



AU 355130

OM SRI BABA  
**R. PREMNATH**  
STAMP VENDOR  
L.No. 8053/B3/07  
HIGH COURT CAMPUS  
CHENNAI - 600 104

6273  
1706.14  
TAMILNADU

Sridharan

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 19<sup>th</sup> June 2014

Emirates, Emirates Group Headquarters  
United Arab Emirates

Versus

Zhao Ke, Shanghai – 200041, China

...

Complainant

...

Respondent

Sridharan

**BEFORE S SRIDHARAN, SOLE ARBITRATOR**  
**OF NATIONAL INTERNET EXCHANGE OF INDIA**  
**ARBITRATION AWARD**

**DATED: 19<sup>th</sup> June 2014**

<b>Emirates, Emirates Group Headquarters United Arab Emirates</b>	<b>...</b>	<b>Complainant</b>
<b>Versus</b>		
<b>Zhao Ke, Shanghai – 200041, China</b>	<b>...</b>	<b>Respondent</b>

**1. The Parties**

- 1.1 The Complainant, Emirates, a corporation organized and existing under the laws of Dubai, having its principal place of business at Emirates Group Headquarters, P.O. Box 686, Dubai, United Arab Emirates represented by Mr. Tarvinder Singh & Mr. Anshuman Sharma of KOCHHAR & CO, Advocates & Legal Consultants, Technopolis Building, 3rd Floor, Tower B, Sector- 54, DLF Golf Course Road, Gurgaon – 122002 (NCR) India.
- 1.2 Respondent is Zhao Ke at Weihai Road 755, Shanghai – 200041, China.

**The Domain Name and Registrar**

- 1.3 The disputed domain name <[airemirates.co.in](http://airemirates.co.in)> created on 16.05.2014 is registered with Dynadot LLC (R117-AFIN).

**2. Procedural History**

- 2.1 On 22<sup>nd</sup> May 2014, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On the same day, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 24<sup>th</sup> May 2014, I received hardcopy of the Complaint.
- 2.3 On 28<sup>th</sup> May 2014, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 30<sup>th</sup> May 2014, I received soft copy of the Complaint from the Complainant.
- 2.5 Respondent has not filed any response to the Complaint.





- 2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

**3. Factual Background**

**A Complainant**

- 3.1 The Complainant is a Dubai Corporation established by Decree No. 2 of 1985 (as amended) by the Government of Dubai. In the same year as the corporation was established, on October 25, it launched its first flight. Since then the international airline of the United Arab Emirates has become an award-winning, world-class carrier and is the world's largest long haul airline. In almost three decades, the Complainant has experienced extraordinary growth and has become one of the most trusted transcontinental passenger airline brands.
- 3.2 With a fleet of over 218 aircrafts, the Complainant route portfolio now comprises of more than 142 destinations in 80 countries around the world. In addition to operating passenger air services, the Complainant's business activities also include: freight services (Emirates Sky Cargo); aircraft engineering and maintenance (Emirates Engineering) and ground logistics and tourism (Arabian Adventures).
- 3.3 The Complainant adopted the trade mark EMIRATES as early as the year 1985 with respect to its goods/services and it has become distinctive of the Complainant's goods/services in commerce. The Complainant is the owner of the mark EMIRATES and various other marks containing the word EMIRATES. In addition to its use as a trade mark, the word EMIRATES is also the corporate identity and trading style of the Complainant.
- 3.4 The Complainant expended significant resources in promotion and advertisement worldwide, including in India, and has established significant Internet presence over the years. Advertisements pertaining to the trade mark/trade name EMIRATES have been featured regularly in print and electronic media which inter alia include magazines, television, and the internet. The Complainant has incurred a significant amount of money in promotional expenses worldwide. As a result of Complainant's efforts, trade mark/trade name EMIRATES enjoys tremendous reputation and goodwill in the minds of the consumers as well as the members of the trade all over the world, including India. Consequently, the members of the trade and public associate and recognize the trade mark/trade name EMIRATES exclusively with the Complainant and none else.
- 3.5 The Complainant has been sponsoring many events, seminars, exhibitions, conferences etc., where the trade mark/trade name EMIRATES is displayed conspicuously through banners, hoardings, or online displays. The Complainant has been committed to sports sponsorship in both the UAE and around the world, beginning with the first powerboat race held in Dubai, in 1987. The list of sports includes but not limited to Formula 1, Football, Rugby, Tennis, Horse Racing, Golf, Cricket, Sailing. In addition to the extensive portfolio of sports sponsorships, the Complainant is also dedicated to the growth of global arts and culture through a number of sponsorships around the world. For example, Australian Symphony Orchestra, San Francisco Symphony, Dubai International Film Festival, The Emirates Airline Festival of Literature, Skywards Dubai International Jazz Festival, Dubai Summer Surprises shopping festival, etc. The Complainant was also the Team Sponsor of Deccan Chargers Cricket Team in the IPL. The Complainant in partnership with the ICC, sponsors the Emirates Elite Panel of ICC Umpires and Referees, an agreement which sees

