



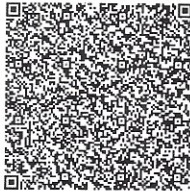
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL50494795231887R
Certificate Issued Date	: 05-Sep-2019 10:25 AM
Account Reference	: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71730307867884725850R
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Dr. V. K. AGARWAL, Sole Arbitrator  
NATIONAL INTERNET EXCHANGE OF INDIA  
6C, 6D, 6E, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110 001

*V K Agarwal*

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FDC Limited v. Confluence Home Pvt. Ltd.

**CASE NO. INDRP/1137/2019**

**AWARD**

**1. The Parties**

The Complainant is M/s FDC Limited, 142 – 48, S. V. Road, Jogeshwari (West), Mumbai – 400 102.

The Respondent is M/s Confluence Home Private Limited, 125, 2<sup>nd</sup> Floor, Shahpurjat, New Delhi 110 049.

**2. The Domain Name and Registrar**

The disputed domain name is <www.fdcindia.in>. The said domain name is registered with Net 4 India Limited, 139 – A – 1 S/F Mohammadpur, New Delhi – 110 061. The details of registration of the disputed domain name, as per Exhibit 3 to the Complaint, are as follows:

(a) Domain ID:	D7804623 - IN
(b) Registrar:	Net 4 India Limited
(c) Date of creation:	October 26, 2013
(d) Expiry date:	October 26, 2023

**3. Procedural History**

(a) A Complaint dated August 6, 2019 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Exhibit 3. It is confirmed that the Respondent is listed as the registrant and provided the contact details

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for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (b) In accordance with the Policy and the Rules, an attempt was made by the National Internet Exchange of India to send a copy of the Complaint to the Respondent through e mail address. However, no reply has been received from the Respondent. Hence, the present proceedings have to be ex parte.

#### **4. Factual Background**

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant is a public limited company incorporated in India with its company name and trademark "FDC Limited". The Complainant was initially established in 1940 with the name of "Fairdeal Corporation (Private) Limited". In the year 1986 its name was changed to FDC Private Limited. On September 16, 1988 the Complainant became a public limited company and changed its name to "FDC Limited".

*V. K. Agarwal*

According to the Complaint, the Complainant has been in the pharmaceutical business in India since 1936. It is engaged in the business of manufacturing and marketing Oral Rehydration Salts (ORS) and Ophthalmics. The Complainant has also set up multi-location manufacturing facilities for Active Pharmaceuticals Ingredients (APIs) as well as Finished Dosage Forms. In other words, the Complainant markets more than 300 products in India and exports many of these to over 50 countries.

The Complainant also has presence in the United Kingdom and South Africa. It has a 100% wholly owned subsidiary viz. FDC International Limited (established in 1996) and a branch office viz. FDC Pharma (established in 2009) - both are located in Southampton, United Kingdom. The Complainant also has a subsidiary in South Africa by the name of FDC SA (Pty) Limited (established in 2003). Further, in India the Complainant has received, as mentioned in the Complaint, a number of awards and accolades.

### **Respondent's Identity and Activities**

The Respondent's activities are not known.

## **5. Parties Contentions**

### **A. Complainant**

The Complainants contend that each of the elements specified in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. The said elements are as follows:

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- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

The Complainant contends that each of the elements specified in the Policy is applicable to this dispute.

In relation to element (i), the Complainant contends that the Complainant is, inter alia, owner of several trademark registrations for the designation FDC, all of which are for the nature of services rendered by the Complainant. These trademarks are registered in different countries. According to the Complaint, following is an illustrative list of such registered trademarks (copies of the Registration Certificates are available at Exhibit 4 of the Complaint).

Mark	Reg. No.	Appl. Date
<b>FDC</b>	216397	July 5, 1963
<b>FDC DEXAVIT</b>	143280	April 22, 1950
<b>FAIRDEAL'S FDC VITCOBIN</b>	143288	April 22, 1950
<b>FAIRDEAL'S FDC NEUSEDIL</b>	143289	April 22, 1950
<b>FAIRDEAL'S FDC PLUVITIN</b>	143290	April 22, 1950
<b>FAIRDEAL'S FDC RUTO CIN</b>	151017	October 08, 1951
<b>FAIRDEAL'S FDC TONAVIT</b>	151018	October 08, 1951

According to the Complaint, the said trademark has acquired enormous goodwill and reputation and high degree of distinctiveness, distinguishing

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and signifying the source of the services as originating from the Complainant and/or their group company.

The Complainant contends that the disputed domain name contains the trademark of the Complainant, that is, FDC. The addition of the generic word "in" in a domain name is insignificant. It does not lead to any distinctiveness or reduce the similarity to the trademark "FDC" of the Complainant. It will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the services offered under the disputed domain name from the Complainant. Further that, it does not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the services rendered by the Complainant.

