



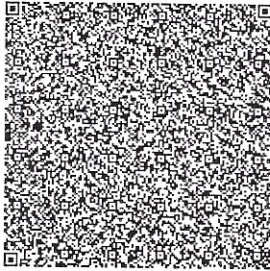
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Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL921303913493537981000
Purchased by : SANJAY KUMAR SINGH ARBITRATOR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SANJAY KUMAR SINGH ARBITRATOR
Second Party : Not Applicable
Stamp Duty Paid By : SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH, ARBITRATOR.
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

AXALTA COATING SYSTEM --- COMPLAINANT

VS

MR. OM NARAYAN --- RESPONDENT

Sanjay Kumar Singh
21-10-16

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Axalta Coating System,
Suite 3600, 2001 Market Street
Philadelphia, PA 19103, USA.
Address at (a) 6th Floor, A-1601,
Lotus Corporate Park, Gram Path,
Jay Coach Junction, Opp.
Western Express Highway,
Jogeshwari East Mumbai,
Maharashtra-400063, India.
(B) Coatings Foreign IP Co, LLC
C/o The Corporation Trust Company,
Corporation Trust Center, 1209 Orange Street,
Wilmington, Delaware 19801, United States of America
Through its authorized representative
Ms. Archana Sahadeva, Singh & Singh Lall & Sethi,
D-17, South Extension, Part-II, New Delhi-110049.
E-mail: asahadeva@indiaip.com , www.indiaip.com

COMPLAINANTS

Versus

Mr. Om Narayan
Ittaina Mahavir
Bangalore- 560035
Karnataka, India
E-mail: vasuaxalta@gmail.com

RESPONDENT

II. THE PARTIES

A. THE COMPLAINANT:

1. The Complainant no.1 in this administrative proceeding is Axalta Coating System, Suite 3600, 2001 Market Street, Philadelphia, PA 19103, USA. Address at (a) 6th Floor, A-1601, Lotus Corporate Park, Gram Path, Jay Coach Junction, Opp. Western Express Highway,

Sanjay Kumar Singh
31-10-16

Jogeshwari East Mumbai, Maharashtra-400063, India. The complainant no.2 in the present proceeding is Coatings Foreign IP Co, LLC C/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, United States of America through its authorized representative Ms. Archana Sahadeva, Singh & Singh Lall & Sethi, D-17, South Extension, Part-II, New Delhi-110049. E-mail: asahadeva@indiaip.com, www.indiaip.com

2. The Complainant's preferred method of communications directed to the Complainant in the administrative proceedings is as follows:

Material including hardcopy

Method: Courier/RegisteredAD/Email

Address: Singh & Singh Lall & Sethi,

D-17, South Extension, Part-II,

New Delhi-110049.

E-mail: asahadeva@indiaip.com, www.indiaip.com

Electronic-only material

Method: E-mail

B. THE RESPONDENT

The Respondent (amended) in this administrative proceeding is

Mr. Om Narayan

Ittaina Mahavir

Bangalore- 560035

Karnataka, India

E-mail: vasuaxalta@gmail.com

III THE DOMAIN NAME :

This dispute concerns the domain name identified below:

"www.axaltacoatingsystems.co.in"

The present Complaint has been filed by the complainant on account of the unauthorized and illegal registration & use of Complainant's trademark www.axaltacoatingsystems.co.in, as part of its domain name by the Respondent.

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31-10-16

The complainant has contended the following grounds in support of the Complaint in accordance with the .In Domain Name Dispute Resolution Policy:

1. The Registrant's domain name "**www.axaltacoatingsystems.co.in**" incorporates the Complainant's trademark "AXALTA" and is identical and deceptively similar to the Complainant's trading style and trade mark "AXALTA", in which the Complainant has exclusive rights.
2. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
3. The Registrant's domain name has been registered and is being used in bad faith.
4. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the affiliation, or endorsement of the Registrant's website.
5. The disputed domain name is registered only for the purpose of trafficking/cybersquatting.

