



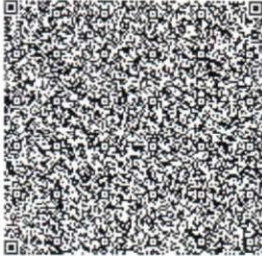
सत्यमेव जयते

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**ARBITRATION AWARD**

**.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF  
INDIA**

**.IN domain Name Dispute Resolution Policy INDRP Rules  
of Procedure**

**IN THE MATTER OF:**

Force India Formula One Team Limited  
Dadford Road  
Silverstone  
Northampton  
NN12 8TJ

..... Complainant

**VERSUS**

Mr. Mandeep Singh Dhingra  
8-2-401/B 1  
Road No.4  
Banjara Hills  
Hyderabad  
Andhra Pradesh 500034

..... Respondent

1. **THE PARTIES:**

The Complainant in this administrative proceeding is Leslie Ross, Force India Formula One Team Limited, Dadford Road, Silverstone, Northampton NN12 8TJ. The Respondent is Mr. Mandeep Singh Dhingra, 8-2-401/B 1, Road No.4, Banjara Hills, Hyderabad, Andhra Pradesh 500034.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <www.saharaforceindiaf1.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com.

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. Mandeep Singh Dhingra, Hyderabad, Andhra Pradesh. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

- 3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **25<sup>th</sup> September, 2012**. The parties were notified about the appointment of an Arbitrator on **25<sup>th</sup> September, 2012**.

- 3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on **25<sup>th</sup> September, 2012**. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.
- 3.3. The Respondent was granted an opportunity on **16<sup>th</sup> August 2012**, as aforesaid, to file its response if any within ten days. Since the Panel did not receive any response from the Respondent within prescribed time as granted by e-mail communication dated **25<sup>th</sup> September, 2012**, the respondent was again granted one more final opportunity to file its response within seven days of the reminder email of **8<sup>th</sup> October, 2012**, failing which respondent was informed that the matter shall be decided by the Panel on the basis of the material available on record and in accordance with provisions of law as applicable. The respondent failed and/or neglected and/or omitted to file any response within the time granted to him by the said notice by email of **25<sup>th</sup> September, 2012** as well as **8<sup>th</sup> October, 2012**.
- 3.4 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the

statements and documents submitted on record, the present award is passed.

**4. FACTUAL BACKGROUND**

- 4.1 The Complainant in this administrative proceeding is Force India Formula One Team Limited a company incorporated as per the provisions of Indian Companies Act, 1956 having its principal place of business at Dadford Road, Silverstone Northampton NN12 8TJ.
- 4.2 The Complainant is a company that owns and runs a Formula One racing team, based in Silverstone, England. The team was formed in 2007 and was known by the name "Force India Formula One Team" until 2011 when Sahara Adventure Sports Limited, an Indian company which forms part of the Sahara Group, purchased 42.5% of the shares of Orange India Holdings S.A.R.L., the parent company of the Complainant, and the team was then renamed "Sahara Force India F1 Team".

**5. PARTIES CONTENTIONS**

**5A COMPLAINANT**

5A(1)The Complainant claims to be the registered proprietor of a large number of trademark registrations and applications for the mark "Force India", in a wide range of classes and in many jurisdictions worldwide. The Complainant submits that the earliest registration dates from 9 May 2008 and the mark has been in constant use since 2008.

**B. Respondent**

5B(1) The Respondent has been given opportunities to file its response to the Complaint, by the panel by its notice(s) dated **25<sup>th</sup> September 2012** and **8<sup>th</sup> October. 2012**. However, the respondent has failed to file any response within the prescribed time or extended time or to seek any further extension of time. The case of the complainant, therefore, remain unrebutted.

**6. DISCUSSIONS AND FINDINGS**

- 6.1 The Complainant, while filing the Complaint submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.
- 6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it



considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

- 6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.
- 6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5. The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.
- 6.6. The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the

authenticity of the documents filed by the Complainant.

- 6.7. The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <www.saharaforceindiaf1.in> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.
- 6.8. Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9. The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10. The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.11. Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to



any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

- 6.12. Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

**A. IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The Complainant claims to be the registered proprietor of a large number of trademark registrations and applications for the mark "Force India", in a wide range of classes and in many jurisdictions worldwide. The earliest registration dates from 9 May 2008 and the mark has been in constant use since 2008.

6A.2 The Complainant submits that Sahara element of the Sahara Force India name is owned by Sahara India, an Indian company which controls the Sahara Groups as described above. The name "Sahara" has been extensively registered by that entity as a trademark in India and used by it since 1987. It is very well known brand in India, in relation to a wide range of business interests conducted by Sahara India, which is a substantial conglomerate company headquartered in Lucknow, India.

6A.3 The complainant submits that whilst the composite brand "Sahara Force India" has not yet been registered as a trademark, three applications for a European Community registration (one as a word mark and two logos) have been made by the Complainant. The name "Sahara Force India" has been used extensively

by the Complainant since October 2011 and is now globally recognised in the field of motor racing.

