

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.combined.in

between

**COMBINED INSURANCE COMPANY
OF AMERICA**

...COMPLAINANT

AND

PRAHLAD SHARMA

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



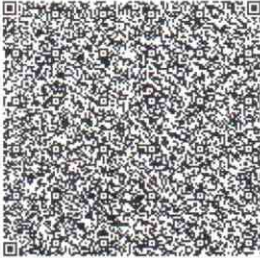
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL55192302668056N
Certificate Issued Date : 10-Sep-2015 10:57 AM
Account Reference : IMPACC (IV)/ dl732103/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL73210308032557396103N
Purchased by : V SHRIVASTAV
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : V SHRIVASTAV
Second Party : Not Applicable
Stamp Duty Paid By : V SHRIVASTAV
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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AWARD

1

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.
3. In case of any discrepancy please inform the Competent Authority.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 07/08/2015. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. It was also noticed that the Complainants had not filed their Power of Attorney/ Vakalatnama. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to file their Vakalatnama and either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
2. That the Complainants vide their email dated 07/08/2015 requested for time for filing of their Vakalatnama as their clients were based abroad which was granted by this Tribunal vide its order dated 12/08/2015. The other directions were complied by the complainants.



3. This Tribunal vide same communication directed the Respondent to file their Statement of Defense by 22/08/2015 as they had already received the hard copy of the complaint sent to them by NIXI on 08/08/2015.
4. That vide email dated 14/08/2015 the Respondent sent a soft copy of their SOD and the hard copy by speed post. On receipt of the hard copy of the SOD, this Tribunal noticed that the same was unsigned, hence could not be taken on record, therefore vide order dated 20/08/2015 the Respondents were given time till 27th August, 2015 to file their signed hard copy of the SOD to this Tribunal as well as to the complainants & NIXI.
5. That vide its order dated 20/08/2015 this Tribunal also directed the Complainants on receipt of the Respondent's SOD to send their Rejoinder and their Evidence by way of affidavit. Likewise vide the same order the Respondents were also told to file their Evidence by way of Affidavit in support of their SOD. However, after the receipt of the hard copy of SOD the complainant filed

their Rejoinder cum Evidence by way of Affidavit, but the Respondent failed to comply with the direction.

6. That vide order dated 08/09/2015 this Tribunal reserved its award. Thereafter on 09/09/2015 vide email the Respondents sent the soft copy of their Evidence by way of Affidavit and dispatched the hard copy of the same by speed post.

CLAIM

7. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed that the Complainant i.e. Combined Insurance Company of America is a company incorporated in the USA in the year 1922 by its founder Mr. W. Clement Stone and is purportedly a global provider of supplemental insurance products including accident insurance, disability insurance, health insurance, life insurance and critical care coverage in North America, Europe and Asia Pacific. The parent company of the complainant is M/s ACE Limited.

B. It is claimed that the Complainant is the owner and registered proprietor of the COMBINED INSURANCE Marks in the USA and that the Complainant had adopted the trademark "COMBINED" in 1947 and uses the same in connection with "*underwriting of life, accident, and health insurance*" and has been in continuous use of the said trademarks in the USA since the year 1947. The Complainant has placed strong reliance on "**EXHIBIT - B & EXHIBIT -C** and "**EXHIBIT -1**" of their Evidence by way of Affidavit to buttress its claim for the trademarks Combined and Combined Insurance.

C. It is also claimed that the COMBINED INSURANCE Marks are prominently displayed on the websites of the Complainant at <http://www.combinedinsurance.com>
<http://www.combined.ca/>,
www.combined.com/au,
www.combinedinsurance.co.nz,
www.combinedinsurance.com.pt,
www.combinedinsurance.co.uk

www.combinedinsurance.de through which those in the insurance industry as well as potential customers from all over the world including from India access information about the Complainant and its products and services made available under the COMBINED INSURANCE Marks. It is claimed that the said websites are accessible to readers / customers throughout the world including India and have thousands of unique visitors worldwide. The Complainant has given the viewership details which are as under:

(QUOTE)

| Sr. No. | Website | Year | No. of Visitors |
|----------------|---|-------------|------------------------|
| 1. | http://www.combinedinsurance.com/ | 2010 | 1,250,720 |
| | | 2011 | 1,200,060 |
| | | 2012 | 1,359,892 |
| | | 2013 | 1,532,893 |
| | | 2014 | 1,563,906 |
| 2. | http://www.combined.ca/ | 2010 | 206,595 |
| | | 2011 | 198,544 |
| | | 2012 | 217,746 |
| | | 2013 | 409,498 |

| | | | |
|----|--|------|---------|
| | | 2014 | 511,579 |
| 3. | www.combined.com/au | 2011 | 35,930 |
| | | 2012 | 50,155 |
| | | 2013 | 54,169 |
| | | 2014 | 60,416 |
| 4. | www.combinedinsurance.co.nz | 2011 | 29,366 |
| | | 2012 | 30,379 |
| | | 2013 | 31,222 |
| | | 2014 | 49,532 |
| 5. | www.combinedinsurance.com.pt | 2013 | 16,334 |
| | | 2014 | 50,434 |
| 6. | www.combinedinsurance.co.uk | 2011 | 40,116 |
| | | 2012 | 40,373 |
| | | 2013 | 41,006 |
| | | 2014 | 38,836 |
| 7. | www.combinedinsurance.de | 2012 | 7,487 |
| | | 2013 | 15,536 |
| | | 2014 | 16,012 |

(UNQUOTE)

