



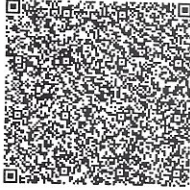
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate Issued Date	: 29-Jul-2020 02:54 PM
Account Reference	: IMPACC (IV)/ dl718203/ DELHI/ DL-DLH
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Purchased by	: DIVYA BALASUNDARAM
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DIVYA BALASUNDARAM
Second Party	: Not Applicable
Stamp Duty Paid By	: DIVYA BALASUNDARAM
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Before the Sole Arbitrator, Divya Balasundaram

C/O National Internet Exchange Of India

In the matter of:

Century 21 Real Estate LLC -vs- Alchemist Ltd.

Divya Balasundaram

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ARBITRAL AWARD

.IN REGISTRY

C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name – < www.century21.in>

In the matter of:

Century 21 Real Estate LLC
175 Park Avenue
Madison, New Jersey 07940
U.S.A.

Complainant

-vs-

Alchemist Ltd.
Sector-9,
Chandigarh- 160009

Respondent

1. THE PARTIES

- 1.1 The Complainant in these proceedings is Century 21 Real Estate LLC, a company incorporated under the laws of the State of Delaware, USA, having its principal place of business at 175 Park Avenue, Madison, New Jersey 07940, U.S.A. The Complainant is represented by FIDUS Law Chambers, F-12, Ground Floor, Sector 8, NOIDA-201301.
- 1.2 The Respondent in these proceedings is Alchemist Ltd. of the address Sector-9, Chandigarh- 160009.

2. DISPUTED DOMAIN NAME AND REGISTRAR

- 2.1 This dispute concerns the domain name century21.in which was registered in July 2011 (the 'disputed domain name'). The Registrar with which the disputed domain name is registered is Endurance Domains Technology LLP, Unit No. 501, 5th Floor, IT Building 3, Nesco IT Park NESCO Complex, Western Express Highway, Goregaon (E), Mumbai, Mumbai City MH 400063.

3. PROCEDURAL HISTORY

- 3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).
- 3.2 NIXI vide its email dated May 22, 2020 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of



Impartiality and Independence in compliance with the .INDRP Rules of Procedure on the same day.

- 3.3 Arbitrator was appointed vide NIXI's email of May 28, 2020.
- 3.4 Arbitrator sent email on May 28, 2020 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days.
- 3.5 Since no response was received even after the time had elapsed, the Arbitrator addressed an email of June 22, 2020 to all concerned parties that the Panel would proceed to pass its award ex-parte.
- 3.6 The language of these proceedings is English.

4. BACKGROUND OF COMPLAINANT AND ITS RIGHTS IN TRADEMARK CENTURY21 AS SUBMITTED IN THE COMPLAINT

- 4.1 The Complaint is based on the adoption and use of the trademark CENTURY21 of the Complainant and its use in connection with its domain names.
- 4.2 The Complainant was incorporated as Century 21 Real Estate Corporation in 1971 in California, USA. In 1979, this entity merged with New Century Real Estate Corporation to form "Century 21 Real Estate Corporation", incorporated on 17th September 1979 under the laws of the State of Delaware, USA. Later, the status changed from a corporation to limited liability company, and therefore the name Century 21 Real Estate LLC was adopted on 28th December 2004.
- 4.3 The Complainant is a wholly owned indirect subsidiary of Realogy Group LLC, formerly known as Realogy Corporation, USA, and is a limited liability company, organized and existing under the laws of the state of Delaware. The Complainant is a prominent and globally renowned franchisor in the field of real estate and offers comprehensive training and marketing support for the franchised real estate system provided under the trademark CENTURY 21. The CENTURY 21 System includes independently owned and operated franchised broker offices worldwide.
- 4.4 The Complainant through its affiliated franchisees and agents has been engaged in the business of real estate services since 1971 and it is the first entity in the world to have used the trademark CENTURY 21 in relation to real estate brokerage services.
- 4.5 The Complainant, under its trademark CENTURY 21, provides marketing, communications, and technology solutions that enable its franchisees and their independent agents to provide real estate services such as buying, selling and renting houses, etc.
- 4.6 The Complainant has long been engaged in the business of franchising its brand for use in connection with real estate brokerage services and is among the largest franchisors in this field worldwide. The Complainant and its international Master Franchisees have collectively franchised over 8000 independently owned and operated franchised broker offices in approximately 80 countries and territories worldwide, encompassing the United States, Europe, Latin America, the Middle East and Asia, and they are actively working to continue increasing the Complainant's presence and market share globally. Complainant has duly executed CENTURY 21 Sub-franchise Agreements with Master Franchisors all over the world.
- 4.7 In 2007, the Complainant, through its authorized licensee Realogy Group LLC, entered into a Sub-Franchise Agreement with DGS Realtors Pvt. Ltd in India. Thereafter, the agreement was terminated by Realogy Group LLC effective 2nd June