IV Factual and legal Grounds:

The complainant has contended the following grounds:

1. The Complainant (which term shall hereinafter include AXALTA COATING SYSTEMS), its subsidiaries, and sister concerns) in this administrative proceeding is Axalta Coating System, Suite3600, 2001 Market Street, Philadelphia, PA 19103, USA.
2. The complainant is a leading global coatings company dedicated to the development, manufacture and sale of liquid and powder coatings(through its predecessor), in 2016 celebrates 150 years in the paint and coatings industry as the original producer of Axalta's well-known STANDOX paint was founded in 1866.
3. The complainant has submitted that the name Axalta coatings systems became an independent company, with a new name and identity on February 01, 2013 and as on date the complainant is doing business in more than 130 countries.
4. The complainant has submitted that in view of the above, the Complainant has trade mark registration for the AXALTA marks in classes 2, 35, 37 41 and 42. Apart from aforesaid trademark applications, in classes 35, 37, 41 and 42 seeking registration of trade mark AXALTA COATING SYSTEMS in favour of the complainants are also pending before the trade mark registry.

RESPONDENT

1. The Respondent in the present dispute has registered the domain name "**www.axaltacoatingsystems.co.in**". The Complainant has submitted that Respondent is seeking to capitalize on the goodwill associated with trademark of Complainant and has

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31-10-16

registered in bad faith and without authorization, the domain name in issue www.axaltacoatingsystems.co.in which (i) wholly incorporates the word "AXALTA" (ii) is identical to the Complainant's trademark "AXALTA/ OR AXALTA COATING SYSTEMS". The domain name "www.axaltacoatingsystems.co.in" is identical to the trademark of the Complainant, thereby making confusion and deception inevitable.

COMPLAINANT'S CONTENTION

1. The Complainant has submitted that the Respondent has no legitimate justification for having registered a domain name incorporating word "AXALTA/ AXALTA COATING SYSTEMS" and has no apparent use for the domain name other than to profit from the diverted traffic to its website, which may confuse the Registrant as the website of the Complainant. The Complainant has further submitted that the Respondent has no *bona fide* intention to use the domain name www.axaltacoatingsystems.co.in and the same has been registered in bad faith.
2. The complainant has submitted that the registration of the domain name "www.axaltacoatingsystems.co.in" is clearly in bad faith and reeks of *mala fides*. The disputed domain name is registered by the Respondent which will confuse and divert customers to believe that the disputed domain name to the Complainant's legitimate website. The complainant has submitted that the two domain names being identical, bad faith registration is writ large from the fact that the Respondent could have no justification for seeking registration of a domain name of which the word "AXALTA" is the whole and only component. The act of registering a domain name, which incorporates the Complainant's trademark "AXALTA/ OR AXALTA COATING SYSTEMS", by the Respondent is likely to cause confusion, deception or persuade Internet users into believing that the registration by the Respondent of the domain name "www.axaltacoatingsystems.co.in" has been effected on behalf of the Complainant or is sponsored, licensed or authorized by, or that the Respondent is affiliated, connected or otherwise associated with the Complainant or its services.
3. The complainant has prayed that domain name "www.axaltacoatingsystems.co.in" be transferred in favour of the Complainant and costs be also awarded in the matter.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name "www.axaltacoatingsystems.co.in"

Satyajit K. Singh
31-10-16

3. I was appointed as Sole Arbitrator in the matter by NIXI.
 4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
 5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
 6. The complainant has stated in his complaint that:
 1. The Registrant's domain name "**www.axaltacoatingsystems.co.in**" incorporates the Complainant's trademark "AXALTA/ OR AXALTA COATING SYSTEMS" and is identical to the complainant's trademark, in which the Complainant has exclusive rights.
 2. The Registrant has no rights or legitimate interests in respect of the impugned domain name.
 3. The Registrant's domain name has been registered and is being used in bad faith.
 4. The Registrant has intentionally attempted to attract Internet users to the Registrant's website by creating a likelihood of confusion with the Complainant's name and mark as to the affiliation, or endorsement of the Registrant's website.
 7. The complainant as such has prayed for an award in the above matter for the transfer of the domain name "**www.axaltacoatingsystems.co.in**" in favour of the complainant. The complainant has also prayed for cost in his favour.
 8. On 19-05-2016, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.
 9. On 30-05-2016, I again informed the concerned parties to the complaint to file their counter/ reply and rejoinder with the supportive document/evidence.
 10. On 29-06-2016, I again informed the concerned parties to the complaint to file their counter/ reply and rejoinder with the supportive document/evidence.
- The parties to the complaint exchanged mails for reporting compromise and I received the intimation/ e-mail from the respondent from his email address "vasuaxalta@gmail.com" and an undertaking dated 27th August 2016 reporting the compromise and undertaking for transferring the disputed domain name to the complainant.
11. There upon the complainant vide email informed the arbitrator for award in view of amicable settlement and the undertaking of the respondent.

