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FH 056757

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

7 FEB 2020

ADMINISTRATIVE PANEL DECISION

Tickets Worldwide LLP v. India Portals <tickets.in>

SOLE ARBITRATOR: ANKUR RAHEJA, FCS LLB MCA

In the matter of:

Tickets Worldwide LLP

...Complainant

71-75 Shelton Street, London,

WC2H 9JQ, United Kingdom

Versus

India Portals

...Respondent

16A, Narayah Dhruv Lane,

Off Abdul Rehman Street,

Mumbai, Maharashtra 400003, India

Araksh
17-03-20

ARBITRATION AWARD

Disputed Domain Name: Tickets.in

1. The Parties:

Complainant is **Tickets Worldwide LLP** ("Complainant"), United Kingdom represented by Ms. Divya Balasundaram of M/s Inventure IP, Noida, India. Respondent is **India Portals** ("Respondent"), Mumbai, India represented by Mr. Ravi Goyal of M/s Scriboard, New Delhi, India.

2. The Domain Name and Registrar:

The domain name at issue is **<tickets.in>**, created on 17th February 2005, registered with Endurance Domains Technology LLP.

3. Procedural History:

The Complaint was filed with NIXI, .IN Registry. Arbitrator received an email, inquiring if Nixi can avail of its services as an arbitrator for the dispute pertaining to the domain name **<tickets.in>**. Arbitrator confirmed availability and sent the signed Statement of Acceptance and Declaration of Impartiality and independence as required by rules.

Arbitral Proceedings commenced on 19th December 2019 by issue of a notice by the Arbitrator by email to the Respondent, directing Respondent to file his response to the Complaint by 05th January 2020. The Respondent counsel requested for additional time to file the response on 02nd January 2020 as having been advised late. Therefore, a new timeline of 15th January 2020 was fixed for the response.

Thereafter, time till 30 January 2020 was provided to the Complainant to file the rejoinder and followed by one weeks time to file written arguments by the parties, i.e. by 07th February 2020.

On 10th February 2020, Arbitrator requested NIXI to make available the WHOIS History for another domain name <tickets.org.in>. The same was made available by 18th February 2020. Lastly, clarifications were sought from the Complainant on 20th February 2020, therefore, these proceedings exceeded the normal 60 days timeline.

No personal hearing was requested / granted / held. The language of these proceedings is in English.

4. Factual Background:

Complainant:

Complainant is a flight ticket aggregator, compares thousands of offers from major reservation systems. It was incorporated in the United Kingdom in September 2018 and is claimed to be the legal successor of another company, DANA Technology.

Complainant first started using brand **TICKETS** in 1998 by registration of domain name tickets.org.uk. It has a presence in over 50 countries around the world. The main corporate domain ttm.org was registered in 2003. The Complainant and its Subsidiaries have turnover of over \$100 million.

The Complainant is the owner of various domain names that incorporate keyword "tickets", including <tickets.org.uk>, <tickets.org.in>, <ttm.org> and many more country specific domain names, with presence in 55 countries across all regions of the world.

The Domain Name was registered on February 17, 2005, by the Respondent. The Domain Name does not resolve either to a website or to a parking page.

5. Parties Contention

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A. Complainant:

Complainant started operating in India in 2006 by registration of domain name tickets.org.in. While the Trademark was applied in India only in 2015 under class 39 as wordmark and got registered on 15 March 2019. Complainant claims that its reputation and brand knowledge was already spread across in India, earlier to 2006. It has been claimed to have got Indian media attention and has a presence on Social Media sites like Instagram, Telegram, Github.

The Respondent has registered various domain names including proprietary and common words, without having any legitimate rights or interests including government.in, cricket.in, mail.in, love.in, education.in, video.in, work.in, tech.in, ticket.in, portal.in, training.in, software.in and so on. A finding has been made against the Respondent in Case No INDRP/346 for wrongly registering 'champagne.in'.

Respondent's domain name is identical or confusingly similar to Complainant's Trademark, as it incorporates the Complainant's mark in full. Complainant has not authorized or licenced the Respondent to apply for, register or use or offer for sale the disputed domain name or any trademarks forming part thereof.

The Respondent is neither known by the disputed domain name as per WHOIS information nor owns any trademark or service mark rights in the name and mark **TICKETS**. The domain name is merely parked and no demonstrable preparations to use the domain name has been made. Hence, no legitimate use of the domain name being made. Complainant further contends that domain name has been registered in Bad Faith. Respondent has passively held the domain name since registering it.

The Domain Name has been registered similar to the Complainant's mark, with the sole intention of squatting on the same and holding for profit. It has been registered with the intention of preventing Complainant from being able to use it. Lastly, there is a potential danger that the Respondent may use the disputed domain name in future



or sell it to any third party including Complainant's Competitors and any such use would be unauthorized and cause confusion.

B. Respondent:

The only trademark registrations the Complainant has relied upon is a trademark registration each in India and Egypt, while the trademark Applications are pending in other countries. As regards Complainant's Indian Trademark under Class 39, the Respondent noticed that the trademark application was filed on October 14, 2015, almost 10 years after its claimed 'first use' of mark 'TICKETS' in India in 2006. Surprisingly the Respondent also found that the Complainant has filed for a trademark for the device mark 'TICKETS' in the EU, recently on June 19, 2019.

