



தமிழ்நாடு தமில்நாடு TAMILNADU
19-11-13
Sridharan

AS 099354
S. MALLINATHAN
STAMP VENDOR
L.No. 14661-B1/86
Plot. 1706, 35th Street, 1 Block
ANNA NAGAR WEST, MADRAS-600 04

BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 02 February 2014

Hearing: Pondicherry

Award Delivered: Chennai

Gokul Kalyanasundaram
No.23, 5th Cross Street,
Gurusamy Nagar
Anakaputhur
Chennai 600 070

... Complainant

Versus

Eternal softwares,
Proprietor: Mr.Prabhu
Sakthy Street
Pondicherry 605003

... Respondent

Sridharan

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Sakthy Street
Pondicherry
605003

... **Respondent**

1. The Parties

- 1.1 The complainant, Gokul Kalyanasundaram is an individual, resident of No.23, 5th Cross Street, Gurusamy Nagar, Anakaputhur, Chennai 600 070.
- 1.2 Respondent is Eternal Softwares, a proprietary concern of Mr.Prabhu, carrying on business at Sakthy Street, Pondicherry, 605003

The Domain Name and Registrar

- 1.3 The disputed domain name <shastiaphapoorathi.co.in> created on 22.09.2012 is registered with Adodis Technologies Pvt Ltd (R143-AFIN).

2. Procedural History

- 2.1 On 11th December 2013, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 12th December 2013, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 21st December 2013, I received hardcopy of the Complaint. 23rd December 2013, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint

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and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.

- 2.3 On 26th December 2013, I received a soft copy of the Complaint.
- 2.4 On 31st December 2013, I received Respondent's reply.
- 2.5 On 6th January 2014, I received Complainant's rejoinder.
- 2.6 Both the Parties separately made requests for personal hearing. Their requests were granted and the hearing was fixed on 19th January 2014 at 10.30 AM at Business Center, Sunway GRT Grand, Pondicherry. The Complainant and the Respondent attended the hearing on the scheduled date.
- 2.7 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A. General

- 3.1 This is a dispute between two brothers of a priest family of Mr.T.R.Viswanatha Gurukkal. He is the head priest of Thirukadavoor or thirukadaiyur temple, near Mayiladuthurai in Nagapattinam District of Tamil Nadu. He has four sons and one daughter. The temple is famous for performing Ayul shanti homams of various types. People celebrate their 60th, 70th, 80th, 90th and 100th birthdays in this holy town by performing appropriate homams and pujas. People also perform other special homams to satisfy and get the blessings of navagrahas.
- 3.2 Thirukadaiyur is the place where Lord Shiva bestowed immortality to Sri Maarkandeya by killing yama and the Lord Shiva in this temple is known as Mirthunjayamoorthi. Many people perform Mirthunjaya homam and related poojas here in this temple.
- 3.3 Among various religious ceremonies, the celebration of completion of 60th year of a bridegroom - shastiaphapoorthi – is very important. Shastiaphapoorthi will be celebrated only if the spouse of the bridegroom is alive and the couple is living together.
- 3.4 Many priest families living in and around thirukadaiyur undertake several poojas for the devotees in the temple or other places within the temple city. Some of the homas and poojas are offered in specialized packages to the devotees to realize all their objectives of their visit to the temple city in a single trip.
- 3.5 The priest community has realized the potential of internet and in order to reach out to the devotees, they have created web sites, devised various packages of special homas and poojas and have offered them to the potential clients over internet. The information available in the web sites enables the needy devotees to understand the significance of various homas and poojas. The web sites also enable the devotees to book in advance their required holy package and the attendant accommodation and boarding arrangements.
- 3.6 These priests operating web sites in turn make arrangements with the temple authorities by making advance bookings of mandaps etc. They also book the chefs and travel reservations. It is a win-win arrangement for the priest families and the devotees.
- 3.7 The head priest of the holy temple, his sons and daughter have separate web sites to serve the needy devotees:

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|--------------------------------------|--|
| Head Priest: T.R.Viswanatha Gurukkal | www.trviswanathagurukkal.com |
| T.R.V Ramalinga Gurukkal | www.shastiaphapoorthi.co.in www.shastiaphapoorthi.in |
| T.R.V Gurumoorthy Gurukkal | www.sastiaphapoorthi.com |
| T.R.V Sundaramoorthy Gurukkal | www.shastiaphapoorthi.com |
| T.R.V Chandramouli Gurukkal | www.thirukadaiyurpooja.com www.thirukadaiyur.in |
| M.E Chandrakala Mahalingam | www.thirukkadavoor.com |