2009, resulting in disputes between the parties before courts in India and before the American Arbitration Association. During the course of these proceedings the Respondent expressed a desire to obtain a license to use the Century 21 marks and system and consequently entered into negotiations with DGS Realtors Pvt. Ltd. and to this end provided confidential good and valuable consideration to DGS Realtors Pvt. Ltd. in exchange for the execution of a complete and unconditional release agreement by DGS Realtors Pvt. Ltd. Subsequently, in 2012, Realogy entered into a new Master Sub-Franchise Agreement with the Respondent.

- 4.8 The Complainant is the registered proprietor of the trademark CENTURY 21, as a standalone word mark and also in the form of a stylized mark, (together referred as CENTURY 21 trademarks), in over 100 jurisdictions all over the world, including in India. The first registration for the trademark CENTURY 21 was obtained in the United States of America, on 12th April 1977. Details of Complainant's trademark registrations in India as well as outside are provided.
- 4.9 The Complainant's CENTURY 21 brand is world-renowned in the real estate brokerage industry and is immensely popular in trade circles and amongst real estate consumers throughout the world, so much so that the name CENTURY 21 has become synonymous with the Complainant. The Complainant's immense popularity is evident from various independent surveys and assessments, wherein the public has identified the Complainant's CENTURY 21 brand as the most respected in the industry.
- 4.10 The Complainant owns and operates a website under the domain www.century21.com, which has been registered since 2nd March 1995. The website disseminates information about the Complainant's business and is accessible to people from around the world, including India.
- 4.11 On account of its longstanding worldwide use and publicity, the trademark CENTURY 21 has acquired distinctiveness, immense goodwill and fame amongst members of the public over almost five decades. The trademark CENTURY 21 has had immense trans-border and spill over reputation in India even before the goods and services under the trademark CENTURY 21 were officially launched in India on account of such publicity and use.
- 4.12 The Delhi High Court in an order dated 28th May 2015, in the matter of Century 21 Real Estate LLC v. Sambit Basu and Ors. CS (OS) 1671/2015 [(Now Century 21 v. Kankana Das & Ors CS (COMM) 506/2017)], recognised the Complainant's long-standing rights in the trademark CENTURY 21 and its well-known character and repute. The Court also specifically recognised the Complainant's worldwide well-established reputation and fame.

5. THE RESPONDENT

- 5.1 In December 2012, Realogy Group LLC, entered into a Master Sub-Franchise Agreement [hereinafter 'the Agreement'] with the Respondent. The Respondent was granted the exclusive right to use and sublicense the CENTURY 21 trademarks and Century 21 System to franchisees in India on such terms and conditions as set forth in the Agreement. During the process of negotiations, the Respondent had registered the disputed domain name on 26th July 2011.



- 5.2 The Respondent being the sub-franchisor of the Complainant was known as CENTURY 21 INDIA and offered real estate brokerage and franchising services through the disputed domain.
- 5.3 Subsequently, the Respondent breached several provisions of the Agreement, and the Complainant terminated the Agreement and sent a letter dated 26th January 2016 to the Respondent. On 1st March 2016, the Respondent replied and requested the Complainant to grant a period of three months to cure the breach. Vide letter dated 13th April 2016 the Complainant sent a reply wherein Complainant clarified that the Respondent had to cure the breach by March 2016, which it failed to do. Further, the Complainant also indicated that in accordance to Clause 14 of the Agreement, the Respondent is called upon to do a number of things, including immediately transfer the disputed domain name to the Complainant.
- 5.4 Even after termination of the Agreement, the Respondent continued to host the website on the disputed domain. Subsequently, the Complainant sent follow up letters on 18th September 2018 and on 15th November 2019, respectively, to the Respondent for the transfer of the disputed domain, however no response was received.
- 5.5 As of present date no website is hosted on the disputed domain, however the domain registration continues to be renewed every year, clearly showing that the Respondent is misusing the Complainant's trademark and domain even after being put to notice of the Complainant's rights in the same.

