



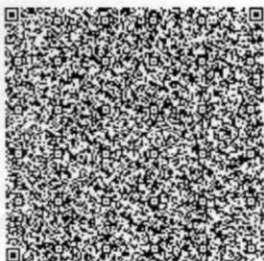
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL81674243976020L
Certificate Issued Date	: 28-Oct-2013 11:43 AM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL61362299214793L
Purchased by	: NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Second Party	: NA
Stamp Duty Paid By	: NIKILESH RAMACHANDARAN SO U K RAMACHANDARAN
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



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ARBITRATION CASE NO. 6 OF 2013

**IN THE ARBITRATION MATTER OF:-**

ROVIO ENTERTAINMENT LIMITED

COMPLAINANT

VERSUS

THOMAS LEE

RESPONDENT

*Signature*

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilstamp.com". Any discrepancy in the details on this Certificate and on

## **AWARD**

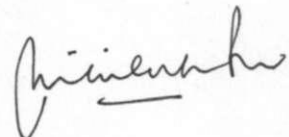
The present dispute relates to the registration of the dispute domain name <[www.angrybirds.co.in](http://www.angrybirds.co.in)> in favour of the respondent.

The Complainant has filed the instant complaint challenging the registration of the disputed domain name <[www.angrybirds.co.in](http://www.angrybirds.co.in)> in favour of the Respondent. In pursuance to the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant had preferred this arbitration for raising this dispute for redressal of its grievances.

The complainant namely Rovio Entertainment Ltd. ("Rovio") is a Finish company founded in 2003. That the complainant had stated that it is known for its famous ANGRY BIRDS mobile game, which was launched in 2009 and has become a worldwide phenomenon.

The complaint has stated that since the first release of Angry Birds in 2009, it had over 1.7 billion downloads across all platforms and including both regular and special editions, with over 23 million combined downloads in India.

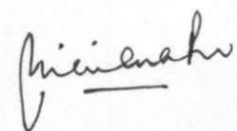
The complainant has stated in its complaint that it is a registered proprietor of the trademarks ANGRY BIRDS as well as ANGRY BIRD CHARACTERS and variations thereof in many countries around the world.



The complainant had also provided a list of the registrations for the trademarks ANGRY BIRDS as well as the ANGRY BIRD characters obtained in different jurisdictions i.e. different countries. The complainant had also filed foreign registration certificates in respect of the trademarks ANGRY BIRDS and ANGRY BIRD. The complainant had also stated that it had obtained registration for the trademark angry bird vide registration no. 1987883 dated 01.07.2010 in Classes 9,16,28 and 41 on 15.03.2013 (certificate no. 1043676). The complainant had further filed the copies of the applications for the trademarks ANGRY BIRDS and ANGRY BIRD character.

The complainant has stated that the website of the complainant prominently displays the ANGRY BIRDS mark and characters. The complainant has also filed the copies of the web pages from the website [www.angrybirds.com](http://www.angrybirds.com). The complainant has further filed the copies of the WHOIS results which shows [www.angrybirds.com](http://www.angrybirds.com) registered in 2009 in the name of the complainant. The complainant has contended that the disputed domain name is identical and confusingly similar to complainant's famous web-site namely [www.angrybirds.com](http://www.angrybirds.com) and trademark ANGRY BIRDS.

The complainant had also stated that it had spent millions of Euros each year to promote its trademark in countries around the world by means of national and transnational advertising. The complainant had also stated that the trademark angry birds had been

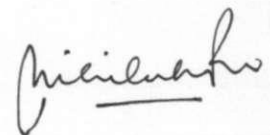
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advertised in wide variety of print and electronic media, including news papers, magazines, advertisements and satellite T.V channels as well as on the Internet.

The complainant has further stated that by virtue of continuous, extensive use since 2009, vast publicity coupled with its customer centric policies, worldwide registration and the high quality of the goods and the marks ANGRY BIRDS and ANGRY BIRD characters, the same have become distinctive and associated /identified by the public and the trade with the complainant's goods and services alone. The complainant had further contended that the trademark ANGRY BIRDS has acquired substantial reputation and good will and are well known and famous within India within the meaning of section 2 (zg) of the Act and Article 6 (bis) of the Paris Convention.

