



उत्तर प्रदेश UTTAR PRADESH

BF 693569

**BODHISATVA ACHARYA
ARBITRATOR**

(Appointed by .IN Registry-National Internet Exchange of India)

Case No. Of 2012

ARBITRATION AWARD: DISPUTED DOMAIN NAME :< livenation.in >

In the matter of:

Live Nation Worldwide, Inc.
9348 Civic Center Drive
Beverly Hills, CA 90210
United States of America
E-mail: privacy@livenation.com

Filed by its authorized representative attorney -

Remfry & Sagar
Remfry House at the Millennium Plaza
Sector-27, Gurgaon-122009
Email: - remfry-sagar@remfry.com

.....Complainant

Vs.

Mr. Meyers
Tradepare BV
Bordeslaan 329
Den Bocsh, NL
5223 MN, NL
Email: - tradeparcbv@gmail.com

.....Respondent

A W A R D

1. The Parties:

The complainant in this arbitration proceeding is Live Nation Worldwide, Inc. 9348 Civic Center Drive, Beverly Hills, CA 90210, United States of America with E-mail: privacy@livenation.com filed by its authorized representative attorney Remfry & Sagar, Remfry House at the Millennium Plaza, Sector-27, Gurgaon-122009 with Email: remfry-sagar@remfry.com

Respondent in this arbitration proceeding is Mr. Meyers, Tradepare BV, Bordeslaan 329, Den Bocsh, NL, 5223 MN, NL, with Email: tradeparcbv@gmail.com

2. The Domain Name, Registrar & Registrant:

The disputed domain name is www.livenation.in



3. Procedural History:

The complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name www.livenation.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed **Mr. Bodhisatva Acharya** (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on November 21st, 2012 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on December 5th, 2012, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the January 1st, 2013 as Ex-parte.

4. Factual Background:

- (a) The Complainant i.e. 'Live Nation Worldwide, Inc.', a Delaware Corporation of 9348 Civic Center Drive, Beverly Hills, CA 90210, United States of America, is a subsidiary of 'Live Nation Entertainment, Inc.' which is listed on the New York Stock Exchange.
- (b) The Complainant (the term includes its parent company, predecessor/s, subsidiaries, affiliates etc.) is the world's leading live entertainment and ecommerce company. The history of complainant's activities goes back to the year 1997. The Complainant comprises four market leaders: Ticketmaster.com, Live Nation Concerts, Front Line Management group and Live Nation Network. Ticketmaster.com is the global event ticketing leader and one of the world's top five ecommerce sites, with over 27 million monthly unique visitors. Live Nation Concerts produces over 22,000 shows annually for more than 2,300 artists globally. Front Line is the world's top artist management company, representing over 250 artists. These businesses power Live Nation Network, the leading provider of entertainment marketing solutions, enabling over 800 advertisers to tap into the 200



million consumers the complainant delivers annually through its live event and digital platforms.

(c) The Complainant is the largest five entertainment company in the world connecting more than 200 million fans to over 2,00,000 events in approximately 41 countries. The complainant is boastful of being the largest producer of live music concerts in the world, based on total attendance at these events of other promoters. Globally, the Complainant owns, operates, has looking rights for and/or has an equity interest in 133 venues and prestigious locations such as the Fillmore (historic music venue in San Francisco), the Hollywood Palladium (a theatre located in Hollywood, California) the Heineken Music hall (a concert hall in Amsterdam, Netherlands) and the O2 (a 14,000 seat amphitheatre located at North wall quay in the Dublin Docklands in Dublin, Ireland). The Complainant's global network is the world's largest music marketing network for corporate brands and includes one of the world's largest music marketing network for corporate brands and includes one of the world's top five ecommerce websites.

(d) The Complainant operates in five segments:

A. Concerts - This segment principally involves the global promotion of live music events in the Complainant's owned and/or operated venues and in rented third party venues.

B. Ticketing - This segment is primarily an agency business that sells tickets for events on behalf of the Complainant and retains a convenience charge and order processing fee for its services.

C. Artist Nation - This segment primarily provides management services to music recording artists in exchange for commission on the earning of these artists.

