

महाराष्ट्र MAHARASHTRA

सदरचा मुद्रांक लिह्व अँड लायसेन्ससाठी नाही

GV 437581

अनुक्रमांक ३३८९, दिनांक २२/३/१३, रुपये १००/-
मुद्रांक कोकत्या कारणासाठी वापरण्याचा आहे. ३२५३३/१००
मुद्रांक अर्थनियम १९५८ चे अनुच्छेद क्र.
मुद्रांक वापरणाराचे संपूर्ण नाव.
संपूर्ण पत्ता. ३३४, सिटीय निवासी, आनंदी, ...
हस्त लेखणीचे संपूर्ण नाव. ...
पत्ता. ६७३, नरयण रोड, भद्रवथी, ...



नरेश कुमार (मुद्रांक विक्रेता)
(सी. अरुण जी. वेल्लकर)
पत्ता क्र. २२०१०५९/१९३९
संस्थानाची मुद्रा ३९/३/२०
पत्ता: ४२५ ए, शनिवार पेठ, पुणे-४११००५

AWARD IN ARBITRATION

'MUTHOOTFINANCE.ORG.IN'

Muthoot Finance Limited
Muthoot Towers, Alaknanda, New Delhi. 110019.

THE COMPLAINANT

AND

Mahesh Kumar
Narayan Road, Bhadravathi
Karnataka..

THE RESPONDENT /
THE REGISTRANT

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

SOLE ARBITRATOR

DELIVERED ON THIS 28TH DAY OF FEBRUARY TWO THOUSAND
THIRTEEN AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. Names and addresses
Of the Complainant: -

Muthoot Finance Limited
Muthoot Towers, Alaknanda
New Delhi. 110019..

Through its authorized
representative

Ravi Kant Jhz
Authorised Signatory.
Nuthoot Finance Limited.

02. Name and address of
The Respondent: -

Mahesh Kumar
Narayan Road, Bhadravathi, Karnataka

03. Registrar

Directi Internet Solutions P. Ltd
dba.

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	24/01/2013
02	Hard copy of complaint received	01/02/2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 11.02.2013)	01/02/2013
04	Reminder notice sent (with instruction to file say latest by 21/02/2013)	18/02/2013
05	Notice of closure of arbitration	23/02/2013
06	Award passed	23/02/2013



I] PRELIMINARY: -

- 1) Muthoot Finance Limited , a limited company registered under the provisions of the Companies Act, 1956, having its office at Muthoot Towers, Alaknanda, New Delh, 110019 (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name `muthootfinance.org.in' (**the disputed domain name / domain name**), through its authorised representative **Mr.Ravi Kant Jha**.
- 2) The Complainant has disputed registration of domain name `muthootfinance.org.in' in the name of **Mahesh Kumar, Narayan Road, Bhadravathi, Karnataka (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 1st February 2013 with the instructions to file his reply / say latest by 11th February 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, suo-motu, the period to file say/ reply, if any, latest by 21st February 2013. However no reply / say was filed by the Registrant / Respondent, even within the extended period.
03. In view of no reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant is the owner of registered trademark No.1215365 dated 17/07/2003, in class 16 in respect of printed matter, publications, catalogues,



brochures, posters, pamphlets, teaching and publicity material cards and stationery included in Class 16.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF CIC: -

1. The Registrant's domain name is identical to that of the Complainant's name in which the Complainant has right and the domain name that is subject of dispute herein has been registered and is being deliberately used in bad faith by the Registrant.
2. The Registrant has no rights or legitimate interests in respect o the domain name.
3. The Registrant is making illegitimate commercial use and using the domain name in bad faith with intent for commercial gain to misleadingly divert consumers and with sole object of making wrongful gain and causing wrongful loss to the Complainant and at the same time tarnish the goodwill / reputation gained over a period of time by the Complainant.
4. The Complainant has been commonly been known by the domain name and is also the Registrant and uses the following domain name in connection with the goods and services offered by it: -
 - a. www.muthootfinance.fom
 - b. www.muthoofinance.net
 - c. www.muthootfinance.biz
 - d. www.muthootfinance.info
 - e. www.muthoofinance.mobi
5. The Registrant has been intentionally and deliberately attempted to attract internet users to his website.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

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

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

As stated earlier the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period.

VII] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.



VII] 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.

SR. 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

VIII] BASIS OF FINDINGS: -

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



The Complainant is the owner of trademark registered at Sr. No.1215365 dated 17/07/20003 in its name. The Complainant also owns various domain names in India, which include the words 'MUTHOOT'. A comprehensive list of these marks and domain names has been produced by the Complainant.

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 'MUTHOOT' 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 global 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 'MUTHOOT'.

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 filed any say or reply to the complaint and hence it is presumed that he does not have / he 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.

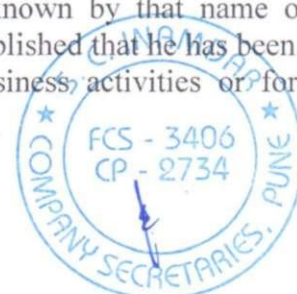
4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Mahesh Kumar. As such he is not commonly been 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 'muthoot'. He is not commonly been 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 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 website is designed in such a manner that it appears to be authentic website of the Complainant. It also includes its logo and other details and links. Obviously the Registrant is therefore using it in bad faith to obtain monetary gains illegally.

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 and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the Respondent. Therefore it is squarely 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?

The website is appearing to be authentic website of the Complainant and hence internet users are being attracted to the website as if it is of the Complainant. It is beyond doubt that the website is creating confusion with the Complainant's name or 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?

Though there is no direct or express offer by the Registrant, it is very usual that cyber-squatters are registering domain names ultimately to be sold for monetary gains unlawfully.

Therefore my finding on this issue is affirmative.



IX] CONCLUSION AND BASIS OF AWARD: -

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

1. The Registrant has not replied to complaint or Notice of Arbitration at all. This act can lead to only conclusion that registration has been done with criminal and deceitful intentions and for the purposes of gaining illegally and immorally.
2. The disputed domain name includes 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.
3. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'muthoot' 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.
4. The Registrant has not been commonly known by the disputed domain name.
5. The Registrant is not making bona fide and fair use of the disputed domain name for his bona fide business purposes, much less for non-commercial purpose.
6. The Respondent / Registrant has completely failed to establish his 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 has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

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 – 'muthootfinance.org.in' and hence the same be transferred to the Complainant.**
02. No orders as to the costs.

Dated: - 28.02.2013

Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR

