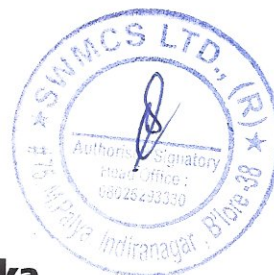


**INDIA NON JUDICIAL**

Government of Karnataka

e-Stamp

Certificate No.	: IN-KA45716271194009S
Certificate Issued Date	: 22-May-2020 03:04 PM
Account Reference	: NONACC (FI)/ kacrsfl08/ INDIRA NAGAR1/ KA-BA
Unique Doc. Reference	: SUBIN-KAKACRSFL0898582151634867S
Purchased by	: HARINI NARAYANSWAMY
Description of Document	: Article 12 Bond
Description	: ARBITRATION JUDGEMENT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: HARINI NARAYANSWAMY
Second Party	: NA
Stamp Duty Paid By	: HARINI NARAYANSWAMY
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE NO. 1234

SANVIV SERVICES PVT Ltd.

Complainant

Vol.

ONE WAY DROP TAXI INDIA PVT Ltd.

Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.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.

Havini Narayana

GOVERNMENT OF KARNATAKA

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE NO. 1234

**SANVIV SERVICES PVT Ltd.
286 GST Road Chrompet
Chennai 600044
Kancheepuram
Tamilnadu
INDIA**

Complainant

Versus.

**ONE WAY DROP TAXI INDIA PVT LTD.
No. 30/97, Srinagar Main Road , Annasalai
Behind Panayathamman Koil
Poonamallee
Chennai 600056
Tamilnadu
INDIA**

Respondent

1. The Parties

The Complainant is Sanviv Services Pvt. Ltd. of Chennai India and is represented in these proceedings by Ms. Sanjana Srivastava of Hyderabad, India. The Respondent is One Way Drop Taxi India Private Limited of Chennai India and is represented in these proceedings by Mr. Karthikeyan. N of Chennai, India.

2. The Domain name, Registrar and Policy

The present arbitration proceeding pertains to a dispute regarding the domain name <onewaydroptaxi.in> (hereinafter referred to as 'the disputed domain name') and was registered on November 15, 2016. The registrar for the disputed domain name is GoDaddy LLC of United States of America. This Arbitration proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

Hanin Narayana

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. On June 23, 2020, the Arbitrator received the electronic copy of the Complaint. The Arbitrator transmitted on June 24, 2020 an email notifying the Respondent of commencement of the arbitration proceedings under the INDRP Rules. The Respondent was informed that the Response with supporting documents can be sent within twenty-one days of the notification. Copies of the said notification were sent to other interested parties to the dispute.

The Respondent filed the Response on July 11, 2020. Prior to filing the Response, the Respondent had requested for unlocking of the disputed domain name. The Respondent was informed that the disputed domain name needs to be locked during pendency of the dispute, in-order to comply with the Policy and the Rules. On request by the parties to file additional pleadings, the Complainant was given time to submit a rejoinder by July 19, 2020 and the Respondent was given time to reply the rejoinder by July 26, 2020. The Complainant filed the Rejoinder on July 18, 2020 and the Respondent filed the Sur-rejoinder on July 26, 2020.

3. Factual Background

The Complainant is running an inter-city taxi business under the trademark DROPTAXI. The domain name <droptaxi.in> was registered by the Complainant on August 30, 2013. The Complainant has registered trademark rights for the DROPTAXI mark under class 39 in India. Details of the Complainant's trademark application / registration for its DROPTAXI mark are:

Trademark	Application /. Registration Number	Application/ Date	Class	Status
DROPTAXI (Device)	3721627	January 8, 2018	39	Pending
DROPTAXI Word mark	3721626	January 8, 2018	39	Registered
DROPTAXI (Device)	2693667	March 7 , 2014	39	Registered

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The Respondent, One Way Drop Taxi India Private Limited, is also in the business of taxi transportation services. It offers its services under the trademark ONE WAY DROP TAXI. The Respondent, registered the disputed domain name <onewaydroptaxi.in> on November 15, 2016. The Respondent has a trademark registration for its mark ONE WAY DROP TAXI under class 39 in India bearing number 3640945, dated September 22, 2017. The Certificate of Incorporation of "One Way Drop Taxi India Private Limited" shows that it was incorporated on March 9, 2018.

The Parties Contentions

The Complainant

The Complainant states that its head office is in Chennai and it was incorporated in the year 2016. The Complainant asserts that its mark DROP TAXI was adopted and used since 2013 and its domain name <droptaxi.in> was registered in August 2013. The Complainant is the registered proprietor of the device mark DROPTAXI.IN bearing application number 2693667, which is valid till March 7, 2024. The Complainant claims that it came to know of the disputed domain name around October 2019, and sent a notice to the Respondent on January 10, 2020. Although the Respondent replied the notice, the Complainant claims that very little substantive reasons were given by the Respondent to continue using the disputed domain name.

The Complainant states that it is a leading intercity taxi service, and its website "www.droptaxi.in" is accessible from all over the world including India. The Complainant emphasises that its name and mark are well-known and that significant amounts have been spent to promote its mark. The Complainant additionally asserts that the web traffic to its domain name is much higher as compared to the disputed domain name, and has provided the web traffic ranking details for the two domain names from the Alexa site as evidence. The Complainant has also submitted evidence of its promotions / advertisements in print and other media, and of outdoor advertisements such as promotions placed on bus bodies and at traffic kiosks among others.

The Complainant argues that the Respondent is engaged in the same area of business, which is taxi services, but it has registered the disputed domain name much later. The Complainant argues that it has superior rights due to prior adoption and use of its registered word mark since 2013, whereas the Respondent's first use of its mark/ logo was from November 26, 2016. The Complainant submits that it has legitimate interest in the "droptaxi.in" domain name and has used the mark extensively and continuously. The Complainant states that it has not assigned,

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licensed or authorized the Respondent to use its mark in any manner and that the disputed domain name was created to mislead consumers and to cause damage to its goodwill.

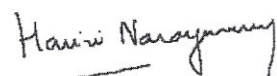
The Complainant requests for transfer of the disputed domain name on the grounds that: (i) the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name and (iii) The disputed domain name has been registered or is being used in bad faith by the Respondent.

The Respondent

The Respondent states that Mr. C. Pandi, a director of the Respondent company, started the business of transport services in the year 2016. The Respondent claims that its registered trademark ONE WAY DROP TAXI was made popular by continuous and wide use and has gained significant reputation and goodwill. The Respondent alleges that the mark was honestly adopted in the year 2016, and was coined using an arbitrary combination of words conceived by the Respondent for the first time.

The Respondent states that it is the proprietor of the disputed domain name and has a trademark registration for ONE WAY DROP TAXI, bearing number 3640945, with user claim from November 26, 2016 . The Respondent states that the said mark was advertised for opposition in the Trademark Journal No 1836 dated 12/02/2018. As no opposition was made by the Complainant or any other party to its trademark application, the registration of the mark was allowed. The Respondent states that the mark has been widely used and promoted through newspapers and magazines since 2016, and adds that its trademark is an identifier of source for its services which has attained secondary meaning, and is protected by statutory and common law rights. The Respondent alleges that the taxi services offered under its mark is sought after by its customers, which is indicative of the reputation and goodwill associated with its mark.

The Respondent reiterates that the name and mark was adopted honestly in 2016 and it has obtained permissions from various government agencies concerning its business. As evidence the Respondent has submitted: (i) The Certificate of Incorporation of One Way Drop Taxi India Private Limited (ii) The Permanent Account Number (PAN) of the Respondent (iii) Tax Deduction Account Number (TAN) in its name, (iv) Goods and Service Tax Registration (GST) of the Respondent, (v) Certificate issued by the Ministry of Micro, Small and Medium Enterprises, Government of India. (vi) Evidence of its promotions / advertisements in print and other media.



..

The Respondent argues that the Complaint is not maintainable as it is a prior adopter of the trademark ONE WAY DROP TAXI. The Respondent states that the case has been filed due to business rivalry, and such a case would not stand in a court of law. The Respondent alleges that the cases cited and relied on by the Complainant, are not relevant to the facts of this case.

The Respondent further argues that the Complainant does not enjoy monopoly rights, and is not an honest or true proprietor of DROPTAXI, as the Complainant's trademark application number 3721627 has been opposed. The Respondent adds that this fact, has been suppressed by the Complainant. The Respondent claims that it is a *bona fide* owner and has an "elder" and sole right to the disputed domain name and requests for denial of the Complaint with costs.

