



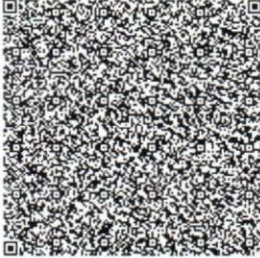
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL29108159265940K
Certificate Issued Date	: 04-Oct-2012 01:57 PM
Account Reference	: IMPACC (IV)/ dl719703/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71970358204794782869K
Purchased by	: V SRIVASTAV
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: V SRIVASTAV
Second Party	: NA
Stamp Duty Paid By	: V SRIVASTAV
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



.....Please write or type below this line.....

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"anytimefitness.in"
between

ANYTIME FITNESS LLC

...COMPLAINANT

AND

Mr. SUNIL OF THE GOLD GYM

...RESPONDENTS

AWARD

1

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Statutory Alert:

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 20/09/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a hard copy of their complaint to the Respondents by Courier.
2. That compliance of the order was complied to by the Complainants vide their email dated 20/09/2012 in which they sent a copy of a courier receipt dated 23/08/2012 of M/s FedEx waybill No. 8009 9457 8295 which had been received by the Respondent on 24/08/2012 and signed for by D.Davinder. Hence, this Tribunal vide order dated 20/09/2012 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending the soft copy by email and a hard



copy by Courier so as to reach this Tribunal latest by 27th September, 2012.


3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried their level best to serve the Respondents on the address provided by him in WHO IS besides this Tribunal notes that emails are also being sent by this Tribunal to the Email id of the Respondent as provided in the WHOIS and the hard copy of the complaint has been duly received by the Respondent. Be it that as it may this Tribunal notes that the copy(s) of the complaint is with the Respondent hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings or is incapacitated in any way from sending his response to the complaint.
4. In view of the above this Tribunal vide order dated 28/09/2012 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal

notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant is a franchisor of health and fitness clubs that was founded in the year 2002 as Anytime Fitness, Inc. Thereafter, the Complainant underwent a conversion in December, 2009 and changed its name to the present one, i.e. Anytime Fitness, LLC. Reliance is placed on **Annexure 2**.

- B. By relying on **Annexure 3** the Complainant claims that it is the world leader in providing health and fitness club services and as of date has over 1900 health and fitness clubs located all around the world including global franchisees in the United States of America (all 50 States), Australia, Canada, Ireland, India, Mexico, New Zealand, Netherlands, Poland, Qatar United Kingdom etc.
- C. It is claimed that the health and fitness clubs of the Complainant are extremely popular and renowned and currently have a global membership of over one (1) million people.
- D. It is again reiterated that the Complainant adopted the trade mark ANYTIME FITNESS in the year 2002 and also adopted the logo  in 2002. It is claimed that since the adoption of the said logo, the same symbolizes the business of the Complainant and, today, the trade and public associate the marks ANYTIME FITNESS (word) and



mark rests exclusively with the Complainant.

- E. Besides it is claimed that the Complainant is the owner and registered proprietor of the ANYTIME FITNESS marks in several jurisdictions around the world including Argentina, Australia, Bahrain, Bermuda, Canada, Chile, China, Egypt, European Union, India, Indonesia, Japan, Kuwait, Lebanon, Madrid Protocol, New Zealand, Oman, Russia, Saudi Arabia, Singapore, South Africa, United States of America, Vietnam etc. and that the first registration for the ANYTIME FITNESS marks dates back to April, 2002. Reliance has been placed on a table containing the details of the worldwide registrations for the ANYTIME FITNESS marks given as **Annexure 4** and further **Annexure 5** are copies of some registration certificates issued in the above jurisdictions for the ANYTIME FITNESS marks. It is also claimed that in India, the Complainant is the registered proprietor of the mark ANYTIME FITNESS and has a

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pending application for the logo . Reliance is placed on **Annexure 6**.

F. It is claimed that the Complainant has registered and operates a number of websites using the ANYTIME FITNESS marks in the top level domain category including www.anytimefitness.com. In addition, the Complainant has also registered and operates several country code top level domain names including www.anytimefitness.co.in, www.anytimefitness.co.uk, www.anytimefitness.com.sg, www.anytimefitness.de, etc. It is claimed that the earliest domain name registration dates back to 2002 and to buttress this contention the complainant rely upon **Annexure 7**.

G. It is claimed that the Complainant's business, since commencement, has been successful and the revenue generated by the Complainant's business has been growing with each passing year. The Complainant claim

that its revenues of FY 2011 exceeded USD Twenty Three Million Dollars (\$23,000,000.00).

H. It is also claimed that the Complainant has spent substantial amount of money in promoting and advertising its business and the ANYTIME FITNESS marks. It is claimed that the advertising and promotional expenditure incurred by the Complainant in 2011 was in excess of USD Two Million Dollars (\$2,000,000.00). The Complainants place reliance on **Annexure 8** and it is claimed that the business of the of the complainant is in media attention as well. Reliance has been placed on **Annexure 9**.

I. Besides the above the Complainant has been active in enforcing its rights against any third party misuse/ misappropriation of its ANYTIME FITNESS marks around the world. Such actions have included filing civil suits, filing oppositions/ rectifications with the Trade Marks Registry, sending legal notices, filing domain name actions etc. Reliance is placed on **Annexure 10**.

- J. It is claimed that sometime in 2009, the Complainant learnt that the impugned domain name <anytimefitness.in> had been registered by a Mr. Sunil of The Gold Gym (hereinafter, referred to as the 'Respondent') and this they found from the WHOIS details which is given as **Annexure 11** with the complainant.
- K. It is alleged that from the WHOIS details of the impugned domain it is seen that the same was created on September 2, 2008, which is allegedly subsequent in time to the adoption and use of the ANYTIME FITNESS marks by the Complainant.
- L. It is further alleged that the Respondent has not hosted a website on the impugned domain. Reliance has been placed on **Annexure 12**.
- M. It is submitted by the complainant that the impugned domain <anytimefitness.in> is identical to the

Complainant's trading name and the ANYTIME FITNESS marks and the Complainant has filed sufficient documents to demonstrate its rights and interests in its ANYTIME FITNESS marks.

- N. It is further alleged that the Respondent has no rights or legitimate interest in the impugned domain name as he is not ordinarily known by the ANYTIME FITNESS name and mark and as per WHOIS information the Respondent is ordinarily known as "The Gold Gym" hence the impugned domain or the ANYTIME FITNESS marks are not in anyway connected with the Respondent. Further, the Respondent has not hosted any website on the impugned domain and has failed to demonstrate any intention whatsoever to commence use of the impugned domain and/ or the ANYTIME FITNESS marks whereas it is stressed the Complainant has been continuously and extensively using the ANYTIME FITNESS marks since its adoption. As per the complainants they had adopted and used ANYTIME FITNESS marks since 2002.

O. It is alleged that the impugned domain is bound to cause confusion and deception in the market and the general public and internet users are bound to believe that the Respondent and the impugned domain enjoy endorsement and/ or originates from the Complainant.

P. It is also alleged that the registration and use of the impugned domain by the Respondent is in bad faith and driven by mala fide intention to take undue advantage of the reputation and goodwill of the Complainant in its well known ANYTIME FITNESS marks.

ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any reply and hence

the allegations / documentary evidence of the complainants remain un rebutted.

8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <anytimefitness.in> hence this Tribunal directs the Registry to transfer the domain name <anytimefitness.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 4th day of October 2012.

NEW DELHI
04/10/2012



V. SHRIVASTAV
ARBITRATOR