

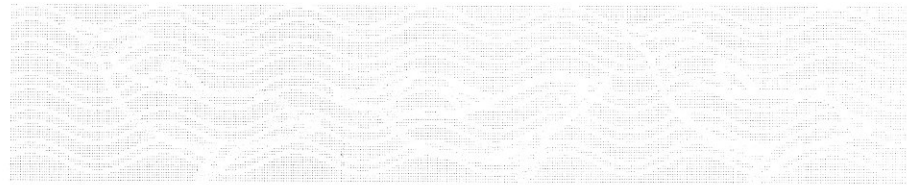
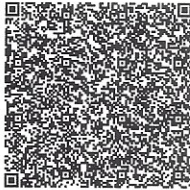
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL27107750110761S
Certificate Issued Date	: 22-Feb-2020 11:34 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP1763535354168740S
Purchased by	: DIVYA BALASUNDARAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DIVYA BALASUNDARAM
Second Party	: Not Applicable
Stamp Duty Paid By	: DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Incuse Designs Corp. - Versus - Stavros Fernandes

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ARBITRAL AWARD

.IN REGISTRY
C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram
Disputed domain name - <incase.in>

In the matter of:

Incase Designs Corp.
3347 Michelson Drive, Suite 100 Irvine
California 92612, United States of America

Complainant

Stavros Fernandes
18 Ribeiro Building, 1st Floor
1st Dhobi Talao Lane, Marine Lines
Mumbai - 400002, Maharashtra

Versus

Respondent

1. THE PARTIES

- 1.1 The Complainant in these proceedings is Incase Designs Corp., a corporation organized and existing under the laws of the State of California, United States of America, with an address at 3347 Michelson Drive, Suite 100 Irvine, California 92612, United States of America. The Complainant is represented by its attorneys, ALG India Law Offices LLP.
- 1.2 The Respondent in these proceedings is Stavros Fernandes of the address 18 Ribeiro Building, 1st Floor, 1st Dhobi Talao Lane, Marine Lines, Mumbai - 400002, Maharashtra.

2. DISPUTED DOMAIN NAME AND REGISTRAR

- 2.1 This dispute concerns the domain name <incase.in> which was registered on June 21, 2014 (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is Endurance Domains Technology LLP.


3. PROCEDURAL HISTORY

- 3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).
- 3.2 NIXI vide its email dated February 18, 2020 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on February 18, 2020. Arbitrator was appointed vide NIXI's email of February 21, 2020.
- 3.3 Arbitrator sent email on February 21, 2020 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days. Respondent sent email dated March 3, 2020 requesting additional time to file



- reply which was granted till March 12, 2020. Reply was received on the morning of March 13, 2020 by email.
- 3.4 Arbitrator sent email on March 17, 2020 stating that the pleadings are complete and award would be passed. Subsequent to this, on March 20, 2020, Complainant sent an email with few further submissions, which were provided without the leave of the Arbitral Forum. Further, in the considered view of the Arbitral Forum, no further submission from Complainant was needed. The Arbitrator again responded on March 24, 2020 stating that all submissions are received and complete and Arbitrator is in the process of passing the award.
- 3.5 Subsequently, the Respondent sent an email of March 24, 2020, refuting Complainant's mail of March 20, 2020 and requesting further time to submit a response. However, this was declined as time was already granted to file reply and further extended upon Respondent's request. Also in the considered view of the Arbitral Forum, no further response/ submission was called for.
- 3.6 Given the above, the Complainant's further submissions are not being taken into consideration and the award is being passed on the basis of the Complaint and reply alone.
- 3.7 The language of these proceedings is English.

