



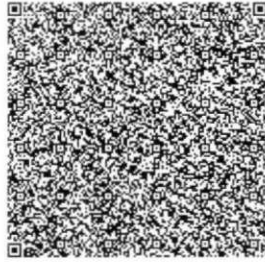
सत्यमेव जयते

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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: 3rd August, 2012

In the matter of:

**Equity Master Agora Research Private Limited
103, Regent Chambers, Nariman Point,
Mumbai-400021**

..... Complainant

Vs

**Shri Rajkumar
H.No. 26-f, Sultanpur Mazra
Delhi-110068**

..... Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is Equity Master Agora Research Pvt. Ltd. with registered office at 103, Regent Chambers, Nariman Point, Mumbai-400021.
- (b) Respondent firm is: **Shri Rajkumar, H.No. 26-F, Sultanpur Mazra, Delhi-110068**. It has presence on internet with domain name of "equitymaster.net.in" which is subject to dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www. equitymaster.net.in registered with the .IN Registry.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. BRIEF BACKGROUND

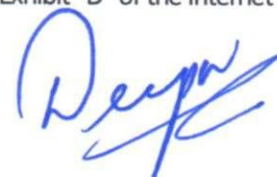
Factual & Legal Grounds

Equitymaster Agora Research (P) Ltd adopted the mark 'Equitymaster' in year 2000. To get statutory protection and registration of trademarks containing its corporate name "Equitymaster", Complainant applied for Marks registrations under classes 36, 16 and 9.

Complainant claims to be in the business of carrying out equity research on Indian Stock Market and providing various investment advisory services through its website www.equitymaster.com including 'Stock Select', 'Midcap Select', 'Hidden Treasure' and Research Reports on the Indian Equity Stock Market. Complainant also claims it that publishes on its website www.equitymaster.com, various articles on topics relating to finance as well as general articles on corporate which are relevant to its subscribers.

Attached in Exhibit "B" copies of the trade mark registration certificates and TM-12, as mentioned in the first five applications for trade mark registration. These trademarks were applied by Quantum Information Services Pvt. Limited, an associate company of the Complaint and were later assigned to the Complainant by way of a business purchase agreement. Exhibit "C" enclosed is copy of online status of the abovementioned trade mark applications as on September 22, 2011 and October 5, 2011.

Complainant mentions that its website www.equitymaster.com is India's leading financial services site. Various research reports are provided exclusively to its paid subscribers and articles published on its website www.equitymaster.com are original literary works. That it employs and engages number of experts/analysts in the area of financial domain for creating the original research works. These experts undertake in-depth research and use very expensive software for preparation of various research reports for the Complainant. More than 21700 subscribers as on August 31, 2011 have actually availed the paid services of the Complainant through its website www.equitymaster.com. Average of more than 24000 visitors visit www.equitymaster.com per day. Enclosed Exhibit "D" of the Internet visitor's monthly report.



'Equitymaster' has a definite significance which is integral to its business strategy and objectives. Mark 'Equitymaster' has been popularized by the Complainant through extensive advertisement, publicity, promotion and marketing for which they spent huge sum of money plus extensive time and efforts which lead to 'Equitymaster' getting a unique brand value.

4. PARTIES CONTENTIONS:

A. COMPLAINANT'S CONTENTIONS:

- a. **THAT THE INFRINGED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE TRADE MARK OR SERVICE MARK IN WHICH EQUITYMASTER AGRO RESEARCH (P) LTD HAS RIGHTS CAUSING CONFUSION AMONG INTERNET USERS:**

Equitymaster Agora Research (P) Ltd the complainant adopted the mark "Equitymaster" in year 2000.

Attached in Exhibit "B" are copies of the trade mark registration certificates and TM-12, as mentioned in the first five applications for registration of trademark. These trademarks were applied by Quantum Information Services Pvt. Limited, an associate company of the Complaint and were later assigned to the Complainant by business purchase agreement. Exhibit "C" enclosed is copy of online status of the abovementioned trade mark applications as on September 22, 2011 and October 5, 2011.