*Induvaran*

the Fly Emirates logo prominently displayed on the umpires' clothing at all ICC events. This has made the Complainant as one of the most trusted and visible airline and travel & holiday Services Company in the world and has gained worldwide acclaim and reputation.

- 3.6 Due to the high quality of services being rendered by the Complainant, it has been conferred with numerous prestigious awards for excellence worldwide.
- 3.7 The Complainant owns a significant international trade mark portfolio for the mark "Emirates", and other related marks. In particular, relevant to this complaint, the Complainant has Indian trade mark registration no. 1291824 for EMIRATES and Device (the "Emirates Word and Device Mark") in Class 39 notably covering "airline services, air transportation services and aircraft chartering services; cargo handling services; escorting of travelers; booking and reservation agencies for travel; freight brokerage and freight forwarding services". Indian trade mark application no. 2311713 for EMIRATES (Stylized), filed on 9 April 2012 in Classes 16, 18, 25, 28 and 39 is pending.
- 3.8 In addition to those listed above, the Complainant also has trade mark registrations in the US, Canada, Mexico, Cyprus, France, Germany, Singapore, Taiwan, Lebanon, Morocco, Australia, New Zealand, Oman, Qatar, China, Hong Kong, Bahrain, Vietnam, African Intellectual Property Organization (OAPI), for either the Emirates Word and Device Mark or EMIRATES.
- 3.9 Moreover, the profile and popularity of the Complainant under the trade/service name/mark EMIRATES, has been continuously increasing since the date of adoption and use of the mark. At present, the Complainant's trade name/mark is a formidable brand and has acquired an enormous goodwill not only in the UAE or India but in many countries across the globe. As a result of the substantial and extensive use of the name EMIRATES by the Complainant it enjoys significant reputation and goodwill in the EMIRATES name and marks. The Complainant's trade marks have become synonymous with aviation, travel and leisure services and the name EMIRATES is more associated in the minds of the public with the Complainant than with the region known as the United Arab Emirates. It is submitted that the EMIRATES mark/name, due to its extensive use, advertisements, publicity and awareness throughout the world, has acquired the status of a well-known trade mark under Section 2(1) (zg) of the Trade Marks Act, 1999. The said mark/name qualifies all tests for the well-known status of a mark under Section 11 (6) of the Trade Marks Act, 1999, which includes considerations like knowledge or recognition among relevant section of public, duration, extent and geographical area of use, promotion and publicity of mark etc. It is further submitted that the mark/name EMIRATES, also falls under the category of a famous mark as provided by Article 6bis of the Paris Convention. Additionally, since EMIRATES forms integral part of the Complainant's trade/corporate name the same deserves protection under Article 8 of the Paris convention.
- 3.10 The Complainant considers their trade/service name/mark an important and an extremely valuable asset and thus in order to protect the same, has obtained trade mark registrations for the trade mark EMIRATES in India.
- 3.11 The name/mark EMIRATES has acquired unique importance and are associated with the Complainant. A mere mention of the said marks establishes an identity and connection with the Complainant and none else. The Complainant owns all the rights in the said marks which are its "Trade Mark" & "Service Mark". The use of the said marks by a third party either as a mark, name and domain name, or in any other form whatsoever constitutes





infringement and passing off and is a violation of the Complainant's rights in the said marks. Further, the use of the disputed domain name by the Respondent amounts to misrepresentation and the Respondent by doing so is indulging in unfair competition.