The Date of First Use of the trademark 'TICKETS' in the Indian application is provided as September 08 2006, which was originally claimed as May 29, 2009. Subsequently, they tried, on the basis of the registration date of <tickets.org.in>, to attempt to get an earlier date of use for the trademark – probably to take action against the Respondent.

The Complainant has mentioned three main domain names owned by it:

- a. **tickets.org.uk** – registered in 1998 and active since 2015-2016 as per Archive.org.
- b. **ttm.org** – registered in 2003 and not used till 2013 as per Archive.org.
- c. **tickets.org.in** – registered since 2006, whois owner has the name Tickets TM LLC, but not used till 2013. Since 2016, said domain name appears to have had a website under the brand name 'TICKETSUA' and in mid 2017 the disputed domain had a 'COMING SOON' web-page.

That is, these web-pages clearly stated that the Complainant commenced operations in 2009 as opposed to what it has falsely claimed in the Complaint. Further, it can be conclusively established that in all the cases, the domain names were not used by the Complainant for its alleged business of selling flight tickets under the trademark 'TICKETS' until at least 2013. Additionally, there is a strong possibility that the

Complainant was not the original and first registrant of the domain name [tickets.org.in] as it claims to be.

The Complainant, its brand 'TICKETS' and the business under it is not well-known or popular in India or elsewhere. The Respondent is making this claim based on the following:

- a. The Complainant's social media following is extremely less for a business which claims to be in existence since 1998 and further whose business model is selling flight tickets on the internet.
- b. A search for the term 'TICKETS' on www.google.com does not reveal any search results for the Complainant on the first page of the results.
- c. The Complainant's three websites as referred to in Paragraph 8 of this response does not indicate any substantial traffic or visitors as per the search conducted on www.alexa.com, a leading website which records internet traffic.
- d. The Android and iTunes App of the Complainant under the brand 'TICKETS' do not appear to be popular or to have been downloaded by a large number of individuals.
- e. A search on www.facebook.com for accounts/pages of brands does not show the Complainant as a top result.

It is submitted that the Respondent, a proprietorship firm, registers generic words which have a dictionary meaning and are non-distinctive in nature. By virtue of the word 'TICKETS' being generic in nature, it is non-distinctive and thus the rights to use or own the word 'TICKETS' cannot exist with one single entity or individual. The Respondent submits that none of the domain names owned by it infringes upon trademark rights of any third-party. In fact, this is the reason the Respondent only registers dictionary words – that too only those words which are still non-distinctive and used in their natural sense.

Champagne.in [INDRP/346]. It is humbly submitted that the facts of the said case are different than the present case. It is to be noted that the decision was ex-parte since the Respondent was not able to quickly engage a counsel proficient in INDRP at that

stage. Additionally, the Respondent admits that it was unaware of 'Geographical Indications' at that time and genuinely thought that the word 'Champagne' was a dictionary word meaning such as soda, juice, rum, etc.

Moreover, the Complainant has not produced any documents which could establish that the word 'TICKETS' has a strong reputation or widespread use as a brand of the Complainant. No documents relating to sales turnover, invoices, annual returns, customer surveys, media recognition, etc. have been produced.

It is submitted that there are many entities and businesses offering 'TICKETS' as part of their services or business model. The Complainant cannot assert exclusive rights on such a generic term which is used by members of the public in the context of the general meaning and definition of the word 'TICKETS'. The Respondent has rights and legitimate interests in the impugned domain name. It is pertinent to mention here that the Respondent is the prior user of the mark 'TICKETS'. It registered the impugned domain name on February 17, 2005 and has not transferred or otherwise sold or offered to sell the domain name since the date of registration.

The Complainant's mark 'TICKETS' was not known or popular in India – or in fact anywhere in the world in February 2005, that is at the time the impugned domain name was registered by the Respondent. That is almost 15 years after the registration of the impugned domain name, there is no indication that the Complainant's alleged brand 'TICKETS' and the business under it is popular or well-known. Being a business, whose entire business model is dependent on the internet, one would have thought that there would have been strong indications on the internet pointing to the fact that the mark 'TICKETS' is the Complainant's brand. However, there appears to be no such indications or evidence.

Moreover, in the case of Pradeep Misra V Radiantly Life; INDRP/957, the Learned Arbitrator stated that the: "...in such cases of generic/descriptive terms, there is an even greater onus on Complainant to present compelling evidence of secondary meaning or distinctiveness, when there are various other entities using the similar mark." It is submitted that the Respondent was not aware of the Complainant's business under the mark 'TICKETS' at the time of registration of the disputed domain

name. In fact, the Respondent had no knowledge of the Complainant and its business prior to the filing of this Complaint by the Complainant.

It is submitted that various UDRP Panels have held that a Respondent has a right to register and use a domain name to attract Internet traffic based on the appeal of commonly used descriptive or dictionary terms, in the absence of circumstances indicating that the Respondent's aim in registering the disputed domain name was to profit from and exploit the Complainant's trademark. [Javier Narvaez Segura, Grupo Loading Systems S.L. v. Domain Admin, Mrs. Jello, LLC, D2016-1199]

Additionally, it has been held that where a Respondent registers a domain name consisting of a dictionary term because the Respondent has a good faith belief that the domain name's value derives from its generic or descriptive qualities rather than its specific trademark value, the use of the domain name consistent with such good faith belief would establish a legitimate interest. [National Trust for Historic Preservation v. Barry Preston, WIPO Case No. D2005-0424; Private Media Group, Inc., Cinecraft Ltd. v. DHL Virtual Networks Inc., WIPO Case No. D2004-0843; T. Rowe Price Associates, Inc. v. J A Rich, WIPO Case No. D2001-1044; Sweeps Vacuum & Repair Center, Inc. v. Nett Corp., WIPO Case No. D2001-0031; EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc., WIPO Case No. D2000-0047; Mobile Communication Service Inc. v. WebReg, RN, WIPO Case No. D2005-1304]

