

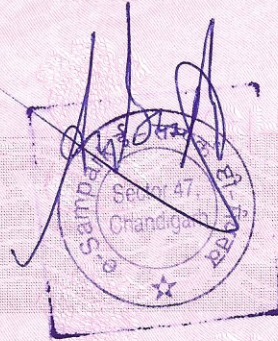
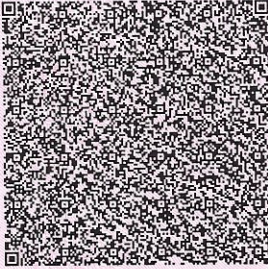


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH042175862573660
Certificate Issued Date : 02-Jul-2016 10:44 AM
Certificate Issued By : chankshai
Account Reference : IMPACC (GV)/ chimp07/ E-SAMPARK SEC-47/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP07083544680438640
Purchased by : ASHWINIE KUMAR BANSAL
Description of Document : Article 12 Award
Property Description : #187 ADVOCATE SOCIETY SEC 49 A CHD
Consideration Price (Rs.) : 0
(Zero)
First Party : ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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ARBITRATION AWARD

(On Stamp Paper)

Ashwinie B

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Statutory Alert:

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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]

ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:
DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.
Advocate, Punjab & Haryana High Court,
Chandigarh

In the matter of:

Blackhawk Network, Inc.
6220 Stoneridge Mall Road,
Pleasanton, California 94588,
United States of America
Email: Jim.McDonald@bhnetwork.com

...Complainant

VERSUS

Anand Srivastav
Weblogiciel
New Delhi, 110041
India
Email: anand.srivastaw@gmail.com

...Respondent

Ashwinie Bansal

REGARDING: DISPUTED DOMAIN NAME:

WWW.RELOADIT.NET.IN

1. The Parties:

Complainant:

Blackhawk Network, Inc., 6220 Stoneridge Mall Road,
Pleasanton, California 94588, United States of America,
Email: Jim.McDonald@bhnetwork.com

Respondent:

Anand Srivastav, Weblogiciel, New Delhi, 110041, India, Email:
anand.srivastaw@gmail.com

2. The Domain Name and the Registrar:

The disputed domain name <www.reloadit.net.in > is registered with GoDaddy.com, LLC (R101-AFIN).

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed by Complainant with the National Internet Exchange of India (NIXI) regarding registration of disputed domain name by Respondent. Complainant has made the Registrar verification in connection with the disputed domain name <www.reloadit.net.in>. It is confirmed that at present Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted

Ashwinie Kumar Bansal

his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI had sent the hard copy of the Complaint and annexures to the Respondent. NIXI has informed the Arbitrator vide email dated 22.06.2016 that DTDC, the courier agency had sent an email informing NIXI that the hard copy of the complaint with annexure sent to the respondent address would be returned to NIXI office today due to insufficient address.

In accordance with the INDRP Rules of Procedure (the Rules), Arbitrator directed Respondent on 16.06.2016, with copy to Complainant and NIXI, through the email, to give his Reply within 15 days. Complainant was also requested to send a soft copy of the Complaint to Respondent along with Annexures and accordingly Complainant had sent a soft copy of the Complaint and Annexures on 16.06.2016 to Respondent as per direction of the Arbitrator. Respondent had acknowledged the receipt of email dated 15.06.2016 of NIXI by his response vide email dated 15.06.2016 a copy of which has been forwarded to the Arbitrator by NIXI on 16.06.2016. Respondent email dated 15.06.2016 to NIXI is reproduced below:

"Hello Sir,

I really don't understand it all. The domain you are discussing is being booked for one of my client.

I just booked the domain and provide the hosting. May I know what I have to do. Because I really don't know that is it.

I am going to realize the domain as I found the issue with it."

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In view of provisions of section 3 of the Arbitration and Conciliation Act, 1996 regarding receipt of communications, and the fact of acknowledgement of receipt of email dated 15.06.2016 of NIXI by Respondent, he is deemed to have been duly served. Respondent has failed to give any response to the Complaint inspite of expiry of stipulated period given to him vide email dated 16.06.2016 of the Arbitrator.

4. Factual Background

Complainant was founded in the year 2001 as a subsidiary of Safeway Inc. and it presently a leading provider of prepaid and financial payment products and services. Complainant is registered proprietor of the trademark RELOADIT.

Respondent has registered the disputed domain name <www.reloadit.net.in> on July 15, 2015. Hence, present Complaint has been filed by Complainant against the Respondent.

5. Parties Contentions

A. Complainant

Complainant is a leading prepaid and payments network that supports the program management and the physical and digital distribution of a large range of prepaid products across the global network.

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Complainant is the registered proprietor of the RELOADIT trademark internationally and has applied for the registration of the same in India under class 36 of its reloadable prepaid card services. The Trademark registrations have been made in favour of Complainant between the period 31.05.2011 and 23.06.2015 by the United States Patent and Trademark Office as per **Annexure-C** enclosed with the Complaint. The Complainant has also applied for registration of the Trademark under class 36 which is pending registration. Complainant uses the Trademark in connection with reloadable prepaid card services, which is an easy, safe and affordable way to load cash onto prepaid debit cards.

