

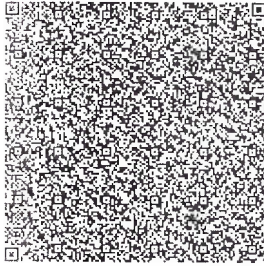
सत्यमेव जयते

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Certificate Issued Date : 02-Jul-2018 11:52 AM
Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL92130393765267926679Q
Purchased by : SANJAY KUMAR SINGH ARBITRATOR
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : SANJAY KUMAR SINGH ARBITRATOR
Second Party : Not Applicable
Stamp Duty Paid By : SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.) : 100
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BEFORE SH. SANJAY KUMAR SINGH, SOLE ARBITRATOR
NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE RESOLUTION POLICY
INDRP
IN RE:-
Sanviv Services Private Limited -- Complainant
vs
Dropme Taxi -- Respondent

Statutory Alert:

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BEFORE SHRI SANJAY KUMAR SINGH, SOLE ARBITRATOR,
NATIONAL INTERNET EXCHANGE OF INDIA
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Sanviv Services Private Limited,
 Plot NO. 299/300, 1st Floor,
 12th Cross Street Heritage Jayendra Nagar,
 Semkabakkam Chennai, Kancheepuram TN 60073,
 Email: srinihv@gmail.com,

Through its authorized representative

Sanjana Shrivastava,
 B1, Block 3, Ramaniyam Shivani Apartments,
 Thiruvanmiyur, Chennai 600041,
 E-mail: sanjanashrivastava0409@gmail.com

COMPLAINANT

Versus

Dropme Taxi, Chennai,
 City Chennai, INDIA,
 Email: dropmetaxi@gmail.com

RESPONDENT

I. THE PARTIES:

A. THE COMPLAINANT:

Sanviv Services Private Limited, a private limited company registered under the Companies Act, 2013 and having its registered at Plot NO. 299/300, 1st Floor, 12th Cross Street Heritage Jayendra Nagar, Semkabakkam Chennai, Kancheepuram TN 60073, E-mail: srinihv@gmail.com

The Complainant's authorized representative in this administrative proceeding is:

Sanjana Shrivastava,
 B1, Block 3, Ramaniyam Shivani Apartments,
 Thiruvanmiyur, Chennai 600041,
 E-mail: sanjanashrivastava0409@gmail.com

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B. THE RESPONDENT

The Respondent (amended) in this administrative proceeding is
 Dropme Taxi, Chennai,
 City Chennai, INDIA,
 Email: dropmetaxi@gmail.com

II. THE DOMAIN NAME:

www.dropmetaxi.in

III. The registrar with which the domain name is registered is:

- i. Name: GoDaddy LLC
- ii. Registrar's Address: 14455 N Hayden Rd Ste 226, Scottsdale, AZ 85260-6993.

E-mail Address: udrpdisputes@godaddy.com The language of the proceeding is English.

IV. Factual and legal Grounds:**V. The complainant's contentions:****A. REGISTRATION APPLICATIONS IN INDIA****TRADE MARK/SERVICE MARK INFORMATION: INDRP3 (b) (v):**

The complainant, Sanviv Services Private Limited is registered proprietor of trademark (device) Droptaxi.in bearing application no.2693667 and domain name www.dropmetaxi.in in India and has been using it in connection with its outgoing business. The registration is valid until March 7, 2024. The details of the complainant's registrations are as under:

SR. NO	TRADE MARK		APP. NO.	DATE APPLICATION/ REGISTRATION OF	COUNTRY	CLASS	GOODS
1.	Droptaxi (Device Mark)		3721627	08.1.2018	India	39	Advisory services relating to

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							transportation, arranging and booking of travel tours, arranging of transportation and travel and travel services provided online, booking of transportation via a website, providing transport and travel information via mobile telecommunicatio ns apparatus and devices, provision and devices, provision of information relating to traffics, timetables and methods of transport, road transportation services, taxi
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							transport, tracking of passenger or freight vehicles using computers or global positioning systems, cars rental, car- pooling services, chauffeur-driven car hire services, rental of chauffeur-driven cars, consultancy services relating to transportation, leasing of automobiles, limousine services, organizing transport services, passenger transportation services,
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							providing taxi transport for people who are incapable of driving safely due to alcohol consumption, travel arrangement and reservation services, vehicle driving services, vehicle driving services, transport, packaging and storage of goods, travel arrangement.
2.	DROPT AXI (word mark)		3721626	08.1.2018	India	39	Advisory services relating to transportation, arranging and booking of travel tours, arranging of transportation and travel

