

INDIA NON JUDICIAL

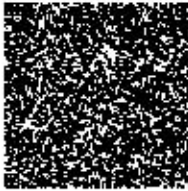
Government of National Capital Territory of Delhi

e-Stamp



सत्यमेव जयते

Certificate No. : IN-DL46177011168874R
Certificate Issued Date : 27-Aug-2019 11:33 AM
Account Reference : IMPACC (IVY) d/916803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL91680398130829893104R
Purchased by : LUCY RANA
Description of Document : Article Others
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : LUCY RANA
Second Party : Not Applicable
Stamp Duty Paid By : LUCY RANA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY
(Appointed by .IN Registry- National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <AKELIUS.IN>

IN THE MATTER OF:

Akelius Residential Property AB/ Roger Akelius
Svardsvagen 3A,
Box 104,
182 12 Danderyd,
Sweden.

...Complainant

-----versus-----

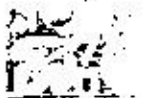
Shashi Shekar/ Shashishekar T.S.
Restalundsvagen 42,
Orebro,
Orebro Lan- 70216,
Sweden.
Ph: +46.767948628
E-mail: shashi.shekar7@gmail.com

... Respondent

L. Rana

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shodestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority



1. The Parties

The **Complainant** in this arbitration proceeding is **Akelius Residential Property AB/ Roger Akelius**, of the address Svardsvagen 3A, Box 104, 182 12 Danderyd, Sweden.

The **Respondent** in this arbitration proceeding is **Shashi Shekar/ Shashishekar T.S.**, an individual Indian citizen, having address at Restalundsvagen 42, Orebro, Orebro Lan- 70216, Sweden.

2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <akelius.in> with the .IN Registry. The Registrant in the present matter is **Shashi Shekar**, and the Registrar is **GoDaddy.com, LLC**.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

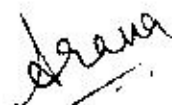
NIXI vide its emails dated June 24 and July 04, 2019, sought consent of **Mrs. Lucy Rana** to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on July 04, 2019.

Thereafter, NIXI forwarded soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide email dated July 11, 2019 (stipulating the date of handover as July 10, 2019) and made the pronouncement that Mrs. Lucy Rana, in her capacity as Arbitrator, would be handling the matter. The hard copies of the Domain Complaint along with Annexures as filed by the Complainant were also received by the Arbitrator on the same day.

The Arbitrator confirmed receipt of the Complaint along with Annexures as filed and further sought confirmation of service of the same in soft as well as hard copies upon the Respondent vide emails dated July 13, 2019.

The Respondent acknowledged receipt of the soft copy of the Complaint along with Annexures as filed, however requested for thirty (30) days' time to furnish a reply after receipt of the same in hard copy, vide email dated July 11, 2019.

Thereafter, the Arbitrator, vide email dated July 13, 2019, informed the Respondent that as he has been duly served with the Complaint and Annexures thereto in soft copy, as acknowledged by him vide his email of July 11, 2019, as per Rule 2(a)(ii) of the INDRP Rules of Procedure, this constitutes effective service. Further, Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 provides that *"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."*



Hence the service of notice was deemed to have been completed upon the Respondent. Therefore, the Respondent was deemed to have been duly served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email (i.e. July 13, 2019), within which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

However, the Respondent, once again vide (identical) emails of July 15 and 19, 2019 once again requested for thirty (30) days' time to furnish a reply after receipt of the same in hard copy. The Arbitrator replied on July 19, 2019 and reiterated that the Respondent had already been deemed to have been served with the Complaint as filed and Annexures thereto vide Arbitrator's email of July 13, 2019 and had further been granted a period of **fourteen (14) days** therefrom. However, the Arbitrator was willing to extend the time by **seven (7) days** and stipulated the revised deadline as **August 03, 2019**.

Thereafter, the Respondent tendered his official reply to the domain complaint vide email dated July 25, 2019, however Arbitrator noted that the same was regarding on-going domain complaint proceedings between the same parties, however in respect of the domain <akelius.co.in> (INDRP Case No. 1114) being adjudicated by a different arbitrator, and requested clarification whether the said reply was to be considered as the Respondent's official reply in respect of the present matter as well, vide email dated July 28, 2019. The Respondent replied in the affirmative on the same day.

The Arbitrator acknowledged receipt of the Respondent's confirmed reply in the matter and granted the Complainant **fourteen (14) days** to submit an official rejoinder thereto vide email of July 29, 2019. The Arbitrator further requested the Respondent to remove her email address from the recipients in respect of the corresponding on-going matter of <akelius.co.in> (INDRP Case No. 1114) vide separate email on the same day.

Complainant's counsel submitted the official rejoinder to the Respondent's reply vide email dated August 02, 2019. Arbitrator acknowledged receipt of the same on the same day and granted the Respondent **seven (7) days** therefrom to tender a reply thereto (if any). Arbitrator also advised both Parties that no further submissions thereafter would be entertained from either Party.

Respondent tendered his formal (in-line) response to the Complainant's rejoinder on August 03, 2019 (received by Arbitrator on August 04, 2019 owing to international time difference). However, the Complainant's counsel tendered an objection thereto (vide email on August 05, 2019) claiming that there is no provision in the INDRP for filing a further reply to the rejoinder, especially without leave of the Arbitrator, and requested the Arbitrator to disregard the Respondent's response. The Respondent replied to this email on the same day, inter alia pointing out that leave to reply had been granted by the Arbitrator and requesting the Arbitrator to in fact take note of the contents of his response.