- 3.12 In terms of the Complainant's internet presence, it actively operates the [www.emirates.com](http://www.emirates.com), which was registered on 25 July 1996. The said domain name is the natural extension of its corporate name/mark. The Complainant has spent a considerable amount of money and skill to develop the mark/name EMIRATES. The website [www.emirates.com](http://www.emirates.com) is comprehensive, unique and acclaimed website of the Complainant.
- 3.13 The Complainant has also registered/acquired a number of domain names containing the word "EMIRATES" such as :

[www.theemiratesgroup.com](http://www.theemiratesgroup.com), [www.emiratesholidays.biz](http://www.emiratesholidays.biz), [www.emirates-holidays.co.in](http://www.emirates-holidays.co.in),  
[www.emiratesgroupcareers.com](http://www.emiratesgroupcareers.com), [www.emiratesholidays.info](http://www.emiratesholidays.info), [www.emirates.in](http://www.emirates.in),  
[www.emiratesholidays.co.uk](http://www.emiratesholidays.co.uk), [www.emiratesholidays.us](http://www.emiratesholidays.us), [www.emiratesholidays.asia](http://www.emiratesholidays.asia),  
[www.emiratesholidays.com](http://www.emiratesholidays.com), [www.emirates-holidays.info](http://www.emirates-holidays.info), [www.emiratesindia.com](http://www.emiratesindia.com),  
[www.emirates-holidays.org](http://www.emirates-holidays.org), [www.emirates-holidays.in](http://www.emirates-holidays.in), [www.emirates-holidays.co.uk](http://www.emirates-holidays.co.uk),  
[www.emirates-holidays.us](http://www.emirates-holidays.us), [www.emirates-airline.com](http://www.emirates-airline.com),  
[www.emiratesaviationcollege.com](http://www.emiratesaviationcollege.com), [www.emirates-airline.ru](http://www.emirates-airline.ru), [www.emirate-airlineservices.com](http://www.emirate-airlineservices.com),  
[www.emiratesairlines.ae](http://www.emiratesairlines.ae), [www.emiratesairline.at](http://www.emiratesairline.at),  
[www.emiratesairline.com](http://www.emiratesairline.com), [www.emiratesliveevents.com](http://www.emiratesliveevents.com), [www.emiratesairline.co](http://www.emiratesairline.co);  
[www.emiratesairlinefoundation.org](http://www.emiratesairlinefoundation.org), etc., in order to prevent others from using variations of its famous marks.

- 3.14 The Complainant has spent considerable time and money promoting its business under the EMIRATES trade mark/name. The Emirates Monthly Dashboard, a monthly marketing report commissioned by Emirates, for January, February and March 2014 illustrates the popularity of the EMIRATES trade mark/name, with the Complainant's website [emirates.in](http://emirates.in) domain being viewed over 100,000 times in one calendar month.
- 3.15 The Complainant's EMIRATES trade mark/trade name has been used extensively in commerce for a sufficient length of time and the Complainant has also established in these proceedings that it has made enormous investments to promote/advertise the trade mark/name in India and internationally. The Complainant has demonstrated that its EMIRATES trade mark/trade name is highly distinctive one, with respect to its goods/services more precisely services related to travel and holidays. Considering the impeccable reputation, goodwill and notoriety enjoyed by the Complainant in its trade mark/trade name EMIRATES the world over including in India, its unauthorized usage and thereby infringement by unscrupulous traders in all arrays of business activities has been on a rise. To safeguard its intellectual property rights in the trade mark/trade name EMIRATES, the Complainant has been extremely vigilant and, wherever geographically possible, has been taking stringent legal actions against the unscrupulous traders and infringers, including in India.
- 3.16 In addition to the above, the Complainant has also been successful in restraining various third parties from using deceptively similar domain names bearing the word EMIRATES all across the world and has been able to get those domain names transferred in its favour. The fame of the mark has been recognized in many previous domain name cases. Accordingly, any third party using the Complainant's name or brands will inevitably