Sangeeta K. Singh
31-10-16

12. In the facts and circumstance stated above the award is hereby passed in view of the undertaking of the respondent whereby he has given undertaking for the transfer of the disputed domain name to the complainant.

Therefore, this matter is being decided in view of the undertaking of the respondent for the transfer of the disputed domain name to the complainant.


RELIEF

The domain name "**www.axaltacoatingsystems.co.in**" of respondent be transferred to the complainant in view of the undertaking of the respondent whereby he has given undertaking for the transfer of the disputed domain name to the complainant. The complainant is entitled for transfer of domain name **www.axaltacoatingsystems.co.in** to him, as complainant has established its bonafide rights in trademark. The undertaking shall form part of the award. I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 31- 10-2016.


(Sanjay Kumar Singh)
Arbitrator



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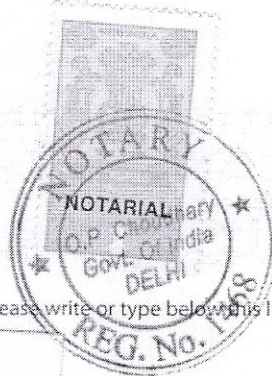
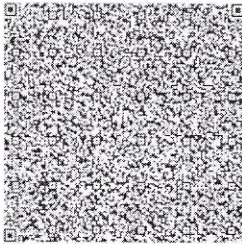
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Certificate Issued Date	: 22-Aug-2016 02:45 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP17724230579164030
Purchased by	: OM NARAYAN RAI
Description of Document	: Article Undertaking
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: OM NARAYAN RAI
Second Party	: Not Applicable
Stamp Duty Paid By	: OM NARAYAN RAI
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

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Entry No. 140/e/16
Date. 27 AUG 2016

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Om Narayan

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UNDERTAKING

This undertaking is executed on this 27th day of AUGUST 2016 by Mr. **Om Narayan Rai**, aged 35, R/o. H308, Ittina Mahavir, Bangalore – 560 035, Karnataka, India, presently at Delhi (hereinafter referred to as the '**Executant**' and the expression whereof shall include the legal heirs, successors and assigns in business), in favor of **Axalta Coating Systems**, of the address Suite 3600, 2001 Market Street, Philadelphia, PA 19103, USA and **Coatings Foreign IP Co, LCC**, of the address C/o. The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, USA (hereinafter collectively referred to as the '**Proprietors**' and the expression whereof shall include its subsidiaries, affiliates, legal heirs, successors and assigns in business).

WHEREAS the Proprietors are the honest adopters and proprietors, in India and all over the world, of the trade mark AXALTA COATING SYSTEMS / AXALTA / A AXALTA (collectively referred to as the 'AXALTA Marks') for a wide variety of paints and coatings products and related products and services.

AND WHEREAS, the Executant has adopted the mark 'Axalta' and is using the same, in *toto*, as part of the following domain names:

1. www.axaltacoatingsystems.in
2. www.axaltacoatingsystems.co.in
3. www.axaltahomepaints.in
4. www.axaltahomepaints.com
5. www.axaltacoating.in

The said domain names are collectively referred to as the 'Disputed Domain Names'.

AND WHEREAS the Proprietors served a legal notice dated November 03, 2015 on the Executant, requesting that the Executant cease and desist from using the name AXALTA COATING SYSTEMS and/or AXALTA or any variation thereof as the right over the said trade mark vests with the

1 *Om Narayan*

Proprietors. However no settlement could be arrived at between the parties. The Proprietors herein filed two complaints before the National Internet Exchange of India (NIXI) in relation to the following two domain names:

1. www.axaltacoatingsystems.in
2. www.axaltacoatingsystems.co.in

In relation to the complaint regarding the domain name www.axaltacoatingsystems.in, an award dated June 26, 2016 was passed in favour of the Proprietors, which, *inter alia*, directed the Executant to transfer the aforementioned domain name in favour of the Proprietors and further costs of INR 10 Lakhs were imposed on the Executant. The second complaint in relation to www.axaltacoatingsystems.co.in is currently pending adjudication before the Ld. Arbitrator.