The Arbitrator, vide email on the same day as well, corrected the Complainant and allowed the Respondent's reply to Rejoinder to be taken on record. Thereafter, proceedings were concluded, and award was reserved on the basis of material on record and applicable law.

4. Factual Background-Complainant



The Complainant has made the following factual submissions (supported by annexed exhibits) of note:

- That they are the largest listed real estate company in Sweden;
- That while they were founded and incorporated in 1971 (under the name 'Exklusiv Fritid Aktiebolag', and thereafter changed their name to 'Aktiv Forvaltningstjanst Aktiebolag'), they only changed their corporate name officially to "**Akelius Fastigheter Aktiebolag**" in 1994;
- That their business involves buying, upgrading and managing residential properties and that they now have holdings in 13-15 metropolitan cities spread across Europe and North America;
- That the Complainant is the registered proprietor of the trademarks **AKELIUS/ Akelius** as used in respect of insurance, financial affairs, monetary affairs and real estate affairs, worldwide. The Complainant has provided details of their trademark registrations in Norway, Sweden, the European Union, USA and International Registrations;
- That the Complainant has spent huge sums of money on advertisement and sales promotions of its products and services under the trademarks **AKELIUS/ Akelius**;
- The Complainant owns the domain name <akelius.com> which was registered on **January 03, 1997**;
- That the top most search results for the term "Akelius" on popular internet search engines show only the Complainant's business;
- That the Complainant maintains an active presence on social media (namely, Facebook and LinkedIn).

Legal History (Complainant)

The Complainant has claimed that the trademarks **AKELIUS/ Akelius** are highly distinctive and have acquired substantial international reputation and goodwill and are therefore associated with the Complainant alone.

The Complainant has submitted that the Respondent has registered the disputed domain name <akelius.in> since January 01, 2019 which is subsequent to the adoption and use of the name/mark **AKELIUS/ Akelius** without authorization or license from the Complainant.

The Complainant has submitted that the disputed domain name <akelius.in> resolves to a webpage which is parked for free courtesy of the domain registrar, GoDaddy. The Complainant has further submitted that the said free parked page displays the message "*Would you like to buy this domain?*" which, the Complainant contends, is evidence that the Respondent has registered the disputed domain in bad faith, with the sole purpose of selling it for valuable consideration in excess of its documented out-of-pocket costs. The Complainant has contended that the Respondent's website appears to be a pay-per-click website (i.e. profiting from the number of clicks made by users on the links that are hosted thereon) and that the disputed



domain name has been registered merely with the objective of attracting internet traffic on the strength of the reputation of the Complainant's trademark AKELIUS, and selling the said domain for illegal profits.

The Complainant has claimed that it is aware that the Respondent (Registrant) is approaching its (the Complainant's) customers to expand their business venture in the same field of business, i.e. property and real estate, and to garner sales by exploiting the reputation and goodwill of the Complainant and their name/mark AKELIUS. The Complainant has annexed an email claiming to evidence the Respondent's fraudulent activities in this regard as Exhibit 11.

The Complainant claims that it has well-established rights in its AKELIUS marks through its long term, continuous and exclusive use of the same and that the Respondent can have no possible explanation for adopting a domain name which is phonetically, visually and conceptually identical to the Complainant's name/mark AKELIUS. The Complainant has further contended that a web browser looking for the Complainant's services under its

trademarks AKELIUS/ **Akelius** would very likely mistake the Respondent's domain as being their India-specific domain. Therefore, the Complainant has contended that the Respondent's conduct amounts to infringement by taking advantage of the Complainant's goodwill and reputation in the aforesaid trademarks, divert the Complainant's customers and make unjust monetary gains. Thus, the Complainant has claimed that the Respondent's activities are unlawful and likely to jeopardize the reputation and goodwill accrued by the Complainant in its aforementioned trademarks.

5. Contentions and Legal Grounds Submitted by the Complainant

The Complainant has made the following legal claims in its complaint:

A. The domain name <akelius.in> is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights [INDRP, Para 4(i), Rules 3(b)(v), (b)(vi)(1)]

- i. That the Complainant has continuously used the name/mark AKELIUS prior to January 01, 2019, i.e. the registration date for the disputed domain name. That the Complainant also holds the registration for the domain name <akelius.com> since (January 03) 1997. That the Complainant had also obtained (global) trademark registrations for the trademarks AKELIUS/

Akelius much prior to 2019, all of which remain valid and subsisting. On the basis of the aforesaid, the Complainant has contended that

the Complainant's rights in the trademarks AKELIUS/ **Akelius** pre-date those of the Respondent. The Complainant has relied on the decision in the matter of: *Uniroyal Engineered Products v. Nauga Network Services WIPO Case No. D2000-0503 (July 18, 2000)* in support of their contentions in this regard.

- ii. That it is obvious that the disputed domain name <akelius.in> is identical to the Complainant's name/mark AKELIUS, save for the <.in> ccTLD, which

dgang

is necessary for technical reasons and is not sufficient to distinguish the disputed domain name from the Complainant's trademark. The Complainant has relied on the decision in the matter of: *Robbie Williams v. Howard Taylor*, *WIPO Case No. D2002-0588* and *Expedia Inc. and Hotels.com L.P. v. Arabia Horiozons Tours LLC*, *WIPO Case No. DAE2014-0005* in support of their contentions in this regard.

- iii. In view of the above contentions, the Complainant has submitted that the conditions as laid down under Paragraph 4(i) and Rules 3(b)(v) and 3(b)(vi)(1) read with Paragraph 7 of the INDRP and Rules, are hereby satisfied.