mislead members of the public into assuming or believing that use of the name is that of the Complainant or is otherwise associated with, or endorsed by the Complainant.

- 3.17 It has come to the Complainant's attention that someone has obtained a domain name registration for [www.airemirates.co.in](http://www.airemirates.co.in). The Complainant immediately searched the WHOIS database for the disputed domain name and found that the disputed domain name is registered in the name of Zhao Ke of China. Aggrieved by the registration of the disputed domain name the Complainant has approached this Hon'ble Forum.
- 3.18 The Complainant has filed 12 annexures along with the Complaint.

#### **B Respondent**

- 3.19 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

#### **4. Parties Contentions**

##### **A Complainant**

- 4.1 The disputed domain name, [airemirates.co.in](http://airemirates.co.in), consists of the Complainant's registered trade mark EMIRATES in combination with the descriptive term "air". The use of the Complainant's trade mark EMIRATES does not distinguish the disputed domain name [airemirates.co.in](http://airemirates.co.in) from the Complainant's trade mark. This is especially so when the Complainant's registered trade marks rights in the trade mark EMIRATES are used and registered in relation to airline services. Further, the utmost *malafide* intention of the Respondent is evident from the fact that the disputed domain name incorporates the Complainant's mark/name EMIRATES in its entirety. Moreover, it is a settled law that the addition of the descriptive and/or generic terms such as "air", "airline" etc. does not dispel the confusing similarity between the mark and the domain name. In fact, the WIPO Arbitration & Mediation Center in various cases has held that the mere addition of a non-significant element does not sufficiently differ the domain name from the registered trade mark. Thus, disputed domain name is confusingly similar to a trade mark/trade name EMIRATES in which the Complainant has rights.
- 4.2 The name/mark EMIRATES is distinctive, unique and has an established reputation both in India and throughout the world. The mere mention of the said name/mark establishes an identity and connection with the Complainant and none else. The Complainant owns all the rights including statutory and common law rights in the said name/mark and is entitled to protection under the Indian Trade Marks Act, 1999. The use of the said name by a third party either as a mark, name and domain name, or in any other form whatsoever constitutes violation of the Complainant's rights.
- 4.3 It is a well-established principle that the addition of a generic or country code top-level domain names or second level domain names to the disputed domain name does not avoid confusing similarity. Therefore, the specific top-level and/or second-level of a domain name such as ".com", ".org", ".in" and/or ".co.in" may be disregarded when determining whether it is identical or confusingly similar to the trade mark in which the Complainant has rights.