The disputed domain name is identical to the mark "equitymaster" which with and without other symbols has been registered by the complainant through its associate company much before the respondent. The domain name Equitymaster singly and with other words like online, my etc. has been registered in different domains of .net, .in, .org, .mobi etc much before the respondent.

- b. **THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF DOMAIN NAME:**

'Equitymaster' has acquired unique importance and is associated with the Complainant. Said Mark establishes an identity and connection with the Complainant. That Equitymaster Agora Research (P) Ltd is the owner of all statutory and equity rights pertaining to the mark "Equitymaster" and the domain names registered by it and its associate company. That Complainant has not licensed or otherwise permitted the Respondent to use the mark "Equitymaster."



c. THE IMPUNGED DOMAIN NAME equitymaster.net.in HAS BEEN REGISTERED & IS BEING USED IN BAD FAITH:

The complainant claims that Respondent is offering financial services with mala fide intention to divert clients of the Complainant and thereby causing financial loss to the Complainant. Enclosed Exhibit "E" screenshot of the webpage page of the Disputed Domain Name Respondent not using Name for bona fide offering of services.

Respondent registered the Infringed Domain Name primarily for the purpose of disrupting the business of the Complainant. Google search with 'Equitymaster' reflects the Infringed Domain Name, enclosed hereto Exhibit "F" screen shot copy of the Google search result with 'Equitymaster'. By using the Infringed Domain Name, the Respondent has intentionally attempted to attract, internet users to its website or other online locations by creating likelihood of confusion with the Complainant's mark ' "Equitymaster" ' as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location of services on its website. The Respondent has registered and is using the infringed domain name in bad faith.

It is respectfully prayed that the Infringed Domain Name 'www.equitymaster.net.in' be directed to be transferred in favour of Equitymaster Agora Research P Ltd alongwith award of costs of present proceedings to the Respondent & further award such other reliefs as nature and circumstances of this case may deem fit and proper.

B. Respondents Contentions
Not responded at all.

5. OPINION:

I. Issue:

- A) To obtain relief under the dispute, resolution, policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.



Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has its origination since Year 2000. That Complainant is using the mark 'EQUITYMASTER' since then and has made massive efforts to promote the brand name 'EQUITYMASTER' by consuming various resources available at his end. That word 'EQUITYMASTER' is well known, has acquired a Brand name.

On the basis of the records submitted by the complainant it's proved that the domain name 'equitymaster' is related to the business of Complainant and is being used for purposes related to his work.

It is confirmed that Complainant is user of name 'EQUITYMASTER'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark 'EQUITYMASTER' alone and with other symbol or Figure or other injunctions has been effectively registered in India as attached in the Annexures submitted. Respondent's registration of the infringed Domain name 'equitymaster.net.in' in spite of fame and public recognition of name 'EQUITYMASTER' through global internet and its trademark being registered in India, establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using it as a domain name of the complainant.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence of the domain name wishing to be registered at the various registries of internet and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to intentionally trade on the goodwill and reputation of Equitymaster Agroa Research (P) Ltd.

Respondent registration and used of the Infringed Domain Name to direct Internet users familiar with the reputation and services of 'EQUITYMASTER' to third party links offering financial services so as to divert clients of complainant constitutes bad faith use under the policy. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.



It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'Equitymaster' is a registered and protected trademark of the Complainant.

Respondent intentionally attempted to attract Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademark EQUITYMASTER, Internet users will apparently and reasonably expect only the Complainant or its authorized / affiliated enterprises under the domain equitymaster.net.in.

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name being 2nd December, 2010.

The Trademark logo 'EQUITYMASTER' and similar domain names. i.e., equitymaster.com, equitymaster.net, equitymaster.org, equitymaster.mobi, equitymaster.in, equitymasteronline.com, myequitymaster.com were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and was legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'equitymaster.net.in' and therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the



present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties, their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name www.equitymaster.net.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 10,000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 3rd day of August, 2012.


Deepa Gupta
Arbitrator