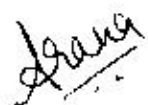
B. The Respondent has no rights or legitimate interests in the domain name <akelius.in> [INDRP, Para 4(ii) and Rules 3(b)(vi)(2)]

- i. That the Respondent has registered the disputed domain name only in 2019, i.e. decades after the Complainant has invested millions of dollars in popularizing and seeking registration of the trademarks **AKELIUS/ Akelius** and the domain name <akelius.com>. That moreover, by the time the Respondent registered the disputed domain name, the Complainant had already generated hundreds of millions of Euros in revenue

under the trademarks **AKELIUS/ Akelius** and acquired the status of a "well-known"/famous mark. In view thereof, the Complainant has contended that the Respondent would have been well aware of the Complainant's prior

rights in respect of the trademarks **AKELIUS/ Akelius** at the time of registering the disputed domain name. The Complainant has relied on the decision in the matter of *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TLX*, *WIPO Case No. D2005-0179* and *Accord Young Genius Software AB v. MWD, James Vargas*, *WIPO Case No. D2000-0591* in support of their contentions in this regard.

- ii. That there is no credible legitimate reason for the Respondent to have chosen to adopt the identical domain name consisting of the **AKELIUS** trademark. That the Respondent's purpose in selecting the disputed mark was to generate web traffic and to confuse internet users when looking for the Complainant and their services.
- iii. That upon information available to the Complainant and their bona fide belief in this regard, the Respondent is not commonly known by any name (or nickname) incorporating the Complainant's name/mark **AKELIUS**. The Complainant has further submitted that the Respondent has not been authorized by the Complainant to register or use the mark **AKELIUS**, including in respect of a domain name. The Complainant has relied on the decision in the matter of *SAP Systeme/SAP India Systems v. Davinder Pal Singh Bhatia*, *WIPO Case No. D2001-0504 (June 08, 2001)* in support of their contentions in this regard. Therefore, and further in light of the fact that the Respondent's website carries no content, but has merely been parked for free, the Complainant has contended that the registration of the disputed domain

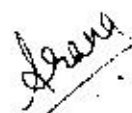


name by the Respondent is a typical example of "cybersquatting", and that the Respondent has no legitimate business interests in respect of the same, nor can such use be said to be a bona fide offering of goods or services, nor a legitimate, non-commercial or fair use of the disputed domain name.

- iv. Accordingly, the Complainant has asserted that the burden of proving that the Respondent does in fact have any rights or legitimate interests in the disputed domain name <akelius.in> now shifts onto him and has referred to the decisions in the matters of *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 and *Clerical Medical Investment Group Limited v. Clericalmedical.com* (Clerical and Medical Services Agency), WIPO Case No. D2000-1228, and has submitted that the conditions as laid down under Paragraph 4(ii) and Rule 3(b)(vi)(2) read with Paragraph 7 of the INDRP and Rules, are hereby satisfied.

C. The Complainant submits that the domain name was registered and is being used by the Respondent in bad faith [INDRP Para 4(iii), Rules 3(b)(vi)(3)]

- i. The Complainant has contended that, the disputed domain name was acquired by the Respondent with the express intention of making money by selling the same in excess of incurred out-of-pocket expenses as the message "Would you like to buy this domain?" is prominently advertised on the free parked page hosted at the domain. The Complainant has further contended that the Respondent (Registrant) has been approaching the Complainant's customers to expand his business venture in the field of property and real estate and to garner sales by exploiting the reputation and goodwill of the Complainant in its name/mark **AKELIUS**. The Complainant has annexed a copy of an email (contact information redacted) dated May 27, 2019, and alleged as being a fraudulent communication from the Respondent targetting one of the Complainant's customers, and citing the same as evidence of the Respondent's bad faith in registering the disputed domain name for the primary purpose of deriving unfair advantage by making unauthorized use of the Complainant's name/mark **AKELIUS**. The Complainant has relied on the decisions in the matters of *Cofra Holding AG v. Mr. Obada Alzatari*, WIPO Case No. D2014-1709 and *Royal Bank of Canada v. Namegiant.com*, WIPO Case No. D2004-0642, in support of their contentions in this regard.
- ii. The Complainant has contended that it is unlikely that the Respondent created the disputed domain name comprising of the Complainant's identical name/mark **AKELIUS** independently and in fact that it can instead be construed that he was aware of the Complainant's trademark rights in respect of **AKELIUS** on account of the following factors:
 - a. Continuous use of the brand **AKELIUS** in respect of their business since 1994, as well as registered proprietorship of the trademarks **AKELIUS/Akelius** in various countries worldwide;
 - b. Earliest trademark registration in respect of **AKELIUS** in the name of the Complainant dating back to 1995;



- c. Registration of the domain name <akelius.com> in 1997, i.e. decades before the Respondent's registration of the disputed domain name (in 2019);
 - d. That the Respondent has not hosted any content on the disputed domain name <akelius.in> and has only parked it for free.
- iii. The Complainant has contended that despite having prior knowledge of the Complainant's trademark rights in this regard, the Respondent registered the disputed domain name with no intention of conducting legitimate business thereon, and that this amounts to clear evidence of bad faith registration. That the Respondent has intentionally attempted to attract Internet users to the website at the disputed domain by misleading them and creating a likelihood of confusion with regard to the source, sponsorship, affiliation or endorsement of the website available thereon for his own commercial gain. The Complainant has relied on the decision in the matter of *SAP AG v. Peifang Huang*, *WIPO Case No. D2014-0928*, in support of their contentions in this regard.
 - iv. The Complainant has contended that the Respondent's choice of an identical disputed domain name cannot be a coincidence and must be definitely directed towards illegally encashing upon goodwill and reputation of the Complainant.
 - v. Accordingly, the Complainant has asserted that the Respondent's use of the disputed domain name constitutes use in bad faith and has submitted that the conditions as laid down under Paragraph 4(iii) and Rule 3(b)(vi)(3) read with Paragraph 7 of the INDRP and Rules, are hereby satisfied.

6. Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <akelius.in> to be transferred to the Complainant by means of the present Complaint.

The Complainant has submitted that they are unaware of any other legal proceedings either commenced terminated pertaining to the disputed domain name.

7. Respondent's Submissions/Contentions vide Reply dated July 25, 2019

The Respondent vide its Reply dated July 25, 2019 to the present Domain Complaint has put forward the following points, which are briefly stated as follows:

- i. That they have registered a company under the name 'Akeliu Tech Private Limited'. The Respondent has annexed the Certificate of Incorporation of the said company on January 17, 2019 under CIN U72900KA2019PTC120507 along with his reply;
- ii. That they have no business operations in Sweden and are based out of Tumkur District, Karnataka;
- iii. That they are not related to the Complainant's field of business (i.e. real estate) and instead operate in the field of (information) technology;

- iv. That they have no mala fide intentions against any other company;
- v. That they are in the final stages of building their website and have plans to launch the same soon;
- vi. The Respondent has raised the contention of how they can be accused of misappropriating the goodwill of the Complainant when they are operating from an Indian small town;
- vii. That they had conducted searches for Indian businesses and trademarks conflicting with 'AKELIUS' prior to commencing their business, however had not come across any conflicting companies or businesses. Further, that they have now also registered a company in India under the name 'Akelius Tech Pvt. Ltd.' and also have a corresponding trademark;
- viii. That they have a genuine and bona fide technology business in India and are willing to submit the logos and website design, inter alia showing that they are not related to the Complainant's business operations;
- ix. The Respondent claims that they cannot steal the goodwill or customers of the Complainant as they are involved in completely different streams of business as well as in different geographic locations. Therefore, the Respondent has contended that their activities cannot affect the Complainant;
- x. Respondent has denied having sent any email (namely the one dated May 27, 2019 as presented by the Complainant) to acquire property in Sweden in the name of **Akelius Tech Pvt. Ltd.** Respondent has contended that in order to buy property in Sweden, a company needs to be registered in Sweden. However, the Respondent's company has been incorporated and operates in the sphere of technology solely in India;
- xi. The Respondent has alleged the Complainant's mala fide intentions in attempting to acquire their domain name by means of the present dispute proceedings and has placed a request before NIXI to disregard the Complainant's false claims, especially in view of the fact that the Complainant does not operate a technology business in India;
- xii. Respondent has once again asserted that they do not operate in any of the countries/locations worldwide where the Complainant have their operations and that their areas of operation are completely different (i.e. real estate as compared to software technology). Moreover, that the majority of the Respondent's customers at present are confined to Tumkur district, Karnataka, India;
- xiii. Respondent has asserted that as the two parties are operating in different spheres of business as well as in geographic locations and further as they have no bad faith intentions of causing consumer confusion with respect to the Complainant's consumer base; and also that they have not infringed any trademark and are duly registered per the regulations of the Ministry for Corporate Affairs (i.e. as an incorporated company), they had registered the domain name <akellus.in> corresponding to their corporate name in which they claim rights;
- xiv. Respondent has further represented that although the Complainant has put forward that the term "AKELIUS" has no meaning, the Respondent has selected it based upon its meaning in Greek mythology signifying "*fine qualities*". The Respondent has submitted that they had made this submission even while incorporating their company and had conducted due diligence searches prior thereto wherein no Indian business under the name "AKELIUS" had been revealed;
- xv. The Respondent has asserted that they have no intention of voluntarily surrendering the disputed domain name <akelius.in> as they are an operational company;
- xvi. That the email (dated May 27, 2019) as tendered by the Complainant is fraudulent and is being used to "steal" their domain. The Respondent claims not to desire to take advantage of any of the Complainant's goodwill;



- xvii. The Respondent has submitted that he has attached documents in support of his claims and contentions and is willing to provide any further documentation as may be required.

The Respondent has annexed the following documents in support of his claim and contentions as put forward vide his aforementioned Reply:

- a) A copy of the certificate of incorporation for **Akelius Tech Pvt. Ltd.** dated January 17, 2019;
- b) A copy of the webpage as available at the domain <**akelius.co.in**>;
- c) A copy of an electronic payment receipt dated February 09, 2019 for an amount of USD 95.40, made to a website hosting provider (BlueHost) with respect to the domain <**akelius.co.in**>;
- d) Copies of three (3) purchase invoices, all dated April 29, 2019, issued to **Akelius Tech** from **Envato Pty. Ltd.**;
- e) Copies of web templates from the website at <**akelius.co.in**>.

Reliefs claimed by the Respondent

The Respondent has prayed that the present Complaint be dropped.