D. eCommerce - This segment manages the Complainant's online activities including enhancements to its websites, ~~bundling~~ product offerings and online advertising at its websites. Through its websites, the Complainant sells tickets of its own events as

well as those of other clients and disseminates event and related merchandise information online.

- E. Sponsorship - This segment employs a sales force that creates and maintains relationships with sponsors, through a combination of strategic, international, national and local opportunities for businesses to reach customers through our concert, venue, artist relationship and ticketing assets.
- (e) Since its modest beginning in the year 1997, the Complainant today, has spread its wings to a plethora of destinations worldwide including Australia, Belgium, Beijing, Czech Republic, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy, Mexico, Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Shanghai, South Africa, Turkey and United Kingdom. As of December 31, 2011, the Complainant had approximately 6,600 full time employees and 13,000 seasonal employees.
- (f) The Complainant- due to its exceptional services- has over the years, received numerous awards and recognition for its customer service, innovation and extensive sale. In the year 2007, the Complainant received an industry trophy at the *BT Digital Music Awards* (UK's only award that are completely dedicated to digital music entertainment). In the July 2009, the Complainant's website www.livenation.com was announced as the 5th most visited online music site based on *Nielsen Net View's* web traffic report. Further, the complainant had dominated the 2006 and 2009 *Billboard Touring Awards* (honors the top international industry artists and professionals) in New York when it received seven and eight awards, respectively.
- (g) The Complainant owns a plethora of trade/service marks for/comprising 'LIVE NATION' which forms part of the corporate name of the Complainant/its affiliates and serves as the principal trade/service mark/name and domain name as well its house mark.
- (h) Complainant/its parent company/affiliates have registered top level domain names (TLD) comprising the trade/service mark/name 'LIVE NATION' such as 'livenation.com', 'livenationentertainment.com', 'livenation.org', 'livenation.net',

'livenation.info', 'livenation.mobi', etc. The complainant has also obtained numerous country code top-level domains (ccTLD) such as 'livenation .co.uk', ' livenation.ca', 'livenation.hk', 'livenation.nl', 'livenation.fr', 'livenation.co.za', 'livenation.it', 'livanation.co.jp' etc. Listed herein below are a few domains which were registered by the Complainant prior to the registration of the impugned domain 'livenation.in' i.e December 25, 2005.

- (i) The trade/service mark/name/domain 'LIVE NATION' represents important proprietary rights of the complainant/its services, brand identify, business reputation and public identification throughout the globe including India. The Complainant has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in its said trade/service mark/name. Resultantly, a secondary meaning stands attached in respect of the said trade/service mark/name, which is exclusively associated by members of the trade and public with the Complainant and its services. Needless to say, the Complainant's said trade/service mark/name is extremely well-known throughout the world and it considers the same as its valuable intellectual property and vigorously enforces against any act of passing off.

- (j) It appears from the website of Tradeparc BV (Registrant organization) - www.tradeparc.com - that it is engaged in auction of domain names. The website classifies domains according to their cost estimate ranging from USD 2,000-20,000. Tradeparc BV registers various domain names and then puts up the same for auction. It is surprising that tradeparc BV based in the Netherlands has registered a .IN domain i.e. livenation.in when it has no business in India. The Complainant has been organizing events in the Netherlands; has made a huge customer base; and its concerts/event is extremely popular. The Registrant/tradeparc BV, based in Netherlands, would surely be aware of the Complainant as well as the goodwill and reputation vesting in the mark/name LIVE NATION in favor of the Complainant.