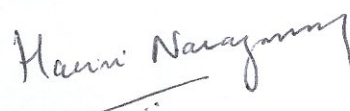
Complainant's Rejoinder

The Complainant in the rejoinder reiterates that it has used the DROP TAXI mark since 2013, and has a word mark registration for DROPTAXI, registration number 3721626, claiming use from October 14, 2013, and a pending device mark application number 3721627. The Complainant re-emphasises that the Respondent started using ONE WAY DROP TAXI only from November 26, 2016, which was adopted in bad faith to cause confusion and derive unjust gains.

The Complainant submits a recent web ranking for the two websites, "www.droptaxi.in" and the disputed domain name. The global ranking for its website is shown as 2,863,934 whereas the disputed domain name is ranked 6,443,070. The Complainant argues that the traffic to its website is 37 % higher than the traffic to the disputed domain name. The Complainant has submitted evidence showing use of its DROPTAXI.IN mark for the period 2014 to 2016, and evidence that the mark was extensively advertised during the years 2014, 2015 and 2016.

The Complainant argues that DROP TAXI is the distinctive part of the disputed domain name and refutes the Respondent's claim that its adoption by the Respondent was original or unique. The Complainant asserts that incorporation of a company does not grant rights to the Respondent over the Complainant's word mark, and the evidence submitted by the Respondent, namely PAN, TAN, GST and its registration under Micro Small and Medium Enterprises Act 2006 are statutory requirements for a business, which are not relevant to the present dispute.

The Complainant refutes the Respondent's statement that the notification of the present arbitration should have come as a surprise, as the Respondent was already put on notice by the



Complainant in January 2020. The Complainant rebuts the Respondent's argument that its mark DROPTAXI is comprised of merely generic terms and lacking in distinctiveness, as its registered trademark is unique, original and distinctive. The Complainant asserts that the National Internet Exchange of India is the appropriate forum to seek remedy regarding the domain name, which it can opt for, in addition to court remedies. The Complainant reiterates that the disputed domain name has been registered in bad faith, and the evidence submitted by the Respondent has no relevance to the present dispute and does not offer any protection to intellectual property.

Respondent's Sur-Rejoinder

The Respondent in the Sur-Rejoinder states that it has grown to become a leading taxi business and is a leading business conglomerate in Tamil Nadu under the name ONE WAY DROP TAXI. The Respondent further contends that various government authorities including the trademark registry have acknowledged that it is a "leading taxi business". The Respondent also argues that if the two marks are considered to be identical, the Trademark Registry would not have accepted the Respondent's trademark application or issued the registration certificate for its mark.

The Respondent again alleges that the present dispute is one of business rivalry. The Respondent states that the words "drop" and "taxi" are common to the taxi business and has listed out several other domain names registered by other third parties, such as: <thedroptaxi.com>, <mydroptaxi.com>, <tamilnadudroptaxi.com> and <droptaxy.com>.

The Respondent argues that its valid registrations from various government authorities pertaining to its business show that it is not a fly by night operator, and contends that the disputed domain name was registered with *bona fide* intentions, with legitimate interest and not in bad faith. The Respondent requests that the Complaint be dismissed with costs.

4. Discussion and Findings

Under paragraph 4 the INDRP Policy, the Complainant has to establish the following three elements to obtain the remedy of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and

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- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has submitted evidence of its trademark registrations for its DROPTAXI mark to establish its rights. Annexure C and D appended to the Complaint are copies of the trademark registration certificate of the Complainant's DROPTAXI mark number 3721626 under class 39, dated January 8, 2018. It is well established under the Policy that a trademark registration is considered *prima facie* evidence of rights in a mark. See *Goldman Sach & Co, LLC v. Lina, Doublefist Limited*, INDRP Case No. 936 (trademark registrations serve as *prima facie* evidence of Complainant's ownership and validity of the mark.) If a complainant owns a trademark, it is sufficient to satisfy the threshold requirement of having trademark rights under the Policy. Accordingly, it is found that the Complainant has established its rights in the DROPTAXI mark.

The disputed domain name has the entire DROPTAXI mark and differs from the Complainant's mark with the additional terms "one way" prefixed to the mark. It has been consistently held that when a domain name includes a trademark with descriptive terms, regardless of other terms in the domain name, it can be found to be identical or confusing similar to the mark. See for instance *L'Oreal v Zeng Wei*, INDRP Case No. 342, pertaining to the domain name <loreal-paris.in>, where the L'OREAL mark was found confusingly similar to the domain name although it included the word "paris" with the said mark.