8. Complainant's Submissions/Contentions vide Rejoinder dated August 02, 2019

The Complainant, vide the above-mentioned rejoinder, has responded to the Respondent's reply dated July 25, 2019. Facts, submissions and contentions already stated are not being repeated hereunder for the sake of brevity. The salient points in the rejoinder as put forward by the Complainant are summarised as follows:

At the outset, the Complainant has denied each and every allegation/contention/statement/averment as well as the supporting documents provided by the Respondent vide his reply of July 25, 2019 and has put the Respondent to strict proof thereof. The Complainant has asserted that the reply contains no valid justification(s) for the Respondent's adoption/registration of the disputed domain name and has contended that the same is devoid of merit.

The Complainant has thereafter provided a detailed rejoinder of the allegations/contentions/statements/averments as put forward by the Respondent vide their statement in reply dated July 25, 2019.

By way of preliminary objections, the Complainant has stated/contended as follows:

- i. That the trademark application for the **AKELIUS** logo in Class 42 was filed by the Respondent on July 25, 2019, i.e. after the commencement of the present domain recovery proceedings. Therefore, the Complainant has contended that the move is clearly an afterthought and planned as an attempt to create rights to cover their bad faith in adopting the impugned trade name "**AKELIUS**" in respect of their business. The Complainant has additionally reserved their rights to oppose the registration of the said trademark application before the relevant forum;
- ii. That the Respondent's company '**Akelius Tech Pvt. Ltd.**' was incorporated on January 17, 2019 which is subsequent to his registration of the disputed domain name. Therefore, the Complainant has contended, the registration of one cannot function as



justification for the registration of the other as it is not the case that the Respondent has been trading under the name 'Akelius Tech Pvt. Ltd.' for many years and only now chosen to register a domain name in respect of the same. On the other hand, the Complainant has submitted, that they have been carrying on business under the name/mark 'AKELIUS' since 1994;

- iii. That per the documents submitted by the Respondent, the Directors of the company 'Akelius Tech Pvt. Ltd.' are listed as Mr. Sampath BM and Ms. G. Sowbhagya, and therefore there appears to be no apparent link between the Directors of the said company and the Respondent per the subscriber details provided in the Memorandum of Association. Therefore, the Complainant has contended that incorporation of the company cannot be said to have any bearing on the present case;
- iv. That per the documents submitted by the Respondent, no commercial transaction per se in the name of the said company has been evidenced and further that the website at the domain <akelius.co.in> appears to have only recently been activated (from evidence as tendered by the Complainant with the original domain complaint as filed);
- v. That the Respondent's contentions that it does not operate in Sweden and that it has no business presence in the said country is contrary to the evidence on record, in that the address of the Respondent (Registrant) as mentioned in the WHOIS details of the disputed domain is in Sweden and further by the allegedly fraudulent email as sent by the Respondent and relied upon by the Complainant. The Complainant has contended that both these facts evidence the Respondent's inherent bad faith in taking advantage of the Complainant's acquired goodwill and reputation in respect of the disputed domain name.

On merits, the Complainant has further reiterated its earlier submissions with respect to their

prior registration of the trademarks **AKELIUS/Akelius** in various countries worldwide as well as upon their prior registration of the domain <akelius.com> as of January 03, 1997. The Complainant has once again relied on the cases of *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TLX*, WIPO Case No. D2005-0179 and *Uniroyal Engineered Products v. Nauga Network Services* WIPO Case No. D2000-0503 (July 18, 2000) in support of their contentions.

The Complainant has submitted that the name/mark **AKELIUS** has no meaning in India and is of foreign origin. That it was adopted by the Complainant as far back as 1994 to carry on its real estate business in various countries of the world, and that the Respondent's claim that the name has significance in Greek mythology (i.e. meaning 'fine qualities') is a frivolous justification and an afterthought. The Complainant has further contended that the meaning has no bearing on a technology business and the top results upon searching for the name 'AKELIUS' on popular internet search engines pertain solely to the Complainant and their business. Therefore, the Complainant has contended that it is incomprehensible that the Respondent was not aware of the Complainant at the time of registering the disputed domain name.

The Complainant has contended that where the Respondent's initial adoption of the name/mark 'Akelius' in respect of their business is tainted, subsequent steps, such as filing a trademark application and incorporating a company cannot justify the same. The Complainant has reiterated the Respondent's mala fides in their adoption/registration of the disputed domain name.



The Complainant has prayed that the relief sought by the Respondent be dismissed *in limine* and the disputed domain name be transferred to the Complainant with exemplary costs to be awarded to the Complainant.

9. Respondent's Submissions/Contentions vide Rebuttal dated August 03, 2019

The Respondent, vide the above-mentioned Rebuttal, has responded to the Complainant's rejoinder dated August 02, 2019. Facts, submissions and contentions already stated are not being repeated hereunder for the sake of brevity. The salient points in rebuttal by the Respondent are summarised as follows:

The Respondent has submitted that their delay in filing for trademark applications for an Akelius logo had been delayed owing to delay in the designing and finalization process and not due to any mala fides. The Respondent has further contended that their company is the prior applicant for a trademark incorporating the word 'Akelius' in Class 42 in India (as the Complainant has not filed for registration of its trademarks here). Additionally, the Respondent has posited that it remains open to the Complainant to oppose their trademark application when it becomes available to do so. The Respondent has also contended that as he is presently residing in Sweden, it would not be possible for him to file a trademark in India while being resident in Sweden and that therefore their trademark application had been pre-meditated and was not incumbent upon filing of the present domain complaint.

The Respondent has submitted that they commenced incorporation formalities (such as making requisite payment, etc.) on January 01, 2019, however the incorporation certificate for the company **Akelius Tech Pvt. Ltd.** was issued only on January 17, 2019. However, the Respondent has submitted that they have been bona fide carrying on business under the name **Akelius Tech Pvt. Ltd.** and using the domain name <akelius.in> since their commencement of operations, i.e. since January 01, 2019. The Respondent has contested the Complainant by stating that they are not operating in India under the name/mark **AKELIUS**.

