosport.in> was registered on February 2nd, 2011 by the Respondent and as per **Annex 6** the disputed domain name resolves to the parking page with pay-per-click links.

G. The Complainant have challenged the registration of disputed domain name on the following grounds:

I. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights as the disputed domain name <gosport.in> is identical to its prior trademark GO SPORT®.

Complainants rely upon the following cases:

- Case No. INDRP/927, *Society Generale v. Mr. Xi Da Hai*, <qigo.in>;
- Case No. INDRP/776, *Amundi v. GaoGou*, <amundi.co.in>.

II. Complainant further contend that the addition of the ccTLD “.IN” is not sufficient to escape the finding that the domain is identical to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

Reliance is further placed on

- WIPO D2016-2288 *Go Sport v Jean McLean* < *gosportsnl.com* > < *gosportfr.com* > ;
- WIPO D2015-0389 *Go Sport v Clara Toussaint*; < *gosport-nike.com* > ;
- WIPO DES2017-0048 *Go Sport v Branch Creative Adam Wiaderek*; < *go-sport.es* > < *courir.es* >

III. The Respondent has no rights or legitimate interests in respect of the domain name(s).



IV. By again relying on the case the Case No. INDRP/776, *Amundi v. GaoGou*, the Complainant submits that the Respondent lacks rights or legitimate interests in the said domain name. It is emphasized that the Respondent is not known as "GO SPORT", but as "Vinit Saxena" and such a Respondent is not commonly known by a disputed domain name.

Reliance is placed on the case:

- *NAF Case No. FA 96356, Broadcom Corp. v. Intellifone Corp*

V. It is claimed that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. Nor does he carry out any activity for the complainant has no business with the Respondent.

VI. It is further contended that Complainants has neither licensed nor authorized the Respondent to make any use

of the trademark GO SPORT®, or apply for registration of the disputed domain name by the Complainant.

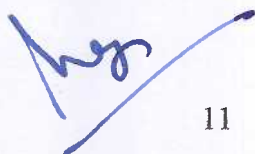
VII. The domain name was registered and is being used in bad faith. It is alleged that the domain name <gosport.in> is identical to the known trademark GO SPORT®, registered by the Complainant and given the reputation of the Complainant's trademarks and the inclusion of the commercial links in relation with the Complainant's activity to the parking page where the disputed domain name resolves, the Respondent has registered the domain name with full knowledge of the Complainant's trademarks and has registered the domain name in bad faith.

- Case No. INDRP/986, *Accor v. Vyacheslav Chistovich* INDRP/851, *BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Elizabeth Rose*, <boehringer-ingelheim.co.in>.

- H. *Per contra* the Respondent have contested the claims by stating that as per Annexure 2,3,4A,B,C,5,6,7A,B,C the Complainants have no presence in India and that Go Sport is a Town in England and also in Alabama USA hence it is a generic name.
- I. The contentions of the Respondent w.r.t. Annexure 7A, 7B & 7C is concerned there is no denying the fact that the said towns exist but the Respondents have not been able to show:
- (i) their association with the said towns and
 - (ii) whether the said towns relate to some business which the Complainants claim to be in.
- J. The other contention of the Respondent is w.r.t. the presence of Complainants in India since 2018 and their registration of the disputed domain name in February, 2011. This contention of the Respondent stands belied by Annexure 2 which dates back to 1978 & Annexure 4B – where in International Registration of Trade Mark “GOSPORT” is dated 02/08/1998 & 06/08/1998.

K. Hence, by registration of a Domain name on 02/02/2011 does not give any mileage to the Respondents. What is most surprising is that the Respondent got the domain name registered in 2011, yet he chose not to develop and operate it. In his reply he submits "..... *So far I haven't got the opportunity to develop a website.*" This amplifies that Respondent has only parked the domain name.

L. What is most surprising is that the Respondent [Mr. Vinit Saxena] has chosen not to lead any defense or step into the witness box post filing his reply to the present Complaint and hence his reply SOD cannot be looked into by this Hon'ble Tribunal. [Reliance is placed on rely upon the judgment of the Hon'ble Apex Court reported at **1999 (3) SCC 573 Para 17** wherein it has been held that – "*where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption shall arise that the case set up by him is not correct.*"



M. Further Mr. Saxena's wife Mrs. Sudha Saxena has deposed as the attorney holder wherein she claims to be a "Housewife", hence, she cannot be privy to the registration of the disputed domain name. It has been held by Hon'ble Supreme Court in its judgment **(2010) 10 SCC 512 Man Kaur (Dead) by LRs versus Hartar Singh Sangha** that *"An Attorney Holder cannot depose or give evidence in place of his principal for the acts done by the principal or transaction or dealings of the principal of which principal alone has personal knowledge. He can depose only to the transaction or acts which are to his personal knowledge."*


ORDER

8. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the SOD/ Evidence of the Respondents . Hence, in view of the above this Tribunal holds that the respondents did not have any claim on the domain name www.gosport.in, hence this Tribunal directs the Registry to transfer the domain name www.gosport.in to the complainants.

9. The Complainants too are free to approach the Registry and get the same transferred in their name.
10. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint nor have the complainants disclosed their revenue figures.
11. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 13th day of November, 2018.

NEW DELHI
13/11/2018



V. SHRIVASTAV
ARBITRATOR