

महाराष्ट्र MAHARASHTRA

EM 452669

आर्बीट्रेशन ऑफिस

नंबर २५७७७ रुपये १०० x १ = १००
दिनांक ५/६/११
नाव श्री. वि. लालमणी
पत्ता २७०८, शनिवार पेठ, पुणे
हरते श्री. जयश्री वेलसरे
श्री. जयश्री वेलसरे, स्टॅम्प वेंडर, ला.नं. - इवेली १/३६/१९९५
४२५ ब, शनिवार पेठ, पुणे-३०



AWARD

IN ARBITRATION

Estreet Services Ltd.
59A, Kingston Road, London.
England. SW19 1JN

THE COMPLAINANT

AND

Elias Bowman
Viru 55-9, Tallinn, Harjumaa, 15200 EE

THE RESPONDENT

IN THE MATTER OF DISPUTED DOMAIN NAME: - ask4fone.in

CASE NO. - NOT ALLOTTED BY NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR**

DELIVERED ON THIS 5th DAY OF JULY TWO THOUSAND ELEVEN AT PUNE,INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- 01. Names and addresses** Estreet Services Ltd.
Of the Complainant: - 5 9A, Kingston Road, London.
England. SW19 1JN
- Through its authorized Mr.Imran Hussain Shah
representative 514, Street Number 37, Near Manjula
Polyclinic, Zakir Nagar, New Dehli.
110025
India
- 02. Name and address of** **Elias Bowman**
The Respondent: - Viru 55-9, Tallinn, Harjumaa, 15200 EE

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case was referred to me	02/06/2011
02	Acceptance was given by me	02/06/2011
03	Copy of the complaint was received and Notice of arbitration was issued	16/06/2011
04	Submission of say by the Respondent	Did not file say
05	Reminder Notice sent to the Respondent to submit his say, if any.	30/06/2011
06	Submission of say by the Respondent	Did not file any say
06	Award	05/07/2011

I] PRELIMINARY: -

- 1) M/s Estreet Services Ltd., having its office at 59A, Kingston Road, London, England, SW 19 1J (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name **ask4fone.in (the disputed domain name / domain name)**..
- 2) It has disputed registration of domain name **ask4fone.in'** in the name of **Elias Bowman, Viru, 55-9, Tallinn, Harjumaa, 15200, EE (The Respondent)**.
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 16th June 2011 with the instructions to file his say latest by 26th June 2011.
02. The Respondent did not file his reply to the Complaint by 26th June, 2011.
03. Thereafter the reminder notice was sent to the Respondent to submit his say, if any, latest by 3rd July 2011 failing which the dispute shall be decided ex-parte.
04. The Respondent failed / neglected to file any say even by the extended time period.
05. Copies of notices were marked to the Complainant's authorised representative and NIXI every time.

III] SUMMARY OF THE COMPLAINT: -

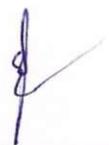
- (A) The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -



- a) The Complainant is a registered proprietor of trademark / service mark "ask4phone\
- b) The Complainant has registered its domain name in 2005 and has been used by it since 2009 while the Respondent has registered disputed domain name in August 2010.
- c) The disputed domain name is identical and confusingly similar to the trademark in which the Complainant has rights.
- d) The Complainant's website "www.ask4phone.co.uk" has gained wide publicity among its online users in the United Kingdom. For this purpose the Complainant has spent remarkable amount of money for marketing and advertising the website.
- e) The Complainant is a company registered under the UK laws and is using the domain name for its business purposes and is engaged in the business of providing online comparison services with respect to various goods and services like mobile phones, mobile accessories etc. The Complainant owns all proprietary and intellectual property rights including copyright and trademark in the logo, taglines, contents, images presentation and arrangement and in the overall look and feel of all its websites.
- f) The disputed domain name very closely and phonetically resembles the domain name of the Complainant with the only difference in CCTLD i.e. '.in' and '.co.uk.'
- g) The Respondent has not only used the copyrighted content but also has used the logos, trademarks, taglines, of the Complainant. The Respondent has malafidely miss spelt the word "phone" and replaced by 'fone' and also copied content on the Complainant's website in verbatim. All the contents, use of logos, taglines etc. are without any permission of the Complainant in that behalf.



