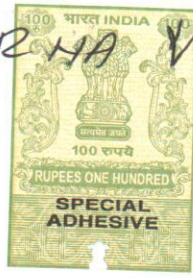


3215 m/s RHA Vatik Tower Sagar Co  
T. 002



NEERAJ SHARMA

- 9 OCT 2014

STAMP VENDOR, GURGAON

RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Wells Fargo & Co.  
420 Montgomery St  
San Francisco, California 94104  
United States of America

And

Wells Fargo India Solutions Private Limited  
Wells Fargo Centre, Building 1-A,  
Divyasree, Orion (Special Economic Zone)  
Sy. No. 66/1, Raidurga, Serilingampalli,  
Hyderabad  
India

.....Complainant

Mr. DeepDas Kumar  
Kumar Exim Limited  
Elephant Hill Avinashi Road,  
Coimbatore, 641066  
Tamil Nadu, India

..... Respondent

Disputed Domain Name: [www.wellsfargo.org.in](http://www.wellsfargo.org.in)

**AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Wells Fargo & Co., 420 Montgomery St, San Francisco, California 94104, United States of America and Wells Fargo India Solutions Private Limited, Wells Fargo Centre, Building 1-A, Divyasree, Orion (Special Economic Zone), Sy. No. 66/1, Raidurga, Serilingampalli, Hyderabad, India. The Complainant is represented by its authorized representatives Rodney D. Ryder , Advocates & Legal Consultants of Level 2, Elegance Towers, Mathura Road, Jasola, New Delhi – 110025, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. DeepDas Kumar, Kumar Exim Limited of Elephant Hill Avinashi Road, Coimbatore, 641066, Tamil Nadu as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name is www.wellsfargo.org.in. The Registrar is Webiq Domains Solutions Pvt. Ltd. (R131 -AFIN) also t/a PDR Limited d/b/a publicdomainregistry.com

The Registrant is Mr. DeepDas Kumar, Kumar Exim Limited of Elephant Hill Avinashi Road, Coimbatore, 641066, Tamil Nadu.

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on September 17, 2014 and the notice was issued to the Respondent on September 17, 2014 at his email



address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response. On October 01, 2014 the Arbitrator granted further opportunity to the Respondent to submit its response on or before October 06, 2014. However, no response was submitted by the Respondent within the stipulated time of thereafter. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them. I may place it on record that the copy of Complaint with Annexures was not only send by courier and registered post but also emailed to the Respondent which has been confirmed by the Complainant vide his email of 1<sup>st</sup> October, 2014.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions**

- a) The Complainant Wells Fargo is considered as one of the top four largest banks in the US by assets and one of the largest banks by market capitalization. According to the fortune 500 list for the year 2013, Wells Fargo is the 25<sup>th</sup> largest company in the US. It was founded by Henry Wells and William Fargo in New York City on 18<sup>th</sup> March 1852.
- b) In 2012, Wells Fargo, in the US had more than 9000 retail branches and over 12,000 automated teller machines in 39 states and the District of Columbia. The company has over 2,70,000 employees and over 70 million customers worldwide. Furthermore, Wells Fargo has principal offices in 420 Montgomery St, San Francisco USA.
- c) Wells Fargo or its affiliates has presence in many countries, including but not limited to India where, its Affiliate Wells Fargo India Solutions Private Limited, is incorporated and registered as a private limited Company carrying on business activities of IT and ITES. Wells Fargo in India has about 5000 employees and Wells Fargo India Solutions has been judged as the one of the best employers by Aon Hewitt, by a recently conducted survey.
- d) The Complainant has spent a huge amount of money on the promotion and advertisement of its services and products under the trade/service name/mark 'Wells Fargo' since its adoption and use. The amount spent on



promoting Wells Fargo's services including advertising and producing literature/brochures from 2003 through 2012 worldwide has been approximately \$4,927 million US Dollars.