- (k) Aggrieved by the adoption/registration of the domain 'livenation.in' which is identical with and/or confusingly similar to the Complainant's registered trade/service mark/name/domain name 'LIVE NATION', the Complainant through its counsel, addressed a 'cease and desist' letter dated November 14, 2011 to the erstwhile Registrant, with a copy marked to its Registrar by registered airmail, fax as well as e-mail on the details indicated in the then WHOIS records. The Complainant, *vide* its aforementioned letter, apprised the erstwhile Registrant of its statutory and proprietary rights worldwide including India vesting in the trade/service mark/name/domain name 'LIVE NATION' and requested it to cease using "LIVE NATION' as a part of its domain name and transfer the same in favor of the Complainant . On November 28, 2011, the Complainant received an email from one Mrs. T. Bosch using the erstwhile Registrant's email address (trdaeparcbv@gmail.com). Interestingly, whilst the erstwhile registrant made frivolous claims in the domain name 'livenation.in', it trivialized the issue by stating "*what's in a name.*". The erstwhile Registrant further stated that "Hopefully we can find a solution that is beneficial for both parties." The erstwhile Registrant's stand constrained the Complainant to address yet another letter dated December 8, 2011 stating that its adoption/use of the domain is *non est* and *void ab initio* and affording yet another opportunity to transfer the impugned domain in favour of the Complainant. However, the erstwhile Registrant, displaying absolute defiance and *mala fide* did not reply to the Complainant's letter and instead renewed the domain for another year i.e. upto December 28, 2012.
- (l) The Complainant forwarded yet another letter dated December 20, 2011 to the erstwhile Registrant in the bleak hope that good senses would prevail upon it to transfer the impugned domain to the rightful proprietor i.e. the Complainant. Contrary to the Complainant's expectations, the erstwhile Registrant *vide* email message dated December 21, 2011 refused to transfer the domain and averred dubious statement. "*We are very reasonable but it has its boundaries, could you give us any alternatives to discuss further about?*". On January 26, 2012, the Complainant received another email message from the erstwhile Registrant outlining the alleged business plan of website development and



outlining the alleged business plan of website development and requesting it to revert with a "quick and reasonable solution". The erstwhile Registrant (Registrant organization) being engaged in the business of auctioning of domain names, the Complainant could easily deduce that the aforesaid statements indicate monetary compensation in lieu of transfer of the impugned domain name. Copies of the correspondence exchanged between the Complainant and the erstwhile Registrant.

- (m) Recently, the Complainant reviewed the domain 'livenation.in' and observed that the name of the Registrant as well as its address has changed to Mr. Meyers of Bordeslaan 329, Den Bosch, NL., 5223 MN, NL (referred to as the 'Registrant'). However, the Registrant's organization as well its email address continues to be the same i.e. Tradeparc BV and tradeparcbv@gmail.com. Further, the Complainant was shocked to observe that the website 'www.livenation.in' operating under the impugned domain contained objectionable/obscene materials relating to 'adult category'. Such use of the impugned domain name by the Registrant is in bad faith and most certainly liable to tarnish the reputation of the complainant as well as its trade/service mark/name.
- (n) Aggrieved by the intransigent stance adopted by the Registrant in refusing to transfer the domain in favour of the Complainant as well as its recent act of including adult related content on the website, the Complainant is left with no other option but to initiate the instant proceedings. There is no iota of doubt that the impugned domain name is identical to the Complainant's trade/service mark/name/domain names comprising "LIVE NATION". In the circumstances, the Complainant submits that the Registrant's impugned domain name 'livenation.in' may be transferred to the Complainant.
- (o) Lastly the complainant filed this complaint for Arbitration proceeding and the complaint was produced before the Arbitrator on November 21st, 2012 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on December 5th, 2012, to submit his reply but nothing was submitted to Arbitrator till the date of award hence



the AWARD is being declared on the January 1st, 2013 as Ex-parte.

5. Parties Contentions:

- (a) Complainant contends 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 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, and the domain name be transferred to the Complainant.
- (b) Respondent contends that

The respondent gave no response and produced no reply.

6. Discussion & Findings:

- (i) The Registrant's impugned domain name 'livenation.in' comprises the Complainant's prior and well-known trade/service mark/name/domain name 'LIVE NATION' which is proprietary to it. The impugned domain is identical to the Complainant's famous trade/service mark/name 'LIVE NATION' except the suffix '.in' which is used to indicate India specific domain name. When a domain name wholly incorporates a well-known trade mark, it is held to be sufficiently similar and it was held in case *Parfums Christian Dior v. Javier Garcia Quintas and Christian Diornet*, WIPO Case NO. D2002-0226, *ITC Limited v. Vishal*, INDRP/065- April 15, 2008. Further, it is well established in domain name cases that the suffix to indicate the top level of the domain name can be disregarded for the purpose of



determining confusing similarity to the trade mark in which the Complainant has rights and it was held in *PepsiCo, Inc. v. Bijon Chatterji*, INDRP/014-June 24, 2006, *Mothercare UK Limited, United Kingdom v. Mr. Rajkumar Jalan, New Delhi*, INDRP/061-April 27, 2008, *Compagnie Gervais Danone v. Digitech Software Solutions*, INDRP/096-June 27, 2009 Registrant has registered the impugned domain name 'livenation.in' with an intention to trade upon the immense goodwill and reputation enjoyed by the Complainant in its famous trade/servicemark/name/domain name 'LIVE NATION' and thereby gain undue mileage out of it. This is a clear case of passing off which is violative of the rights enjoyed by the Complainant in its famous trade/service mark/name/domain name.