The Respondent did not register or is not using the domain name in bad faith. The Respondent was not aware about the Complainant's business or mark until the INDRP proceedings were initiated in relation to the impugned domain name. As submitted above, the domain name was registered in 2005, well before the Complainant's alleged date of first use of 2006 for 'TICKETS' – as claimed by the Complainant. It is pertinent to mention here that the Respondent has never approached the Complainant or any other party to sell the domain name and has never misled or targeted the Complainant's customers. The domain name has been in the possession of the Respondent for the last 15 years and within this time there has not been a single instance where the Respondent attempted to sell this domain name.

The Respondent submits that since the disputed domain name was registered many years prior to the Complainant's actual use of its trademark, there can be no finding that the Complainant's trademark was targeted at the date of registration of the disputed domain name and, in particular, it cannot have been registered primarily for the purpose of selling it to the Complainant or a competitor of the Complainant for an excessive sum.

The Respondent has not and does not intend to engage in such activities. The Complainant has not been able to prove this ground. It is further submitted that the Complainant does not have exclusive rights on the word 'TICKETS'. Moreover, even though the Respondent has never attempted to offer to sell the domain name, multiple Panels have held that in cases of dictionary words or non-exclusive terms, offering a domain name for sale does not constitute bad faith. For instance, in *Mark Warner 2001 v. Larson*, FA 95746, it was held that:

"...simply considering to sell or even offering to sell a domain name is insufficient to amount to bad faith under the ICANN Policy, because the domain name must be registered primarily for the purpose of selling it to the owner of trademark for an amount in excess of out-of-pocket expenses."

C. Complainant under Rejoinder:

The rights for the business activity of older companies have been passed to the Complainant. Complainant provides services in 58 countries and under the single brand TICKETS only. Complainant owns 59 different domain names, with the keyword TICKETS, though all may not be operational. The Complainant has exclusive right to name their IOS APP as TICKETS. The Complainant has managed social accounts within the major social networks since 2018 with a total of 29 accounts. Total count of active users is over 72,000 on TICKETS social media accounts in all.

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Complainant submits that all the three conditions of INDRP policy are satisfied. The disputed domain name is identical with the trademark, in which Complainant has rights.

The Respondent has failed to prove any legitimate rights or interest in the impugned domain name on his part. He claims that he has registered domain names to build a service around them as part of its large-scale business plan, etc. There has been not a shred of evidence of this claim. It is incomprehensible what research Respondent has been conducting for 15 long years since the registration of the impugned domain. Respondent's business is to register generic words with a dictionary meaning to build a service around them. This is similar to the business of a domainer and commercial registrant. Such an entity has an incumbent duty to check his domains are not conflicting with rights of another party.

Respondent has not placed anything on record to show what check/ searches he undertook with respect to the several domains he registered; further not all domain names registered by Respondent are generic terms. Further, registering a large number of .IN Domains on or around the same day, none of which are working so far, points to bad faith.

Statement made at the WIPO meeting at geneva (as a part of presentation on Geographical Indications by an Indian law Firm): "Respondent was a cyber squatter who had registered nearly 530 generic words as domain names without any intention to use". No use at all (legitimate or otherwise) has been made by the Respondent in 15 long years since registration. It has only been passively held / simply warehoused. There is an implausibility of any good faith use to which the impugned domain name may be put; there is an inference that it was registered either to prevent the Complainant from using it in connection with genuine business interest, or to sell to Complainant/competitor.

Assuming without admitting for the sake of argument that the impugned domain name was registered in good faith, it has certainly not been used in good faith and the third element of the Policy also stands satisfied. It has recently come to the notice of the Complainant from online articles that domain names casino.in and

betting.in were registered in name of Respondent and changed hands in end 2017; presumably these were sold by Respondent for a large sum of money. Source: <https://our.in/betting-casino-changed-hands>.

6. Discussion and Findings:

The Arbitrator has reviewed all the documents placed before it by the parties. The Complainant in its complaint has invoked Para 4 of the INDRP, wherein the Complainant is supposed to satisfy all three conditions provided under Para 4 of the .IN Domain Name Dispute Resolution Policy (INDRP).

A. Identical or Confusingly Similar:

1. Complainant asserts rights in the **TICKETS** mark through its registration of the mark in India in respect to goods and services covered under class 39. Complainant also contends that Respondent's domain name **<tickets.in>** is identical or confusingly similar to Complainant's Trademark, as it incorporates the Complainant's mark entirely.
2. Undoubtedly, the trademark registration constitutes prima facie evidence of the validity of trademark rights. Moreover, when a domain name wholly incorporates Complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy under the first clause of the Policy.
3. Disregarding the gTLD, ".IN", as a functional component of the domain name system, therefore, the Arbitrator concludes that the disputed domain name **<tickets.in>** is identical to the Complainant's registered trademark **TICKETS**.

