



தமிழ்நாடு தமில்நாடு TAMILNADU

AS 034134

**D. SARAVANAN**

Advocate & Arbitrator

"Orient Chambers", No. 90 / 73,  
& 5th Floor, Armenian Street,  
Chennai - 600 001.

**P.S. SHANMUGA SUNDARAM**

STAMP VENDOR,

L No B4 / 109 / 88

HIGH COURT CAMPUS,  
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN  
.IN REGISTRY  
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <www.511tactical.in>

5.11, Inc.  
4300 Spyres Way  
Modesto, CA 93536  
johnw@511tactical.com

Versus

....Complainant

Zhou,  
1503 Room,  
Weilaicheng Yuelu Qu,  
Changsha, Hunan,  
China- 410000  
ly212@vip.qq.com

....Respondent

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**D. SARAVANAN**  
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LN 84 / 109 / 88  
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### 1. The Parties:

The complainant is a corporation incorporated under the laws of the State of California, USA having principal place of business at 4300 Spyres Way, Modesto, California 93536, USA, rep. by its authorized representative Janet Robertson Kaufman.

The respondent is Zhou having contact address at 1503 Room, Weilaicheng Yuelu Qu, Changsha, Hunan, China 410000.

### 2. The Domain Name and Registrar:

The dispute domain name : <www.511tactical.in>

The disputed domain name is registered with Web Services Pvt. Ltd.

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**3. Procedural History:**

October 3, 2013	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
October 3, 2013	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
October 17, 2013	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
October 27, 2013	Due date for filing response.
November 04, 2013	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

**4. Complainant's Trading Name:**

The complainant is the owner of the trademarks 5.11 and 5.11tactical. The complainant has registered the said trademark in numerous countries worldwide.

Following are the trademarks registered in United states:-

Mark	Registration No.	Registration Date	Class
5.11	3,872,605	9 <sup>th</sup> November, 2010	11,18,25
5.11	2,836,547	27 <sup>th</sup> April, 2004	25
5.11 TACTICAL	3,538,661	25 <sup>th</sup> November, 2008	25
5.11 TACTICAL	3,781,193	27 <sup>th</sup> April, 2010	11
5.11 +	3,702,129	27 <sup>th</sup> October, 2009	8,9,13,14,18,25
5.11 TACTICAL SERIES	2,820,840	9 <sup>th</sup> March, 2004	25
5.11 + TACTICAL SERIES	3,731,857	29 <sup>th</sup> December, 2009	8,9,13,14,18



### **5. Respondent's Identity and activities:**

According to WHOIS search database, the respondent in this administrative proceeding is Zhou having contact address at 1503 Room, Weilaicheng Yuelu Qu, Changsha, Hunan, China 410000.

### **6. Dispute**

The dispute arose when the respondent registered and used the domain name **www.511tactical.in** seeking the transfer of domain name.

### **7. Parties contentions:**

#### **A. Complainant:**

i) **The domain name is identical to complainant's trade mark:**

a) The complainant states that it is the owner of the trademarks 5.11 and 5.11 TACTICAL and has registered the said trademark in numerous countries.

ii) **Respondent has no rights or legitimate interests in respect of the domain name:**

a) The domain name at issue is 511tactical.in, which incorporates nearly the identical trademarks owned by Complainant, namely 5.11 and 5.11TACTICAL. The domain name is confusingly similar to the Complainant's trademark as it is virtually identical. There is neither any evidence that Respondent has any rights in 5.11 trademarks nor that the respondent has been commonly known by the domain name.

iii) **The registration and usage of domain name by the respondent is in bad faith:**

a) The domain name has presumably been registered for the purpose of trading on the enormously successful goodwill of the Complainant 5.11 Inc. The 5.11 Tactical brand is a well known brand worldwide. The respondent has clearly registered the





domain name for the sole purpose of seeking commercial gain by diverting potential customers of the complainant to its website.

b) The complainant also states that the respondent has intentionally attempted to attract the internet users to its website for his own commercial gain and to create an impression that the website is authorized by the complainant or is affiliated with the complainant.

c) The domain name at issue leads to only directory site and does not appear to offer any products or services. Moreover, the domain is listed at the top of the home page as being for sale.

#### **B. Respondent:**

In spite of repeated notice and notice of default, the respondent did not submit any response.

#### **8. Discussion and Findings:**

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 04.11.2013.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The respondent's domain name is identical to the trademark 5.11 TACTICAL;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name 5.11tactical.in; and



(iii) The registration and usage of domain name 5.11tactical.in by the respondent is in bad faith.

**(a) Identical or confusing similarity:**

i. The Arbitral Tribunal finds that the trade mark **5.11 TACTICAL** is identical to respondent's domain name. The sole intention of the Respondent is to derive benefit from the good will and reputation of the Complainant's brand and mislead members of public.

ii. The respondent's unwarranted registration of the impugned domain name with NIXI identical to Complainant's trade mark is clearly an offence under laws of India. The Tribunal also observes that the impugned domain name was registered recently on 03.05.2012 whereas the complainant is the rightful owner of the trade mark since 2004. The trade mark 5.11TACTICAL being the well known all over the world clearly shows the dishonest intention of the respondent.

iii. The adoption of impugned domain name by the Respondent is dishonest, fraudulent and bad faith. The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy

**(b) Respondent's Rights or Legitimate Interests:**

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a



Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii. The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.

iv. The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.

v. The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the complainant in the domain name and holds that the respondent has infringed the rights of the complainant by registering the trademarks of the complainant.

vi. The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

**(c) Registration and Use in Bad faith:**

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the



Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website under the registered www.511tactical.in mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Arbitral Tribunal observes that the Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical to registered trademark of the Complainant. The Respondent has no affiliation or connection or any kind of relationship with the Complainant. Registration of a domain name that is identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.



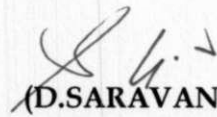


In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

**9. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name < **www.511tactical.in**> be transferred to the Complainant.

**Dated at Chennai (India) on this November 16<sup>th</sup>, 2013.**

  
**(D.SARAVANAN)**  
**Sole Arbitrator**