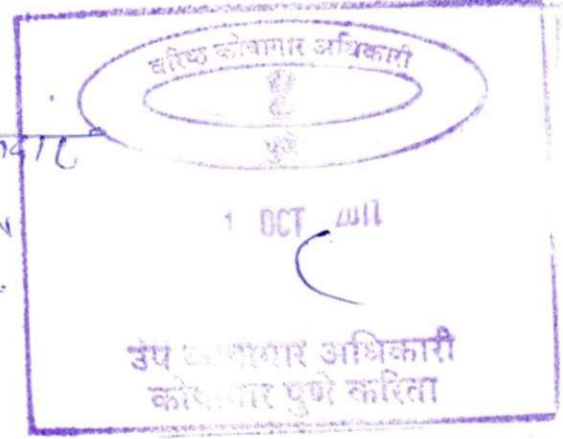




महाराष्ट्र MAHARASHTRA

EU 425144

अनुक्रमांक ५०३८० दिनांक २१/११/१९९९ रुपये १००/- १-१००७  
मुद्रांक कोणट्या धारणासाठी वापरणारा नाव आहे ३१/११/९९  
मुंबई मुद्रांक अधिपतिपत्र १९५८ चे अनुच्छेद क  
मुद्रांक वापरणाऱ्याचे संपूर्ण नाव शिरीय मिनाहार इजाजत  
संपूर्ण पत्ता २५/११/९९ शिरीय मिनाहार इजाजत  
हस्त लेखनीय संपूर्ण नाव शिरीय मिनाहार इजाजत  
पत्ता ३१/११/९९ शिरीय मिनाहार इजाजत  
जमादारी (सी. जयदीप मि. वेळारकर)  
मुद्रांक विक्रेता  
पत्ता- ४२५ ब, शनिवार पेठ, पुणे-४११००४  
परधान्याची मुदत ३१/३/२०  
पत्ता- ४२५ ब, शनिवार पेठ, पुणे-४११००४



## AWARD IN ARBITRATION

AUTOMOBILES CITROEN  
12 rue Fructidor, 75835 PARIS  
CEDEX 17

THE COMPLAINANT

AND

**HYDERABAD, INDIA, POVERTY, CHILD RESCUE CENTER**  
**ALI**  
500081 Near Hitec In

**THE RESPONDENT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - citroen.co.in**

**BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**  
**SOLE ARBITRATOR**

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**DELIVERED ON THIS FOURTH DAY OF NOVEMBER TWO THOUSAND  
ELEVEN AT PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

- 01. Names and addresses** **AUTOMOBILES CITROEN.**  
Of the Complainant: - 12 rue Fructidor  
75835 PARIS  
CEDEX 17
- Through its authorized representative NAMESHIELD.  
27, rue des arenes 49100 Angers  
France
- 02. Name and address of** **Hyderabad, India, poverty,**  
**The Respondent: -** Child Rescue Center  
Ali  
500081 Near Hitec In

**03. Calendar of Major events:**

| <b>Sr.<br/>No.</b> | <b>Particulars</b>                  | <b>Date<br/>(Communications in<br/>electronic mode)</b> |
|--------------------|-------------------------------------|---|
| 01                 | Arbitration case referred to me     | 08/10/2011  |
| 02                 | Acceptance given by me              | 08/10/2011  |
| 03                 | Hard copy of the complaint received | 20/10/2011  |
| 04                 | Notice of arbitration issued        | 20/10/2011  |
| 05                 | Submission of say by the Respondent | 03/11/2011  |
| 06                 | Award                               | 04/11/2011  |



## I] PRELIMINARY: -

- 1) M/s AUTOMOBILES CITROEN, having its registered office at 12 rue Fructidor, 75835 Paris, Cedex 17 (**The Complainant**) have filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**citroen.co.in**' (**the disputed domain name / domain name**), **through its authorised representative M/s Nameshield, having their office at 27 rue des arenes 49100 Angers France.**
- 2) The Complainant has disputed registration of domain name '**citroen.co.in**' in the name of **Hyderabad, India, poverty, child rescue center, Ali, 500081 Near Hitec In. (The Respondent).**
- 3) Major events took place as enumerated in the above table.

## II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 20<sup>th</sup> October 2011 with the instructions to file his say latest by 31<sup>st</sup> October 2011.
02. The Respondent filed reply to the Complaint on 3<sup>rd</sup> November 2011.
03. In view of irrelevant reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

## III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

- a) The Complainant is a leading industrial firm in designing and in manufacturing cars worldwide. Its establishment is worldwide and it employs 201690 people and has manufactured 3.18 M vehicles in 2009.