- 3.8 The family members may not be the registered owners of the above web sites. Web sites have been created for the benefit of the family members and as such each member is the beneficial owner of one or more of the above web sites / domain names. The beneficial ownership assumes significance because the family members do not have time to attend these registrations and maintenance of the web sites. They are the main priests of the holy temple and are responsible for performing temple poojas. Depending on the free time available to them, the family members may themselves conduct the homas and poojas for their clients or cause the same to be performed by others.
- 3.9 Admittedly, Mr.T.R.V Sundaramoorthy Gurukkal is the beneficial owner of the web site www.shastiaphapoorthi.com . This web site has been created for his benefit by the Complainant. The beneficial owner, Mr.T.R.V Sundaramoorthy Gurukkal has also attended the personal hearing along with the Complainant and others.
- 3.10 Similarly, Mr.T.R.V Ramalinga Gurukkal is the beneficial owner of the web sites: www.shastiaphapoorthi.co.in and www.shastiaphapoorthi.in . These web sites have been admittedly created for the benefit of Mr.T.R.V Ramalinga Gurukkal by his close family relation Mr.Murugan. Mr.Murugan has in turn registered them through the Respondent.
- 3.11 Mr.Murugan has admittedly attended all the emails sent to : nathan.office@yahoo.com , the registered email ID of the Respondent mentioned in the whois data of the Disputed Domain Name <shastiaphapoorthi.co.in> and has actively participated in the entire arbitration proceedings for the benefit of Mr.T.R.V Ramalinga Gurukkal. The beneficial owner, Mr.T.R.V Ramalinga Gurukkal has also attended the personal hearing along with Mr.Murugan and others.
- 3.12 The present complaint is in respect of the web site under the domain name www.shastiaphapoorthi.co.in . The complaint filed by the same complainant in respect of the web site under the domain name www.shastiaphapoorthi.in is pending before another arbitrator of NIXI.

B. Complainant

- 3.13 The Complainant purchased the domain www.shastiaphapoorthi.com for his cousin brother Shri T R V Sundaramurthy Gurukkal. He is doing Ayul Shanthi Parihara Homams (Fire workshops for Deities) in the Thirukadaiyur temple, located in the Nagapatinam district of Tamil Nadu. The Complainant is the registrant of this website, maintaining the website day to day and attending enquires by email and mobile.
- 3.14 Thirukadaiyur temple is historically very famous for performing 60th, 70th, 80th birthdays and other Ayush Homams. 60th year completion in Sanskrit is called Shastiaphapoorthi, 70th birthday is Bhimaradha shanthi and so on. It is said that performing Ayush Homams in this temple increases life longevity of an individual, get rid of diseases and improves the

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status. People from almost all parts of the country come here for performing Ayul Shanthi Pariharams. Here the homams happens 365 days a year. Based on the Sanskrit word "shastiaphapoorthi", the complainant named the web site as www.shastiaphapoorthi.com

- 3.15 The Complainant created the website www.shastiaphapoorthi.com as early as 3rd January 2009 and has been successfully running the same for almost 4 ½ years. The complainant has enclosed the registrant information). This website guides the devotees coming to the Thirukadaiyur temple from almost all parts of the Country. The beneficial owner T R V Sundaramurthy Gurukkal performs the fire workshops (homam) as requested by the devotees and also arrange food, accommodation and transportation for them as per their requirements. The Complainant's website is a religious one which helps the devotees about the function, first-hand information about the holy place and is really beneficial to the entire Hindu Community.
- 3.16 In these circumstances, the Complainant has come to know about a website named www.shastiaphapoorthi.co.in of the Respondent registered in September 2012. The Respondent is also operating from Thirukadaiyur as the Complainant does.

B Respondent

- 3.17 Mr. Murugan has sent reply on behalf of the beneficial owner of the disputed domain name <shastiaphapoorthi.co.in>. He has created this website on behalf of his cousin brother Shri TRV Ramalinga Gurukkal, the eldest son of Dr. TR Viswanatha Gurukkal. The beneficial owner has been performing Shastiaphapoorthi shanthi, Ayul Shanthi, Parihara Homams and other Homams at Thirukadaiyur temple since 1986.
- 3.18 The family of the beneficial owner has been involved in spiritual service since 1962. Their dedication and honesty have resulted in huge VIP clients from all over the world seeking spiritual service. Per their request, the website has been created to help them get complete information about the rituals and homams being performed at Thirukadaiyur.

