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**VISHESHWAR SHRIVASTAV  
SOLE ARBITRATOR  
IN  
ARBITRATION PROCEEDINGS OF DOMAIN NAME  
"intesanpaolo.in"**

**INTESA SANPAOLO S.P.A. ...COMPLAINANT**

**AND**

**VAN WEI ...RESPONDENTS**

**AWARD**

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 13.03.2010. However, while checking the records of the proceedings this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents.

2. That a part compliance of the order was done by the Complainants vide their letter dated 17.03.10 and thus by its order dated 24.03.10 and 05.04.10 the complainants were again directed to supply a copy of the complaint by DHL and FEDEX to the Respondents.
3. That the order for sending copy was complied on 6<sup>th</sup> of April, 2010. That on 06.04.2010 this Tribunal received an email from complainant stating *interalia*, that they had intimated to this Tribunal vide their email dated 25.03.10 that they had sent a copy of the complaint by some courier agency namely TNT. Accordingly this Tribunal vide its order dated 06.04.2010 directed the Complainants to supply the copy of email dated

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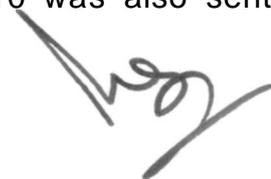
25.03.2010 which they purportedly sent to this Tribunal as this Tribunal's record did not show any receipt of an email.

4. Accordingly, on 06/04/2010 the complainants sent a copy of an email dated 25.03.10 which had a scanned copy of TNT receipt with a tracking details thereof which showed that the courier was not delivered on the Respondent.
5. That this led the Tribunal to pass an order dated 15.04.10.
6. That vide their email dated 16.04.10 it was intimated by the complainant that they have sent the copy of the complaint by DHL in compliance of the order of this Tribunal. This Tribunal traced the tracking details of DHL and found that the same has been delivered to the respondents.
7. That accordingly this Tribunal vide its order dated 15.04.10 directed the complainant to also serve copy of the order dated 15.04.10 to the Respondents by DHL. That vide the said orders

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respondents were given time till 30 April, 2010 for sending their reply to the statement of claim/complaint filed by the complainants.

8. That the order dated 15.04.10 too was sent by DHL courier No. 6569370986 on 19.04.10 and its track details as supplied by the Complainants shows delivery thereof on 21.04.10 on the Respondents.
9. That despite the date of 30.04.10 being notified to the Respondent they chose not to send any communication or file any Statement of Defense.
10. It is seen that the Complainant have tried to serve the copy of the complaint by TNT and on specific directions of this Tribunal they even sent a hard copy of their complaint on the respondents by DHL courier which shows delivery thereto on 08.04.10 and thereafter on specific directions on the complainant a copy of the order dated 15.04.10 was also sent

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by courier which was received by the Respondent on 21.04.10. This shows that despite specific directions of 15.04.10 this Tribunal has not received any communication from the Respondents let alone a statement of defense.

11. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal is to decide the controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

## **CLAIM**

12. The claim as put forward by the complainant is briefly as under:

13. The dispute relates to domain name <intesananpaolo.in>. The complainants are aggrieved by the same being registered by GoDaddy.com Inc. who are the Registrar in favour of the Respondent Yan Wei # 800, Dongchuan Road, Shanghai 200240, CHINA.

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14. The Complainants have alleged that the domain name is identical and is confusingly similar to the name, trademark, service mark in which the Complainant has rights as they are claiming to be a leading Italian banking group and also one of the protagonists in the European financial arena. And that Intesa Sanpaolo is the company which is a result of a merger between one Banca Intesa S.p.A. and Sanpaolo IMI S.p.A., who claim to be two of the top Italian banking groups. It is claimed that Intesa Sanpaolo is now among the top banking groups in the euro zone, with a market capitalization exceeding 70 billion euro having an average market share of approximately 18% in all business areas (retail, corporate and wealth management). They claim to have a network of approximately 6,500 branches capillary and well distributed throughout the Country, with market shares of more than 15% in most Italian regions and the Group offers its services to approximately 11 million customers. It is further claimed that Intesa Sanpaolo has a strong presence in Central and Eastern

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Europe with a network of approximately 1,900 branches and over 8 million customers. To fortify their stand the Complainants rely upon **Exhibit A**. The complainants further claim that it has an international network supporting corporate customers in 34 countries, including in the United States, Russia, China and India.