- b) The Complainant's market share in Western Europe is at 13.8%, in Central and Eastern Europe at 7.2%, in Latin America at 5.5%, in China about 4.9% and in Russia it rose sharply by 67%.
- c) The Complainant has various registered trademarks in various countries including in India. Its trademark 'CITROEN' was registered in India on 28.11.2003 with registration number 1252316. It has produced a list of such registered trademarks and annexed as Annex 2 to its Complaint.
- d) The Complainant owns various domain names similar to trademark 'CITROEN' like citroen.in, citroen.fr, citroen.info etc. It has produced a list of such registered domain names in Annex 3.
- e) The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -
1. That the disputed domain name is identical to its trademark 'CITROEN' and is reproduced in its entirety.
  2. Addition of a CTLD 'co.in' is not sufficient to escape the finding that the domain is identical to the trademark and does not change the overall impression of the designation as being connected to a trademark of the Complainant.
  3. It does not avoid the likelihood of confusion between the disputed domain names and AUTOMOBILES CITROEN, its trademarks and its domain names associated.
  4. CITROEN is a well-known brand in manufacturing cars, worldwide.
  5. The term CITROEN is associated with the Complainant and it has no meaning whatsoever in English or in any other language.
  6. Google search of word CITROEN displays several results, related to the Complainant.
  7. The Respondent has no rights or legitimate interests in respect of the domain name. According to WIPO Case No. D2003-0455, Croatia Airlines d.d. V Modern Empire Internet Ltd. if the Complainant makes out a prima facie case, the burden of demonstrating rights or legitimate interests in the domain name lies with the Respondent.
  8. On the website [www.citroen.co.in](http://www.citroen.co.in) the domain name is on sale and displays commercial links. Some links are in relation with the Complainant's activities.
  9. The Respondent does not use nor has provided a bona fide offering of goods or services or legitimate use of the domain names.

10. The domain name was registered and is being used in bad faith. CITROEN is well known brand including in India and the Respondent was aware of the Complainant's rights in it.

11. The Registrant / Respondent has attempted to create confusion with the change in the information in whois during the Complaint on 06/07/2011.

12. The Respondent registered domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting internet traffic.

13. The Respondent has used the domain name only in purpose of sale to the Complainant.

#### **IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

In response to the contentions of the Complainant, the Respondent / Registrant has filed say / reply. In his reply the Respondent has submitted that he registered the domain name for public purpose and not to infringe any body's interests. He has plans to use domain name and has made investments for that purpose. He also stated that he is willing to negotiate with the Complainant if 'good solution' is available.

#### **V] REJOINDERS OF THE PARTIES: -**

In view of weird reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

#### **VII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

| <b>SR. NO.</b> | <b>ISSUE</b>  | <b>FINDING</b> |
|----------------|---|----------------|
| 01             | Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights? | <b>Yes</b>     |
| 02             | Does the Complainant have trade mark or service mark directly related to the disputed domain name?  | <b>Yes</b>     |



|    |   |            |
|----|---|------------|
| 03 | Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?  | <b>No</b>  |
| 04 | Whether the Registrant has been commonly known by the domain name?  | <b>No</b>  |
| 05 | Whether the Registrant has any legitimate interests in the disputed domain name?  | <b>No</b>  |
| 06 | Whether the Registrant's domain name has been registered or is being used in bad faith?   | <b>Yes</b> |
| 07 | Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration? | <b>Yes</b> |
| 08 | Has the Registrant 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?   | <b>Yes</b> |
| 09 | Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?                                    | <b>Yes</b> |
| 10 | Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?  | <b>No</b>  |

#### VIII] BASIS OF FINDINGS: -

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'citroen' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademark of the Complainant which was registered vide No.1252316 dated 28.11.2003 among other registered trademarks, world over.

Against this the Respondent has no registered trade mark or service mark consisting of the word 'citroen'.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant is Hyderabad, India, poverty, Child rescue center, Ali. As such he is not commonly known by the domain name 'citroen'.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'citroen'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name. Against this he has offered to negotiate with the Complainant for 'good solution', thereby indirectly suggesting to sell the domain name to the Complainant.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant is yet to commence use of domain name. As per the Complainant, the site was for sale. However when I attempted to visit the site, it could not be displayed.

Therefore my finding on this issue is affirmative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

Yes. The Registrant has offered to negotiate for good solution with the Complainant.

Therefore my finding on this issue is affirmative.

8. Has the Registrant 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?

The main business activity of the Registrant is not known. The Registrant has failed to establish his bona fides and nexus with the disputed domain name.

Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

As stated by the Complainant the site was for sale some time back. The Registrant has not used the site for his own purposes.

Therefore my finding on this issue is affirmative.

10. Whether the Registrant has established the usage or demonstrable preparations to use, the domain name before any notice?

The Registrant has not established site fully. It is not being displayed also. The Complainant has stated that it was for sale some time back.

Therefore my finding on this issue is in negative.

#### **IX] BASIS OF AWARD: -**

The Registrant has failed completely to establish his nexus with the disputed domain name in any way. He has also failed to establish that he has been using the site for his bona fide purposes. He is not having registered trademark or service mark containing the words 'citroen'. On the contrary he has offered to negotiate with the Complainant. From all these issues it can be concluded that the Registrant has registered domain name with the purpose of selling the same to the Complainant or to his competitors for monetary benefits.



On the basis of issues, findings on the same and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.citroen.co.in and hence the same be transferred to the Complainant.
02. The Registrant shall pay to the Complainant documented costs of these arbitral proceedings as well as cost for transferring domain name in favor of the complainant.

Dated: - 04.11.2011  
Place: - Pune

  
(S.C.INAMDAR)  
SOLE ARBITRATOR