Complainant is based in California with operations in twenty two countries, including offices in Australia, Brazil, Canada, Mexico and the United Kingdom. Complainant has been using the RELOADIT and RELOADIT & Design Trademarks since 2007.

Complainant has also registered the domain name <www.reloadit.com> on May 31, 2011 which incorporates its trademark RELOADIT.

Complainant's RELOADIT SAFE service was awarded with the prestigious Paybefore Awards 2015 in Top Digital Dollars category. The Complainant's trademark is identified by the purchasing public exclusively with Complainant which has acquired enormous goodwill across the globe.

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Respondent had recently registered disputed domain name <www.reloadit.net.in> on 15.07.2015 and said site reproduces, distributes and publicly performs the copyright works of Complainant without authorization. Respondent has also used the RELOADIT Trademark on the disputed domain website and he is fraudulently soliciting payment and information from the Complainant's customers. If a customer navigates to the similar website linked to the disputed domain name and enters information for their purchased RELOADIT pack and prepaid card, the associated funds are transferred not to the consumer's prepaid card but instead to an unrelated account presumably associated with Respondent. Since the disputed domain website uses the Complainant's Trademark, it has led to actual consumer confusion and deceived consumers as to affiliation, connection or association of the disputed domain name with the Complainant's company.

B. Respondent

Respondent has not filed his Reply to the Complaint nor any evidence inspite of opportunity given to him.

6. Discussion and Findings

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of Respondent to file a response.

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It remains incumbent on Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(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.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules there under."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant's Trademark is known for the reloadable prepaid card services throughout the world, as evidenced by the registrations of the RELOADIT Trademark in the United States and he uses the same for several years.

Respondent has registered the disputed domain name <www.reloadit.net.in> wholly incorporating the Trademark RELOADIT of the Complainant, which the Arbitrator finds is

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sufficient to establish confusing similarity for the purpose of the Policy. The disputed domain name <www.reloadit.net.in> is confusingly similar to the RELOADIT Trademark.

The Arbitrator finds that the registration of the Trademark RELOADIT is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy. Internet users who enter the disputed domain name <www.reloadit.net.in> being aware of the reputation of Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <www.reloadit.net.in> is confusingly similar to the website and Trademark RELOADIT of the Complainant.

B. Rights or Legitimate Interests

Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name as held in *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries, NAF Claim No. 0741828*; *AOL LLC v. Jordan Gerberg, NAF Claim No. 0780200*. Complainant has registered the disputed domain name consisting of the Trademark RELOADIT owned by the Complainant. Complainant has been using the Trademark for many years. Complainant has not authorized or permitted Respondent to use the Trademark RELOADIT.

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Respondent has not filed his response to rebut the Complainant's prima facie case and Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <www.reloadit.net.in> as per Paragraph 7 of the Policy. The Arbitrator finds that Complainant has made out a prima facie case.

Based on the facts as stated above, the Arbitrator finds that Respondent has no rights or legitimate interests in respect of the disputed domain name <www.reloadit.net.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has 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, provided that the Registrant has engaged

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in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that Respondent is continuing to act in bad faith.

Respondent has registered the disputed domain name <www.reloadit.net.in> and he is operating a website which reproduces and distributes copy right works of Complainant. Respondent is soliciting payment and information from customers of Complainant. Complainant has sent Cease and Desist notice dated 22.09.2015 to Respondent to remove and disable access to the disputed domain name. A similar notice was also sent to CtrlS Datacenters Ltd., which providing website hosting services to the disputed domain name.

Complainant has not granted Respondent permission, or, a license of any kind to use its Trademark RELOADIT and register the disputed domain name <www.reloadit.net.in>. Such unauthorized registration of the Trademark by Respondent suggests opportunistic bad faith. Respondent's true intention and purpose of the

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registration of the disputed domain name <www.reloadit.net.in> which incorporates the Trademark of Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark RELOADIT.

The Arbitrator, therefore, finds that the disputed domain name <www.reloadit.net.in> has been registered by Respondent in bad faith.

The Trademark RELOADIT has been a well-known name. The domain disputed name <www.reloadit.net.in> is confusingly similar to the Complainant's Trademark RELOADIT, and Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <www.reloadit.net.in> in bad faith. These facts entitle Complainant to an award transferring the domain name <www.reloadit.net.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <www.reloadit.net.in> be transferred in favour of the Complainant.

7. **Decision**

The disputed domain name <www.reloadit.net.in> is similar to the Trademark RELOADIT in which Complainant has rights. Keeping in view all the facts and circumstances of this case, this Complaint is allowed in favour of Complainant and against Respondent.

The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.reloadit.net.in> be transferred to the Complainant.

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The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 11.07.2016



Dr. Ashwinie Kumar Bansal

Sole Arbitrator

Advocate, Punjab and Haryana High Court

#187, Advocates Society, Sector 49-A

Chandigarh, India