15. The Complainant claim that they are owner of a number of domain names which support the Complainant's several dedicated and official websites for its consumers and other visitors from different countries and jurisdictions they are listed below:

INTESASANPAOLO.ASIA

INTESASANPAOLO.BIZ

INTESASANPAOLO.CC

INTESASANPAOLO.CH

INTESASANPAOLO.CN

INTESASANPAOLO.CO.KR

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INTESASANPAOLO.CO.UK

INTESASANPAOLO.COM

INTESASANPAOLO.COM.CN

INTESASANPAOLO.COM.PL

INTESASANPAOLO.DE

INTESASANPAOLO.EU

INTESASANPAOLO.HK

INTESASANPAOLO.INFO

INTESASANPAOLO.IT

INTESASANPAOLO.KR

INTESASANPAOLO.LI

INTESASANPAOLO.ME

INTESASANPAOLO.MOBI

INTESASANPAOLO.NAME

INTESASANPAOLO.NET

INTESASANPAOLO.NET.CN

INTESASANPAOLO.ORG

INTESASANPAOLO.ORG.CN

INTESASANPAOLO.PL

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INTESASANPAOLO.RS

INTESASANPAOLO.SG

INTESASANPAOLO.TW

INTESASANPAOLO.UA

INTESASANPAOLO.WS

16. Besides the above Complainant claim to be the owner of trademarks INTESA SANPAOLO, INTESA, and SANPAOLO worldwide. The complainants buttress their stand by relying on their pending applications for trade mark for INTESA SANPAOLO and INTESA SANPAOLO in different countries given as **Exhibit B.** The complainants state that their application for the registration of the trademark INTESA SANPAOLO was filed on 2 February, 2007 and granted on 7 March, 2007, while that in the European Union was filed as a Community trademark on 8 September, 2006 and granted on 6 July, 2007. It is also claimed that In India, the Complainant has been using the INTESA SANPAOLO trademark since 1 January, 2007 and is the registered proprietor of the subject

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trademark since 26 April, 2007. The complainants have given a list of their INTESA SANPAOLO trademarks in India which are numbered as 1553279, 1553280 and 15532881. The complainants rely on the online database of the Trade Marks Registry which is given as **Exhibit C.** Besides the above the complainants rely upon copies of articles and news items about the Complainant and its activities published in India and international media given as **Exhibit D.**

17. The Complainants found that the Respondents have on 19th December, 2008, registered the domain name <intesasanpaolo.in> which is identical to the trademark and corporate name/trade name INTESA SANPAOLO of the Complainant **Exhibit E.** To fortify their stand the complainants have also relied upon various decisions by a number of international arbitration panels, including the WIPO Arbitration & Mediation Panels who have and decided in favour of the Complainant.

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It is alleged that the Registrant i.e. the Respondent has no rights or legitimate interests in respect of the domain name as his website connected to <intesananpaolo.in> lists unrelated links. From the links listed augments confusion amongst internet users who are looking for the Complainant's website and this results in diversion of traffic to such unrelated websites. It is alleged that the Respondent's website has no apparent purpose as the Respondent has made no use of the domain name in connection with a bona-fide offering of goods or services, and is holding on to the domain name clearly for dishonest purposes. Reliance is placed to **Exhibit G**. Further there is an allegation that the domain name has been registered in bad faith as the Respondent had no apparent purpose and despite this he is holding on to the same with absolutely no justification to make wrongful profit therefrom. It is also alleged that the Respondent is a cyber-squatter waiting to derive illegal profit from his wrongful act.

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19. The Complainants also allege that the Respondent has acquired the domain name at issue to attract Internet users for commercial gain by facilitating "pay-per-click" on various unrelated links, by trading on the goodwill associated with the Complainant's trademark thus has violated Paragraph 6 of the INDRP .

20. That this Tribunal has given an anxious and due consideration to the contents of the complaint and the exhibits filed thereto particularly in view of the total silence on the part of the respondents despite being repeatedly served with the notice and copies of the complaint besides the orders through the internet.

#### ORDER

21. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name INTESA SANPAOLO SPA.IN hence this Tribunal directs the Registry to transfer the domain name INTESA SANPAOLO SPA to the complainants. The

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Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records

Signed this 10<sup>th</sup> day of May 2010.

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NEW DELHI

V. SHRIVASTAV  
ARBITRATOR