6. GROUND FOR COMPLAINT

- 6.1 The Respondent's domain name is identical to the trademark/ trade name in which the Complainant has rights.
- 6.2 The disputed domain is identical to the Complainant's trade mark CENTURY 21. Further, the disputed domain is deceptively similar to the official website administered by the Complainant i.e., century21.com. The disputed domain incorporates the trademark CENTURY 21 in its entirety.
- 6.3 The Respondent has no rights or legitimate interests in the domain name.
- 6.4 As on present date the Complainant has not assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use, register or renew domain names comprising its trademark CENTURY 21.
- 6.5 The Complainant has terminated the Agreement with the Respondent and has also sent cease and desist letters enumerating the same. Despite the termination of the Agreement, the Respondent continued to host the website www.century21.in and also renew the domain registration periodically. This clearly demonstrates that while the Respondent does not have any legitimate interest in the disputed domain, it continues to hold the same in its name, thereby preventing Complainant from registering and using it in connection with its business.
- 6.6 No website is currently being hosted on the disputed domain. Accordingly, there is no evidence to suggest that the Respondent has either used or made any demonstrable preparations to use the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods and services.




- 6.7 Hence, the Respondent is not using the disputed domain for a bona fide offering of services, and not making legitimate non-commercial or fair use of the Complainant's trademark under the Policy.
- 6.8 The domain name was registered or is being used in bad faith.
- 6.9 It is submitted that the Respondent's bad faith is established by the fact that the Respondent, even after termination of the Agreement, has been passively holding the disputed domain name. Given the distinctiveness and reputation of Complainant's trademark CENTURY 21, the only conclusion that can be drawn is that the Respondent registered the domain name in bad faith to hold such for profit.
- 6.10 Complainant had also sent a notice dated 26th January 2016 apprising the Respondent of the Complainant's rights in the trademark CENTURY 21 and terminating the Agreement. Subsequently, the Complainant also sent reminder letters dated, 18th September 2018 and 15th November 2019, however, the Respondent did not respond to the said letter or take any corrective measures which is further indicative of the Respondent's mala-fide. Therefore, the disputed domain name has been registered and is being used in bad faith. The Respondent is continuously renewing and using the disputed domain name in bad faith.

7. DISCUSSION AND FINDINGS

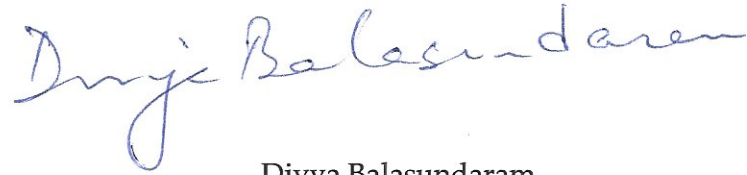
- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant as well as the case law cited by the Complainant. The Arbitral Tribunal has been properly constituted.
- 7.2 At the outset, the Arbitrator finds that the disputed domain name is identical to Complainant's trademark and domain, CENTURY21.
- 7.3 Further, the Respondent has independent right in the disputed domain name. It is clear that the disputed domain name was registered by the Respondent during negotiations with the Complainant for a franchise arrangement in India for real estate business. Subsequently, a Master Sub-franchise Agreement was entered into in December 2012 under which the Respondent was granted the exclusive right to use and sublicense the CENTURY 21 trademarks and Century 21 System to franchisees in India. The terms and conditions of such use were set forth in the Agreement. Whatever rights the Respondent had were only derived from and subject to the terms of the Agreement.
- 7.4 Hence, after the termination of the Agreement, Respondent has no continuing or subsisting rights to use the said domain name. Despite the termination of the Agreement, the acts of the Respondent in continuing to host website on the disputed domain and also renewing the same, is devoid of any legitimate right and is also in bad faith.
- 7.5 The Arbitrator finds that the Complainant has established all the 3 elements essential to maintain its complaint. The Respondent was given sufficient time to reply to the complaint, however, no response has been filed.

8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.



- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <century21.in > be transferred to the Complainant.
- 8.3 No order as to costs.



Divya Balasundaram

Sole Arbitrator

Date: June 26, 2020

Place: New Delhi.