The complainant has averred that the respondent has no right or legitimate interest in respect of the disputed domain name [www.angrybirds.co.in](http://www.angrybirds.co.in). It has been stated by the complainant that the respondent does not have any prior rights or legitimate interests in the 'ANGRY BIRDS' trademark.

That the complainant has also urged that the use of the disputed domain name by the respondent is done in bad faith. The complainant has further stated that the complainant's mark ANGRY BIRDS is reputed one and the respondent is bound to have prior

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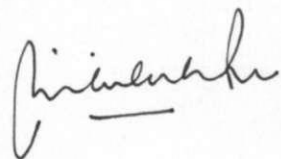
knowledge of the fame and reputation of the Complainant's trademark ANGRY BIRDS.

On the basis of the aforesaid averments and contentions on behalf of the complainant, the complainant has sought remedy that the domain name www.angrybirds.co.in may be transferred to the Complainant.

I entered upon reference regarding the instant dispute on 30.09.2013 and a notice dated 12.10.2013 was sent to the respondent calling upon for his response to the complaint filed by the complainant. However the respondent, after being given ample opportunity to file a reply/ response to the aforesaid complaint, failed to do so. Accordingly, the respondent is proceeded ex-parte.

Since the respondent has failed to file any response to the complaint or appear in the proceedings before me to present his case. Hence the averments made by the complaint and the documents filed as evidence are left un-rebutted.

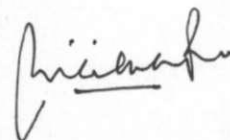
I have perused the records and have gone through the contents of the complaint. Although there has been no reply on behalf of the respondent to the complaint, I shall deal with the complaint on the basis of its merits.

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I shall now deal with the various grounds regarding the rights of the complainant vis-à-vis that of respondent over the disputed domain name www.angrybirds.co.in. The trademark <ANGRY BIRD> is a reputed trademark and is used worldwide by the complainant. The complainant has shown its various trademark registration details world over. The complainant had also given the details of the registration of its trademark in India which had been registered through application under various classes 9,16,28,41. Moreover the complainant due to vast advertising of its trademark had acquired the status of "well known trademark" under section 2 (zg) of the Indian Trademark Act, 1999.

Firstly I am of the view that the disputed domain name www.angrybirds.co.in is confusingly and deceptively similar to the website i.e. www.angrybirds.com, trademark ANGRY BIRDS, ANGRY BIRD and ANGRY BIRD characters. I further am inclined to say that the respondent has no legitimate right over the mark "ANGRY BIRDS" as the respondent has no prior rights in respect of the trademark ANGRY BIRDS.

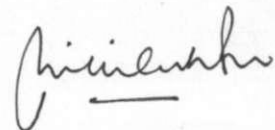
It was held in **Satyam Infoway Ltd. V. Sifynet Solutions Pvt. Ltd. [AIR 2004 SC 3540]** that "the use of same or similar domain name may lead to diversion of users which would result in such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers



and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different web site with an identical name which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods or services through its promotional activities and the first domain owner thereby lose their customers."

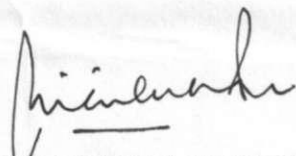
Secondly I am of the view that the addition of the word 'co.in' as suffix to the mark by the respondent is an attempt to harm, create confusion in the minds of public and may cause irreparable loss to the complainant. Hence the use of the disputed domain name by the respondent cannot be treated as a fair one.

Thirdly, the respondent has acted in bad faith in respect of domain name as the trademark of the complainant is very well known, reputed one and the complainant has been using his trademark worldwide for a long time. In **Adidas-Saloman AG V. Domain locations** bearing Case No. D. 2003 0489, it was held that, "the registration of a well known trademark of which the respondent must reasonably have been aware of is in itself sufficient to amount to bad faith". I am of the view that the action of the respondent suggest that the registration of the domain name has been done by him in bad faith as the use of domain name by the respondent will cause substantial harm to complainant.



Considering the facts and circumstances of the present case and in view of the precedents in this context, I hold that the complainant has proprietary right over the trademark "ANGRY BIRDS". Thus I deem it fit and proper to allow the prayer of the complainant in its favour and direct the registry to transfer the said domain name i.e. www.angrybirds.co.in in favour of the complainant.

Parties to bear their own costs.



(NIKLESH RAMACHANDRAN)

Date:- 12.11.2013

ARBITRATOR