B. Rights or Legitimate Interests:

1. As the Arbitrator concludes that Complainant has not satisfied the third condition of the policy, the Arbitrator declines to analyze the said condition (Rights or Legitimate Interests) of the Policy. See Creative Curb v. Edgetec Int'l Pty. Ltd., FA 116765 (Forum Sept. 20, 2002) (finding that because the complainant must prove all three elements under the Policy, the complainant's failure to prove one of the elements makes further inquiry into the remaining element unnecessary); see also Hugo Daniel Barbaca Bejinha v. Whois Guard Protected, FA 836538 (Forum Dec. 28, 2006) (deciding not to inquire into the respondent's rights or legitimate interests or its registration and use in bad faith where the complainant could not satisfy the requirements of Policy ¶ 4(a)(i)).
2. Further, in the matter of Scribe Opco, Inc. d/b/a BIC Graphic v. Ryan Ramsey, given that Complainant's Complaint fails on the third element, as discussed below, the Panel does not address whether Respondent has rights or legitimate interests in the disputed domain name [WIPO Case No. D2019-2543]. Similar position was held in Scalpers Fashion, S.L. v. Dreamissary Hostmaster [WIPO Case No. D2019-2937] and ADITO Software GmbH v. Domain Admin, Mrs. Jello LLC, [WIPO Case No. D2008-1771].
3. Even under INDRP/978 - MasterPay.co.in & INDRP/957 - ApanaGhar.in, a similar stance was taken and one of the elements was not analyzed in terms of the .IN domain dispute resolution policy (INDRP)... "the Arbitrator need not address the element of bad faith registration and use, as the Complainant has failed to prove the second / previous clause as to legitimate use by the Respondent."
4. Accordingly, the Arbitrator need not address the element of legitimate interests, as the Complainant has failed to prove the third clause as to bad faith registration or use by the Respondent.

C. Registered or Used in Bad Faith:



1. The Complainant has failed to prove why the Respondent knew or should have known of the existence of the Complainant use of brand '**TICKETS**' at the time of registration of the Disputed Domain Name, when the same was applied as a Trademark in India in 2015 only, that is, after a gap of 10 years. The disputed domain name has been registered since 17 February 2005, while the Complainant claims the use since 2006, in accordance with the WHOIS registration date of its Indian website <tickets.org.in>. The Complainant further claims that its knowledge and reputation had already spread across India before 2006. Though, the Archive.org shows no use of Complainant's domain name - ttm.org, tickets.org.uk, tickets.org.in till the year 2013, as claimed by Respondent as well.
2. It is generally accepted that for a bad faith registration, (i) the Respondent must have been aware of the Complainant or its trademarks when it registered the Disputed Domain Name, and (ii) the registration must in some way have been targeted at the Complainant or its trademark, for example by seeking to capitalize on it [Knud Jepsen A/S v. Rick Schwartz, Virtual Dates Inc., WIPO Case No. D2017-0679]. Further where a domain name has been registered before a Complainant has acquired trade mark rights, only in exceptional cases would a Complainant be able to prove a respondent's bad faith (see WIPO Overview 3.0, sections 1.1.3 and 3.8). This is not such an exceptional case [Scalpers Fashion, S.L. v. Dreamissary Hostmaster WIPO Case No. D2019-2937].
3. The main evidence as to use of the Complainant's domain names <tickets.org.uk>, <ttm.org>, <tickets.org.in> since 1998, 2003 and 2006 respectively based upon the WHOIS registration date is in itself contradictory with the Archives (archive.org) for the said domain names available online. In Eterno Infotech Pvt. Ltd. V Zheng Wei [HuntNews.in - INDRP/782], it was held that evidence from Internet Archive - Archive.org is considered a reliable source of evidence, wherein the changes made upon the disputed domain since filing of the case, were considered for determining Bad Faith. Moreover, while Complainant currently has trademark rights in the at-issue mark, such rights do not magically relate back to the time that Respondent first registered

disputed domain name, time well prior to Complainant's first use of its mark.
[Riveron Consulting v. Stanley Pace [NAF # FA1002001309793:
<riveron.com>].

4. Therefore, given the information as to historical use of the domain name and further information as to exchange of hands of two of Complainant's domain names publicly available online. In fact the domain name <tickets.org.in> was sold on 10th or 11th June 2013 on SEDO platform in an auction for \$300 (*information available at [inforum.in](#), [the.in](#), [dnpric.es](#) and [tldinvestors.com](#)*), while in another auction before 11 July 2013 at Namejet.com, <ttm.org> was sold for \$609 (*source: [domainsalescenter.com](#)*), that is acquired/purchased by the Complainant in 2013 from an existing user. Though as for the first sale which is more relevant to the matter, an opportunity of being heard was provided to the Complainant, they failed to provide any proper information. Though, Complainant tried to provide some documents from SEDO related to the year 2015 (*including one in German*) and others had no relevance (*including new reference to [www.heidpark.de](#)*) to the specific information sought for the year 2013 as to purchase of domain name <tickets.org.in> by the Complainant at SEDO.
5. Further, historical WHOIS records as well point to the fact that the WHOIS for domain name <tickets.org.in> and <ttm.org> for the first time was changed in Complainant's name in June and July 2013 respectively.

A) Following is the WHOIS record for domain name <tickets.org.in> made available by NIXI for 27 June 2013, referred to as a significant change, within the same month of purchase of the Domain Name.