The Respondent has submitted that the Directors of the company **Akelius Tech Pvt. Ltd.**, i.e. **Mr. Sampath B.M.** and **Ms. G. Sowbhagya**, are the Respondent's parents. The Respondent has clarified that he bought the domains on his account for the use of his parents (the Directors) in respect of the company **Akelius Tech Pvt. Ltd.** The Respondent has further stated that he is ready and willing to transfer the domains in his name to the company **Akelius Tech Pvt. Ltd.**

The Respondent has submitted, in response to the Complainant's allegations that he has not been able to show proof of commercial transactions in the name of the company **Akelius Tech Pvt. Ltd.**, that during the relevant time period, the bank account in the name of the Respondent's company **Akelius Tech Pvt. Ltd.** was being set up and they were in the process of designing and testing their website for launch, resulting in a temporary parked page at the disputed domain. The Respondent has claimed that they were in the continuous business of starting up their company under the name **Akelius Tech Pvt. Ltd.** which is sufficient to exhibit legitimate interest in the disputed domain name as per the provisions of the INDRP.

The Respondent has submitted, in response to the Complainant's allegations that the address in the WHOIS records for the disputed domain is one in Sweden that he is currently studying



for a Masters degree in Sweden and holds a valid residential permit to reside in Sweden for the said purpose. The Respondent claims that he is pursuing studies in the field of Mechatronics, inter alia to take over the technological business being operated under the company Akelius Tech Pvt. Ltd. and has annexed proof of admission in this regard alongwith his submissions.

The Respondent has further contended, in response to the Complainant's allegations of fraudulent activity with the intention of acquiring property in Sweden, that the Respondent would first require permissions from relevant authorities in both India and Sweden before being able to acquire property in Sweden. The Respondent has claimed that being a technology company, they are not interested in acquiring real estate or entering into the real estate business. The Respondent has additionally contended that while the Complainant has accused him of sending fraudulent communications (to the Complainant's customers), the Complainant has not been able to support it with sufficient proof and has rejected it as a false accusation. In fact, the Respondent has placed a counter-claim that the present proceedings may be a way for the Complainant to forcibly and fraudulently acquire the Respondent's domain.

The Respondent has contested the Complainant's trademark claims by pointing out that the Complainant may have trademark registrations for its marks in international jurisdictions, but does not have the requisite registrations in India. That trademarks, being country-specific, bestow rights only pertaining to the jurisdiction in which they are registered. The Respondent has stated that the Complainant has failed to satisfy the first criteria for consideration under the INDRP as they have not been able to satisfactorily establish that: i) they have trademark rights in India; ii) that they are not operating commercially in India; and iii) that they operate in a completely different sphere of business (i.e. real estate) from that of the Respondent (information technology).

The Respondent has subsequently refuted the Complainant's reliance on their cited case laws, i.e. *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TLX*, WIPO Case No. D2005-0179 and *Uniroyal Engineered Products v. Nauga Network Services* WIPO Case No. D2000-0503 (July 18, 2000).

The Respondent has submitted that they had employed a CA (Chartered Accountant) to conduct due diligence with regard to conflicting trade name and trademark rights prior to incorporating their company under the name Akelius Tech Pvt. Ltd., and had gone ahead with their registration only upon being advised of no conflict from their CA.

The Respondent has submitted that they are a legitimate business enterprise, holding an incorporated company along with legitimate registered domain name(s) in India. That the Complainant does not hold the requisite trademark rights in India and moreover operates in a completely different jurisdiction and field of business as compared to the Respondent. That the Complainant's allegations of the Respondent's company being a sham company is arrogant and mala fide and amounts to defamation of the Respondent and his business.

The Respondent has submitted that the Respondent has succeeded against the Complainant in respect of all three (3) of the criteria as laid down under the INDRP.

The Respondent has prayed for the disputed domain <akelius.in> to be granted to the Respondent (Registrant) and for the claims of the Complainant to be denied.

10. Further Communications



It is relevant to mention that despite the Arbitrator's express instructions that no further communication would be entertained from either party post-receipt of the Respondent's rebuttal to rejoinder, both Parties tendered communications dated August 05, 2019 before the Arbitrator wherein the Complainant contested the Respondent's rebuttal, inter alia stating that there is no express provision for filing rebuttal to a rejoinder without express leave of the Arbitrator. The Respondent, in reply, stated that the rebuttal had been filed only upon being granted express leave to do so by the Arbitrator vide email correspondence in this regard dated August 02, 2019, and therefore requested the Arbitrator to consider the rebuttal as part of submissions on record.

As mentioned above in the facts of the proceedings, the Arbitrator, vide email also of August 5, 2019, corrected the Complainant and allowed the Respondent's rebuttal to rejoinder to be taken on record.

11. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

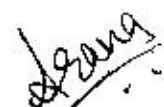
- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
 - ii. The Registrant has no rights and legitimate interest in respect of the domain name;
 - iii. The Registrant's domain name has been registered or is being used in bad faith.
- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**
(Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)

It has been held by the Hon'ble Supreme Court of India in the case of *M/s Satyam Infoway Ltd. v. M/s Sifynet Solutions (P) Ltd.*, JT 2004 (5) SC 541, that a domain name may have all the characteristics of a trademark and such principles (such as founding a passing off action thereon) as are applicable to trademarks, are concurrently applicable to domain names as well.

