

हरियाणा HARYANA

R 468704

BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

NEW DELHI, INDIA

**Automotive Exchange Private Limited**

12<sup>th</sup> Floor, Vishwaroop IT Park,

Sector -30A, Vashi

Navi Mumbai – 400 705

Maharashtra

.... Complainant

versus

**Hundraj Haryani**

Laxmi Niwas, Flat No.1,

Nr. Bus Depot

Near Railway,

Thane- 400 603

Maharashtra

.... Respondent

### **1. The Parties**

The Complainant is Automotive Exchange Private Limited of 12<sup>th</sup> Floor, Vishwaroop IT Park, Sector 30-A, Vashi, Navi Mumbai- 400 705 through its Authorised Representatives, Mr. Dipak G. Parmar and Mr. Ganesh Pramod Juvekar, M/s. Cyber –IPR, 13/A, Shreenath Sadan, Ground Floor, Bhajjivanji Lane, J.S.S. Road- Thakurwar, Mumbai- 400 002.

The Respondent is Mr. Hundraj Haryani of Laxmi Niwas of Flat No.1 Nr. Bus Depot, Nr. Railway, Thane- 400 603. The Respondent is represented by himself.

### **2. The Domain Name, Registrar and Registrant**

The disputed domain name is <CARWALE.FIRM.IN>. The Registrant is Mr. Hundraj Haryani and the Registrar is 'Net4India Ltd'.

### **3. Procedural Timeline**

**September 3, 2015 :** The .IN Registry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure.

**September 3, 2015 :** Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

**September 3, 2015 :** Parties to the dispute were informed of the constitution of the Arbitration panel and the effective date of handover.

**September 7, 2015 :** Arbitral proceedings were commenced by sending notice to the



Complainant's Representative through e-mail, with a copy marked to the NIXI, directing it to forward a soft copy of the Complaint alongwith the Annexures to the Respondent within two days.

**September 7, 2015 :** Arbitral Tribunal addressed a notice to the Respondent, with a copy marked to the Complainant's Authorized Representative, directing the Respondent to file its response, if any, to the Complaint within ten days.

**September 21, 2015 :** Respondent filed the Response to the Complaint

**September 23, 2015 :** The Complainant's Authorized Representative was granted time till September 28, 2015 to file a Rejoinder.

**October 1 :** The Complainant filed the Rejoinder

**October 5, 2015 :** The pleadings in the arbitration proceedings were closed.

**October 9, 2015 :** The Complainant and Respondent, *vide* emails informed the Arbitrator that all outstanding disputes between the parties has been amicably settled and filed a joint application for withdrawal cum transferring the disputed domain name <CARWALE.FIRM.IN> in favour of the Complainant.

**October 10, 2015 :** Respondent confirmed signing of the joint application for withdrawal cum transferring the disputed domain name <CARWALE.FIRM.IN>

The language of the proceedings shall be English.






#### 4. Factual Background:

##### 4.1 Complainant's Activities

The Complainant states *inter alia* that it is a company incorporated under the Companies Act, 1956 in the year 2005 and is a part of the Axel Springer Group (Owner of Auto Bild, the world's largest selling automotive magazine) and India Today Group (India's largest magazine publisher and owner of the leading Indian news channel Aaj Tak). The Complainant launched its web site <CARWALE.COM> in October, 2005 and claims to be the first website in India to consolidate used car inventory across dealers and present it to car buyers as an online marketplace/portal for information on cars. The Complainant states that in the last ten years it has served more than 120 million car consumers. Further, the Complainant states that it offers complete consumer focussed services that include content and tools for exhaustive research, pricing and marketplace information. As consumers research and make purchase decisions, the Complainant connects them with automotive manufacturers, finance and insurance companies, guiding them to make the best decisions to purchase vehicles. The Complainant claims that since its inception, it has been credited with various initiatives for car consumers such as *inter alia* becoming the first website in India to consolidate used car inventory across dealers and presenting it to car buyers as an online marketplace in 2005 and announcing voting for India's first consumer choice car awards in 2008. The Complainant further claims to have received many prestigious awards. The Complainant states that it has its major business and market in Mumbai along with the rest of India. A perusal of the revenue generated by the Complainant annexed with the Rejoinder as Annexure III reveals that the Complaint has generated INR 138,19,90,705/- since its inception in 2003. Annexure IV to the



Rejoinder reveals that the Complainant has spent INR 75,28,34,037/- on marketing since its inception in 2003.