4. COMPLAINANT'S TRADEMARK RIGHTS AND BASIS OF COMPLAINT AS SUBMITTED BY THE COMPLAINANT

- 4.1 Founded in 1947, the Complainant operates as a subsidiary of Incipio LLC, a global consumer technology solutions platform. The Complainant is the industry leading designer and manufacturer of award-winning mobile device accessories and technology protection products.
- 4.2 The Complainant has business presence in numerous countries around the world, and as a result of the extensive sales and promotion of its high-quality products worldwide over the course of over two decades, the Complainant is globally recognized for its creative and design driven solutions. The Complainant is a highly acclaimed producer of some of the best lifestyle and electronic products, and accessories for electronic products, sports armbands, slider cases, leather bags, range pouch bundles, chargers, cables, headphones, slings, backpacks, camera bags, and other consumer electronic equipment.
- 4.3 The Complainant's products and solutions are known to cater to a vast range of popular devices of leading technology brands. It is known for collaborating with popular companies and celebrities for release and promotion of its products and accessories. Moreover, the Complainant is the first third party accessory brand to manufacture and sell accessories for Apple in Apple stores and is the largest and most recognizable supplier of Apple accessories around the world.
- 4.4 Over the course of many years, the Complainant has spent substantial resources towards research, development, creation and improvement of its highly innovative products. The Complainant has been granted patent protection for its numerous
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- products and the patents for some of its products have been overwhelmingly cited by in other patents and are among the most cited design patents awarded since 2010.
- 4.5 The Complainant is the first adopter, registered proprietor and user of the INCASE mark. The Complainant honestly adopted the INCASE Mark in 1997 and since then has been using the same extensively in relation to its products and services, as well as a key portion of its corporate name, house mark, domain names, trade name and trading style in respect of various aspects of its operations and activities. In India, Complainant is the registered proprietor of trademarks under numbers 1581058, 1581059, 1581060 and 1581061.
- 4.6 Complainant is also the owner of domain name <incase.com> registered in June 1997 and also owns several other domain name registrations featuring the mark INCASE.
- 4.7 The Complainant's products under the INCASE Mark are available for purchase in over 200 countries including in India, through www.incase.com as well as several popular e-commerce websites, and through distributors.
- 4.8 The Complainant also has a record of successfully enforcing its rights in the INCASE Mark in court actions, as well as in domain name disputes under the Uniform Dispute Resolution Policy. A search on the Internet for "INCASE" immediately reveals a direct and exclusive ownership of the mark by the Complainant.
- 4.9 Complainant's INCASE products have received enormous publicity in various print media across jurisdictions and having circulation in India. The Complainant has also won several awards and accolades for its products and services. The Complainant enjoys extensive online presence on social media, worldwide, including in India.
- 4.10 Owing to the Complainant's long, extensive and continuous use of the INCASE Mark worldwide, including India, the successful record of enforcement of its exclusive rights in the INCASE Mark, the INCASE Mark has come to be well-known and is exclusively associated with the Complainant. The Complainant recently learnt about the registration of the infringing domain name <incase.in>.

5. LEGAL GROUNDS SUBMITTED ON BEHALF OF THE COMPLAINANT

- 5.1 The domain name <incase.in> is identical to the trademark INCASE in which the Complainant has rights.
- 5.2 The Complainant is the registered proprietor of the INCASE Mark in India as well as several countries worldwide. It is well-established that trademark registrations constitute prima facie evidence of validity of trademark rights. Apart from its trademark rights, the Complainant also uses the INCASE mark as a prominent and essential portion of its corporate name, trade name and trading style. Moreover, the Complainant has extensively and continuously used the INCASE Mark for several years around the world, including in India.
- 5.3 The disputed domain name <incase.in> is identical to the Complainant's INCASE Mark, which is incorporated fully with the ccTLD '.in'.
- 5.4 It is submitted that the ccTLD element of a domain name has no distinguishing capability and should be disregarded while considering whether a domain name is

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- identical or confusingly similar to a trademark. Therefore, disregarding the ccTLD ".in", the disputed domain name <incase.in> is identical to the Complainant's INCASE Mark.
- 5.5 It follows that the disputed domain name <incase.in> is identical to the Complainant's INCASE Mark. Thus, the Complainant has established that the requirements of the INDRP Policy Paragraph 4(i) are fulfilled.
- 5.6 The Respondent has no rights or legitimate interests in respect of the domain name <incase.in>.
- 5.7 The Respondent created the disputed domain name <incase.in> on June 21, 2014. By this time, the Complainant had well-established statutory and common law rights in its INCASE Mark. The Complainant has not authorized the Respondent to use the INCASE Mark or register the disputed domain name <incase.in>. The Complaint has also not granted the Respondent any licenses to use the INCASE Mark. In fact, the Respondent does not have any association or affiliation with the Complainant. The Respondent is not commonly known by the disputed domain name and, to the knowledge of the Complainant, has not acquired any trademark rights in the mark INCASE. The Respondent, therefore, has no reason to adopt or register the disputed domain name <incase.in>.
- 5.8 The Complainant's INCASE Mark has garnered immense reputation and goodwill owing to its long and continuing use, and has consequently, become well-known. Therefore, it is unlikely that the Registrant did not know about the Complainant's rights in its INCASE Mark. Registration of a domain name based on awareness of a complainant's trademark rights is recognized as bad faith registration.
- 5.9 The webpage hosted at www.incase.in carries sponsored listings/advertisements, which redirects Internet users to various websites, including the Complainant's website and those of its competitors. Such use by the Respondent is not a bonafide use under the Policy and does not confer rights or legitimate interests upon the Respondent.
- 5.10 The incorporation of the INCASE Mark in the disputed domain name <incase.in> in its entirety is likely to mislead the public and Internet users. Internet users may falsely believe that the Respondent's domain name is owned or authorized by the Complainant. Misleading users by incorporating others' trademarks in a domain name gives a false impression to users and does not constitute a bonafide offering of goods and services under the Policy.
- 5.11 The domain name <incase.in> has been registered or is being used in bad faith.
- 5.12 Bad faith is implicit in the registration of the disputed domain name. The Respondent unauthorizedly registered the disputed domain name on June 21, 2014, by which time the Complainant's INCASE Mark, through extensive and continuous use, had acquired immense goodwill and reputation amongst the public and trade.
- 5.13 The Respondent is making money by luring customers to the website and deceiving them by diverting them to third party sponsored listings. This establishes the Respondent's intention to prevent the owner of trademark from reflecting the mark in corresponding domain name.
- 5.14 There is also no instance where the Respondent has made (or has made preparations for) a bona fide offering of goods/services under the mark/name INCASE or through hosting at the disputed domain name <incase.in>.