WHOIS information from 2013 after June 2013

On 2013-06-27, 11 events were recorded. The following are the significant changes that occurred:

- a. Billing contact changed
- b. Transfer/Renewal from registrar 8067-EP (<UNKNOWN>) to 8173-GO (GoDaddy)

- c. Billing, admin, tech and registrant changed
- d. Name servers removed
- e. Name servers added
- f. The remainder of the events were changes to the domains status and authInfo.

The final change to the object was made on 2013-06-27 11:39:56.

Domain Name: tickets.org.in

Registrar ID: 8137-GO

Creation Date: 2006-09-08 21:55:33

Registry Expiry date: 2014-09-08 21:55:33

Registry Registrant ID: CR146151145

Registry Admin ID: CR146151149

Registry Billing ID: CR146151151

Registry Technical ID: CR146151147

Name Server: NS51.DOMAINCONTROL.COM

Name Server: NS52.DOMAINCONTROL.COM

Last Updated Date: 2013-06-27 11:39:56

Contact ID: CR146151145

Creation Date: 2013-06-27 10:53:15

Name: Bogdan Shevchuk

Organization:

Street: 57-67 Lexh** Gard***

Street:

Street:

City: London

State/Province:

Postal Code: W8 6JJ

Country: GB

Phone: +44.7937*****

Phone Ext:

Fax:

Fax Ext:



Email: *****chuk@gmail.com

B) The WHOIS Information for <tickets.org.in> till May 2013 was in the name of the domain name company from Germany: Checkdomain GmbH, with name servers as ns.checkdomain.de and ns2.checkdomain.de (**Last Updated on 2012-09-08 22:30:46** archived on 21 May 2013 at DomainTools.com and exactly same information as to September 2012 shared by NIXI as well with same exact WHOIS update date and time).

C) The above WHOIS record for <tickets.org.in> was again changed on 15-July-2013, as per the next WHOIS record for domain name <tickets.org.in> archived at DomainTools.com on 21 July 2013 (**Last Updated On:15-Jul-2013 12:05:35 UTC**). The same were updated in the same US details as provided for Complainant's another domain name <ttm.org> below.

D) Following is the WHOIS record for domain name <ttm.org> archived at DomainIQ.com on 14 October 2013, showing for the first time details of the Complainant WHOIS update date as **29-Aug-2013**, just a month after purchase of the Domain Name. The archives from Archive.org further support these findings as submitted by the Respondent as Annexures.

Domain ID: D98223421-LROR

Domain Name:TTM.ORG

Created On:03-Jun-2003 20:12:08 UTC

Last Updated On:29-Aug-2013 05:04:58 UTC

Expiration Date:03-Jun-2015 20:12:08 UTC

Sponsoring Registrar:GoDaddy.com, LLC (R91-LROR)

Status:CLIENT DELETE PROHIBITED

Status:CLIENT RENEW PROHIBITED

Status:CLIENT TRANSFER PROHIBITED

Status:CLIENT UPDATE PROHIBITED

Status:TRANSFER PROHIBITED

Registrant ID:CR149884252

Registrant Name:Bogdan Shevchuk

Registrant Organization:TICKETS TM, LLC

Registrant Street1:101 N. Bra** Bl**, 11th Floor

Registrant Street2:

Registrant Street3:

Registrant City:Glendale

Registrant State/Province:California

Registrant Postal Code:91203

Registrant Country:US

Registrant Phone:+1.9168*****

Registrant Phone Ext.:

Registrant FAX:

Registrant FAX Ext.:

Registrant Email:****@ON5.com

P.S. Registrant Address, Email ID and Phone Number, have been partly hidden, so that there are no privacy concerns. But the WHOIS files can be shared separately by the Arbitrator, if either party in the matter requires more information.

6. Moreover, filing of TM-M by the Complainant before the Trademark Registry on 10 October 2018 for amendment of usage date of the trademark **TICKETS** under class 39, resulted in the change of usage date of Complainant's mark has from 2009 to 2006, purely upon the date of WHOIS details of domain name <tickets.org.in>, which indicated domain name registration by previous owner as **Creation Date: 2006-09-08T21:55:33Z**. The said act has been referred by the Respondent as probably an attempt by the Complainant to take action against the Respondent in these domain dispute proceedings. While the website at <ttm.org> refers to Complainant's name for the first time in January 2014 as per Archive.org.

7. As for the third domain name <tickets.org.uk> claimed to be registered in 1998, the first page was archived on 23 May 2013, having a SEDO parking page. The next archive refers to the owner as info@mils-ip.co.uk and only in 2016 for the first time this domain had an active website in the name of

TICKETSUA. This very clearly proves the fact that the Complainant acquired these domain names <ttm.org>, <tickets.org.in> around mid 2013, while no active use of even <tickets.org.uk> is visible through archive, till 2016 or at least till 2013, it was not active. The information as to TICKETSUA seems to be part of evidence rendered by the Complainant before the Trademark Registry but surprisingly not referred in the Complaint for proving popularity of the mark. Moreover, ownership of TICKETSUA (*now at www.tickets.ua, now owned by the Complainant as on date*) has been questioned by the Respondent under the Response but again the Complainant did not respond to the same under the Rejoinder. In any case, it is not important for these summary proceedings to go into further details of those facts.

