



सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No.

: IN-CH21498582264189R

Certificate Issued Date

: 31-Dec-2019 11:07 AM

Certificate Issued By

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Account Reference

: IMPACC (GV)/ chimpssp07/ E-SMP MANIMAJRA/ CH-CH

Unique Doc. Reference

: SUBIN-CHCHIMPSP0742956023140988R

Purchased by

: DR ASHWINIE KUMAR

Description of Document

: Article 12 Award

Property Description

: H NO 209 MARINA STREET PIETA MALTA

Consideration Price (Rs.)

: 0
(Zero)

First Party

: NETBET ENTERPRISES LTD

Second Party

: DEBORAH R HEACOCK

Stamp Duty Paid By

: NETBET ENTERPRISES LTD

Stamp Duty Amount(Rs.)

: 100
(One Hundred only)



-----Please write or type below this line-----

ARBITRATION AWARD

(On Stamp Paper)

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SR 0008399912

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Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate

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

NetBet Enterprises Ltd, 209 Marina Street, Pieta, PTA 9041, Malta.

...(Complainant)

Versus

Deborah R. Heacock, 1256 Horizon Circle, Seattle. Washington,
98119, United States of America.

...(Respondent)

COMPLAINT REGARDING: DISPUTED DOMAIN NAME:

<NETBET.IN>

1. The Parties:

Complainant: NetBet Enterprises Ltd, 209 Marina Street, Pieta,
PTA 9041, Malta, E-mail: legal@safenames.net,
james.taylor@safenames.net

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Respondent:

Deborah R. Heacock, 1256 Horizon Circle, Seattle. Washington, 98119, United States of America, e-mail: domainsimple@gmail.com

2. **The Domain Name and the Registrar:** The disputed domain name <netbet.in> is registered with Dynadot LLC, 210 S Ellsworth Avenue, # 345, San Mateo, California 94401, United States, E-mail: abuse@dynadot.com (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

The Complaint has been filed with the National Internet Exchange of India (NIXI) which appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has already submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI informed the parties about appointment of arbitrator vide its E-mail dated 07.11.2019 and also sent soft copy of the Complaint along with annexures by e-mail on 07.11.2019 to the Respondent. The e-mail was duly delivered to him as per confirmation by complainant vide e-mail dated 08.11.2019. NIXI had also sent hard copy of the Complaint along with annexures to him by courier. However, NIXI informed vide its e-mail dated

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02.12.2019 that the Courier Company was unable to deliver the packet due to incorrect address.

The Arbitrator vide email dated 08.11.2019 directed the Respondent to file his reply within 10 days and the e-mail was duly delivered as there was no report of non-delivery. The arbitrator vide e-mail dated 19.11.2019 again directed the Respondent to file his reply within 10 days and the e-mail was duly delivered as there was no report of non-delivery.

NIXI had made efforts to serve the hard copy on the Respondent at his last known address but could not serve as address was incorrect, hence there is deemed service of the hard copy as per the provisions of Section 3 of the Arbitration and Conciliation Act, 1996 (the Act) which provides as under:

"3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

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In view of provisions of section 3 of the Act regarding receipt of communications, the Respondent is deemed to have been duly served. A copy of Complaint and Annexures as well as notices issued by the Arbitrator were communicated to the Respondent by E-mail. Hence, service of the Respondent is complete by this mode also.

The Respondent was directed to file the response to the Complaint within 10 days vide E-mails dated 08.11.2019 and another opportunity was given vide e-mail dated 19.11.2019. The Respondent has failed to file any response to the Complaint till date although period for filing of response has already been expired. As per section 25 of the Act the arbitrator is competent to make the award if Respondent fails to file the reply before him. In view of above, arbitrator proceeds to make the award in accordance with provisions of the rules read with section 25 of the Arbitration and Conciliation Act, 1996.