- 4.4 Thus, the ccSLD “.co.in” is without legal significance since use of a ccSLD is technically required to operate the domain names and it does not serve to identify the source of the goods or services provided by the registrant of the disputed domain name.
- 4.5 It is a well-established principle that an unauthorized party cannot claim a legitimate interest in a domain name that contains, or is comprised of, the Complainant’s mark.
- 4.6 The Respondent, apparently, is in the business of holding domain names and selling them whereas the Complainant is an established business entity doing business under the mark/name EMIRATES. A copy of extracts from the website ([http://www.sedo.com/search/details.php4?partnerid=14460&language=e&et\\_cid=13&et\\_id=354248&domain=airemirates.co.in&et\\_sub=1006&origin=parking](http://www.sedo.com/search/details.php4?partnerid=14460&language=e&et_cid=13&et_id=354248&domain=airemirates.co.in&et_sub=1006&origin=parking)), where the disputed domain name is parked for sale, is attached. This is adequate evidence to show that the Respondent has no legitimate interests in the disputed domain name and is merely hoarding the same without doing any business from it.
- 4.7 There has never been any relationship between the Complainant and the Respondent. The Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name. Further, the Respondent is not authorized or licensed by the Complainant to use its trade mark/trade name or to use the disputed domain name. The Respondent may misuse the domain name by hosting an unauthorised website. It is a settled law that registration of a well-known trade mark by a party with no connection to the owner of the trade mark and no authorization and no legitimate purpose to utilize the mark reveals bad faith. It was held that the act of registering a domain name similar to or identical with or famous trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the mark to either increase traffic to domain, or to seize a potential asset of the trade mark owner in the hope that the trade mark owner will pay the requirement to relinquish the domain name.
- 4.8 The disputed domain name <[airemirates.co.in](http://airemirates.co.in)> incorporates the whole of the Complainant’s mark/name EMIRATES and the disputed domain name on its face suggests that it is affiliated with or otherwise connected to, the Complainant. Such a registration cannot be considered bona fide in nature or otherwise performed in good faith. The Respondent may have registered the disputed domain name with a view to reaping a significant financial windfall by selling it.
- 4.9 The illegality in the registration of the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> arises from the fact that domain names today are a part and parcel of the corporate identity of a large business enterprise. A domain name acts as the address of the company on the Internet and can be termed as a web address or a web mark just like a trade mark or service mark. It is also the Internet address of a company. The mere act of registration by the Respondent of the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> containing the mark/name of the Complainant in it amounts to infringement and passing off.
- 4.10 The fact that the Respondent registered the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> years after the registration of the Complainant’s domain name [www.emirates.com](http://www.emirates.com) is prima facie evidence of *malafide* intentions and bad faith. Given the significant extent and use of the brand by the Complainant in India, the Respondent must have been aware of the Complainant and its brand, trade marks and business when it registered the Domain Name years after the Complainant was established.

*Induvarans*

4.11 The Respondent has obtained registration for the disputed domain name in bad faith for either or all of the following motives:

- (a) The disputed domain name <[airemirates.co.in](http://airemirates.co.in)> could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name. This is pretty much evident as the Respondent is not running any website on the disputed domain name.
- (b) Through the disputed domain name <[airemirates.co.in](http://airemirates.co.in)>, by activating a website, the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some innocent party by entering into transactions or contracts with them under the garb of being associated with the Complainant. This can be extremely dangerous and prejudicial to public interest as well.
- (c) The Respondent can transfer or sell the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant. This will lead to complete tarnishment of the Complainant's image if a valuable property like the domain name falls into wrong hands.
- (d) The Respondent by using the disputed domain name <[airemirates.co.in](http://airemirates.co.in)>, may attempt to attract for commercial gain, the Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark/name/domain name as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.
- (e) The Respondent registered the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> for the purpose of disrupting the Complainant's business. The disputed domain name only <[airemirates.co.in](http://airemirates.co.in)> offers pay-per-click links to various websites. The Respondent has been earning pay-per-click revenue from the sponsored links/ads on the Respondent's website. In so doing, the Respondent has been attempting to attract Internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's trade/service mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Further, the sponsored links on the Respondent's website belong to the businesses that offer goods and services that compete with, or rival, those goods and services offered by the Complainant. In such circumstances, it can be inferred that the Respondent stands to gain financially in one way or another from the use it makes of the disputed domain name <[airemirates.co.in](http://airemirates.co.in)>. It is thus profiting or intending to profit from the adoption of a famous mark in which it has no rights, by generating a misleading impression of some legitimate connection between the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> and the Complainant. The way it has constructed the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> further supports the conclusion that its real designs are to profit from the unauthorized use of the Complainant's mark/name/domain name and the reputation that adheres to it.
- (f) The registration and use of a disputed domain name <[airemirates.co.in](http://airemirates.co.in)> to re-direct Internet users to websites that offer products and services in competition with Complainant's services, constitutes a bad faith registration and use.