- (ii) The Registrant registered/ adopted the impugned domain name on December 28, 2005 whereas the Complainant's domain 'livenation.net' was created as early as on February 20, 2002. The domain 'livenation.com' was, thereafter, registered on January 1, 2004 and the website operated thereunder, as highlighted above, is the official website for the Complainant. "It is a well-adjudicated principle that where the respondent registers a domain name that is identical to the Complainant's domain name used for its official website in another domain, it is held to be confusingly" was held in case *Societe air France v. Richard J.*, WIPO Case No. D2005-0812, *ITC Limited v. Vishal*, INDRP/065-April 15, 2008. In view of arbitrator, it is crystal clear that the Complainant has prior rights in the trade/service mark/name/domain name 'LIVE NATION' vis-à-vis the Registrant.
- (iii) Registrant is not offering any goods/services under the domain name 'livenation.in'. It has been held that such linkage with a Complainant's mark could reasonably be supposed to tarnish and dilute that and consequently the use would be in bad faith. (*Christian Dior Couture v. Paul Farley* WIPO Case No. D2008-008; *Wagamama Limited v. Park HaeDong, Hae Dong Limited*, WIPO Case No. D2008-0301 . In fact, the website under the said domain name was not even operational till a few days back when the Registrant posted adult oriented content on the

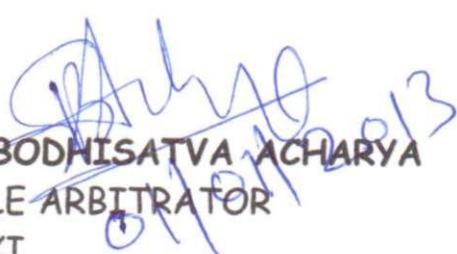
website. Mere use of another's trade mark in the domain name does not confer rights or legitimate interests in favour of the owner of the domain name as held in *America online, inc. v. Xianfeng Fit*, WIPO Case No. D2000-1374, *ITC Limited v. Travel India*, INDRP/065-April 15, 2008. Thus no goods or services are being offered by the Registrant. The Registrant's organization i.e. 'Trade parc BV', as outlined above, is operating its business using the said name and has also registered the domain 'trade parc.com' and is operating a website there under. On the other hand, the Complainant, an international leader in the live entertainment and ecommerce industry, due to its extensive and continuous use of the trade/service mark/name/domain name 'LIVE NATION', has become well-known and the said mark/name/domain name is associated with the Complainant/its businesses and none else. The Complainant is not only using the trade/service mark/name/domain name but has also registered/applied for the said mark in various jurisdiction of the world. Hence, the Registrant cannot claim to have been commonly known by the domain name for any reason/s whatsoever.

- (iv) The Registrant is not making any legitimate, non-commercial or legitimate fair use of the domain name. The website under the domain name 'livenation' was not even operational until recently and contained weblinks pertaining to the websites of the Complainant's competitors who are in the same line of business which most certainly cannot be termed fair use. The recent uploading of adult oriented content on the website www.livenation.in cannot be termed as legitimate fair use. Such acts are aimed at tarnishing the image of the Complainant/its trade/service mark as well as goodwill/reputation vesting in the same. Registrant/its organization i.e. auctioning of domain name is being carried on under a different domain name i.e. 'trade parc.com'. The registration of the impugned domain may be aimed to gain mileage from the immense goodwill and reputation of the Complainant's trade/service mark/name/domain name and divert customers there by creating a dent in its business.

- (v) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.livenation.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith. The Arbitrator further decides and orders that the domain name www.livenation.in shall be transferred to the Complainant with immediate effect.


Dr. BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: January 1st, 2012,
PLACE: NEW DELHI,
INDIA.