4. Factual Background

The Complainant, NetBet Enterprises Ltd is the operator of the "NETBET" brand: an online gaming and casino company which has received much recognition internationally. The Complainant was founded in 2001; it is licensed and regulated by the Great

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Britain Gambling Commission and the Malta Gaming Authority. The Complainant and its related companies own several registered trademarks for the "NETBET" mark in multiple jurisdictions, including a European Union Trademark for "NETBET".

The Respondent has registered the disputed domain name <netbet.in> on 10.07.2012 wholly incorporating Trademark NETBET of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Complainant, NetBet Enterprises Ltd is the operator of the "NETBET" brand: an online gaming and casino company which has received much recognition internationally. The Complainant was founded in 2001; it is licensed and regulated by the Great Britain Gambling Commission and the Malta Gaming Authority.

The "NETBET" brand offers a variety of games, including skill-based games such as Poker. All games offered under the "NETBET" brand are intended to be entertaining, attractive and use flash technology to provide the most up-to-date graphics. Many of them are developed by established providers, such as NetEnt, Amaya, Evolution Gaming, IGT, iSoftBet and Pragmatic Play.

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In addition to online use, "NETBET" offers an app which features more than 30 games and enables consumers to use the popular "NETBET" services on the move. To date, "NETBET" has been subject to many awards, including but not limited to the award for "Best Overall Sports Betting Operator at CEEGA 2016".

The Complainant has offered over 450 state-of-the-art casino games and become a market leader within the online casino and betting industry. "NETBET" has international and cross-border renown, helped by the fact that the website is available in multiple languages, including but not limited to French, Spanish, Italian and English. In terms of additional features, the "NETBET" website provides a chat service, which customers have rated highly.

To date, the Complainant and its related companies own several registered trademarks for the "NETBET" term in multiple jurisdictions, including a European Union Trademark for "NETBET" registered on the 16th May 2012. This trademark predates the creation date of the Disputed Domain Name. The Complainant also uses the "NETBET" trademark as a brand logo, which is used to distinguish their services from competitors.

In addition to trademarks, the Complainant has used the "NETBET" term in many of its domain names, including but not limited to: <netbet.com>, <netbet.co.uk>, <netbet.ro> and <netbet.it>.

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To date, the Complainant's "NETBET" brand is the first hit on popular search engines on entering the term "NETBET" – including on Google from the jurisdiction of India. It is also the first hit on public trademark databases. Such online presence demonstrates that the brand is well-known to the general public as a supplier of online casino games and betting services, and has been for several years.

In terms of further recognition of the "NETBET" brand online, the Complainant is active on social media platforms, such as Twitter, Facebook and Instagram. As a company which provides its services online, its services are available across the globe. Thus, it maintains a significant cross-border presence, particularly given its recognition through marketing and third-party media platforms. Such examples include an article in the popular newspaper El Pais about the growth of the "NETBET" brand and an article about a study conducted by the Complainant, both of which were published just prior to the Respondent's registration of the Disputed Domain Name.

Additionally, third-party websites which deal with online casino and betting services give much attention to the "NETBET" brand, including it being listed as the 12th most visited bookmaker in a list of "Top 100 Online Bookmakers". The nature of services provided

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under the "NETBET" brand, therefore, means its Internet presence is of crucial importance to the Complainant.

The Complainant has registered trademarks for the "NETBET" term in multiple jurisdictions. Accordingly, the Complainant maintains that they have 'rights' for the purpose of these proceedings.

The Disputed Domain Name, <netbet.in>, incorporates the term "NETBET" verbatim. The addition of the ccTLD, ".in", should be disregarded in the comparison between the Complainant's trademark and the contested domain name, as it is merely a technical requirement to identify domain names in India.

The Complainant has submitted that the burden of proof lies on the Complainant to prove that the Respondent has no rights or legitimate interests.