6A.4 The domain name that is the subject of this Complaint is identical or confusingly similar to a trademark in which the Complainant has rights, as described above. The domain name contains the mark "Sahara Force India", which contains the "Force India" trademark that is the subject of the trademark registrations owned by the Complainant, as described above. The domain name reproduces the composite mark "Sahara Force India" in which the Complainant has substantial goodwill and related rights deriving from its use of this name since 2011. The Complainant's rights are thereby being infringed by the registration and use by the Respondent of the domain name that is the subject of this Complaint.

6A.5 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name <www.saharaforceindiaf1.in> is identical and/or deceptively similar to the earlier registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark/domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name <www.saharaforceindiaf1.in> is identical and/or confusingly similar to the trademark "Force India" of the Complainant.

6B. The Respondents have no interest or legitimate right with respect to the Disputed Domain Name.

6B.1 The Complainant submits that the as at the date of this Complaint there is no evidence that the Complainant has been able to find of any use by the Respondent, or any preparations to use the domain name in question, or any name corresponding to the domain name in connection with a bona fide offering of any goods or services

6B.2 The Complainant further submits that to the knowledge of the Complainant, the respondent has not been known by the domain name in question and has not acquired, or attempted to acquire, any corresponding trademark or service mark rights in or relating to it.

6B.3 The Complainant further submits that the Respondent is not making any legitimate non-commercial or fair use of the domain name; but rather seems to have registered it solely with the intention of making commercial gain out of its sale to the Complainant.

6B.4 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also finds, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.5 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Complainant in the domain name

<www.saharaforceindiaf1.in> and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name and has no legitimate right or interest therein.

C. **Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The Complainant submits that the rebranding of the Complainant company took place after a substantial shareholding in the Complainant's parent company was acquired by the Sahara Group. This transaction was announced on 12 October 2011. The domain name that is the subject of this Complaint was registered on the very same day by the Respondent.

6C.4 The Complainant further submits that at present, the domain name <<www.saharaforceindiaf1.in> > is being held by the Respondent. This is in bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. This is an attempt to misuse the domain name by the use of a simple domain name extension variant. It is submitted by the complainant that the Respondent by registering the domain name, intentionally attempts to attract for financial gain, internet users to the Respondent's website, by creating a deliberate confusion and/or deception with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the

Respondent's website. The mark ""Force India"" having been extensively used is understood and associated by consumers in India and throughout the world as the mark of the Complainant denoting its services and business. On account of the high degree of inherent and acquired distinctiveness, which the mark "Force India" is possessed of, the use of this mark or any other phonetically, visually or deceptively similar mark, by any other person would result in immense confusion and deception in the trade, leading to passing off. The name/mark ""Force India" has acquired unique importance and is associated with the Complainant to the strict exclusion of all others. A mere mention of the said name/mark establishes an identity and connection with the Complainant and none else.

6C.5 On 14 October 2011 the Complainant discovered that two domain names [www.sharaforceindia.com](http://www.sharaforceindia.com) and [www.saharaforceindiaf1.com](http://www.saharaforceindiaf1.com) (which are the subject of a Complaint which is being heard by the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP) had been registered to the Respondent. The Complainant contacted the Respondent to determine how the Complainant could acquire the domain names from the Respondent. An offer of 8,000 INR (Indian Rupees) was made by the Complainant to the Respondent, which was refused. Further investigations led the Complainant to discover that in addition to the two .com domain names (above) the Respondent had also registered the domain name that is the subject of this Complaint and three similar IN domain names which are the subject of three additional Complaints.

6C.6 The Complainant further submits that on 15 November 2011 further offers to the Respondent in the form of (i) a pair of free domestic return tickets on Kingfisher Airlines and (ii) an all expenses trip to attend one of the international Grand Prix's scheduled for 2012, initially for one and then for two people were also made by the Complainant and were refused by the Respondent.

6C.7. The Complainant further submits that in November, 2011 the Respondent was again contacted by the Complainant and was asked what he wanted to receive in order to agree to transfer all of the domain names to the Complainant, but no reply was received. In December 2011 the Respondent stated that he would transfer the domain names if the Complainant would pay USD3,500 per domain. The Complainant then made an offer of USD10,000 for all six of the domain names. The Respondent indicated that he was prepared to accept this offer, but then failed to co-operate in finalising formal written documentation confirming this agreement. On 22 March 2012, a lower offer for USD 4,000 for all of the domain names was made as a final offer by the Complainant, which was not accepted by the Respondent. This has resulted in the Complainant commencing these proceedings against the Respondent.

6C.8 The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name <www.saharaforceindiaf1.in> was registered by the respondents in bad faith.

6C.9 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration

of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

- Transfer of the domain name <www.saharaforceindia1.in> to the Complainant.
- An Order that a cost of Rs. 25,000/- is to be paid by the Respondent to the Complainant in the above matter.



AMARJIT SINGH  
Sole Arbitrator

Dated: 19<sup>th</sup> November, 2012