

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL34007497122219R
Certificate Issued Date	: 06-Aug-2019 11:44 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ SUPREME COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1774206352601937R
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)



-----Please write or type below this line-----

#### ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (National Internet Exchange of India)

Before the Sole Arbitrator, Divya Balasundaram

Disputed Domain Name – "bira91.in"

In

B9 Beverages SPRL

Versus

Mr. Sandeep Kumar

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shoestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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

Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name – 'bira91.in'

In the matter of:

B9 Beverages SPRL  
19, Deve du Prieure – 1160 Bruxelles

Complainant

Versus

Mr. Sandeep Kumar  
Mathura, UP, 281002

Respondent

**1. THE PARTIES**

1.1 The Complainant in these proceedings is B9 Beverages SPRL, a company incorporated under the laws of Belgium, having its registered office at 19, Deve du Prieure – 1160 Bruxelles . The Complainant is represented by Mason & Associates, Advocates, A-7, Lower Ground Floor, Sarvodaya Enclave, New Delhi 110017.


1.2 Respondent in these proceedings is Mr. Sandeep Kumar of the address Mathura, UP, 281002.

**2. DISPUTED DOMAIN NAME AND REGISTRAR**

2.1 This dispute concerns the domain name bira91.in which was registered in June 2019 (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is GoDaddy.com, LLC, 14455 North Hayden Rd, Suite 219, Scottsdale, AZ 85260, USA.

**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 August 9, 2019 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 the same day.
- 3.3 Arbitrator was appointed vide NIXI's email of August 26, 2019.
- 3.4 Arbitrator sent email on August 26, 2019 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days.
- 3.5 Subsequently, the Arbitrator received an email dated August 27, 2019 from Respondent providing his response.
- 3.6 The Arbitrator subsequently addressed an email of August 29, 2019 to all concerned parties that the Panel would review all submissions and proceed to pass its award.
- 3.7 The language of these proceedings is English.

4. BACKGROUND OF COMPLAINANT AND ITS RIGHTS IN TRADEMARK BIRA91 AS SUBMITTED IN THE COMPLAINT

- 4.1 B9 Beverages SPRL is the trademark owner of the trademark 'BIRA 91' and is a subsidiary of B9 Beverages Pvt. Ltd., a private limited company recognized and incorporated under the Companies Act, having its registered address at H-106, Connaught Place, New Delhi 110001 ('B9 Beverages SPRL' and 'B9 Beverages Pvt. Ltd.' hereinafter collectively referred as "the Complainant Group").
- 4.2 The Complainant Group is a manufacturer and distributor of, inter-alia, beer around the globe. Mr. Ankur Jain, the founder of the Complainant Group began its business in the year 2012, of importing exotic beer and moved to launching its own products under the trademark 'BIRA91'.
- 4.3 The Complainant Group adopted the trademark "BIRA91" in 2014, when it launched its website [www.bira91.com](http://www.bira91.com). B9 Beverages Pvt. Ltd. registered top level Domain Name with GoDaddy under the domain name [www.bira91.com](http://www.bira91.com) on 25<sup>th</sup> October, 2014 and the same is in continuous use ever since.





- 4.4 The Complainant's Group beer under the trademark 'BIRA 91' are available at restaurants, cafes, retail stores, licensed liquor shops etc. across the country and other products are available on its website and are becoming popular among consumers and traders.
- 4.5 The Complainant Group owns and operates from two breweries in India. In 2017, the Complainant Group began its campaign in the United States of America and in 2018, the brand 'BIRA 91' started on its wider expansion in the Asia Pacific market by entering Singapore, Nepal, Dubai. The Complainant Group has invested huge sums of money, labour, skill, time, energy and efforts towards promoting and popularizing the trademark 'BIRA 91'. The annual global advertising and promotional expenses incurred by the Complainant's Group for the financial year March 31, 2017 to March 31, 2018 are INR 62,07,45,000. The annual turnover of the Complainant Group under the BIRA 91 Trademarks for the financial year March 31, 2017 to March 31, 2018 is INR 1,58,23,31,000.
- 4.6 The Complainant's Group trademark 'BIRA 91' has a significant presence on social media platforms such as YouTube, Facebook, Instagram and Twitter etc. which are quite popular amongst the consumers and public at large.
- 4.7 The Complainant Group has won various awards for its BIRA branded beers, for instance, in World Beer Awards 2017. 'BIRA 91' is the only brand to have won four awards in the competition, and was the only award winner from India.
- 4.8 The Complainant owns registrations in European Union, Benelux, Hong Kong, Singapore, Malaysia, Thailand and / filed applications in Canada, Nepal, South Africa, Vietnam for the trademarks BIRA 91 and BIRA 91 (logo). In India, the Complainant is the owner of the BIRA, BIRA 91 and BIRA 91 (logo) (hereinafter referred to as the 'BIRA 91 Trademarks') in several classes such as 09, 21, 22, 25, 32, 35, 41. It is stated that B9 Beverages Pvt. Ltd. is extensively, exclusively and continuously using BIRA 91 Trademarks in respect of their respective goods and services under authorization from the Complainant. However, no document has been provided in support of such authorization.
- 4.9 It is stated that long, extensive, continuous and exclusive use of the trademark BIRA 91 Trademarks over the years has translated into immense goodwill in favour of the Complainant Group and the BIRA



91 Trademark has attained the status of well-known trademarks amongst the relevant segment of the public and members of trade associates and they associate the said trademarks with the Complainant's Group and no one else.