The Complainant has maintained its legal right to <netbet.in>, based on the statutory protection of the "NETBET" term by way of trademarks in several jurisdictions. The Complainant has also relied on the recognition acquired by the Complainant since its establishment, which pre-dates the Respondent's registration of the Disputed Domain Name.

The Respondent's choice of the reputed "NETBET" trademark as its domain name is completely unnecessary and lacks any legitimate business purpose. The sole purpose of carrying on any business

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through the Disputed Domain Name is to create confusion as to the source or endorsement of the website.

The Complainant submitted that the Disputed Domain Name does not resolve to an active webpage. There is no evidence of the Respondent using the Disputed Domain Name in connection with a bona fide offering of goods or services since its registration in July 2012. Indeed, even where the Disputed Domain Name was being actively used in the past, the Respondent has previously hosted Pay-Per-Click (PPC) links, some of which have related directly to the Complainant's expertise.

It is a commonly held principle in domain disputes that merely registering a domain name is not sufficient to establish rights or legitimate interests. As mentioned above, the Respondent does not appear to have any protected rights for the term "NETBET".

The Respondent has used the reputable "NETBET" brand in order to confuse online users of the source, affiliation or sponsorship of the Disputed Domain Name to the Complainant. The Disputed Domain Name would be perceived by online users as a website where they could find information about the Complainant's services. The Respondent offered the Disputed Domain Name for sale on a popular domain name aftermarket site for \$2,000, an amount likely in excess of the Respondent's fees in relation to maintaining the Disputed Domain Name.

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The Complainant has further submitted that anyone who has access to the Internet can find the "NETBET" trademarks on public databases, including, but not limited to, the WIPO Brand Database. To date, results on popular search engines like Google for "NETBET" list the Complainant's brand and services as the first hit. Based on the goodwill and reputation built-up for this brand, the Respondent would have been aware of the Complainant's rights and should have paid more heed to the representations made to their Registrar, to ensure that they did not infringe any trademark rights.

The Respondent has registered the Disputed Domain Name to intentionally target the Complainant. This is evidenced by the Respondent's domain name portfolio which contains extensive infringements on third-party brands. More specifically, the Respondent shows an awareness of brands within the online casino and betting sector given it has registered multiple domain names infringing on third-party brands within the industry. In addition, the Respondent owns the domain name <netbet.us>, which is used to host a PPC advertising page. The links on the page directly relate to the Complainant, namely displaying links such as 'NETBET CASINO'. The fact that the Respondent has registered many domain names corresponding to third party brands, further affirms that the Respondent intentionally registered domain names to profit from

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the brand value of trademarked terms. Such use is consistently held to amount to cybersquatting.

The Respondent's multiple registrations of domain names infringing upon third-party intellectual property rights, specifically within the online casino and betting sector, evidences that he had the Complainant in mind when registering the Disputed Domain Name. The evidence strongly suggests that the Respondent has researched, or is knowledgeable of, online casino brands. The Respondent then conducts cybersquatting in hope of drawing some commercial value either from selling it or utilising traffic directed to that domain name gained due to its value as a reputable trademark. The Respondent has also chosen to ignore a Cease and Desist letter sent by the Complainant's representatives on the 24.05.2019. This letter put the Respondent on notice of the Complainant's trademark and rights to the Disputed Domain Name. The Respondent's disregard of the Complainant's trademark rights is further evidence of bad faith.

Since the registration of the Disputed Domain Name, the Respondent has previously used it for commercial activities, namely the hosting of PPC advertising pages. The Respondent had chosen the "NETBET" brand in order to drive traffic to the PPC page hosted on the Disputed Domain Name, in order to earn revenue from users clicking on links. There is evidence that the PPC page had hosted

links competitive or directly linked to the Complainant, such as 'Poker', 'Netbet Sport' and 'Casino Bonus'.

Currently, the Disputed Domain Name is passively held. The Respondent does make an active attempt to sell the Disputed Domain Name, and has done for many years, such as advertising it for sale at \$10,000 USD in 2015, and for \$2,000 currently.