The Arbitrator accordingly finds the disputed domain name, which has the entire DROPTAXI mark, is confusingly similar to the mark. The Complainant has rights in the said mark, and is found to have fulfilled the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The onus of

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proving rights or legitimate interest in the disputed domain name lies on the Respondent, however the Complainant has to present a *prima facie* case to succeed in these proceedings.

Under the Policy paragraph 7, a respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

The Respondent has filed evidence that shows it is operating a taxi services business under the name "One Way Drop Taxi", which establishes that it is commonly known by the name. The Respondent has also obtained trademark registration for the mark ONE WAY DROP TAXI and incorporated a company under the same name. The Respondent has claimed that its trademark ONE WAY DROP TAXI is a coined mark that was adopted honestly and legitimately. Given the evidence filed by the Respondent, the question arises whether the safe harbour provisions under paragraph 7 (i) and (ii) apply to the Respondent's case and whether the Respondent has rights or legitimate interests in the disputed domain name.

The question whether the Respondent has established rights or legitimate interests in the domain name under the circumstances here, depends on whether the Respondent had at the very outset registered the disputed domain name as an honest adopter. Given the facts and circumstances of this case, where the Complainant has claimed use of the DROPTAXI mark from the year 2013, the Respondent's honest adoption of the disputed domain name is related to the question whether the Complainant has proved it had common law rights in the DROPTAXI mark when disputed domain name was registered by the Respondent in 2016.

The Complainant has filed evidence of its extensive use of the DROPTAXI mark and of significant amounts that it had spent on promotions and advertisements for the said mark during the period 2014 to 2016. The evidence submitted by the Complainant are :

- (i) Bookings and enquiries for its taxi services by its customers and potential clients.
- (ii) Advertisements of the DROPTAXI mark placed in leading daily newspapers such as Times of India.
- (iii) Advertisements of the DROPTAXI mark in widely circulated Tamil publications such as Daily Thanthi , Dina Mani, Thuglak and Tambaraas

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(vi) Invoices showing that numerous advertisements booked through Selvaa Advertising and Vasant Ads Outdoor Advertising of Chennai, for the DROPTAXI mark to be displayed on bus bodies, in particular, advertisements placed at the rear of buses plying to Vellore and Pondicherry

(v) Evidence of several advertisements for the DROPTAXI mark that were displayed at various outdoor locations such as at traffic junctions and traffic kiosks.

(vi) Evidence of advertisements of DROPTAXI that were displayed on bus bodies.

Based on all the evidence submitted by the Complainant, it is found, that the Complainant has successfully established that it has extensively promoted the DROPTAXI mark, particularly in the state of Tamil Nadu, during the period 2014 to 2016. The Complainant has filed evidence of its adoption of the mark from 2013 and of its continuous and extensive use since then, and evidence of its trademark registration for its DROPTAXI mark in India, under class 39, showing use from October 2013. The Complainant has clearly demonstrated it has rights in the DROPTAXI mark at the time the Respondent registered the disputed domain name.

The Respondent is located in Chennai, which is in the state of Tamil Nadu and the disputed domain name is being admittedly used by the Respondent to run a taxi business. When the Respondent is using the disputed domain name in the same area of business, the balance of probabilities, is that the registration of the disputed domain name by the Respondent, which is confusingly similar to the Complainant's mark, indicates that the disputed domain name was registered with an intention to derive advantage and mileage from the Complainant's mark.

The words "*bona fide* offering" in paragraph 7 (i) of the Policy, has to be distinguished from a mere offering of goods and services. It has been consistently held in domain name cases, that the term "*bona fide* offering" implies use by an honest adopter of the mark. See *FINAXA Societe Anonyme v. Vitalie Popa*, WIPO Case No. 2004-0873. The term "demonstrable preparations" are subject to interpretation of whether the respondent has adopted the trademark and business name in good faith and as an honest adopter. See *Madonna Ciccon p/k/a v Dan Parisi and Madonna.com*, WIPO Case No. D2000-0847.

The documents and evidence filed by the Respondent to support its contentions of having rights and legitimate interests in the disputed domain name, as rightly argued by the Complainant, are not relevant to the issue here. The crux of the issue here is whether Respondent's action to register a domain name which is confusingly similar to the Complainant's mark, can be termed *bona fide*. In other words, whether the disputed domain name was registered by the Respondent honestly without intention to gain or exploit the mark of another successful taxi business.

