



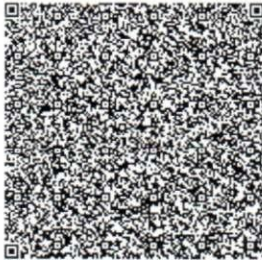
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL69746647040668M  
Certificate Issued Date : 23-Jun-2014 10:42 AM  
Account Reference : IMPACC (IV)/ dl775503/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL77550336372395743960M  
Purchased by : V K AGARWAL  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : V K AGARWAL  
Second Party : Not Applicable  
Stamp Duty Paid By : V K AGARWAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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### NATIONAL INTERNET EXCHANGE OF INDIA

Flat No. 6B, 6<sup>th</sup> Floor, Uppals M6 Plaza,  
Jasola District Centre,  
New Delhi – 110 025

Brigade Enterprises Ltd. v. Vaneet Gupta

### AWARD

*Kagarnal*

**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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## 1. The Parties

The Complainant is M/s Brigade Enterprises Limited, 29<sup>th</sup> and 30<sup>th</sup> floors, World Trade Center, Brigade Gateway Campus, 26/1, Dr. Rajukumar Road, Malleswaram – Rajajinagar, Bangalore – 560 055.

The Respondent is Mr. Vaneet Gupta, TG05/0A Orchid Garden, Sector 54, Gurgaon, Haryana. Postal Code: HA51HR

## 2. The Domain Name and Registrar

The disputed domain name is <www.brigademeadows.org.in>.

The said domain name is registered with GoDaddy.com,LLC

The details of registration of the disputed domain name are as follows:

- |                       |                              |
|-----------------------|------------------------------|
| (a) Domain ID:        | D7907045 – AFIN              |
| (b) Registrar:        | GoDaddy.com. LLC (R101-AFIN) |
| (c) Date of creation: | December 6, 2013             |
| (d) Expiry date:      | December 6, 2014             |

## 3. Procedural History

- (a) A Complaint dated May 31, 2014 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 2. It is 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 Dr. Vinod K. Agarwal, Advocate and former Law Secretary to 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

*Vinod K. Agarwal*



of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.

- (b) In accordance with the Policy and the Rules, on June 2, 2014 the Complainant formally notified the Respondent of the Complaint through the e mail address vaneetg@gmail.com. On June 16, 2014 The National Internet Exchange of India also sent an e mail to the Respondent stating that the postal address mentioned in the WHOIS record is not clear and asked for the correct and complete postal address so that a copy of the Complaint may be served on him by post. No response has been received from the Registrant/Respondent. Hence, the present proceedings have to be ex parte.

#### **4. Factual Background**

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant is a company incorporated according to the provisions of the Companies Act, 1956 (of India). The Complainant was established in the year 1986.

The Complainant is a property developer and is engaged in the business of real estate services, building construction, provision of temporary accommodation, food and drinks, etc. The subsidiaries of the Complainant include Brigade Hospitality Services Ltd., Brigade Tetrarch Private Limited, Brigade Estates and Projects Private Limited, Brigade Properties Private Limited, Brigade Infrastructure & Power Private Limited, etc.

##### **Respondent's Identity and Activities**

Respondent did not file any reply. Hence, the Respondent's activities are not known.

#### **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 contends that it has adopted the trademarks 'Brigade' (**'Brigade Wordmark'**) and 'Brigade' + 'Building' + 'Sun' device (**'Brigade Composite Mark'**) collectively referred to as "**Brigade Trademarks**" since 1986. Further that the Complainant is the sole proprietor of the "Brigade trademarks". They were registered in India on October 21, 2003. The Complainant's trademarks are registered in Classes 36, 37, and 42.

The Complainant is also the registrant and proprietor of various domain name registrations at international and domestic levels, such as, <brigadegroup.com>; <brigadegroup.co.in>; <brigadegroup.in>; <brigadeenterpriseslimited.com>; <brigadeenterpriseslimited.co.in>; <brigadeenterpriseslimited.in>; <brigademeadows.in>; <brigademeadows.co.in>; <brigadecosmopolis.co.in>; etc. Therefore, the Complainant is well known to its customers as well as in business circles as "Brigade Group".

Therefore, the disputed domain name is similar or identical to the registered trademark of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark ""Brigade". The Respondent has no authorization or permission from the Complainant to either use or to register the disputed domain name.

It is further contended by the Complainant that the Respondent has not only registered the disputed domain name but has also copied the Complainant's Brigade Composite Mark including the Brigade Artwork as well as the specification and details of the Complainant's project "Brigade Meadows". However, on April 28, 2014 when a legal notice was issued, the Respondent appears to have removed all contents from the disputed domain name relating to Brigade trademarks, Brigade Artwork and Project details.

Further, the Respondent is not making a legitimate or fair 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.

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Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.brigademeadows.org.in> by the Respondent is to mislead the general public and the customers of the Complainant and with the intention of diverting the internet traffic from the Complainant's domain name(s) thereby deceiving and confusing the trade and public as to affiliation or association of the disputed domain name with the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

## **B. Respondent**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.brigademeadows.org.in> or any trademark right, domain name right or contractual right.

## **6. Discussion and Findings**

The Rules instructs 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.

#### **A. Identical or Confusingly Similar**

The Complainant's name is "Brigade Enterprises Limited". One of the Complainant's trademark is "Brigade". The Complainant is also the owner of a large number of domains as stated above and in Annexure 5 to the Complaint. Most of 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.

The disputed domain name is <brigademeadows.co.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent 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 BRIGADEMEADOWS products in India or elsewhere 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 <www.brigademeadown.org.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.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Regiostrant/Respondent is Mr. Vaneet Gupta. 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 licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name.

### **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's 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.

The Respondent's registration of the domain name <www.brigademeadows.org.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant. Further that, in the first instance copying the Complainant's Brigade Composite Mark on the website and thereafter on receiving a legal notice from the Complainant deleting it from the disputed domain reveals bad faith.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

Therefore, I conclude that the domain name 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 a mark in which the Complainant has rights,





that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith and for the purposes of sale, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.brigademeadows.org.in> be transferred to the Complainant.



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Vinod K. Agarwal  
Sole Arbitrator  
Date: 28<sup>th</sup> June 2014