

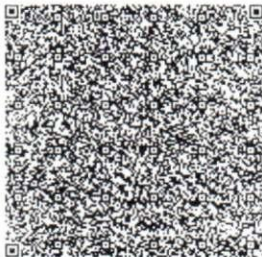


INDIA NON JUDICIAL

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Certificate Issued Date : 07-Jan-2013 12:00 PM
Account Reference : IMPACC (IV)/ dl719103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL71910328798856939062L
Purchased by : RAJEEV SINGH CHAUHAN ADV
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : RAJEEV SINGH CHAUHAN ADV
Second Party : NA
Stamp Duty Paid By : RAJEEV SINGH CHAUHAN ADV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE In DOMAIN NAME DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Lazard Strategic Coordination Company LLC,
30 Rockefeller Plaza, New York, NY 10020, USA
And

Lazard India Private Limited
Express Tower, 20th Floor, Nariman Point, Mumbai- 400 021
Versus

Complainant No. 1

Complainant No. 2

Andrea Dini
13F, No. 112 Zonce Rd, Ballymoney,
BT 53, Great Britain

(Respondent)

Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SRJs).

The Parties

The First Complainant in this proceeding is Lazard Strategic Coordination Company LLC, having its office at 30 Rockefeller Plaza, New York, NY 10020, USA.

The Second Complainant in this proceeding is Lazard India Private Limited having its office at Express Tower, 20th Floor, Nariman Point, Mumbai- 400 021.

The Respondent in this proceeding is Andrea Dini, having her office at 13F, No. 112 Zonce Rd, Ballymoney, BT 53, Great Britain.

The Domain Name & Registrant

The disputed domain name is www.lazard.co.in. The Registrant is Andrea Dini of Ballymoney, Great Britain.

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.lazard.co.in.

.In Registry has supplied the copy of the Complaint and Annexures to me.

I asked the Complainant requesting it to supply the copy of the complaint with annexure to the Respondent and in case if they have already served it, then to provide me with the details of service record.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted ex-parte.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and annexures / document.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

The first Complainant is the registered proprietor of the trademark Lazard and is a subsidiary of the Lazard Group LLC which in turn is a subsidiary of Lazard Ltd. Lazard Ltd. and its

subsidiaries and associates worldwide are a preeminent name in international name in international financial advisory and asset management and have long specialized in crafting solutions to complex financial and strategic challenges. The First Complainant and its affiliates and subsidiaries provide advice on mergers and acquisitions, restructuring and capital raising, as well as asset management services, to corporations, partnerships, institutions, governments and individuals.

The Second Complainant, is a company incorporated in the year 1984 under the seal of the Registrar of Companies, Maharashtra and is an indirect subsidiary of Lazard Group LLC and is the permitted user of the trademark LAZARD and its many variations in India. Hereinafter the word Complainant includes all the associates and affiliates of the First and Second Complainants.

The origins of the First Complainants can be traced back to the year 1848 when it was founded in New Orleans, Louisiana. Its founders, the Lazard Brothers, formed Lazard Freres & Co. as a dry goods business, which later became exclusively engaged in the business of financial services, first with its retail clients and then increasingly with commercial clients. Over time the business expanded into banking and foreign exchange business. The First Complainant is the registered proprietor of the trademark LAZARD and its numerous variations in classes 16/35 and/or 36 in 83 different jurisdictions of the world and its affiliates are owners and registered proprietors of the trademark LAZARD and its variations in four other jurisdictions.

The first use of the said mark can be traced to the year 1848 in United States. In India, the mark LAZARD was used for the first time in the year 1993. Since the first adoption of the mark LAZARD, the same has been used the world over and has come to be associated with the Complainants and their services exclusively.

The Complainants are well-known the world over by the name of LAZARD and substantial revenue has been generated by the complainants under the said name. The Complainants have advised on nearly 1,000 completed mergers and acquisitions having a cumulative value in excess of USD 1 trillion.

The trademark LAZARD has been used extensively over the internet to identify the Complainants and to associate the said mark exclusively with the Complainants.

That in or around October, 2011, the Complainants while browsing the internet came across the website www.lazard.co.in. The said website appears to be a parking page following the "pay-per-click" format and listing various websites such as "Delhi Real Estate", "Online Investments", "Private Equity Firms" and others, which continue to change periodically.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that "*In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case*".