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							services, information relating to travel and travel services provided online booking of transportation and travel information via mobile telecommunicatio ns apparatus and devices, provision of information relating to tariffs, timetable and methods of transport, road transportation services, taxi transport, tracking of passenger or freight vehicles using computers or global positioning
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							systems, car rental, car- pooling services, chauff-driven car hire services, rental of chauffeur-driven cars, consultancy services relating to transportation, leasing of automobiles, limousine services, organizing transport services, passenger transport services, providing taxi transport for people who are incapable of driving safely due to alcohol consumption,
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							travel arrangement and reservation services, vehicle driving services, transport; packaging and storage of goods; travel arrangement.
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The complainant has annexed **Annexure C** as the document evidencing the status of the trademarks.

B. REGISTRATIONS IN OTHER COUNTRIES:

The complaint does not have registrations in any other country.

C. DOMAIN NAME REGISTRATIONS:

<u>DOMAIN NAME</u>	<u>REGISTRATION DATE</u>
<u>www.droptaxi.in</u>	30.08.2013

The complainant has annexed the print outs of the complainant's websites and who is record as **Annexure D. Annexure D.**

VI. BACKGROUND:

- A. The complainant has stated that in and around February 2018 the complainant became aware of the respondent's disputed domain www.dropmetaxi.in on perusal of the disputed domain the complainant noticed that the respondent had adopted the brand name "Dropmetaxi" which is confusingly similar to the brand name of the complainant

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"Droptaxi". The complainant through its advocate, Ms. Sanjana Shrivastava sent a legal notice dated February 12, 2018 to the respondent by registered post with AD informing him to refrain from using the complainant's registered trademark/trade name/logo/domain name in any manner whatsoever and for unauthorized registration and holding a domain name www.dropmetaxi.in identical to that of the complainant's domain name within 14 (fourteen) days of the receipt of the notice. The complainant has annexed the photocopy of the legal notice dated February 12, 2018 as **Annexure E**. The complainant has stated that the respondent replied to the said legal notice issued by the complainant. However, the said response had no legal basis and only contained statements made with an intent to maliciously disrepute the complainant. The complainant submits that as of date the respondent continues to use the disputed domain name containing the complainant's submits this complaint which falls within the scope of the INDRP.

VII THIS COMPLAINT IS BASED ON THE FOLLOWING GROUNDS: [INDRP RULE 3(B)(VI)]

A. The domain name www.dropmetaxi.in is identical and/or confusing similar to the trade mark/service mark/trade name "Droptaxi" in which the complainant has rights for the following reason: [Para 3(b) (vi) (1) INDRP rules of procedure to be read with Para 3 of INDRP]

- i. The complainant has submitted that the disputed domain name www.dropmetaxi.in contains the complainant's complete trademark/trade name registered in India i.e. droptaxi. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name of the complainant. Such registration by the respondent amounts to violation of Para 3 of the INDRP which states that a Registrant is solely responsible to ensure before the registration of the disputed domain name that such domain name registration does not violate the rights of any proprietor/brand owner.

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- ii. The Complainant has further submitted that it has never assigned, licensed or in any way authorized the respondent to register or use the term "Droptaxi" in any manner whatsoever including using it as a domain name in a conflicting manner with that of its own.
- iii. The complainant has further submitted that it is a company founded in the year 2016 in India having its head office at Plot No.299/300, 1st Floor, 12th Cross Street Heritage Jayendra Nagar, Semkbakkam Chennai Kancheepuram TN 600073. The complainant has annexed the extract from the website of Ministry of Corporate Affairs indicating the presence of Indian company of the complainant as Annexure F.
- iv. The complainant has further submitted that that it is one of the Indian's leading intercity taxi services engaged in the business of facilitating intercity taxi service across India for several years.
- v. The complainant has further submitted that in and around August, 2013 it coined, conceived and adopted the trademark/trade name 'droptaxi' and has been openly, continuously and extensively using the mark, 'Droptaxi' as its trade name, corporate name, business name, trading style, trade mark in India since then. The complainant products bearing the mark "Droptaxi" are well known.
- vi. The complainant has further submitted that it is the owner of the trademark Droptaxi.in in India and has mostly used the trademark Droptaxi.in in respect to goods and services covered under class 39. Further, the complainant has also applied for registration of a word mark and device mark for droptaxi in 2017 which are in advanced stages in the registration process.
- vii. The complainant has also submitted that it is also the owner of website www.droptaxi.in which is accessible in India. The said website contain extensive information about the complainant and its products marketed and sold under the trademark and corporate name "Droptaxi".