AND WHEREAS, pursuant to receipt of the award, the Executant has now expressed his desire to tender an unconditional undertaking in favour of the Proprietors, and the Proprietors have agreed to accept the said undertaking.

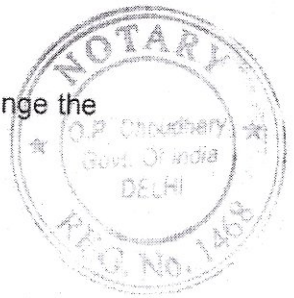
NOW THIS UNDERTAKING WITNESSETH AS UNDER:

- A. The Executant, jointly and severally, recognises the rights of the Proprietors in the AXALTA marks;
- B. The Executant agrees and undertakes not to use or attempt to register in any medium (e.g., print materials, online) any names, marks or identifiers of any kind (including, without limitation, domain names, company names, trademarks, service marks, social media names, product names) that include or comprise the AXALTA marks, any name or mark that includes "Axalta," or any other mark which is identical to or confusingly or deceptively similar, or any misspelling thereof, in any manner whatsoever, in relation to goods and services of any nature whatsoever;
- C. The Executant undertakes to destroy all existing stocks, all goods, packaging and promotional material, brochures, catalogues, stationery, and any other material in any medium whatsoever, bearing the

AXALTA marks or any other mark which may be identical to or confusingly or deceptively similar to those of the Proprietors' marks;

- D. The Executant undertakes not to promote and use the AXALTA marks or any other mark in any style, format and color combination which may be deemed to deceptively similar to that of the Proprietor on their products/services in future;
- E. The Executant further warrants and states that it has not filed any Trade Mark / Copyright application with the Registrar of Trade Marks / Registrar of Copyrights for the registration of any trade mark / copyright that includes or comprises the AXALTA marks, any name or mark that includes "Axalta," or any other mark which is identical to or confusingly or deceptively similar, or any misspelling thereof, in respect of goods and/or services of any nature whatsoever. He further warrants that he has not filed for obtaining domain name registration (except the Disputed Domain Names), which includes the wording "AXALTA" or may incorporate in part or toto, a mark which is either identical to or confusingly or deceptively similar to, or a misspelling of the Proprietors' AXALTA marks.
- F. The Executant undertakes to promptly take all steps necessary to transfer ownership of the Disputed Domain Names, to the Proprietors, within a period of one week from the date of signing the present Undertaking.
- G. The Proprietors undertake that upon successful completion of the transfer of the Disputed Domain Names in their favor, the Proprietors (a) will make a one-time payment to the Executant of INR 11,600/-; (b) will inform the arbitrator in the pending NIXI proceeding involving the domain name www.axaltacoatingsystems.co.in that the parties have amicably resolved the matter; and (c) agree not to press for payment of damages of INR 10 Lakhs awarded to it by NIXI in the award dated June 26, 2016.

H. In view of the aforesaid, the Executant undertakes not to challenge the Award dated June 26, 2016.



BREACH OF UNDERTAKING:

In the event that the Executant commits a breach of the undertakings mentioned hereinabove, the Proprietors shall be entitled to seek all remedies available under law. Executant agrees that he will be liable to the Proprietors for any attorneys' fees and costs incurred by the Proprietors in any actions to address a breach by the Executant of the terms of this agreement, including but not limited to enforcement actions by the Proprietors against the Executant relating to any names, marks or identifiers prohibited under paragraph Babove.

Notwithstanding anything contained in this Undertaking the Proprietors reserve their rights to initiate appropriate legal proceedings against the Executant in respect of future violations in which case the Proprietors shall also have the right to claim damages against past violations of the Executant.

Both parties agree to submit themselves to the jurisdiction of the courts at New Delhi, India

IN WITNESS WHEREOF this undertaking is executed on this day, month and year mentioned above in the presence of witnesses

WITNESSES:

1. Signature: *Mohit Agarwal*
Name: MOHIT AGARWAL
Address: NEELKAMAL
BHAWAN, GANDHI
NAGAR, BALLIA,
UP-277001
2. Signature: *Aniket Kumar*
Name: ANIKET KUMAR
Address: B1401, GPL,
EDEN HEIGHTS
GURGAON-122101



EXECUTANTS

Om Narayan
(OM NARAYAN RAI)

ATTESTED

O.P. Chaudhary
NOTARY PUBLIC, DELHI

27 AUG 2016