*Indulalans*



- (g) It is suggestive of the Respondent's bad faith that the marks/domain names owned by the Complainant were registered before the registration of the disputed domain name [airemirates.co.in](http://airemirates.co.in).
- (h) It is an established principle, when a domain name is so obviously connected with the Complainant and its goods/services, its very use by someone with no connection to the Complainant suggests 'opportunistic bad faith'.
- (i) Further, the disputed domain name [airemirates.co.in](http://airemirates.co.in) is identical or confusingly similar to the Complainant's mark and domain name. A likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's website to the Respondent's website. Attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trade mark may be evidence of bad faith.

**B. Respondent**

4.12 Respondent has not filed with any response to the Complainant's complaint.

**5. Discussion and Findings**

- 5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.
- 5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
  - (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
  - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
  - (III) Respondent's domain name has been registered or is being used in bad faith.
- 5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

***Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.***

- 5.4 The Complainant is the proprietor of the mark EMIRATES. Complainant has been using the mark EMIRATES continuously since 25.10.1985. The Complainant owns several registrations for the trade mark EMIRATES in numerous classes in India. In India, the first registration of the Complainant under No. 1291824 in class 39 dates back to 22.11.2005. This registration has claimed user of the mark from 1.1.1985. The Complainant's domain name [www.emirates.com](http://www.emirates.com) was created on 25.07.1996. The disputed domain name [airemirates.co.in](http://airemirates.co.in) was created on 16.05.2014. Obviously, the Complainant is the prior adopter of EMIRATES mark. The above facts have established that the Complainant has statutory and common law rights in respect of its EMIRATES mark.

*Induvarans*

5.5 EMIRATES is the predominant and distinctive part of the Complainant's web site [www.emirates.com](http://www.emirates.com) and the disputed domain name [<airemirates.co.in>](http://airemirates.co.in). The expressions air is purely descriptive. The expressions .com and .in need to be discarded while comparing the marks with the domain names. Complainant's EMIRATES mark is famous and well known all over the world including India. It is clearly seen that the disputed domain name [<airemirates.co.in>](http://airemirates.co.in) wholly incorporates the prior registered mark EMIRATES of the Complainant. The disputed domain name [<airemirates.co.in>](http://airemirates.co.in) is similar to the Complainant's domain name [www.emirates.com](http://www.emirates.com).

5.6 I, therefore, find that:

- (a) The Complaint has common law and statutory rights in respect of its EMIRATES mark.
- (b) The disputed domain name [<airemirates.co.in>](http://airemirates.co.in) is:
  - (i) Similar to the Complainant's prior registered trade mark EMIRATES, and
  - (ii) Confusingly similar to the Complainant's domain name [www.emirates.com](http://www.emirates.com).

***Respondent has no rights or legitimate interests in respect of the disputed domain name***

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the EMIRATES mark. The Complainant's EMIRATES mark is well known all over the world including India.
- (b) The Complainant's EMIRATES mark was adopted in the year 1985. The first Indian registration for the mark EMIRATES under class 39 was obtained in 2005 claiming user from 1985. The Complainant's domain name [www.emirates.com](http://www.emirates.com) was created on 25.07.1996. The disputed domain name [<airemirates.co.in>](http://airemirates.co.in) was created on 16.05.2014.

5.8 Respondent did not register the disputed domain name until 16.05.2014. Complainant has adopted and used the mark EMIRATES and a domain name containing the mark EMIRATES before Respondent registered the disputed domain name [<airemirates.co.in>](http://airemirates.co.in). It is unlikely that the Respondent was unaware of existence of Complainant's trademark and domain name rights before registering the disputed domain name [<airemirates.co.in>](http://airemirates.co.in).

