

INDIA NON JUDICIAL



सत्यमेव जयते

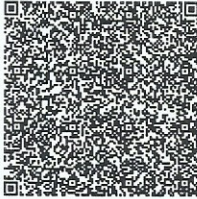
Government of National Capital Territory of Delhi

₹100

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Certificate No. : IN-DL23724668478878V
Certificate Issued Date : 21-Jun-2023 10:45 AM
Account Reference : IMPACC (IV)/ dl926903/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL92690317061219640455V
Purchased by : PRABODHA KUMAR AGRAWAL
Description of Document : Article 12 Award
Property Description : INDRP CASE NO 1702-ARBITRATION AWARD
Consideration Price (Rs.) : 0
(Zero)
First Party : PRABODHA KUMAR AGRAWAL
Second Party : Not Applicable
Stamp Duty Paid By : PRABODHA KUMAR AGRAWAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)

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IN-DL23724668478878V

NATIONAL INTERNET EXCHANGE OF INDIA
9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
New Delhi – 110 001 India

Tata Fintech Pvt Ltd & Tata Sons Pvt Ltd, Mumbai vs. Anshul Goel, U.P.
INDRP Case no. 1702
Arbitrator: Mr. P.K.Agrawal

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AWARD

1. The Parties

The Complainants are 1. Tata Fintech Private Limited having its registered office at Army & Navy, 148, M G Road, Opposite Kala Ghoda, Fort, Mumbai, Maharashtra, 400001 & 2. Tata Sons Private Limited having its registered office at Bombay House, 24, Homi Mody Street, Mumbai, Maharashtra 400001.

The Respondent is Anshul Goel, Flat no-6005, Tower-18, Mahagun Mywoods, Sector 16-C, Greater Noida West, Gautam Budh Nagar, UP-201309.

2. The Domain Name and Registrar

The disputed domain name is <TATAFINTECH.IN>. The said domain name is registered with the Registrar – GoDaddy.com, LLC (IANA ID: 146). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain **ROID**: D56CE8E2592CB45D69DC899C3E50AF598-IN
- b. Date of creation: Feb 09, 2022.
- c. Expiry date: Feb 09, 2024.

3. Procedural History

- (a) A Complaint dated 10.04.2023 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 05.06.2023 by email. The Arbitrator served the Notice under Rule 5(C) of INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 05.06.2023. The Complainant was advised to amend the complaint as per WHOIS details and send copy of the amended complaint (physical delivery) to the Respondent's address as reflected in WHOIS details. The Respondent was given 14 days' time by the Arbitrator through Notice dated 05.06.2023 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant submitted & served the amended complaint through email, and through "DTDC" courier on 06.03.2023. The Complainant, through his email dated 07.06.2023 has submitted the proof of dispatch of the Complaint and annexures to the Respondent through DTDC courier and Email. In view of this, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. The Respondent vide email dated 15th June, 2023 has replied that – "The Respondent wishes to settle the matter amicably. Kindly pursue for the same.", but not submitted detailed reply or defence. Hence, these proceedings have to be conducted with the pleadings brought on record by the Complainant.

4. Factual Background

The Complainants in this arbitration proceedings are 1. Tata Fintech Private Limited having its registered office at Army & Navy, 148, M G Road, Opposite Kala Ghoda, Fort, Mumbai, Maharashtra, 400001 & 2. Tata Sons Private Limited having its registered office at Bombay House, 24, Homi Mody Street, Mumbai, Maharashtra 400001.

The Complainant no.1 is part of TATA group of companies, which is headed by the Complainant no.2 (hereinafter, 'the Complainants Group') which includes service companies and companies selling TATA products to franchisees in certain markets. The Complainants Group is engaged in various kinds of business which includes companies providing consultancy services, selling and manufacturing vehicles, steel products, chemicals products, consumer products, watches, electricity, hospitality services, communications, financial and electronics.

The Complainant no. 2 is principal investment holding company and promoter of Tata companies. In 2021-22, the revenue of Tata companies, taken together, was \$128 billion (INR 9.6 trillion). There are 29

publicly listed Tata enterprises with a combined market capitalization of \$311 billion (INR 23.6 trillion) as on March 31, 2022.

The trademark **TATA** was adopted as early as 1968 by the Complainants Group's founder Jamsetji Tata. The trademark **TATA** is inherently distinctive and is a strong identifier of source for the Complainants Group and its goods and services. It has no dictionary meaning and does not otherwise exist in the English language.

The Complainant no. 1 was incorporated on 1st November 2021, with a view to provide the financial services. The Complainant no. 1 is authorized vide trademark and trade name agreements by Complainant no. 2, the contents and terms of which are confidential, to use and enforce the trademark and trade name **TATA** and to do business under the said trademark and trade name in India.

According to the Complainants, the trademark **TATA** is the subject of a large number of trademark registrations in several countries around the world. In India, the trademark **TATA** is household name, and everyone in India relates the trademark **TATA** to the values of integrity, responsibility, excellence, pioneering, unity. The trademark **TATA** forms a part of the trade names of nearly all the companies under the Complainants Group.

The Complainants Group company has also applied for the trademark of '**TATA FINTECH**' under classes 9, 36 and 42 in the name of Tata Sons Private Limited on 17th February 2022. The Complainant with respect to the agreement with Tata Sons has the rights to use the trademark '**TATA FINTECH**'. The Complainants Group owns the domain name <tata.com> registered since 15th October 1996.

The Complainants have pointed out that in the *Tata Sons Limited v. Ramniwas & Ors.*, 2016 SCC OnLine Del 6376, the Hon'ble Delhi High Court held that "*It is evident that the mark TATA has been used by the plaintiff for a long period of time and enjoys reputation and goodwill and has acquired the status of a "well-known" mark*". On the basis of the extensive goodwill and reputation associated with the **TATA** trademark, the Complainants Group has been able to restrain several third parties who were using the trademark **TATA** unauthorizedly in relation to their business. The Complainants have cited many cases in this regard.

According to the Complainants, the present dispute has arisen on account of registration of the domain <tatafintech.in> by the Respondent which fully incorporates the well-known trademark **TATA** of the Complainant no. 2. The disputed domain name is also identical to Complainant no. 1

tradename as well to the trademark "TATA FINTECH" applied by Complainant no.2. The present disputed domain is a parked website.

Respondent's Identity and Activities

The Respondent's activities are not known as per WHOIS details. The Respondent vide email dated 15th June, 2023 has replied that – "The Respondent wishes to settle the matter amicably. Kindly pursue for the same." The Respondent has, therefore, not presented any substantive reply or evidence to defend himself.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the disputed domain name <TATAFINTECH.IN> is confusingly similar to the TATA Marks.

The disputed domain name <tatafintech.in> completely subsumes the Complainants Group's well-known trademark TATA. The disputed domain name is identical to the dominant portion of the tradename of Complainant no.1 **TATA FINTECH PRIVATE LIMITED**. People accessing the disputed domain name, are likely to think that the disputed domain name is owned by the Complainants or is in some way connected with the Complainants.

The Complainants in its submission relies upon *Nike Inc. v. Nike Innovative CV Zhaxia*, INDRP Case No. 804; *Metropolitan Trading Company v. Chandan Chandan*, INDRP Case No. 811; *Lego Juris A/s v. Robert Martin*, INDRP Case No. 125, where it was held that if a disputed domain name completely incorporates the trademark of the Complainant, then the mere addition of domain codes such as ".in" and/or ".co.in" will not distinguish the Respondent's disputed domain name.

In several UDRP decisions as well, various panels have found that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy. *Oki Data Americas, Inc. v. the ASD, Inc.*, WIPO

Case No. D2001-0903; *Go Daddy.com, Inc. v. Shoneye's Enterprise*, WIPO Case No. D2007-109; *Qalo, LLC v. Chen Jinjun and Magnum*, WIPO Case No. D2018-221; *Piering Inc v. The Mudjackers*, WIPO Case No. D2000-1525.

The Complainants Group has used and registered **TATA** as a trademark, tradename and as a part of various domains, well prior to 9th February 2022, which is the registration date of the disputed domain. The Complainants Group has thus established rights in its trademark **TATA** dating back to 1968.

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that **the Respondent Does Not Have Any Right or Legitimate Interest in TATAFINTECH.IN.**

According to the Complainant, under paragraph 7 of the IN Domain Dispute Resolution Policy (INDRP), any of the following circumstances, if found by the Panel, may demonstrate a Respondent's rights or legitimate interests in a disputed domain name:

- i. Before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- ii. The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- iii. The Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant argues that none of the above circumstances exist in the present case. The Respondent is not related to the Complainants or its Group. The Complainants have never assigned, granted, licensed, sold, transferred or in any way authorized the respondent to use as a part of their tradename, as a part of an email server or register domain names

comprising its trademark **TATA**. As already held by previous Panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name. In the present case, the Respondent is not commonly known by the disputed domain. There is no reason to believe that the Respondent is commonly known by the disputed domain name. The Respondent has no rights over the trademark **TATA FINTECH**.