8. Otherwise, the Complainant owns more **TICKETS** domain names in different jurisdiction with different extensions including tickets.us, tickets.co.ua, tickets.com.sg, tickets.se and more. But as it was held in the matter of Century 21 Real Estate LLC vs. Century 21 Main Realty Pvt. Ltd. & Ors. [CS(OS) No. 1687/2007]: "the plaintiff has not placed on record any document to show that its reputation has travelled to India in any manner. Merely because a company is having presence in many countries in the business of reality does not mean that the company's reputation has travelled to every single country on earth. Reputation and goodwill of a company are intangible assets and these intangible assets are to be shown to exist. Intangible assets in India are to be proved by way of evidence. There can be no presumption in favour of a corporation of intangible assets in India merely because the company has a reputation and goodwill somewhere else. I, therefore do not consider that the plaintiff has a prima facie case of having goodwill in India or reputation in India".
9. Moreover, the obligation on the part of a registrant to determine that its domain name does not violate a trademark "is not however an absolute obligation which bars any registration of any domain name if someone else, somewhere in the world, has a trademark (however obscure) corresponding to the domain name. The question of when the registration will amount to a violation of rights is one of fact and degree, depending upon many factors,

such as the geographical locations concerned, the nature and scale of the trademark owner's business, how well known and/or famous the trademark in question is and so on" [SK Lubricants Americas v. Andrea Sabatini, Webservice Limited, WIPO Case No. D2015-1566].

10. The word **TICKETS** is a generic word having a dictionary meaning. By virtue of the word **TICKETS** being generic in nature, it is non-distinctive and thus the rights to use or own the word **TICKETS** cannot exist with one single entity or individual, Respondent argued. The said contentions are upheld, as it has been long held that where the disputed domain name is a generic / descriptive term, it is difficult to conclude that there is a deliberate attempt to confuse. It is precisely because generic words are incapable of distinguishing one provider from another and trademark protection is mostly denied to them for related goods/services. In Lumena s-ka zo.o. v. Express Ventures LTD, FA 94375 (Nat. Arb. Forum May 11, 2000) finding no bad faith where the domain name involves a generic term, and there is no direct evidence that Respondent registered the domain name with the intent of capitalizing on Complainant's trademark interest. Further, in the INDRP matter of Radiantly Life v. Jeevan Deep Services Pvt Ltd. [INDRP/957 - Domain Dispute: apanaghar.in], it was held that the term APNA GHAR is a generic term and no one needs a licence or permission to use the term. Furthermore, in such cases of generic/descriptive terms, there is an even greater onus on Complainant to present compelling evidence of secondary meaning or distinctiveness, when there are various other entities using the similar mark.

11. Further, it has been held on numerous occasions in Indian courts as well, that no one could claim exclusive use of generic/descriptive words. Few of these cases have been quoted in the matter before Hon'ble Delhi High Court in the landmark judgment of Living Media India Limited vs Jitender V. Jain And Anr. on 21 May 2002 [Equivalent citations: 2002 VAD Delhi 161, 98 (2002) DLT 430]:

- In Competition Review Private Limited v. N.N. Ojha (Competition Success Review v. Competition Review) 1996 PTC (16) 124 (Del)

where both the parties had used the word 'competition' while publishing their journals it was held that the word 'competition' is a generic term and that the absence of similarity in the colour scheme, the plaintiff could not claim exclusive use of the word 'competition'.

- In *Rupee Gains Tele-Times Private Limited v Rupee Times* (*Rupee Gain v. Rupee Times*) 1995 PTC (15) 384 Delhi... merely because one of the company has used the word RUPEE to name its financial journal will not mean that the said word cannot be used by any other journal nor it can mean that the journal first using the said word RUPEE has acquired trademark in the said word. RUPEE is a descriptive word not a distinctive word. Everything connected with trade and business is described by money, finances and rupee and it is for this reason that these words are repeatedly used by all the financial journals.

12. In the matter of Hostess Brands, Inc. f/k/a Interstate Bakeries Corporation v. Domain Capital [WIPO Case No. D2009-1357], it was held that Respondent is correct when it emphasizes that "hostess" is also a common word subject to substantial third-party use, though Complainant held a Trademark over the mark "hostess". Similarly, **TICKETS** is a very generic and descriptive term, not only used by numerous businesses globally but used in daily life by every individual as well, whether it means referring to Movie Tickets, Rail Tickets, Air Tickets, Concert Tickets and so on. In any case, no travel arrangement can be completed without issue of the tickets in the name of the travellers by any Travel Company. Undoubtedly, the Travel category is the most competitive, when it comes to online services and there are innumerable travel agencies / websites rendering similar services in India itself.

13. In a previous INDRP matter of Shevaldas C. Raghani v. Stephen Koenig [INDRP/008 - Computer.in] it was held "in what manner the Complainant removed this generic name 'COMPUTER' from the public domain and acquired a secondary meaning. The Complainant must prove secondary meaning. Relevant evidence of secondary meaning includes the amount of sales in the preceding years, the amount spent by the Complainant on

advertising, media surveys, consumer surveys etc. The only evidence is the bald claim that the mark has been under use since last 8 years, its extremely weak and inadequate evidence to prove any enforceable right in the domain name against the respondents. On the basis of the records submitted by the Complainant it's not proved that the domain name computer.in is related to the business of Complainant. It's merely confined to the fact that the Complainant is the registered owner of the mark computer, in relation to sarees". Moreover, in this matter a simple search for the term **TICKETS** on www.google.com does not reveal any search results for the Complainant on the first page of the results and as per Complaint's own admission, it has been active on social media since 2018 only.