5. LEGAL GROUNDS

- 5.1 The domain name is confusingly similar to the trademark or service mark in which the Complainant has rights: (Para 4(i) to be read with Para 7 of INDRP Rules of Procedure)
- 5.2 The Impugned Domain Name was registered in June 2019, which is far more subsequent to the earliest date of registration of BIRA 91 Trademarks and launch of the Domain Name www.bira91.com. The name of the Registrant of the Impugned Domain Name changed from Mr. Sumit Yadav (Mobile No. +917891033123) to Mr. Sandeep Kumar, however, the email ID of the Registrant remains the same. The Impugned Domain Name entails the Complainant's registered trademark 'BIRA 91' in entirety and is nothing but a blatant copy of the Domain Name www.bira91.com with a mere addition of country code '.in'.
- 5.3 The addition of country code '.in' in the Impugned Domain Name gives the impression that the Impugned Domain Name is an Indian counterpart of the Complainant's Group or has been authorized / taken the licenses or permissions from the Complainant's Group, when in fact no such authorization or license exists.
- 5.4 Respondent has no rights or legitimate interests in respect of the www.bira91.in domain name: (Para 4(ii) to be read with Para 7 of the INDRP Rules of Procedure).
- 5.5 The Respondent has registered the Impugned Domain Name with malafide intention with a sole reason of piggy riding on the immense goodwill and reputation of the BIRA 91 Trademarks. The malafide intent of the Respondent is evident from the fact that when a user feeds the Impugned Domain Name on a search engine it maliciously redirects to www.budweiser.com which is one of the competitor of the Complainant's Group offering identical goods i.e. beer.
- 5.6 The effect of such is that the Complainant's Group consumers and/or potential consumer traffic, on typing the Impugned Domain Name will be redirecting to the Complainant's Group business competitor thus not



only infringing the statutory and proprietary rights of the Complainant in the BIRA 91 Trademarks but also causing huge financial loss to the Complainant's Group business and its reputation.

- 5.7 As soon as the Complainant learnt about the aforesaid issue, they filed a trademark complaint through its counsels before GoDaddy requisitioning them to transfer the Impugned Domain Name in favour of the Complainant. However, the reply received from GoDaddy stated that they will not be able to directly participate in the present dispute as "the domain name in question, [www.bira91.in](http://www.bira91.in), is forwarding traffic along to <https://www.budweiser.com/> which is not hosted by GoDaddy".
- 5.8 The Complainant's Group has no relationship with the Respondent or with [www.budweiswer.com](http://www.budweiswer.com), neither there has been any licensee or authorization by the Complainant's Group.
- 5.9 The Respondent deliberately misrepresented and violated the provisions of Paragraph 3 of INDRP.
- 5.10 The Respondent has no plausible reason to register the Impugned Domain Name which is blatant copy the Complainant's Group Domain Name [www.bira91.com](http://www.bira91.com). It is stated that the registered and well-known BIRA 91 Trademarks acts as an indicator of the source of Complainant's Group goods and services. Given the strength and fame of the Complainant's Group and BIRA 91 Trademarks, it is highly unlikely that the Respondent honestly registered the Impugned Domain Name. In addition, the fact the Impugned Domain Name maliciously redirects the internet users / traffic to a competitor website [www.budweiser.com](http://www.budweiser.com) clearly indicates the illegitimate use of the Impugned Domain Name and blatant infringement of the registered and well-known BIRA 91 Trademarks and domain name [www.bira91.com](http://www.bira91.com).
- 5.11 The Respondent's undisputed goal is to divert internet users/traffic, searching for the Complainant's Group to the competitor website [www.budweiser.com](http://www.budweiser.com). From these facts, it is clear that the Respondent's use of nearly identical Domain Name is (a) not legitimate; (b) not fair use, and (c) designed to mislead and divert the potential consumers and members of trade to the Impugned Domain Name and thereto to [www.budweiser.com](http://www.budweiser.com). The Respondent cannot establish any rights to and legitimate interests in the Impugned Domain Name.



