

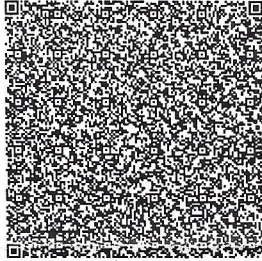
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INDIA NON JUDICIAL

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Certificate No.	: IN-DL39222887826621N
Certificate Issued Date	: 06-Aug-2015 09:49 AM
Account Reference	: IMPACC (IV)/ dl700603/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDL70060375909874254283N
Purchased by	: DEEPA GUPTA
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DEEPA GUPTA
Second Party	: NIXI
Stamp Duty Paid By	: DEEPA GUPTA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure**

ARBITRATION AWARD

DATED: August 1st 2015

In the matter of:

**Century 21 Real Estate LLC.
175 Park Avenue
Madison
New Jersey 07940
United States of America**

(Complainant)

Vs

**David Lye,
P.O. Box 5140
Chatswood West,
Sydney. NSW 2067 Australia**

(Respondent)

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is **Century 21 Real Estate LLC. 175 Park Avenue Madison New Jersey 07940 United States of America**
- (b) Respondent firm is: **David Lye, P.O. Box 5140 Chatswood West, Sydney, NSW 2067 Australia**. It has presence on internet with domain name of www.century21india.in which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.century21india.in registered with the DOT IN Registry through the Dynadot LLC
- ii. The Registry Operator **.IN Registry c/o NIXI is at Flat no. 6B, 6th Floor Uppals M6 Plaza, Jasola District Centre, New Delhi-110025**. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iii. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. BRIEF BACKGROUND

FACTUAL AND LEGAL GROUNDS

Century 21 Real Estate LLC. is a Company Regd. In New Jersey, US engaged in real estate and real estate brokerage services, etc. since 16th April 1972. It also creates and distributes various material related to real estate, like magazines, newsletters and directories etc. It is one of the largest real estate brokerage networks in the world having buyers and sellers worldwide. It carries out its business through licensed brokers and sales associates all over the globe including Australia. It is franchisor of the world's largest residential real estate sales organization having more than 7,800 independently owned and operated offices in over 42 countries. **Century 21 Real Estate LLC** to –protect its Trade Mark and Trade Name “CENTURY 21”, has obtained numerous Trade mark/name registrations in many countries and applied for many others pending registration. It obtained its first Regn. on 12th April 1977 in USA & registered its trademark “CENTURY 21 ” in India in Class16 on March 13th 1989 and applied some others in India pending Regn.(Submitted as Annex2).List of the worldwide applications/registrations submitted as Annexure1.The Company forty years ago conceived and adopted the trademark/trade name “CENTURY 21” in 1972 as its corporate name and the same is in continuous use till now, due to its extensive worldwide use thereof trade mark/trade name “CENTURY 21” has become exclusively associated with the Co and its consumers & due to its extensive use, advertisements, publicity and awareness has acquired the status of a ‘Well Known Trade Mark’.

Company has its domain name and operating website since 2nd March, 1995, the site receives over 4 million visits a month. The Complainant has agreements of franchise covering various parts of India since Year 2007. Agreements include services related to real estate but not limited to real estate brokerage services, real estate management services, real estate leasing services, insurance brokerage services, mortgage brokerage services, and other related financial services etc.In pursuanance to the agreements, Alchemist Ltd, (a company with which Century21 Real Estate LLC has agreements w.r.t. India) has been carrying on business using the trademark and name Century 21. That Alchemist Ltd. Regd domain name on 26 July 2011, operates website century21.in.Respondent registered the disputed domain name/URL on 6th February 2012 without complainants authorization. The site contains an active link to the website www.indiaproperty.com which advertises proper for sale in India. The Respondent is in the same field of business as the Complainant and complainant claims that respondent is obtaining “click through” revenues from this site and earning through this site and its goodwill.