Additionally, there is no plausible good faith use of the Disputed Domain Name which is identical to a well-known trademark within its industry. If the Disputed Domain Name were to be actively used in the future, the goodwill, reputation and customer appeal attached to the "NETBET" trademark would be further damaged and diluted. The selection of the Disputed Domain Name is so clearly connected to the Complainant's trademark that use by someone with no affiliation with the Complainant strongly suggests bad faith. The Respondent's previous use of the Disputed Domain Name, and its current use of some other related infringing domain names (such as <netbet.us> and <betclic.us>), shows the Respondent is prone to using these domain names for commercial use through PPC advertising.

The Respondent has used PPC links which directs online users to gambling websites. The unauthorized use by the Respondent of the "NETBET" brand to redirect online users to websites that are unlawful or unregulated pursuant to domestic Indian law would

have serious consequences upon the trust and goodwill built under the "NETBET" name. The purpose for seeking transfer of the Disputed Domain Name is for defensive purposes on part of the Complainant.

Respondent

The Respondent has not filed the Response to the Complaint 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 the Respondent to file a response.

It remains incumbent on the 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 the 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 thereunder."

The Arbitrator has examined the Complaint and documents filed by the Complainant and he will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Complainant has produced trademark certificates for registration of its Trademark NETBET issued by various authorities along with the Complaint which demonstrates its trademark rights in the Trademark NETBET. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration

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netbet.com incorporating its Trademark NETBET which leads to website containing information on the various products of NETBET.

The disputed domain name was registered by the Respondent on 10.07.2012, which wholly incorporates Trademark NETBET of the Complainant.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy¹. Internet users who enter the disputed domain name <netbet.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <netbet.in> incorporating the Trademark NETBET of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <netbet.in> is confusingly similar to the website and Trademark NETBET of the Complainant.

¹ See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests in the domain name².

The Respondent has registered the disputed domain name consisting of the Trademark owned by the Complainant. The Complainant has been using the Trademark NETBET since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark NETBET.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <netbet.in> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark NETBET of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made

² See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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out a prima facie case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <netbet.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 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. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered domain name <netbet.in> with the .IN Registry incorporating the Complainant's well-known, prior used and registered Trademark NETBET. The domain name is also identical to the prior registered domain of the Complainant i.e. netbet.com. There can be no plausible explanation for the registration and use of the impugned domain name <netbet.in> by the Respondent as the trade/service mark NETBET of the Complainant is a coined mark and exclusively used by the Complainant and its group companies for its products and services. The impugned domain name <netbet.in> has been created by the Respondent very recently on 10.07.2012. The Respondent thus has

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deliberately acquired an identical name in which the Complainant has substantial interest being its registered Trademark. The Respondent is presumed to have constructive notice of the commercial value and significance of the Trademark NETBET which forms a conspicuous part of the disputed domain name.

The Respondent is not making actual use of the domain name since the same does not lead to an active website. The Respondent is passively holding the impugned domain name <netbet.in> in bad faith as the same does not resolve to a web site or other online presence. The use of the impugned domain name <netbet.in> being passively held by the Respondent will diminish the strength and the distinctive value of the trade/service mark NETBET resulting in its dilution and tarnishment.

The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark NETBET in any manner. The disputed domain name clearly incorporates the Complainant's Trademark NETBET in its entirety. Such unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <netbet.in> which incorporates the Trademark NETBET of the Complainant is, in this Arbitrator's view,

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to capitalize on the reputation of the Trademark of the Complainant.

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

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

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

7. Decision

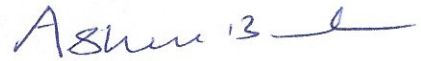
Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <netbet.in> is similar to the Trademark NETBET in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <netbet.in> be 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: 31.12.2019



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

Advocate, Punjab and Haryana High Court
Arbitration House 6, Shivalik Enclave, NAC,
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