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On balance, in the light of the evidence submitted by the parties, it is found that the Respondent's arguments that it has adopted a combination of generic words, independently as the two words "drop" and "taxi" ought to be considered generic to the taxi business, is of little help to the Respondent's case. The Complainant has successfully countered the Respondent's allegations that the DROPTAXI mark consists of merely generic or descriptive terms, by submitting evidence that shows significant prior use of the mark, extensive promotions and advertisements due to which the mark has acquired distinctiveness. The Complainant has demonstrated that it has continuously used the DROPTAXI mark in commerce and the mark has acquired secondary meaning among consumers and the public, and has become an identifier of source for its services, prior to registration of the disputed domain name by the Respondent.

The Respondent's use of a known mark in the disputed domain name is found to be lacking in good faith and using the mark suggests an intention to confuse customers or seeking to create a false associations with an established mark of the Complainant. Further, there is little merit in the Respondent's arguments that its trademark application was not opposed by the Complainant. Not opposing the Respondent's trademark application before the Trademark Office, may at best indicate that the Complainant has not been vigilant in opposing the Respondent's application within the stipulated time, but it does not by any means, negate the Complainant's rights in the DROPTAXI mark, or for that matter indicate that the Respondent's adoption of the DROPTAXI mark in its domain name has been honest or legitimate or support the Respondent's case of establishing rights or legitimate interests in the disputed domain name.

In the light of the circumstances discussed here, it is found that the Complainant has established that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant has made a *prima facie* case as required under the second element of the Policy.

Deficiencies in the Complaint

It needs to be mentioned here, that based on the initial pleadings filed by the parties, namely the Complaint and the Response, the Arbitrator was ready to conclude that the Complainant had failed to prove that its DROPTAXI mark had become distinctive of its services before the disputed domain name was registered. If it was not for the documents filed much after the initial Complaint, this Complaint ought to have been dismissed for lack of proper supporting documents. The Complainant had not provided the required documents on which its case relied in the initial Complaint. Many of the documents submitted as evidence to show use of the mark

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with the initial Complaint were unclear and of very poor quality, and the date was not visible in many documents. Considering that an INDRP case is based largely on documentary evidence submitted by the parties, what prevented the Complainant from submitting proper documents in a timely manner on which its case relied on the first instance, instead of submitting the documents as an afterthought in the Rejoinder.

The Complainant has given an impression of not being serious enough about protecting its rights. If the Respondent had felt encouraged to register a mark or a company name with the same name as the disputed domain name, it is the Complainant's inaction to blame. The Complainant has not been vigilant in taking timely action to protect its rights. When a party seeks relief for protection of its rights, its actions ought to demonstrate that it is interested in protecting its rights in a timely manner. The Complainant redeemed itself from the deficiencies of the initial Complaint by filing the relevant evidence and documents with its Rejoinder, and proved its case.

Bad Faith

The main objective of the Policy is to protect the interests of the public, consumers and Internet users from abusive and bad faith registration of a domain name that incorporates a trademark belonging to another. The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

As discussed in the previous section, the Arbitrator finds that the Complainant has provided considerable evidence that the DROPTAXI mark was widely advertised during the period 2014 to 2016, which demonstrates its common law rights in the DROP TAXI mark. The Complainant's registered trademark for the DROPTAXI mark, bearing number 3721626, claims use from October 14, 2013. The Respondent's arguments that it is a prior user of ONE WAY DROP TAXI as it has coined the mark, is not tenable under the circumstances, as the Complainant has clearly established with evidence that its mark DROPTAXI had acquired distinctiveness, as an identifier of the source of the Complainant's taxi services prior to the Respondent's registration of the disputed domain name.

Given the evidence, and the facts and circumstances, the Arbitrator finds the disputed domain name was registered in bad faith. By registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark. Cybersquatting is a term that is used to describe bad faith registration of a domain name in violation of rights in a third party's trademark in order to derive mileage from the trademark.

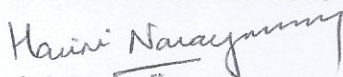
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The Respondent's registration and use of the disputed domain name as discussed, targets the Complainant's DROPTAXI mark. The Complainant is found to have successfully established the third element under paragraph 4 of the Policy that the disputed domain name was registered and is being used in bad faith.

Decision

It is ordered that the disputed domain name <onewaydroptaxi.in> be transferred to the Complainant.

Parties to bear their own costs.



Harini Narayanswamy

Arbitrator

Date: August 23, 2020