4. Parties Contentions

A Complainant

- 4.1 The Respondent is providing similar type of services as what the Complainant is providing all these years. The Respondent has almost copied all the contents, keywords and other required information of the Complainant.
- 4.2 The Complainant is not bothered about the Respondent's copying of the contents into their website. The Complainant is facing serious problem due to the reason that the Respondent's domain name is the same as the Complainant. Due to the domain name is similar and due to the identical words in the websites, the devotees are often getting mistaken / confused and the enquiries are totally scattered. As a result, the Complainant is facing tremendous problem both personally and financially. In matters like this, too much of confusions lead to misinterpretation about the Holy place and the community.
- 4.3 The complainant in his rejoinder to the reply of the Respondent has stated the following:
- 4.4 As regards confusion, the Complainant submits that it is true fact that same domain name into same business, operating from the same place causes too much of confusions to ordinary public. People might think that both are same group. In other words, they may not think that both are operating individually. The complainant has cited some problems faced by

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him (a) the complainant had received calls from people asking for the Respondent. Fortunately, the Respondent could be able to locate one such email and is enclosing the same as a proof for confusion as a .pdf file named "Confusion.pdf". This particular email is addressed to the Respondent, but sent to the Complainant's email id. The Client has seen both the websites and hence, this confusion.

- 4.5 When people google, they see the Complainant's website for the first time and the Complainant provides the required details. When they google next time, they get Respondent's website and from thereon, ultimately enquiries are scattered, thus leading to confusion. The Complainant is talking about the fact on confusion, whereas the Respondent is talking about visiting his gallery for his satisfied clients. The Complainant also has satisfied Clients. Please do visit our testimonial page <http://www.shastiaphapoorthi.com/testimonials>. But unfortunately this is not the argument which the Respondent should understand clearly.
- 4.6 As regards the Respondent's comments that Complainants inability to compete in the market and the current business and competition, the Complainant responds that ability of an individual is to create a business on his own, market it and promote the same. But, here the Respondent's ability is focused on booking an identical domain which is already well established 5 years ago, copying it, confusing people and generating business out of that. The Complainant always welcomes healthy competition and healthy competitors. But unfortunately the Respondent does not fall in this category.
- 4.7 The Respondent might be offering services through the domain name. But the domain name similar to the one in dispute was booked by us 5 years ahead for offering the same type of services. The Respondent should have registered a slightly different domain name for offering their genuine services. This seems to be in dishonest fashion. Also, the Respondent is not making a genuine use of the domain name as the domain name of the Respondent is created with the intention for commercial gain to misleadingly divert clients or to tarnish our service.
- 4.8 Shastiaphapoorthi is not the only common name giving the required meaning of 'Kalyanam', 'Marriage', etc. There are also other names like Shastiabdapoorthi, Shastipurthi, Sastiaphapurthi, etc with different spelling which conveys the same meaning. Various websites can be referred in this connection. But, the Complainant is the one who first registered the name "Shastiaphapoorthi" as early as 2009.
- 4.9 Also, as mentioned by the Respondent, there might be 25-50 teams talking about Shastiaphapoorthi and other similar terms. But they are common websites which gives general information about "Shastiaphapoorthi" and were not created with any commercial intention or to tarnish any other website. Also those 25-50 websites is not referring to the only term "Shastiaphapoorthi", but refers to other terms with different spellings for the same meaning. Moreover, other commercial websites created in this connection has different domain names like "shastipurthi.com", 'Shashtiabdapoorthi.com', etc.
- 4.10 Once again, the Respondent's domain name is having similar spelling as ours.
- 4.11 The Respondent's website might contain genuine information. Here again, focus is not on the information provided on the website, but on the Website itself. The Respondent has booked the disputed domain the domain name having known very well that there is already a pre-existing website with the same domain name offering same type of services from the same business place. This type of intention clearly indicates the Respondent's inability to develop a business on its own and also confuse people to gain enquiries. Regarding the element of bad faith, it is submitted that the Respondent had registered the domain "shastiaphapoorthi.co.in" with the intent of earning profit and mislead the customers / users of our domain name "shastiaphapoorthi.com"

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4.12 Regarding copying of contents, the Complainant provides some evidences:-