- e) The Complainant submits that the present official website [www.wellsfargo.com](http://www.wellsfargo.com) is a comprehensive, unique and acclaimed introduction to Wells Fargo. Google search of the term 'Wells Fargo' throws up a huge number of results of which each and every one pertains to the Complainant only. The Complainant further submits that in order to expand its presence decided to obtain a domain name registration. The Complainant settled for [www.wellsfargo.com](http://www.wellsfargo.com) along with many other domain name registrations as a natural extension of its corporate name for the registration of its domain name. The Complainant then spent considerable amount of money and skill to develop a website on the obtained domain name [www.wellsfargo.com](http://www.wellsfargo.com).
- f) The profile and popularity of the Complainant under the trade/service name/mark 'Wells Fargo' has been continuously increasing since the date of adoption and use of the mark.
- g) The mark 'Wells Fargo' has been in extensive, continuous and uninterrupted use since the year 1852 in relation to the Complainant's business. More specifically, the mark 'Wells Fargo' has been in use by the Complainant in relation to all its stationery articles including letterheads, visiting cards, order forms, bills books, envelopes, application forms and in relation to sales promotional material, such as brochures, catalogues, etc.
- h) The term 'Wells Fargo' has been used by the Complainant continuously for the number of years, as it associated exclusively with the Complainant. The use by any other concern of an identical/deceptively similar mark to that of the Complainant's mark 'Wells Fargo' is bound to lead to confusion and deception and amounts to passing off, and any person or entity using the service mark 'Wells Fargo' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant.
- i) The Complainant submits that it has recently come to their attention that someone has obtained a domain name registration for [www.wellsfargo.org.in](http://www.wellsfargo.org.in). The Complainant immediately searched the WHOIS database for the disputed domain name and found the disputed domain name is registered in the name of Mr. DeepDas Kumar. The registration of the disputed domain name is a duplication of the Complainant's trademark/service mark and cannot have been obtained in good faith.
- j) The Complainant submits that a mere glance at the disputed domain name gives rise to enormous confusion as to its origin as the domain name used by the Respondent is identical to the corporate name of the Complainant. The utmost malafide intention of the respondent is evident from the fact



that not even a single letter differs between the disputed domain name and the corporate name of the Complainant.

- k) The Complainant submits that the use of disputed domain name by the Respondent is a prima facie case of cyber squatting and trade/service mark/name infringement.
- l) The disputed domain name contains the entirety of the Complainant's trademark. It is well established that the specific top level domain, such as .com, .in, .co.in, .org.in, .net or .travel, does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.
- m) It is further submitted that the use of any concern of an identical/deceptively similar mark to that of the Complainant's mark 'Wells Fargo' is bound to lead to confusion and deception and any person or entity using the service mark 'Wells Fargo' in any manner is bound to lead customers and users to infer that its product or service has an association or nexus with the Complainant.
- n) The Complainant submits that the Respondent has no proprietary rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name.
- o) Further, the Complainant submits that the Respondent whose name is Mr. DeepDas Kumar is not commonly known by the neither disputed domain name nor does the Respondent actually engage in any business or commerce under the name 'Wells Fargo'.
- p) The Respondent has no active business in the name of 'Wells Fargo'. The Respondent is not a licensee of the Complainant, nor has the Respondent ever been authorized by the Complainant to use the Complainant's trademarks or register the disputed domain name. The Complainant has no relationship with Respondent.
- q) At present, the domain name [www.wellsfargo.org.in](http://www.wellsfargo.org.in) is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. This is an attempt to misuse the domain name by the use of a simple domain name extension variant. The mark 'Wells Fargo' having been extensively used in understood and associated by consumers in India and throughout the world.
- r) The Complainant submits that the Respondent is directing the disputed domain name to a parking page containing advertisements in an effort to generate revenue through consumers who mistakenly visit the site. Such an act by the Respondent constitutes strong evidence of bad faith registration and use.



- s) The Complainant further submits that it is inconceivable that the Respondent could have registered the disputed domain name without being aware of the Complainant's rights. In light of the Respondent's presumed knowledge of the Complainant's rights, it is reasonable to infer that the Respondent could not have registered the disputed Domain name without the intention to target these rights in some manner.

#### **5) Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy. The attempt to serve them hard copy of complaint by NIXI via courier was also not successful.

#### **6) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'WELLS FARGO' leads to the conclusion that the Complainant has superior and prior rights in the mark 'WELLS FARGO'. Thus it can be said a) the web users are likely to associate the word 'WELLS FARGO' with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.wellsfargo.org.in](http://www.wellsfargo.org.in) and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policies which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant. In addition, the Respondent by providing incorrect address at the time of registration, which is evident from non-delivery of courier and Registered post containing the Complaint (as per the report provided by NIXI dated September 19, 2014 from Blue Dart Express and on September 30, 2014 from Registered post), violated clause 3 (a) of .IN Domain Dispute Resolution policy.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'WELLS FARGO'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'WELLS FARGO' trademark in its entirety. The mark 'WELLS FARGO' which forms key part of the disputed domain name, and is being used by the Complainant to identify its services. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.




- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'wellsfargo.org.in' domain name. Further, the Respondent has no active business in the disputed domain name and their purpose for registration appears to be purely for monetary gain.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to explain its adoption or show interest in protecting his own rights and interest in the domain name. Further, the Respondent has no active business in the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.wellsfargo.org.in'.


- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interest in the domain name, an adverse inference as to their adoption of domain name has to be drawn. In particular 'WELLS FARGO' being words of foreign origin and not a commonly used word in India. 

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'wellsfargo.org.in' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

#### **7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.wellsfargo.org.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name be www.wellsfargo.org.in transferred to the Complainant.

  
**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**27 October 2014**