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- viii. The complainant has further submitted that it has painstakingly built up a good reputation in India and has invested substantial amounts of resources in advertising its services. The complainant also contends that the domain name www.droptaxi.in is widely used by the complainant also contends that the domain name www.droptaxi.in domain name to generates sufficient traffic through the www.droptaxi.in domain name to generate a ranking of approx. 76,000 in India on Alexa. The complainant has annexed a copy of the ranking of the website on Alexa, a website providing analytical services, on the basis of access by customers in India and worldwide as **Annexure G**. The Alexa ranking in number as compared to the domain name of the complainant thereby indicating that the ranking of the impugned domain name www.dropmetaxi.in. A copy of the Alexa indicating the rank of the impugned domain name has been attached by complainant as **Annexure H**.
- ix. The complainant has submitted that it has also invested substantial resources for advertising the trademark "droptaxi" in various magazines, brochures, catalogues, internet, other print and visual media and also through fairs, exhibitions and events. The complainant has annexed the copies of some of the advertisement in India as **Annexure I**. In India, the complainant has invested crores on promotion and advertisement of its products and services under the trademark "Droptaxi".
- x. Further, the complainant has submitted that upon perusal of the respondent's website www.dropmetaxi.in it seems that the respondent is also engaged in the business of taxi service used by Indians which directly conflicts with the complainant's business activities in India.
- xi. The complainant has referred to and rely on the case of pantaloons Retails (India) Limited vs. online Directory Services [INDRP/86] and Pantaloons Retail (India) Limited vs. Mr. K. Ramesh [INDRP/88] wherein it has been held that the

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action of applying for registration of a trademark by the complainant which formed a part of or the whole of the disputed domain name was found to highlight the bona fide intention of the complainant with respect to the disputed domain name and as given due importance.

- xii. the complainant has submitted that further, in Cadila Health Care Limited vs. Cadila Pharmaceuticals Limited [2001 (5) SCC 73] that the following criteria is required to be looked at while determining the similarity between marks; (a) the degree of resemblance between the marks; (b) the nature of goods for which they are used as trademark; (c) similarities in the nature, character and performance of rival goods; (d) class of purchasers.
- xiii. The complainant referred has to and rely on the case of HUGO BOSS Trade mark management GmbH & Co. KG and HUGO BOSS AG v. wangxiaonxiaowang (WIPO Case No. D2016-0805), wherein it has been held that the domain name incorporating a complainant's registered trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks. Please also refer to Alibaba Group Holdings Limited vs. Rickson Rodericks and Domaen Com [INDRP/073] and Puneet Vatsayan vs. Prajakt Raut [INDRP/512], wherein it was held that when a disputed domain name contains the trade mark in its entirety, the domain name is identical and confusingly similar.
- xiv. The complainant has also submitted that the respondent has not applied for registration of the trademark 'droptaxi' before the trademark registry.

VII. Respondent has rights and legitimate interest in the disputed domain name:

- i. The complainant has also submitted that it has legitimate interest in the "Droptaxi.in" as it has registered the said mark and has been openly, continuously and extensively using it for more than 5 years. By virtue of long and

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extensive use and advertising, the "Droptaxi" trademark has become well-known mark.

- ii. Further, the complainant has also submitted that it has registered the domain name www.droptaxi.in on 30/08/2013 whereas disputed domain name www.dropmetaxi.in was registered on 02/07/2017. Hence subsequent adoption and registration of disputed domain name shows that respondent has no right or legitimate interest in the domain name www.dropmetaxi.in.
- iii. The complainant has also submitted that the respondent is neither commonly / popularly known in public nor has applied for any registration of the mark "Dropmetaxi" or any similar mark.
- iv. The complainant has also submitted that it has never assigned, licensed or in any manner authorized the respondent to use the complainant's trademark in any manner whatsoever.
- v. The complainant has also submitted that the disputed domain name was intentionally created by the respondent for commercial gain to misleadingly divert the consumers or trader of the complainant to the disputed domain name thereby causing irreparable loss, harm and damage to the good will and business of the complainant.
- vi. The complainant has also submitted that from the above circumstances, it is apparently clear that the respondent has failed to comply with para 7 of INDRP wherein the onus is on the registrant to prove that he has a right and legitimate interest in the domain name.
- vii. The complainant has also submitted that the domain name of the respondent is visually and phonetically similar to the registered trademark of the complainant and the respondent has only registered the impugned domain name to benefit from the established goodwill and reputation of the respondent to continue using the impugned domain would lead to dilution of the complainant's brand in the

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market which will cause irretrievable harm to the complainant commercially and also in terms of reputation. The registration of the impugned domain name is likely to lead the public to believe that the impugned domain name is affiliated to or associated with the complainant, and will to confusion in the minds of the public.