- a) In the home page <http://www.shastiaphapoorthi.com/>, the Complainant has mentioned that "We, direct from the Gurukkal family (senior Priest 8th Generation at Thirukadaiyur Sri Abhirami Sametha Amirthakadeshwarar Temple Devasthanam).....". If you see the Respondent's weblink <http://shastiaphapoorthi.co.in/AboutUs.htm>, they have mentioned "We are the Senior Priest from Gurukkal family the 8th generation at Thirukadaiyur Sri Abhirami Sametha Amirthakadeshwarar Temple Devasthanam.....". Enclosed snapshot of the same from Respondent's website with file name "copy-matter-1.jpg"
- b) In our home page 2nd paragraph <http://www.shastiaphapoorthi.com/>, we have mentioned that "We have designed a complete set of packages which includes all Poojas and Homas to be performed which covers Transportation, Food and Accommodation". If you see the Respondent's weblink <http://shastiaphapoorthi.co.in/AboutUs.htm> the last paragraph reads as "We have designed set of packages which includes all Poojas and Homams to be performed which also covers Transportation, Food and Accommodation". Enclosed snapshot of the same from Respondent's website with file name "copy-matter-2.jpg"
- c) The whole contents from the Complainant's webpage
- d) <http://www.shastiaphapoorthi.com/ayulshanthiparihaarams.htm> has been completely copied down to the Respondent's website <http://shastiaphapoorthi.co.in/Poojas.htm>. Enclosed snapshot of the same from Respondent's website with file name "copy-matter-3.jpg"
- e) Paragraph-1 from the Complainant's website <http://www.shastiaphapoorthi.com/packageesservices.htm> has been copied by the Respondent to their weblink <http://shastiaphapoorthi.co.in/Services.htm>. Enclosed snapshot of the same from Respondent's website with file name "copy-matter-4.jpg"
- f) The Respondent says, Ramayana and Mahabaratha are common stories for everybody. But each Author depicts it in a different manner following their own style. They also copyright their material to prevent others using the same pattern. Valmiki has written Ramayana in his own style and Kambar has written Ramayana in his own pattern eventhough the story is one and the same. <http://en.wikipedia.org/wiki/Ramayana>. Also, there are evidences that Kamba Ramayana differs in many ways from the original Ramayanam of Valmiki including its storyline <http://www.differencebetween.com/difference-between-valmiki-and-vs-kamba-ramayanam/> ; <http://www.stepbystep.com/difference-between-valmiki-and-kamba-ramayanam-101761/>

4.13 For creating more confusion, the Respondent has created a similar account in Facebook also named "Shastiaphapoorthi Thirukadaiyur". Please see link <https://www.facebook.com/public/Shastiaphapoorthi-Thirukadaiyur> where you will find two accounts with the same name, I created face book account with name "Shastiaphapoorthi Thirukadaiyur" on 8th October 2011. The Respondent has created a Facebook account with the same name "Shastiaphapoorthi Thirukadaiyur" on 30th October 2012. He has invited many of the friends from my friend's list, thereby creating confusion to the extreme.

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- 4.14 Also many of the Keywords from the Complainant's website have been copied by the Respondent.
- 4.15 The Respondent clearly lacks the ability of creating his own ideas and had used the Complainant's website for developing his business which is not fair from any point of view whatsoever. The complainant is very much bothered of copying of his domain name itself. There are many websites which copy contents from other websites, but their domain names would be different. But in this case, the domain name, business services, and place of business – everything is completely identical. This really leads to lot of confusions and thereby spoiling the Complainant's services.
- 4.16 Based on the above facts and evidences, it is very well revealed that the Respondent's statements are groundless. Similar domain names operating from the same place with same type of business is not healthy always and the devotees coming for this Holy Place should not be made confused whatsoever.