- D. It is alleged that the Disputed Domain Name has been registered in the name of the Respondent on 2nd February,

2015 and the said Disputed Domain Name www.combined.in is confusingly similar to the Complainant's registered domain names www.combinedinsurance.com, www.combined.com.au, and www.combined.ca and incorporates the word COMBINED which is visually and phonetically identical to the Complainant's well-known trademark "COMBINED" and that the Disputed Domain Name is also deceptively similar to the house mark and corporate name of the Complainant and the very adoption, registration and use of the Disputed Domain Name is therefore bad in law. It is alleged that the Respondent is trying to take unfair advantage of and ride on the goodwill and reputation of the Complainant's well-known trademarks COMBINED and COMBINED INSURANCE and mislead the public into believing that the Respondent is in some manner associated with or connected to the Complainant when in fact this is not the case.

- E. It is alleged that the Disputed Domain Name is dormant but contains active matter which has been unauthorizedly copied

from the Complainant's website, particularly in relation to the history of the Complainant. This, it is alleged, has been done to create confusion amongst the public and attract traffic towards the Respondent's website. It is alleged that the Respondent's is indulging in theft which is an offence covered and punishable under the Information Technology Act, 2000 ("IT Act") and the Indian Penal Code, 1860. Reliance has been placed on "Exhibit – E" and "Exhibit – F"

F. It is also alleged that the Complainant is the copyright owner of the content on its website and is entitled to copyright protection of the same by virtue of the Berne Convention and the provisions of the Copyright Act, 1957. Reliance has been placed on the following judgment.

- M/s Satyam Infoway Ltd. v. M/s Sifynet Solution (P) Ltd.
JT. 2004 (5) SC 541



- The Hershey Company versus Rimi Sen (Case Number INDRP/289)
- AT&T Corp. v. William Gormally (WIPO Case No. D2005-0758)
- Breitling SA v. Lokesh Morada (Case no. INDRP/661)
- Wikimedia Foundation, Inc. v. Host Master, Above.com Domain Privacy (WIPO Case No. D2015-0132)
- LEGO Juris A/S versus Robert Martin (Case no. INDRP/125)
- Pepsico, Inc. v. Camimex Sales (WIPO Case No. D2015-0197)

RESPONDENTS OBJECTIONS

- G.** *Per Contra* the Respondents aver that he is a blogger and had used the domain as blog. He avers that he writes articles



on www.uturners.com and not for www.combined.in, as he has shut it down and moved it to a label of a hotel service provider.

- H. The Respondents avers *"I have never used any of their logo or any content of the article which violated claimant image or redirect to claimant's competitor or for any other profit."*
- I. The Respondent urges that the word combined is a general word from the English Dictionary and not something that is coined by the Complainant. The Respondent emphasizes that the word "combined" is "generic".
- J. It is alleged by the Respondents that a trade mark application was filed by the Complainants only on **8th July, 2015** for the word "combined", which was post the registration of the disputed domain name website running in India.
- K. It is also alleged that the Complainant have no business in India and are not registered as per Companies Act, 1956, 2013.

- L. The Respondent alleges that domain names like combinedinsurance.in, combinedinsurance.net.in, combinedinsurance.in.net, combinedinsurance.co.in, combined.co.in, combined.in.net, combined.net.in, combinedinsurance.firm.in are still available and the Complainants have not made any efforts to get the same registered in their name.
- M. It is also averred by the Respondent that he has never used logo or design of the Complainant's website.

FINDINGS

- N. The Respondents have claimed that he is just a blogger and had registered this disputed domain name for the purpose and that the name "combined" is generic in nature. Hence, the Complainant cannot have any proprietary claim on the word "combined". It is also vehemently stated that the Complainants had filed for the mark in India only on 8th July, 2015 which was post the registration of the disputed domain name. Be it that

as it may the plea put forward by the Respondents do not overturn the documentary Evidence put forward by the Complainant which weighs in their favour vis-à-vis the use of the word "combined".

O. This Tribunal notices that the Complainants had prior to 8th July, 2015 applied for the Mark "combined". Hence they have a better claim about the said word vis-à-vis the Respondent. Though the Tribunal finds that the word "combined" is no doubt a usual English word but has been long associated with the Complainant and the Respondents have not been able to show any intrinsic association with the same.

P. This Tribunal notices with concern the allegation of the Complainants with regard to Respondents unauthorized copying of the contents from the Complainants website and finds that the Respondents have not been able to rebut the allegation.

ORDER

1. In view of the facts and circumstances stated *supra* this Tribunal holds that the respondent Mr. Prahlad Sharma do not have a plausible claim on the domain name www.combined.in hence this Tribunal directs the Registry to transfer the domain name www.combined.in to the complainants.
2. The Complainants too are free to approach the Registry and get the same transferred in their name.
3. There is no order as to the cost as no details of the cost / damages have been specified in the claim statement.
4. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.
5. In the end this Tribunal cannot help noticing the observation of the Respondents vis-à-vis combinedinsurance.in,

combinedinsurance.net.in, combinedinsurance.in.net,
combinedinsurance.co.in, combined.co.in, combined.in.net,
combined.net.in, combinedinsurance.firm.in which too are
confusingly similar to the trade marks / trade name of the
Complainant and is intrigued at the apathy of the
Complainants to apply for registration to avoid any further
litigations. However, it is for the Complainants to act upon this
aspect.

Signed this 15th day of September, 2015.

NEW DELHI
15/09/2015



V. SHRIVASTAV
ARBITRATOR