5.15 In light of the above, it is apparent that the registration and use of the domain name <incase.in> by the Respondent is not bona fide and the Respondent has prima facie registered and is using the disputed domain name in bad faith.

6. RESPONSE FROM RESPONDENT

- 6.1 The Respondent states that the impugned domain name incase.in was purchased in 2014 without any knowledge of the Complainant's brands existence in the USA or its copyright filed in India. As per the Respondent, the domain was purchased with the intention of creating a portal that would highlight and showcase various cases and judgments in India that were in public interest. So the name INCASE was chosen. However due to various circumstances, the project never took off and the domain was simply renewed with no malicious intent, but with the hope that someday the project would start.
- 6.2 The term 'incase' is a very basic English word and has no unique identity on its own. So there was no malicious intent in purchasing such a basic English word.
- 6.3 The domain name was never used to infringe on the brands copyright nor used to mislead anyone, nor impersonate the brand or showcase the brand in any bad light. Respondent has unknowingly safeguarded the Complainant's brands interests in India, by keeping the domain off the market and away from any possible miscreants who could have easily used the domain in bad faith and intentionally cause irreparable damage to the brand.
- 6.4 The Respondent has further stated that in good faith and for a fair price, he would give up the disputed domain to the Complainant and not further contest the use of the domain with NIXI or in the courts of law.

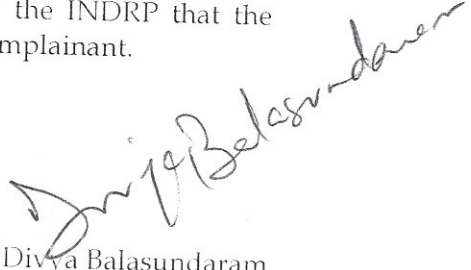
7. DISCUSSION AND FINDINGS

- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant as well as the reply from the Respondent. The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 7.2 The Arbitrator finds that the Complainant has satisfactorily established all the elements necessary to maintain its complaint. The disputed domain name is identical to the trade mark/ trade name INCASE of the Complainant. It is well also established that the mere addition of the Country Code Top Level Domain '.in' does not add any distinctive or distinguishing element, so in essence, the disputed domain name is identical to the Complainant's INCASE mark.
- 7.3 The Respondent is not commonly known by the disputed domain name nor has any authorization/permission from Complainant. There is no use of the same with a bona fide offering of goods and services. Rather the webpage hosted at www.incase.in carries sponsored listings/advertisements, which redirects Internet users to various websites, including the Complainant's website and those of its competitors.

- 7.4 The Complainant has filed several documents showing its rights in INCASE prior to 2014, before the registration of the disputed domain name as well as the use and reputation of the same in India. This includes its trademark registrations in India, direct and online sales information, domain registrations, and its record of enforcing its rights in the mark in court actions and domain disputes under the UDRP noting that the Complainant has "*valid and well established rights, both in the United States and abroad, in its INCASE trademark*". Further, a basic Internet search would have shown up the Complainant's business and activities.
- 7.5 Keeping in mind all of the above, the Arbitrator finds that the Complainant has satisfactorily established all the elements necessary to maintain its complaint.
- 7.6 With regard to the response submitted by the Respondent, the reason proffered for the adoption of the disputed domain name is unsubstantiated and vague. In 2014, there would be sufficient time for Respondent to actually know about Complainant's brand; else given the fame and repute of Complainant's mark, he is deemed to have had knowledge of the same. As regards 'in case' being a basic English word, it is to be noted that it is not a dictionary word, rather a combination of two common dictionary words. Any other name could have also been chosen to set up a portal to showcase public interest judgments in India. The Respondent has not commenced any portal nor demonstrated any preparations for such a portal, rather the webpage hosted at www.incase.in carries sponsored listings/advertisements, which redirects Internet users to various websites, including the Complainant's website and those of its competitors.
- 7.7 The argument of the Respondent that it has unknowingly safeguarded the Complainant's brands interests in India by keeping the domain off the market is misplaced, legally baseless and cannot be regarded. It is significant to note that the Respondent has stated that he would give up the disputed domain name for a fair price. The Respondent has passively held the disputed domain name since registering it. Now, despite a constructive knowledge of Complainant's rights, Respondent wishes to sell it to the Complainant.
- 7.8 The Arbitrator does not find anything in the Respondent's submissions which indicate its legitimate right or interest in the disputed domain, nor a valid refutation of the allegation of bad faith made against it.

8. DECISION

- 8.1 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <incase.in> be transferred to the Complainant.
- 8.2 No order as to costs.


Divya Balasundaram
Sole Arbitrator
Date: March 27, 2020