B. Respondent

- 4.17 The Complainant has "no" rights to the name, trademark or service mark. In this case the Respondent's name which is "shastiaphapoorthi" is a very general and a common term in Tamil Nadu which denotes the celebration of 60th birthday of an individual, akin to the renewal of marital vows. More information about the shastiaphapoorthi can be had from <http://en.wikipedia.org/wiki/Sashtiaapdapoorthi> One can even find general public asking about the same in yahoo answers <http://answers.yahoo.com/question/index?qid=20070408010544AAfIoa>.
- 4.18 In Thirukkadaiyur, there are more than 25-50 teams doing the same business under similar domain names, as Thirukkadaiyur is a special pilgrimage place for people, for all kinds of 60th, 70th & 80th anniversaries and other homams. I am giving below a few similar domain names adopted by other people for rendering similar services.
- <http://www.shastipurthi.com/>
 - <http://www.priestservices.com/our-services/sashtiabthapoorthi/>
 - <http://q2server.in/projects/thirukadaiyur/index.html>
 - http://yellowpages.sulekha.com/shastiaphapoorthi-organisers_bangalore_contacts
 - <http://harivara.com/product-tag/shastiaphapoorthi-thirukadaiyur/>
 - <http://nagapattinam.olx.in/food-catering-pooja-services-thirukkadaiyur-iid-524991928>
 - <http://sairitualservices.com/shastiaphapoorthi-organisers-chennai.html>
 - <http://www.slideshare.net/sairitualservices>
- 4.19 In his complaint, the Complainant has mentioned that *the devotees are often getting mistaken / confused and the enquiries are totally scattered. As a result, we are facing tremendous problem both personally and financially. You will appreciate this is a spiritual thing and too much of confusions lead to misinterpretation about the Holy place and the community*. In this regard, it is submitted that personal problems are personal and personal problems cannot be taken into Account. Financial problems depend on one's ability to gain customer satisfaction and skill level and these problems also cannot be taken into account. As regards, *"too much confusions lead to misinterpretation about the Holy place and the community"*, it is submitted that there are absolutely no confusions as we have thousands of satisfied clients and you can take a look into our gallery in our site or any kinds of misinterpretations about the holy place if so kindly provide any solid proof. In

Shanmugas

fact the Holy place is gaining more popularity and good reviews. It all comes down to the Complainants inability to compete in the market and the current business and competition.

- 4.20 The Respondent is offering all kinds of services and packages for 60th, 70th and 80th anniversaries and all other kinds of *homams* and *pariharams*. Respondent has also uploaded the pictures of us performing all kinds of poojas in his website, at "<http://shastiaphapoorthi.in/gallery>". Hence this shows Respondent not only has legitimate interest but also provides a successful religious pooja service to all his clients and satisfying them with his genuine and best efforts.
- 4.21 Hence shastiaphapoorthi cannot be a brand as it's a common name such as "kalyanam", "marriage" "bheemarathashanthi", "sathabhishegam". Also more the 25-50 teams or sites use the same name as the name is being used for thousands and thousands of years. It is obvious that it's a common business and no one has rights/trademark in any ceremony name such as "shastiaphapoorthi", the same way as how you don't have anyone claiming special rights on the words "kalyanam" or "marriage". All the pundit teams in Thirukkadaiyur do the same kinds of services as the Respondent does as it's a public temple.
- 4.22 If you can look into Respondent's Website and its contents you will come to know that the Respondent's domain name is not being used in bad faith. The Respondent provides all genuine information in their site which has gained the Respondent more clients and moreover the Respondent has not mentioned any information about the Complainant.
- 4.23 The contents of our web site are not similar and moreover the content in the site are common to everyone and the stories and other stuff are very common like the story of Mahabharata or Ramayana as stories and other contents related to God are the same for everyone and no one can claim any rights on the kind.
- 4.24 Thus the complainant's arguments are baseless. The Respondent has always been abiding ICANN rules and policies pertaining to domain names throughout. So the Respondent expects a fair decision from the arbitrator.
- 4.25 The Respondent in his response to the rejoinder of the Complainant has submitted as below:
- a) The Complainant has no rights to the specific disputed domain name <shastiaphapoorthi.co.in>. It does not matter who bought the domain name first, consideration is given to only the person who has rights with a trade mark or ROC or service mark. In this case, it is clear that the complainant does not have any trade mark, service or any other rights on the name "shastiaphapoorthi" to say this particular domain name is the Complainant's. The Respondent has just purchased the disputed domain name like how the Complainant has booked shastiaphapoorthi.net, shastiaphapoorthi.org.
 - b) Respondent has created the disputed domain name <shastiaphapoorthi.co.in> as per the keyword which has more searches and has correct spelling and what is there to copy when it is a common name as the Respondent has the whole state using same name. The Respondent is not bound to find similar domain names which have incorrect spellings. The Respondent had not even look into the Complainant's web site as the complainant has not even put up proper packages information.
 - c) Confusion.pdf file is fake and has false information.
 - d) The Complainant has used the Respondent's name in their site. It could also cause confusion to the Respondent.