- 5.12 The Respondent registered the domain name www.bira91.in in bad faith: (Para 4(iii) to be read with Para 6 of INDRP Rules of Procedure)
- 5.13 The Respondent registered the Impugned Domain Name on 25 June, 2019 while the Complainant's Group has been using the trademark BIRA 91 Trademarks since the year 2014. Respondent is undoubtedly aware of the Complainant's Group and knowingly became registrant of the Impugned Domain Name which contains registered and well-known trademark 'BIRA 91' primarily for the purpose of maliciously redirecting to Complainant's Group competitor www.budweiser.com.
- 5.14 Given the immense worldwide reputation in the BIRA 91 Trademarks and the close proximity between the Impugned Domain Name and www.bira91.com; the internet users would inevitably be confused and will associate the Impugned Domain Name with the Complainants Group and will then redirect the internet users/potential consumers to a competitor's website which is engaged in similar/identical goods and services.
- 5.15 In light of the foregoing, the presence of the Impugned Domain Name is harmful to the Complainant's Group business as well as reputation and the Respondent's actions constitute use in bad faith.

6. RESPONSE RECEIVED FROM THE RESPONDENT

- 6.1 By email dated August 27, 2019, the Respondent sent the following email containing his response, which is reproduced below:

'Sir/Mam,

I still am not able to understand it completely because I'm just a college student but I guess the gist of it is that I've bought bira91.in and Bira91 has filed a complaint to get it back. If I'm not wrong then I'd like to list the following points:

1. How I bought the domain: I was watching the world cup and I saw two advertisements, first Godaddy and second Bira91. Out of curiosity, I opened Godaddy and searched for bira91 and I saw many bira91 domains listed for sale including bira91.in (which was listed for around Rs.1500 or so, don't remember it exactly).

2. Why I bought the domain: Bira91 is a global brand which is spending around \$5 million for ICC sponsorship (source: internet) and yet they haven't bought all of their domain extensions. I thought of this as an





opportunity that if I inform Bira91 about this then I might get appreciated/rewarded for this because that's what big companies do when someone points out any fault/bug.

3. After buying the domain, I tried contacting Bira, I sent several emails to [sandeep.singh@bira91.com](mailto:sandeep.singh@bira91.com) (registrant of [bira91.com](http://bira91.com)) but I didn't get any reply. Not only this, I tried calling them on the office number 011 4100 6793 (google maps) and yet nobody answered. Then somebody suggested to me that if I redirect the address to someone else's website then probably Bira might notice it and will contact me but again nobody contacted.

After a few days, I received this email stating that bira91 has filed a complaint which is quite shocking because I thought that they'll at least try to contact first. I don't have any plans/intent to use [bira91.in](http://bira91.in) for anything. I could've given the domain at that point of time itself if somebody from Bira could've replied to my emails and calls. I'm still ready to give the domain whenever Bira asks for it.

My only intent to buy the domain was to inform Bira to take care of these. As Bira has already spent around Rs.40k (mentioned in the complaint document), I don't think now I'm in a position of asking for any appreciation. I am deeply sorry about this because I didn't want this to happen.

Having said that, it'd be very helpful if I can get something to recover at least the registration fee.

I repeat, my only intent to buy the domain was to inform Bira about this bug (or flaw). I was and I'm ready to handover [bira91.in](http://bira91.in) to Bira whenever they ask.

I can be reached on 8436909888.

Thanks.'

## 7. DISCUSSION AND FINDINGS

- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant.
- 7.2 The Arbitrator finds that the Arbitral Tribunal has been properly constituted.

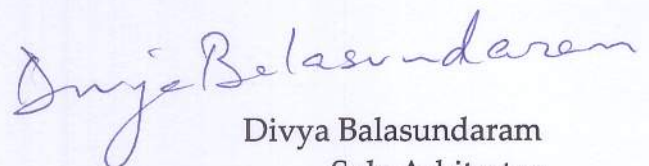




- 7.3 The disputed domain name is identical to Complainant's trade mark BIRA. The Complainant has established its prior trademark rights in BIRA. Mere addition of .in does not serve to differentiate the disputed domain from Complainant's trademark. Apart from the statutory rights, the Complainant has also widely used its mark.
- 7.4 The Respondent is neither commonly known as BIRA nor has applied for any registration of the mark "BIRA" nor carries on any business under the said name. The Respondent was also not authorized or licensed by Complainant to use the domain name.
- 7.5 The reply from the Respondent claiming ignorance as he is a college student cannot justify his registration of the impugned domain name. The reason given by the Respondent for registering the impugned domain name that he wanted to point out a flaw/bug to the Complainant comes across as a fanciful excuse, it is tenuous and cannot be sustained. If the Respondent was genuinely concerned about availability of the impugned domain name to any person, he could have checked and found that this is no bug/ flaw, but simply that domain names are available for purchase on a first come first serve basis. Further, if the Respondent wished to caution or inform the Complainant about the availability of the impugned domain name, he could have tried to contact the Complainant before registering the impugned domain name.
- 7.6 It is also significant to note that the Respondent redirected the impugned domain [www.budweiser.com](http://www.budweiser.com), a competitor of the Complainant, with the purported intent to catch the Complainant's attention. This reasoning is arbitrary and unacceptable. The Respondent has also clearly violated the provisions of Paragraph 3 of INDRP.

8. DECISION

- 8.1 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <bira91.in> be transferred to the Complainant.



Divya Balasundaram  
Sole Arbitrator

Date: September 4, 2019  
Place: New Delhi.