- h) There are other domain names viz. www.directphoneshop.in, www.xpert4u.in, www.mobilejazz.in and www.iazzmobile.in registered by the Respondent which are identical to the trademark in which the Complainant has rights. These are similar to the Complainant's domain names viz. www.directphoneshop.co.uk, www.xpert4u.co.uk, and www.mobileiazz.co.uk in which the Complainant has rights and the same are being used by the Complainant much earlier from the date of its registration by the Respondent.
- i) The Respondent has no rights or legitimate interests in respect of the domain name. The respondent has registered the disputed domain name with mala fide intentions to disrupt the business of the Complainant. The Respondent has never been commonly known by the domain name in dispute.
- j) The Respondent is using the disputed domain name in bad faith. The Respondent has primarily registered / acquired the disputed domain name for the purpose of selling, renting or otherwise transferring the same to the Complainant or to a competitor of the Complainant as the Respondent is not involved in any commercial activity with the disputed domain name.
- k) 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 as to the source, sponsorship, affiliation or endorsement of the Respondent's website.
- l) Since the registration of the disputed domain name in August 2010 business traffic of the Complainant has drastically lowered as can be evidenced from the site analysis at www.compete.com. The number of unique visitors at www.ask4pbone.co.uk fell from 4527 in July 2010 to 332 in August 2010.



IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent has not filed any say / reply even within the extended time period granted by this arbitral panel on the principles of natural justice. The Respondent has failed / neglected to bring out his case in any manner by keeping total silence on his part.

ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Complainant could establish his nexus with the disputed domain name and as such whether he is entitled to protect his rights / interests in the same?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in which the Complainant has rights?	Yes
03	Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?	No
04	Whether the Registrant / Respondent has registered domain name in bad faith?	Yes
05	Whether the Registrant has commonly been known by the domain name?	No



VII] BASIS OF FINDINGS: -

(A) Whether the Complainant could establish his nexus with the registered trade marks and as such whether he is entitled to protect their rights / interests in the same?

1. The Complainant has filed a list of its registered domain names in United Kingdom. All these domain names are valid and in force as on the date of filing the Complaint. Apart from the disputed domain name, a list of other domain names registered by the Respondent has been furnished by the Complainant. It can be observed that the Respondent has registered most of these domain names which are identical, phonetically similar or confusingly similar to those registered by the Complainant. All this data reveals that the Respondent is habitual in registering similar domain names without having any right, legitimate interest in the domain names of the Complainant. Registration of domain name by the Complainant is earlier than that of the Respondent. As against this the Respondent has failed to establish his nexus with the registered domain name.

Therefore my finding on the first issue is affirmative.

(B) Whether the Registrant's domain name is identical or confusingly similar to a name or trademark in the Complainant has rights?

The word "ask4fone" is phonetically similar to 'ask4phone' which is registered domain name of the Complainant. The Complainant has also brought out that the contents of its domain name have been verbatim copied on the disputed domain name by the Respondent. The Complainant has also furnished data compiled from www.compete.com in respect of drastic decline in number of visitors to his website after registration of disputed domain name by the Respondent.

Therefore my finding on this issue is affirmative.



(C) Whether the Respondent is holder of any registered trademark or service mark and accordingly has any right or legitimate interest in respect of disputed domain name?

The Respondent has not bothered to file his say / reply to the complaint or to substantiate his case in any way.

Therefore my finding on this issue is negative.

(D) Whether the Registrant / Respondent has registered domain name in bad faith?

The Respondent has not filed his say / reply to the Complaint. The name of the Respondent is not in any way similar to the Complainant's name, its registered marks etc. He also has failed to establish whether he has been carrying business in the name containing disputed domain name.

Therefore my finding on this issue is affirmative.

(E) Whether the Registrant has commonly been known by the domain name?

The reported name of the Respondent / Registrant is Elias Bowman, which has no similarity, nexus, or resemblance to the disputed domain name.

Therefore my finding on this issue is negative.



IX] AWARD: -

On the basis of findings and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name - www.ask4fone.in and hence the same be transferred to the Complainant.
02. The Respondent shall pay all documented expenses of these arbitral proceedings to the Complainant.

Dated: - 05.06.2011

Place: - Pune



(S.C.INAMDAR)

SOLE ARBITRATOR