Shastharams

- e) The Respondent is the healthy competitor of the Complainant. The arbitration proceedings itself proves this. The Complainant has not come out with the grounds on which they are claiming that the Respondent is diverting the clients of the complainant. Respondent is not in any way responsible if the Complainant's business services are tarnished. If the reputation is any tarnished, it is mainly due to the Complainant's own business and marketing skills and the Complainant cannot blame their competitors for it.
- f) Only the beneficial owner is eligible to perform pooja at the temple and only he can be considered to be 8th generation priest as the Acharya Abhisehgam ceremony has been performed for him which gives him all the rights as per vedic standards.

5. Hearing

- 5.1 Parties attended the personal hearing on the scheduled hearing date and reiterated their pleadings.
- 5.2 From the Complainant's side, the beneficial owner, the complainant, Mr.Jyothikumar and Mr.Senthil Kumar attended the hearing.
- 5.3 From the Respondent's side, the beneficial owner, Mr.Murugan, Mr.Arun, and Mr.Sudarshan attended the hearing.
- 5.4 I heard both the parties elaborately. I will discuss the issues below.

6. Discussion and Findings

- 6.1 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
 - (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
 - (III) Respondent's domain name has been registered or is being used in bad faith.
- 6.2 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Preliminary

- 6.3 The entire complaint is based on the contention that the expression "shastiaphapoorthi" is very common in connection with the events relating to the celebration of 60th birthday of an individual, and needs to be used by anyone. No one can exclude the others from using the expression to denote events of any sort relating to the 60th birth day of a person.
- 6.4 Both the parties have elaborately argued and pleaded that the shastiaphapoorthi is commonly used and available expression in connection with the celebration of 60th birthday. The celebrations may be at the beginning or completion of 60th year and is commonly used to denote the events including the poojas and homams to be performed during the entire 60th year.

Shelvanams

- 6.5 In this case, the parties are using the domain names involving the expression "shastiaphapoorthi" in connection with performing poojas and homams in the holy temple town of Thirukadaiyur. One party is using .com and another is using .co.in domains. Both have the common expression "shastiaphapoorthi" in their domains.
- 6.6 I absolutely agree with the contention of the parties that the expression shastiaphapoorthi is very commonly used by people in connection with the 60th year of a person. The parties are citing so many other people using similar or identical domain names for similar services.
- 6.7 Shastiaphapoorthi is a very common expression and everyone involved with the events relating to 60th birthday of a person is left with no option other than to use the expression "shastiaphapoorthi". Thus it is a very common expression and is incapable of attaining any secondary significance by any length of usage by any one.
- 6.8 The expression shastiaphapoorthi cannot function as a trade mark / service mark in respect of anything dealing with 60th year of a person. The expression shastiaphapoorthi is incapable of distinguishing the services of one person in connection with 60th birthday from the similar services of another person.
- 6.9 The legal position that the expression shastiaphapoorthi cannot function as a trade mark or service mark is applicable to www.shastiaphapoorthi.com of the Complainant and www.shastiaphapoorthi.co.in & www.shastiaphapoorthi.in of the Respondent. The argument that others are using domain names containing similar or identical expression is no defense to the adoption of such expressions by both the parties.
- 6.10 The Respondent has not taken any action so far for the removal of the domain name www.shastiaphapoorthi.com of the complainant before WIPO. Nor has the Respondent reported to the arbitrator about any action pending for removal of the Complainant's domain name www.shastiaphapoorthi.com.
- 6.11 As of the date of award, the domain name www.shastiaphapoorthi.com subsists validly.
- 6.12 Therefore, I proceed to determine this Complaint of the Complainant on the basis of his rights to the domain name www.shastiaphapoorthi.com.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

- 6.13 Under this heading, the Respondent has raised an objection that the Complainant has no trade mark or service mark registration for the expression "Shastiaphapoorthi" and therefore in the absence of any such trade mark / service mark registrations, the first element cannot be determined and as such the complainant is liable to be rejected.
- 6.14 A complaint under INDRP policy is not required to be based on any prior trade mark or service mark rights, whether registered or not. A complaint may still be maintained on the basis of rights available under any domain names also. It is established that domain names have all the characteristics of trademarks and are entitled to equal protection. Therefore, I am not agreeing with the contention of the Respondent and his objection in this regard is rejected.
- 6.15 The Complainant created the website www.shastiaphapoorthi.com as early as 3.1.2009 and has been successfully running the same for almost 4 ½ years. Admittedly, the disputed shastiaphapoorthi.co.in was created on 22.09.2012. Obviously, the Complainant is the

Indrakumar

prior adopter of the domain name www.shastiaphapoorthi.com with the expression shastiaphapoorthi. The above fact has established that the Complainant has common law as well as statutory rights in respect of its domain name www.shastiaphapoorthi.com.