14. That is, here as well, the Complainant was required to provide enough evidence to prove "Secondary Meaning" in respect of use of **TICKETS**, especially in India, which includes length and amount of sales under the trademark (*Complainant only provided a figure as to global sales as on date*), the nature and extent of advertising, consumer surveys, media recognition, so that consumers may relate mark **TICKETS** with the Complainant only. "Secondary Meaning" has been aptly defined in the case of Charcoal Steak House of Charlotte, Inc. v. Staley, 263 N.C. 199, 139 S.E.2nd 185, 144 USPQ 241 (1964) as "This is to say, a secondary meaning exists when, in addition to their literal, or dictionary, meaning, words connote to the public a product from a unique source." It was laid down in Girnar Software Pvt Ltd V Manisha Enterprises [INDRP/712], that a word/mark is suggestive if it requires imagination, thought, reasoning process and perception to reach a conclusion as to the nature of the services involved while in case of a descriptive trade mark to reach such a conclusion is immediate and instant. While the basic difference between a descriptive mark and a generic mark is that a descriptive mark describes the services/goods while a generic mark names the particular service/goods involved.

15. It can be concluded that the said mark **TICKETS** is descriptive in nature and the Complainant needs to show that it has attained Secondary Meaning in the mark and the public relates the mark with the Complainant only. But in the

said matter, the Complainant has just submitted limited evidence in support of its use of mark **TICKETS** as follows:

- a. WHOIS information of three domain names <ttm.org>, <tickets.org.in> and <tickets.org.uk>
- b. Trademark Registration in India and Egypt (later not in English)
- c. UK Company Registration Certificate
- d. Screenshot of the main website <ttm.org>
- e. List of Domain Names owned globally (*with Rejoinder*)
- f. Link to IOS Apps in different languages (*with Rejoinder*)
- g. Link to Social Media pages (*with Rejoinder*)
- h. Information as to predecessor DANA Technologies (*with Rejoinder*)

16. While the Complainant company claims that during 2018-19, the right of the Complainant to use the **TICKETS** as a trade name has been recognized by global Companies: Apple Inc., Facebook Inc., Telegram Messenger Inc., GitHub Inc. Furthermore, on some social media accounts name used by Complainant is <**tickets.in**>, to which Respondent objects and refers to the selection of ID similar to disputed domain name as unethical behavior on the part of the Complainant. In any case, social media presence of the Complainant under the trademark **TICKETS** is since 2018 only and no news clipping or media coverage or otherwise any proof of promotion in India has been provided by the Complainant, in order to show its popularity.

17. Complainant argues that the primary and overwhelming evidence of bad faith on part of the Registrant is its pattern of registering various domain names containing proprietary and common words without having any legitimate interest or right therein. Though, Complainant has not exactly pointed out a single non-generic domain name Respondent holds, except for referring to Champagne.in. In the matter of Knud Jepsen A/S v. Rick Schwartz, Virtual Dates Inc., the Panel finds no grounds for the allegation that the Respondent engages in a pattern of cybersquatting. In light of the Respondent's area of business, the fact that the Respondent was ordered to transfer a domain name to complainants in two previous UDRP decisions is insufficient proof of

find a pattern of cybersquatting, particularly in the context of a domain name portfolio which runs into the thousands [Case No. D2017-0679].

18. Champagne.in, a previous INDRP in 2012 against the Respondent that was mainly based upon a geographical indication rather than a Trademark, moreover Champagne is a geographical location as well. Under rejoinder, Complainant again refers to INDRP loss in the matter of 'CHAMPAGNE.IN' and also submits some link to a presentation made before WIPO in Geneva, where the same matter was included. But the same is quite irrelevant as to what was referred to in a presentation as a personal opinion by a third party and is not upheld, given the facts and circumstance of this case. In any case, the pattern of conduct would have been relevant in case the disputed domain name <tickets.in> was based upon a strong/distinctive mark and moreover, if it could satisfy clause 6 (ii) of the INDRP Policy, that refers to bad faith at the time of registration of the domain name.

19. Complainant points to passive holding of domain name since 2005 and alleges Bad Faith, but it has been long held that passive holding is not a bad faith, unless it is not possible for the Respondent to have otherwise a future website, without infringing Complainant's Trademark. That is, unless the disputed domain name is based upon Complainant's distinctive mark. In the matter of Warner Bros. Entertainment Inc. v. Karl Allberg [Claim Number: FA2002001881913]... the passive holding doctrine was evaluated and it was held that in this case it is not inconceivable for <dumbledore.com> to be active without infringing Complainant's Dumbledore Marks. Passive holding in this context does not support bad faith. Further, the Respondent with the Arguments provided link to some internal confidential document running into 21 pages, containing information as to the research carried out as to various keywords contained in the domain names including some report and slides as well.

20. Further, in the matter of Veena Kumaravel v. Daegu Law Auction [Case No. D2019-2508] the Panel rejected Complainant's argument that Respondent's "passive holding" of the Domain Name amounts to bad faith. (Sadiq

Alakbarov v. Yuxue Wang, WIPO Case No D2088-1771). In the circumstances of this case, where the Domain Name corresponds to a descriptive word and Respondent has not engaged in any activity that might be suggestive of bad faith (e.g., such as providing false contact details, targeting a distinctive well-known trademark, or a pattern of cybersquatting), Respondent's passive holding of the Domain Name is not evidence of bad faith.