The Complainant has adopted the name/trademark of their enterprise, **AKELIUS**, from the name of their founder, i.e. **Mr. Roger Akelius**. In view of the facts and evidence placed on record, the Complainant has been successful in establishing their rights in the **AKELIUS** mark by virtue of, *inter alia* prior and bona fide adoption, extensive use and corresponding (valid and subsisting) trademark registrations in jurisdictions around the world, such as, Norway, Sweden, the European Union and the United States of America.

The impugned domain name **<akelius.in>** is identical to the Complainant's registered trademark **AKELIUS**, save for the generic **.in** top level domain that is insufficient to distinguish the impugned domain name from the Complainant's registered mark **AKELIUS**. The Respondent has not challenged this claim of the Complainant.

Instead the Respondent has claimed that the Respondent's business is limited to the technology sphere in Karnataka, or more specifically the district of Tumkur and will therefore not cause



any confusion to the Complainant's real estate business which is based in Sweden. The Respondent has not provided any cogent documentary evidence which demonstrates that the geographical extent of the Respondent's business is limited to Karnataka. In fact, the Respondent has not provided any evidence relating to his actual or intended consumer base whatsoever. By making the above averment, the Respondent cannot expect to guarantee that the Respondent's business will always be restricted to a particular district in the state of Karnataka. Nor can the Respondent expect to guarantee that the Complainant will never contemplate entering the Indian market in the future, in which case the subject domain would be blocked for them to reflect their legitimate trademark **AKELIUS**. These considerations are immaterial to the determination of the case at hand as what is required to be established under Paragraph 4(i) of the INDRP is only a **likelihood of confusion**, and not the extent of actual confusion per se.

Therefore, given the identity of the impugned domain name <akelius.in> as compared to the Complainant's trademark **AKELIUS**, the Arbitrator upholds that the Complainant has been able to satisfactorily establish the conditions as laid down under Paragraph 4(i) of the INDRP.

ii. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established rights in their **AKELIUS** mark by virtue of prior adoption, bona fide use and registrations around the world since at least 1994.


The Respondent gained registration of the disputed domain name, i.e. <akelius.in> on January 1, 2019, which is *prima facie* subsequent to the Complainant's date of adoption and use of its **AKELIUS** marks and his parents obtained registration of a company called **Akelius Tech Private Limited** on January 17, 2019.

However, as pointed out by the Complainant, the Respondent does not appear to have any direct connection or link with the company, namely **Akelius Tech Private Limited**, as he is not a listed Director in respect thereof. Therefore, the incorporation of the same is irrelevant to the determination of the instant complaint. Further, the Respondent has also allegedly applied for trademark registration of the mark **AKELIUS** in Class 42, however has failed to put any evidence (such as details of the trademark filed or confirmation of such filing) on record in this regard. Nevertheless, by his own averments in his reply to the Complainant's rejoinder, the Respondent has confirmed the Complainant's contention that the said trademark was filed for **after** the institution of the present domain complaint. Therefore, the Respondent has himself admitted to subsequent adoption of a similar trademark.

Under the provisions of Paragraph 7 of the INDRP, three circumstances are enumerated (in particular, and without limitation), and if the Registrant (Respondent) is able to prove his rights in respect of any of the three in his favour, shall demonstrate his rights and legitimate interests in the disputed domain name for the purposes of Paragraph 4(iii).

Based on the submissions and evidence as presented by both Parties on record, it is held in this regard as follows:

- a) **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;**



As outlined above, the Respondent (Registrant) has not been able to establish concrete links with the company under the name **Akelius Tech Private Limited**, as he is not a listed Director in respect thereof. Further, by his own admission, the trademark filed in the name of the said company was post-facto, i.e. subsequent not only to the Complainant's adoption, use and registration of their **AKELIUS** marks, but also subsequent to the institution of the present domain complaint. Additionally, as evidenced by the Complainant (vide Exhibit 10 as annexed with the Complaint), the disputed domain had, up until the present complaint had been instituted, hosted a parked page courtesy of the domain registrar (GoDaddy). A functioning website is only being developed thereon by the Respondent post facto, i.e. subsequent to the institution of the present domain complaint.

In view thereof, the Respondent has not been able to satisfy the provisions as laid down under Paragraph 7(i) of the INDRP.

- b) 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;**

The Respondent, as submitted vide his reply to the Complaint has stated that they had adopted the name 'AKELIUS' in respect of their business allegedly from Greek, meaning "*fine qualities*" the same cannot independently be verified and is therefore not acceptable.

The Respondent has not tendered any other evidence to show that they are or ever have been commonly known by the disputed domain name. In view thereof, the Respondent has not been able to satisfy the provisions as laid down under Paragraph 7(ii) of the INDRP.

- c) 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 has clearly stated that the name 'AKELIUS' was adopted in respect of his parents' business activities in the field of information technology under the corporate entity **Akelius Tech Private Limited**.

In view thereof, it cannot be said that the Respondent is or intends to make any non-commercial use of the same. Therefore, the Respondent has not been able to satisfy the provisions as laid down under Paragraph 7(ii) of the INDRP.