6.16 The Respondent has never denied the Complainant's right to its domain name www.shastiaphapoorthi.com. The main grievance of the Respondent is that the expression shastiaphapoorthi is very common and can be used by any one in his domain names. It is seen that this argument is not legally sustainable.

6.17 It is clearly seen that the disputed domain name shastiaphapoorthi.co.in is identical to the Complainant's www.shastiaphapoorthi.com. The suffix ".co" and ".in" are descriptive and are not distinguishing parts of the domain name. The specific top-level and /or second-level of a domain name such as ".co" ".in" needs to be disregarded when determining the similarity or identity with the Complainant's domain name. The disputed domain name shastiaphapoorthi.co.in is similar to the Complainant's domain name www.shastiaphapoorthi.com.

6.18 I, therefore, find that:

(a) The Complaint has common law and statutory rights in respect of its domain name www.shastiaphapoorthi.com.

(b) The disputed domain name shastiaphapoorthi.co.in is identical to the Complainant's domain name www.shastiaphapoorthi.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

6.19 It is already seen that:

(a) The Complainant is the prior adopter of the domain name www.shastiaphapoorthi.com.

(b) The mark Microsoft was registered in India in 1984. The Complainant's domain name www.shastiaphapoorthi.com was created on 3.1.2009. The disputed domain name shastiaphapoorthi.co.in was created on 22.09.2012.

6.20 Respondent did not register the disputed domain name until 22.09.2012. It is not disputed that all the 4 sons and one daughter of the priest family including the Respondent (the beneficial owner of the domain name shastiaphapoorthi.co.in) were well aware that the Complainant was the first one to adopt the domain name www.shastiaphapoorthi.com in the year 2009 for business purposes. Admittedly, the Respondent has adopted the disputed domain name shastiaphapoorthi.co.in after impressed by the progress made by the Complainant. The Complainant and the Respondent are not strangers but brothers belong to the same priest family.

6.21 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name shastiaphapoorthi.co.in.

Respondent's domain name has been registered or is being used in bad faith.

6.22 We have already seen that the Complainant and the Respondent are brothers and belong to the same priest family. The complainant was the first one to offer a web site based services under the domain name www.shastiaphapoorthi.com in the year 2009. Having seen the progress made by the Complainant, particularly the extent of reach and the ease

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of operation, the Respondent adopted the disputed domain name <shastiaphapoorthi.co.in>.

6.23 Thus the Respondent registered and has been using the disputed the disputed domain name <shastiaphapoorthi.co.in> in bad faith.

6.24 Mr.Murugan, the representative of the beneficial owner of the disputed domain name <shastiaphapoorthi.co.in> is looking after the day to day operations of the web site and responds to the queries he received from the devotees. He is a heart patient and needs continuous medical attention. I fix the cost of the arbitration at Rs.1,00,000/-. I order on equitable principles the Complainant to pay Rs.1,00,000/- (Rupees one lakh only) to Mr.TRV Ramalinga Gurukkal, the beneficial owner of the disputed domain name <shastiaphapoorthi.co.in> towards costs of arbitration proceedings.

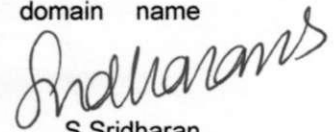
7. Decision

7.1 For all the foregoing reasons, it is ordered as below.

7.2 It is hereby ordered that the registration of the disputed domain name <shastiaphapoorthi.co.in> be cancelled.

7.3 Complainant is ordered to pay Mr.T.R.V Ramalinga Gurukkal, the beneficial owner of the domain name <shastiaphapoorthi.co.in>, a sum of Rs.1,00,000/-(Rupees one lakh only) towards costs of arbitration.

7.4 The cancellation of registration of the disputed domain name <shastiaphapoorthi.co.in> shall take effect only after the payment of costs under Para 7.3 by the Complainant to Mr.T.R.V Ramalinga Gurukkal, the beneficial owner of the domain name <shastiaphapoorthi.co.in>.


S.Sridharan
Arbitrator