21. Lastly, Complainant refers to the Respondent as similar to the business of a domainer, who has registered many domain names around the same time. Though, neither in the previous case **<champagne.in>** as referred by Complainant, the Respondent ever responded to the Complainant in that matter, nor is there any evidence in these proceedings of any attempt to sell the disputed domain name **<tickets.in>** has been made by the Respondent. Though under Rejoinder, Complainant refers to an article on a website www.our.in, where a sale by the Respondent as to Casino.in and Betting.in has been made in 2017.

22. It has been held in numerous UDRP decisions that domain name investing is a legitimate interest mainly when domains are generic and descriptive. As the panel noted in S.P.C.M. SA v. Whois Privacy Services Pty Ltd / Vertical Axis Inc., Domain Administrator, WIPO Case No. D2014-0327, with reference to various decisions under the Policy, carrying on business in registering descriptive or generic domain names is not in itself objectionable, nor is offering such domain names for sale. Similarly in the matter of Virgin Enterprises Limited v. Domain Admin/This Domain is for Sale. Hugedomains.com, D2017-1961 (WIPO December 11, 2017) as for Respondent it "is a domainer which regularly registers domain names that include generic words for the purposes of selling them. Such business activities can be legitimate and are not in themselves a breach of the Policy, so long as they do not encroach on third parties' trade mark rights."

23. In simple terms, investment in generic domain names is like an opportunity to Invest in a virtual property as soon as some new domain TLD is launched

with future expectations. It can be compared to a situation when a new area/locality starts developing and people start investing in real estate and look forward to a long term investment or even a stock Investment in IPOs. This seems to be the only conduct of the Respondent, either he may carry on the business upon it or sell a domain name, of course subject to the law of the land. Though in any case, NIXI's policies only restrict Domain Registrar's from sale over and above the normal price [refer to Registry Advisory LA 01: Sales of .IN Names by Registrars].

24. Even in the INDRP matter of PIAGGIO & C. S.p.A. v. Xu Xiantao (Domain: aprilia.in; INDRP/1132), it was laid that there is a difference between Cybersquatting and Speculating in domain names. As speculating in generic domain name has been held to be a legitimate business under UDRP and claims were denied in the following matters for various reasons. See Aurelon B.V. v. Abdul Basit Makrani, [WIPO # D2017-1679; <printfactory.com>], Vulf Records LLC v. Domain Admin [NAF # FA1802001771089; <vulf.com>], Fresenius Kabi S.A. v. Domain Manager [WIPO # D2018-0491; <nutrihome.com>]. In simple terms, there is a demarcation between Cybersquatting and Domain Investing. Because while former means a deliberate and mala fide action on the part of the domain registrant to try to make profits from someone else's goodwill/trademark rights and is never allowed to anyone (*under INDRP in such cases, costs can be imposed*). While the latter is legitimate interest as laid down in various UDRP Precedents.

25. Indeed, lot has changed since the last few years and domain dispute panelists have held in favor of domain investors, who hold many generic domain names and the evidence of portfolio of generic domain names, rather helps to conclude a good faith on the part of the Respondents as it can be concluded that the Respondent generally registers generic words and has not specifically targeted the Complainant only. In Fresenius Kabi S.A. v. Domain Manager, EWEB Development, Inc. [WIPO Case No. D2018-0491] Respondent had provided evidence of other "nutri-" related domain names

that it registered in the same year as the disputed domain name or in the preceding two years. The arguments were held in favor of the Respondent.

26. Therefore, the Arbitrator concludes that the Complainant has not been able to prove Bad Faith registration or Bad Faith use. Hence, Complainant has not been able to prove the third requirement under the INDRP.

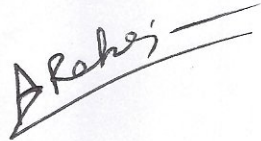
7. Reverse Domain Name Hijacking:

1. Respondent requests that Complainant be found to have engaged in reverse domain name hijacking ("RDNH"). RDNH is "using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name" (*in terms of UDRP*). It is generally accepted that mere lack of success of a complaint is not itself sufficient for such a finding.
2. The three-member UDRP panel in Yell Limited v. Ultimate Search, WIPO Case No. D2005-0091, noted that where a Complainant should have appreciated at the outset that its complaint could not succeed will often be an important consideration on the issue of RDNH. The Arbitrator is of the opinion that such consideration applies to the Complainant's conduct here. The Arbitrator finds, on the entire record, that the current matter of <tickets.in> is a case of Reverse Domain Name Hijacking, given the Complainant's weak mark and an attempt to misrepresent as to date of use of the mark. Here, it is quite evident that domains <tickets.org.in> and <ttm.org> have been acquired by the Complainant in 2013 and there has been no evidence of use since the domain registration date. That rather proves Bad Faith on the part of the Complainant and hence a finding of Reverse Domain Name Hijacking is necessary.
3. The RDNH was previously held under INDRP only once in the matter of INDRP/008 - Computer.in, where in a similar situation it was held that "this tribunal is of confirmed opinion that the domain name, trade name and trademark is a weak mark and absent of proof of fame of widespread

recognition of the services provided by the Complainant makes this complaint without any cause of action". It was further concluded "that the present complaint by the Complainant is a blatant attempt by the Complainant to hijack the domain name of the Respondent and in bad faith to harass the Respondent and to abuse the process of law."

8. Decision:

1. For the foregoing reasons, in accordance with INDRP Policy and rules thereunder, the Complaint is denied with RDHN finding and the disputed domain name <tickets.in> to remain with the Respondent.
2. No order as to costs.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 17th March 2020

Place: Agra, India