#### **4.2 Complainant's use of CARWALE**

The Complainant states that it has been using the trade mark CARWALE since May 1, 2005 and had its domain name <CARWALE.COM> registered on May 24, 2005. Subsequently in the same year the Complainant had the domain name <CARWALE.IN> registered. WHOIS details of both the domains are annexed with the Complaint as Annexure 3(Colly). The Complainant further states that it has registrations in its name in India for CARWALE/CARWALE formative marks in Classes 9 and 41 and also has several other applications for CARWALE/CARWALE formative marks which are pending in various other classes. Details of the said registrations/applications have been annexed with the Complaint and marked as Annexure 5(Colly).

The Complainant has filed the present Complaint contending that the Respondent's disputed domain name is identical to the trade mark CARWALE in which the Complainant has statutory as well as proprietary rights. The Complainant claims that the Respondent has no legitimate interests in respect of the impugned domain name and the Respondent's domain name has been registered and/or is being used in bad faith. In view thereof, the Complainant has prayed for the transfer of the impugned domain name <CARWALE.FIRM.IN> in its favour.

#### **4.3 Respondent's Activities**

The Respondent states that he is the owner of a sole proprietorship firm which is in the business of providing multiple products/services such as car spa services, services related to car buying and selling, manufacturing of polyester putty etc. Further, the Respondent states that the area of



operations of his business is limited to the city of Mumbai and its suburbs only. Respondent also claims that because of his business interest in car accessories and car parts, he has been referred to in the automobile business circles since 1999 as "Carwale Haryani".

#### 4.4 Respondent's use of CARWALE

The Respondent applied for a trade mark registration in the mark CARWALE in 2012 with a user claim since March 07, 2011 and obtained the registration in 2013. The Trade Mark certificate for the registration under No. 2284432 in class 38 in respect of '*Transmission of information and images through electronic media, website*' is annexed with the Response filed by the Respondent as Annexure 1. Further the Respondent has another Application for the mark CARWALE pending under No. 2284438 in class 35 with a user claim since March 07, 2011. Copies of the online status of the trade mark registration No. 2284432 in class 38 and trade mark application No. 2284438 in class 35 are annexed with the Complaint as Annexure 8(Colly). Respondent got the disputed domain name <CARWALE.FIRM.IN> registered on November 19, 2013. Apart from this, the Respondent has registered two other domain names <CARWALEINDIA.COM> and <CARWALEMUMBAI.com>.

Further, the Respondent states that at the time of purchase of the domain name in dispute, the Respondent had already obtained a registration in the mark CARWALE under registration No.2284432 in class 38. The respondent also states that the word CARWALE is generic and descriptive. The Respondent also contends that the geographical area of his business operations and the services offered by him are completely different from that of the Complainant and therefore there is no question of any confusion in the mind of the general public and consumers.





Apart from the aforementioned, the Respondent has not placed any other material on record re its business activities.

## 5. Discussion and Findings

The Complainant and the Respondent have filed a joint application before the Tribunal, relevant extracts whereof are reproduced hereinbelow :

*"3. The matter has been discussed between the parties with the intent to resolve all outstanding issues. Consequently is hereby withdrawing the present complaint and calling upon the Respondent to transfer the disputed domain name ("carvale.firm.in") in favour of the Complainant.*

*4. That the present Application has been moved bona fide and in the interests of justice.*

IN THE ABOVE PREMISES STATED HEREINABOVE, THE APPLICANT, ABOVENAMED, MOST RESPECTFULLY PRAYS THAT THIS HON'BLE TRIBUNAL MAY BE PLEASED TO:

- a) *Transfer Domain Name "carvale.firm.in" in favour of Complainant;*
- b) *In that behalf pass any other order or directions as may be deemed fit and proper in the facts and circumstances of the present case."*

It is pertinent to note that both the parties as well as their Counsel have signed the said Application. The said application has been filed by the Counsel for the Complainant. The Respondent has separately confirmed signing of the said joint application. In view of the joint application for withdrawal cum transferring the disputed domain name <CARWALE.FIRM.IN> in favour of the Complainant submitted by the parties, no further consideration or discussion is deemed necessary by this Tribunal.

## 6. Award



For the aforementioned reasons, in accordance with paragraph No. 4(i) of the Policy and Rule 14 of the INDRP Rules of Procedure, the panel orders that as consented by the Respondent, the domain name <CARWALE.FIRMIN> be transferred to the Complainant. The Complaint is disposed of accordingly.

Dated: October 30, 2015



**C.A. Brijesh**  
Sole Arbitrator