The Respondent registered the disputed domain name decades after the use and trademark registrations of **TATA** by the Complainants Group. Furthermore, the trademark **TATA/TATA FINTECH** has not been used by anyone other than the Complainants Group. It is obvious that it is the fame of the trademark that has motivated the Respondent to register the disputed domain name.

Respondent's unlicensed and unauthorized use of domain name incorporating the Complainant's trademark is solely with a view to misleadingly divert consumers and to tarnish the trademark of the Complainants. Reliance is placed on *Bruyere S.A. v. Online Systems*, WIPO Case No. D2016-1686, where UDRP Panel found "*Given that there is no active website associated with the Disputed Domain Name, the Panel does not find that the Respondent is making any use of the Disputed Domain Name within the meaning of paragraph 4(c) of the Policy. Rather, given that the Disputed Domain Name is identical to the Complainant's Trademark, it gives the misimpression that the Respondent is the Complainant or is otherwise affiliated with the Complainant*".

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the **Domain Name Has Been Registered and Used in Bad Faith**:

The Complainant submits that the disputed domain name completely incorporates the Complainants Group's trademark **TATA** and Complainant's tradename **TATA FINTECH**. Complainants Group's trademark **TATA** is a well-known trademark. Complainant's **TATA** trademarks have immense goodwill and reputation and is well prior to the registration of the disputed domain name. It is a fact that Respondent is based in India, where the Complainant's company is registered and where its **TATA** is household name. Hence, Respondent is bound to have knowledge of the

Complainant's **TATA** trademarks. Respondent registered the disputed domain name in full knowledge of the Complainant's trademark rights and, on balance, with the intention of taking advantage of such rights. Even constructive knowledge of a famous trademark like **TATA** is sufficient to establish registration in bad faith.

The Complainant relies on *Fannie May Confections, Inc. v. Domain Contact 2 (FANNIEMAYS-COM-DOM)*, WIPO Case No. D2006-0813 and *Carla Sozzani Editore S.R.L. v. Michael D. Darr*, WIPO Case No. D2017-1237 where a similar registration of a domain name by Respondent several years after the adoption of the Complainant's mark was held to be with the motive to profit from the goodwill that Complainant had built in its mark and was subsequently transferred to the Complainant.

The Complainant submits that the Respondent's bad faith is further evidenced from the fact that the Respondent registered the impugned domain name on 9th February 2022, years after the registration of the Complainants Group's trademark registrations in India. Also, the Respondent is bound to be aware of the incorporation of Complainant no. 1 as 'Tata Fintech Private Limited' as use of the trademark **TATA FINTECH**.

Further, there is a great likelihood that actual or potential visitors to the present website of the Respondent will be induced to:

- Believe that the Complainants/Complainants Group has licensed its trademark/trade name/trading style **TATA/TATA FINTECH** to the Respondent or authorized the Respondent to register the disputed domain name; and
- Believe that the Respondent has some connection with the Complainants in terms of a direct nexus or affiliation with the Complainants.

Reliance is placed on *Inter IKEA Systems B.V. v. Roman Zubrickiy*, WIPO Case No. D2015-0046, where UDRP Panel while holding that the Respondent has registered and is using the disputed domain name in bad faith observed "*Further, the use of the Disputed Domain Name by the Respondent indicates an intention to attract Internet users to its website for commercial gain by taking advantage of the Complainant's reputation in connection with the IKEA Mark. The Respondent has intentionally chosen the Disputed Domain Name in order to generate traffic and income*

through a site falsely suggesting that it is connected to the Complainant as to source, sponsorship, affiliation or endorsement”.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent vide email dated 15th June, 2023 has replied that – “The Respondent wishes to settle the matter amicably. Kindly pursue for the same.”. He has not submitted any evidence or argument indicating his relation with the disputed domain name <TATAFINTECH.IN> or any trademark right, domain name right or contractual right.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant’s has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant’s domain name has been registered or is being used in bad faith.

Although Respondent has not offered any arguments to defend himself on this complaint, the default does not automatically result in a decision in favour of the Complainant. The burden remains with Complainant to establish the three elements of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

The disputed domain name <TATAFINTECH.IN> was registered by the Respondent on Feb 09, 2022.

The Complainant is an owner of the registered trademark "TATA" for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <TATAFINTECH.IN>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for "TATA" products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <TATAFINTECH.IN> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.



In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Respondent has not responded with a detailed reply in this case despite sufficient notice. There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not TATA or TATAFINTECH as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark "TATA" or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <TATAFINTECH.IN> under INDRP Policy, Para- 4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to

the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or

- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

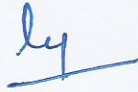
The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith

and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <TATAFINTECH.IN> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 21st June, 2023