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and the hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that "*An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable*"

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "LAZARD".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has stated in his complaint that domain name of respondent www.lazard.co.in is confusingly similar and identical to his name/mark LAZARD. The Respondent has applied for domain name that is identical with complainant's name and mark LAZARD.

It is further stated that the complainant is the registered proprietor of the "LAZARD" trademark in numerous countries in the world including INDIA and has gained significant reputation and its mark can be termed as a well known brand. The complainant is also the registrant and proprietor of various Domain name registration at International and domestic level.

The complainant has further stated that the mark has been in the continuous uninterrupted use by the complainant for over 162 years. The complainant has filed sufficient evidence to show that it has trademark rights in the marks LAZARD and other LAZARD comprising marks.

The Complainant has relied upon the following judgments:

- *Rediff.com India Limited v. Mr. Abhishek Varma & Anr. Case No. INDRP/1 (Decided on 03.04.2006)*
- *Kingston Technology Co. v. Web Master, Skype Network Limited, Case No. INDRP/033.*
- *Hindustan Petroleum Corporation v. M. Ram Swamy, Case no. INDRP/059.*

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- *Kentucky Fried Chicken v. Webmaster Casinos Ltd. Case No. INDRP/66.*
- *Ingersol-And Co. Frankly Gully d/b/a Advcomren, WIPO Case No. D2000-2001)*
- *BoehringerIngelheim Pharma GmbH & Co. KG v. Phalana Dhimkana WIPO Case No. D2006-1594.*

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

The Registrant has no rights or legitimate interests in the respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The Complainant has stated that its trademark has been in use by it since 1848 by the Complainant and its website www.lazard.com was created on 17th February, 1994. The Respondent to this proceeding created the website in question www.lazard.co.in was created on 10th September, 2011, which is very recent and at a time when the trademark of the complainant has gained worldwide recognition.

The Complainant has further stated that the domain name in question is misleading the visitors to the webpage into believing that the Respondent is associated with the Complainants. The webpage in question has links to other websites. The Complainant has further stated that the Respondent is making an illegitimate and commercial use of the domain name www.lazard.co.in and tarnishing the well-known trademark and Corporate

Phalana

name of the Complainants. Further the website www.lazard.co.in uses the pay per click format which is purely commercial.

The Complainant places reliance on the following cases, and others for this issue:

1. *Sociate Des Prodi Its Nestle SA, Switzerland v. Nescafe Limited, Case No. INDRP/100.*
2. *Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455.*
3. *Adobe Systems Incorporated v. Domains OZ, WIPO Case NO D2000-0057.*
4. *eBay Inc. v. Akram Mehmood, WIPO Case No. DAE2007-0001.*
5. *Drexel University v. David Brouda, Case No. D2001-0067.*
6. *Kangaroo Kids Education Ltd. v. Anupama Devi, Case No. INDRP/146.*

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name.

The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered or acquired the Domain name with dishonest intention to mislead and divert the consumers and to tarnish the well-known trade mark/corporate name of the Complainants. The Complainant further stated that the Respondent has registered and is using the domain name to disrupt the business of the Complainant and that the Respondent has not authorized or is associated in any way with the Respondent to this proceeding.

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has the full knowledge and has intentionally attempted to divert the users from the domain name/website of the Complainant and also to deceive the consumers into believing that there is a connection or association between the Complainant and Respondents website.

The Complainant has relied upon the following judgments:

1. *Televisoin Food Network, G.P. v. Arif Siddiqui, Case No. INDRP/138.*
2. *Microsoft Corporation v. Chun Man Kam, Case No. INDRP/119.*
3. *America Online, Inc. v. Cyber Network LLP Case No. D2000-0977.*

The Complainant has also referred various other judgments to make out its case that the Respondent is using the domain name in question not for any personal use but just with the intention to tarnish the brand name of the Complainant and for commercial gain.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint.

The Respondent has registered and used the disputed domain name in bad faith .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.lazard.co.in> to the Complainant. The Award is accordingly passed on this 11th day of January, 2013.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 11th January, 2013