5.9 I have visited on this date of award the web site of the Respondent under the disputed domain name [<airemirates.co.in>](http://airemirates.co.in). It has led to a web page where the disputed domain name is parked by Sedo for sale. The web page has many sponsored links and at the bottom it is prominently mentioned that "Buy this domain – this domain name [<airemirates.co.in>](http://airemirates.co.in) may be for sale by its owner. It is obvious that the Respondent never intended to use the disputed domain name [<airemirates.co.in>](http://airemirates.co.in) in connection with a bona fide offering of goods or services and has simply parked it for sale.

5.10 In the absence of any reply from the Respondent, I agree with the contentions of the Complainant that there has never been any relationship between the Complainant and the Respondent. The Respondent has no proprietary or contractual rights in any registered or



common law trade mark corresponding in whole or in part to the disputed domain name. Further, the Respondent is not authorized or licensed by the Complainant to use its trade mark/trade name or to use the disputed domain name. The Respondent may misuse the domain name by hosting an unauthorised website. It is a settled law that registration of a well-known trade mark by a party with no connection to the owner of the trade mark and no authorization and no legitimate purpose to utilize the mark reveals bad faith.

- 5.11 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name [airemirates.co.in](http://airemirates.co.in).

***Respondent's domain name has been registered or is being used in bad faith.***

- 5.12 The Complainant is the proprietor of the mark EMIRATES. Complainant has been using EMIRATES as a trade mark continuously since 1985 in 2005 claiming user from 1985. The Complainant's domain name [www.emirates.com](http://www.emirates.com) was created on 25.07.1996. The disputed domain name [airemirates.co.in](http://airemirates.co.in) was created on 16.05.2014. Obviously, Complainant's rights in the EMIRATES mark pre-date Respondent's registration of the disputed domain name [airemirates.co.in](http://airemirates.co.in). The Respondent could not have ignored, rather actually influenced by, the well-known EMIRATES mark of the Complainant at the time he acquired the disputed domain name [airemirates.co.in](http://airemirates.co.in).
- 5.13 As seen above, Respondent is currently not using the disputed domain name [airemirates.co.in](http://airemirates.co.in) in any manner. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name [airemirates.co.in](http://airemirates.co.in) is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered EMIRATES mark.
- 5.14 Respondent's lack of response on merits to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's EMIRATES mark.
- 5.15 In the absence of any reply from the Respondent, I agree with the contentions of the Complainant that:
- (a) The domain name could be used by the Respondent to extract huge sums of money from the Complainant who has legitimate interest in the said domain name. This is pretty much evident as the Respondent is not running any website on the disputed domain name.
  - (b) Through the disputed domain name, by activating a website, the Respondent may be able to represent itself as the Complainant or its authorized representative and cause damage to some innocent party by entering into transactions or contracts with them under the garb of being associated with the Complainant. This can be extremely dangerous and prejudicial to public interest as well.
  - (c) The Respondent can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant. This will lead to complete tarnishment of the Complainant's image if a valuable property like the domain name falls into wrong hands.

*Induvarans*

- (d) The Respondent by using the disputed domain name, may attempt to attract for commercial gain, the Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark/name/domain name as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.
- (e) The Respondent registered the disputed domain name for the purpose of disrupting the Complainant's business. The disputed domain name only offers pay-per-click links to various websites. The Respondent has been earning pay-per-click revenue from the sponsored links/ads on the Respondent's website. In so doing, the Respondent has been attempting to attract Internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's trade/service mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Further, the sponsored links on the Respondent's website belong to the businesses that offer goods and services that compete with, or rival, those goods and services offered by the Complainant.

5.16 Thus it is clearly established that Respondent registered the disputed the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> in bad faith.

5.17 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

## 6. **Decision**

6.1 For all the foregoing reasons, the Complaint is allowed as below.

6.2 It is hereby ordered that the disputed domain name <[airemirates.co.in](http://airemirates.co.in)> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs.10,00,000/-(Rupees Ten lakh Only) towards costs of the proceedings.

  
S.Sridharan  
Arbitrator