Further, the Complainant is also the registrant and proprietor of domain name registrations at different levels incorporating the word FDC. One such illustration is: <www.fdcindia.com>, etc;

In support of its contention, the Complainant has relied on the decision in the case of *Akshaya Pvt. Ltd., v. Mr. Prabhakar Jeyapathy (INDRP/277)*; *G. A. Modfine S. A. v. Naveen Tiwari (INDRP/082)*, and *L'Oreal v. Zeng Wel <Lorealparis.in> (INDRP/342)*.

Therefore, the Complainant contends that the disputed domain name is identical and/or confusingly similar to the registered trademark 'FDC' of the Complainant.

In relation to element (ii), the Complainants contend that the Respondent (as an individual, business, or other organization) has not been commonly known by the trademark "FDC". The Respondent does not own any trademark registration as "FDC" or a mark that incorporates the expression

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"IFDC". The Respondent has no license or authorization or permission from the Complainants to either use the designation "FDC" or to register the disputed domain name with the said words.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent has registered the domain name for the sole purpose of harping upon the goodwill and reputation of the Complainants in the trademark domain name FDC and for creating confusion and misleading the general public.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

It has been held in the World Intellectual Property Organization (Arbitration & Mediation Centre) Case No. D2000-0055 that *"...in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated bona fide or legitimate use of the domain name could be claimed by the Respondent"*.

Regarding the element at (iii), the Complainant contends that, "in view of (i) Complainant's registered and common law rights in the said trademark, (ii) the use of the mark by the Complainant for many years prior to Respondent's registration of the Domain name, (iii) the Complainant's prior use of the FDC mark on the internet and in other domain names, (iv) the significant fame, goodwill and reputation associated with the mark FDC, and (v) the content of Respondent's website, it is impossible to conceive of any circumstances in which the Respondent could have registered the Domain name in good faith or without knowledge of Complainant's rights".

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Thus, the Respondent has registered the disputed domain name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.fdcindia.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The consumers are visiting the disputed website under the belief that either the said website belongs to the Complainants or there is an association or endorsement of the disputed domain by the Complainant which is not the case.

The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services.

The Complainants have stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

In support of their contentions, the Claimants have relied on a number of decisions. The findings given in the said decisions have been duly considered. It is not necessary to refer them here.

## **B. Respondent**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.fdcindia.in> or any trademark right, domain name right or contractual right.

## **6. Discussion and Findings**

The Rules instructs this Arbitrator as to the principles to be used in rendering

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its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the .IN Domain Name Dispute Resolution Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

As has been stated above, according to Clause 4 of the said Policy, the Complainant must prove that:

- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

*A. Identical or Confusingly Similar*

The disputed domain name <www.fdcindia.in> was registered by the Respondent on October 26, 2013. The present Complaint is dated August 06, 2019. No explanation is available for the delay of more than six years in filing the Complaint.

The Complainant is an owner of the registered trademark "FDC". The Complainant is also the owner of a number of domains with the word "FDC" as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created and/or registered by the Complainant much before the date of creation of the disputed domain name

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by the Respondent. The disputed domain name is <fdcindia.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The disputed domain name <www.fdcindia.in> gives rise to the confusion and deception *qua* its origin because the disputed domain name is phonetically, structurally and deceptively similar to the Complainant's trademark/ domain names "FDC". The domain name is instantaneously associated with the Complainants. Further, a possibility that an internet user who wishes to visit the Complainant's website for gathering information, is likely to be taken to the Respondent's website cannot be ruled out. Thus, the internet user may see inaccurate information. It may be detrimental to the Complainant's earned goodwill and reputation.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for FDC products in India or elsewhere would mistake the disputed domain name as of the Complainant.

Therefore, I hold that the domain name <www.fdcindia.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

#### *B. Rights or Legitimate Interests*

According to Clause 7 of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

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- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent by which the disputed domain name is registered is Confluence Home Pvt. Ltd.

Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "FDC" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant/Respondent. Further that, the Registrant/Respondent has nothing to do remotely with the business of the Complainants.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy. Clause 4(ii) and Clause 7.

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C. *Registered and Used in Bad Faith*

According to Clause 6 of the Policy, any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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's 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 the 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.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.fdcindia.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized

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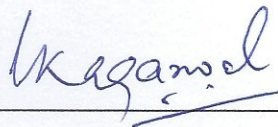


by or is in association with and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

## **7. Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainants have rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.fdcindia.in> be transferred to the Complainant.



Vinod K. Agarwal  
Sole Arbitrator

Date: 09<sup>th</sup> September 2019