4. **PARTIES CONTENTIONS:**

A. **COMPLAINANTS CONTENTIONS:**

1. **The Domain name is identical to a trademark/ tradename or service mark in which the Complainant has rights:**

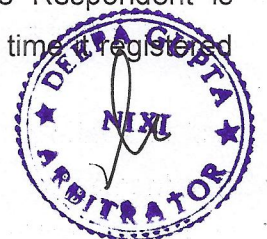
Complainant submits that disputed domain name century21india.in registered and used by the Respondent uses 'Century 21 India' as prominent operative words and this is confusingly similar to that of the registered trademark 'CENTURY 21' of the Complainant and as a consequence of the disputed domain name being confusingly similar to the registered trademark of the Complainant as well as to the international website of the Complainant ordinary internet users are likely to be confused and thus cause loss of business and reputation to the Complainant. The site contains an active link to the website www.indiaproperty.com which advertises property for sale in India. The Respondent is in the same field of business as the Complainant, is obtaining "click through" revenues from its site, thereby trading upon the goodwill and reputation of the Complainant. That the Complainant, as the registered proprietor of the trademark CENTURY 21 and the continuous user of the same for several decades, is the sole and genuine rights holder in the trademark/trade name CENTURY 21 and the Respondent, who appears to have acquired and is now hoarding the domain name/URL to cash in on the brand value and reputation of the Complainant's trademark CENTURY 21 for personal gains.

2. **The Respondent has no rights or legitimate interests in respect of the Domain name:**

Complainant submits that the disputed domain name/URL century21india.in has been registered by the Respondent despite having no affiliation or agreement with the Complainant regarding the same and Respondent has no legitimate rights or interests therein.

3. **The Domain name was registered or is being used in Bad Faith:**

Complainant submits that the fact that the disputed domain name/URL was created as recently as 6th February, 2012, and uses the Complainant's trademark CENTURY 21 clearly prompts the conclusion that the Respondent has purely done so for the purpose of promoting the Respondent's own business and/or his personal monetary gain, and causing loss of business and reputation to the Complainant and that Complainant's mark 'CENTURY 21' is exclusive to the complainant and has been used by them for years, and the Respondent is presumed to have had knowledge of Complainant's mark at the time it registered



the identical domain name, therefore, the registration and use of the impugned domain name/URL by the Respondent is clearly in bad faith.

B. RESPONDENTS CONTENTIONS:

The Respondent has submitted that they have owned the Disputed domain name for many years but were unaware that they owned it and would sell it back to the Complainant and thus return it on receiving money against, in order to cover their registration costs.

5. OPINION:

I. Issue:

A) In order to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :

1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1972 and is using the brand 'CENTURY21' since then, has a big customer base worldwide and has made extensive efforts to promote the brand name 'CENTURY21' by consuming various resources available at its end and got National, International visibility, huge internet presence and wide publicity.

Word 'CENTURY21' has certainly acquired a popular Brand name across the length and breadth of Other Countries including USA, EUROPE, ASIA PACIFIC and India and a prominent place in internet electronic media and Networking Real Estate Agencies. It has a reputation and goodwill of its own.

On the basis of the records submitted by the complainant it's proved that the domain name 'century21india.in' is related to the business and is derived from the name of the Company, Century 21 Real Estate LLC Regd in US on 16th April 1972 and is being used for purpose related to its work.



It is confirmed that Complainant is extensive user of name 'CENTURY21'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark 'CENTURY21' has been registered effectively in different Countries in the world as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'CENTURY21' mark throughout global internet establishes that Respondent has registered the Infringing Domain Name without performing the required due diligence. Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed. Registrant failed to fulfill its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner.

The respondent has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to trade on 'CENTURY21', incorporated in its reputation, goodwill and trademarks. Respondent has not shown any fair or legitimate non-commercial use, but instead has just remained silent and non responsive and later demanded money (howsoever little) for return of name. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with 'CENTURY21' reputation and services to third party links on a portal site constitute bad faith use under the policy. It cannot be ruled out that the Respondent registered the domain name with the purpose of later selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair



advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results is a common practice of domain hijackers constitutes bad faith. It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with Complainant or permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'CENTURY21' is a registered and protected trademark of the Complainant. It cannot be ruled out that Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademark 'CENTURY 21', Internet users will apparently and reasonably expect it as an offer of the Complainant or authorized or affiliated enterprises under 'century21india.in'. The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'CENTURY 21' and similar domain names ,i.e., 'century21.com', 'century21.in' etc. were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'century21india.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner. That the complainant efforts to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.



II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in Para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name 'century21india.in' be and is hereby transferred to Complainant with immediate effect.

Given under my hand and seal on this day of 1st Day of August 2015.



Deepa
Deepa Gupta
Arbitrator