The Complainant, on the other hand, has evidenced first adoption of the name/mark **AKELIUS** by virtue of its company registration certificate (Exhibit 2 as annexed along with the Complaint) which demonstrates that the mark **AKELIUS** has been incorporated in the Complainant's name since the year 1994. The Complainant has stated that the name/mark **AKELIUS** was adopted bona fide from the name of its founder, **Mr. Roger Akelius**. The Complainant has also adduced evidence showing use of the mark **AKELIUS** on the



Complainant's website <akelius.com> as well as on various merchandise such as stationery, pool cars, umbrellas, etc. Further, the Complainant has evidenced that it owns trademark registrations in various jurisdictions around the world, such as, in Norway, Sweden, the European Union and the United States of America, with the earliest registration (in Norway) dating back to the year 1995. The Complainant has also averred that it has extensive presence over social media websites such as Facebook and LinkedIn.

Owing to the Complainant's extensive business presence internationally as well as online (including on social media) since at least 1994, the Respondent's averments of being unaware of the Complainant's business are not tenable and constructive notice of the Complainant's business operations can be assumed on part of the Respondent in this regard, especially as the Respondent confirms having conducted due diligence prior to their adoption of the disputed domain name. However, the Complainant's argument that such notice is owing to the Complainant's AKELIUS mark having become well-known/famous as envisioned under Indian trademark law is rejected owing to lack of sufficient evidence tendered in support thereof.

The Complainant is an entity based in the country of Sweden, where it has acquired mass reputation, as has been sufficiently evidenced in the Complainant's submissions. As reflected in the WHOIS details of the disputed domain name, the Respondent is also (presently) residing in Sweden. In view thereof, being resident in Sweden at the time of registering the disputed domain name, the Respondent can be deemed to have had constructive notice of the Complainant's name/mark AKELIUS as reputed in Sweden.

The Complainant has placed reliance on the decisions in the matter of *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX WIPO Case No. D2005-0179* wherein it was held that, "*where a Respondent has constructive notice of a trademark, and yet registers a confusingly similar domain name thereto, the Respondent cannot be said to have a legitimate interest in the domain name*".

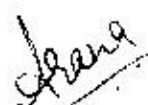
Therefore, in accordance with the holding of previous panels under the INDRP, the evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or legitimate interests in the domain name, which it has failed to do in the current proceedings. Additionally, the Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP (as discussed hereinabove).

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

Paragraph 6 of the INDRP enumerates three conditions, any of which may be established by the Complainant to evidence bad faith (*mala fides*) on part of the Respondent (Registrant). The said three conditions are reproduced below for ready reference:

- a) *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

- b) 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*
- c) 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.*

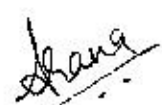
As stated in the preceding paragraphs, given that both the Complainant and the Respondent are based in Sweden, it is reasonable to believe that the Respondent was aware of the Complainant's name/mark **AKELIUS** as reputed in such country. Therefore, it does not appear that the Respondent has registered the impugned domain name **<akelius.in>** in a bona fide manner. It is a well-settled principle of law that if a person who claims to be the proprietor of a trademark is shown to have filed the application for registration of the same in bad faith (*mala fide*), then any rights associated with such trademark are vitiated and liable to be removed. Reference may be made to the judgement in the matter of *American Home Products v. Mac Laboratories Pvt. Ltd. (1986) 1 SCC 465*.

The Complainant has contended that there is no credible or legitimate reason for the Respondent to have adopted an identical domain name incorporating the term **AKELIUS** other than to ride on the fame of the Complainant's **AKELIUS** mark in order to generate web-traffic and to derive unjust enrichment therefrom by causing consumer confusion. Further, the Complainant has claimed that the Respondent has no nexus with the name **AKELIUS** and that the Respondent is a cyber squatter with no active business interests. The Respondent has not been able to satisfactorily establish its bona fide reasons for adoption of the name '**AKELIUS**' in respect of the disputed domain name.

As pointed out by the Complainant, activity at the disputed domain name (by having it redirect to an active domain at **<akelius.co.in>**) was only commenced by the Respondent post facto, i.e. subsequent to the filing of the instant complaint, after the Complainant alleged that the domain was parked at the time of filing the complaint. Further, the trademark application as referenced by the Respondent was filed subsequent to the instant complaint.

In view thereof, neither activity, commenced post facto, after institution of the present domain Complaint, can lend legitimacy to the Respondent's adoption of the impugned domain name **<akelius.in>**.

It is notable that the primary argument favouring *mala fide* adoption of the disputed domain name by the Respondent is the evidence adduced by the Complainant by way of Exhibit 11 to the Complaint wherein they have placed on record a copy of email correspondence evidencing, *prima facie*, that the Respondent is approaching the Complainant's customers to expand into the business of property and real estate in Sweden, which is the Complainant's area of business. The Respondent has only placed on record bald denials of the email correspondence, claiming the same to be fraudulent as well as defamatory, however has not been able to produce any



cogent documentary evidence in support thereof. In view of the Complainant's superior evidence in this regard, the Arbitrator concludes that the Complainant has been able to sufficiently establish mala fide intentions on the part of the Respondent in adopting the name **AKELIUS** in respect of the disputed domain name.

As the identity of the disputed domain name with the Complainant's trademarks has already been established, and the Complainant has placed on record the Respondent's forthright attempts to lure away the Complainant's customers, the third criterion envisioned under Paragraph 6 of the INDRP stands proved and the Arbitrator concludes that the Complainant has sufficiently been able to prove its case under Paragraph 4(iii) as read in conjunction with Paragraph 6 of the INDRP to the Arbitrator's satisfaction.

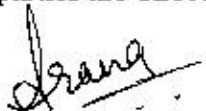
12. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has herein been able to prove conclusively that:

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**akelius.in**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Lucy Rana

Sole Arbitrator

Date: September 12, 2019

Place: New Delhi, India.