VIII. The respondent has registered the disputed domain name in bad faith for the following reasons: [para 3 (b)(vi)(3)INDRP Rules of procedure to be read with para of INDRP]

- i. The complainant has stated that the business by the respondent has been commenced by ex-employees of the complainant who, whilst in the course of employment with the complainant, had acquired all the know-how and skill involved in the business and then commenced their own directly competing business using the know-how and skill acquired from the complainant and started operating under a brand name which is deceptively similar to that of the complainant. The complainant submits that this action has been done to deceive the interest users and confuse them about the brand of the complainant.
- ii. The complainant has referred to the case Ste Des products Nestle vs. Nescafe Limited INDRP/100 May 4, 2009, wherein it was observed that the use of domain name consisting of a trademark to divert the users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interest upon the respondent. The complainant contends that the respondent has commenced use of the impugned domain name www.dropmetaxi.in as an attempt to attract interest users to the respondent's website by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website. This can be evidenced from the fact that 7.09% of the traffic on the website of the

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respondent is attributable to an internet user typing droptaxi on a search engine. This is evidenced from an analysis of the results produced by Alexa which measured the traffic generation on websites.

- iii. Further the complainant has submitted that the registration of the disputed domain name by the respondent has been done in bad faith. The continuation of ownership of the disputed domain name will render irreparable harm to the complainant who is the owner of the trademark 'Droptaxi' and has made a name in the market under the word "droptaxi". Further, the complainant submits that the respondent has continued with the registration of the disputed domain name purely for the purpose of exploitation and gaining undue advantage of the goodwill of the complainant.

RESPONDENT'S CONTENTIONS:

The respondent has submitted a counter statement stating that each and every one of the allegations contained in the complaint except to the extent admitted in the counter statement.

The respondent has submitted that it is not aware as to whether the complainant is a company incorporated under The Companies Act 2013 and the complainant is put to strict proof of the same.

The respondent has denied that the respondent's domain name is identical or confusingly similar to that of the complainant. The respondent has submitted that a visit to the web page of the complainant vis a vis the respondent would ex facie belie the claim of the complainant. The home page of the respondent its logo the colour scheme and all other relevant facts would show the total dissimilarity and difference between the two for a person who visits the website. The afore stated

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distinguishing features and characters would suffice to prove that the allegations contained in the complainant is neither tenable on facts nor sustainable in law.

The respondent has further stated that their registered domain name is descriptive of the general nature of business and as such there can be no exclusive claim for such a name as if it is an intellectual property owned by the complainant or invented by them. The respondent's domain name www.dropmetaxi.in is based on the concept of the business of the respondent which is to drop the passengers and pick them up and do service to them. The concept of pick up and drop being an integral part of the business a suitable available domain name was selected. Having adopted a generic name which is descriptive of the business activity the complainant cannot make claim based on untenable grounds. Such descriptive names such as drop taxi or drop me taxi or call taxi or taxi on call cannot confer exclusivity of usage and such claim is legally untenable.

The respondent has submitted that the domain name www.dropmetaxi.in is owned by a partnership firm. The allegation of the complainant that some of the partners were working under the business entity with a domain name www.dropmetaxi.in does not preclude the firm which is a legal entity by itself from adopting a name suggestive of their own business activity. Further none of the partners have violated any agreement bond or other binding covenant so as to have inter se claim against the individuals constituting the firm.

The respondent has denied that the respondent had not made any application to the trade mark authority. An application has been made by the respondent and the same is pending as is the case with the complainant. The respondent has stated that even on the own admission of the complainant their application is also pending and has not been approved as yet.

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While so it is preposterous on the part of the complainant to make a frivolous claim against the respondent based on imaginary and non-existing rights. No pre-registration rights or passing off is attracted in the present case where the search engine has shown the domain name as available for use and adaptation. The respondent has submitted that they are furnishing necessary documents in support of their counter statement.

The respondent has submitted that in view of the above submissions and in view of the recent judgment of the Delhi High Court in the Big Tree Entertainment Pvt. Ltd. Case which is similar to the present case relating to use of descriptive name holding that no legal right could accrue in such cases the Hon'ble Arbitrator may dismiss the complaint as false baseless and legally unsustainable and thus render justice.

COMPLAINANT'S REJOINDER TO THE COUNTER STATEMENT OF RESPONDENT:

The Complainant in the rejoinder has submitted the following:

1. The complainant has submitted that the counter statement submitted by the Respondent is devoid of any merits and is merely submitted to divert the matter at hand and cause irreparable damage to the goodwill of the Complainant.
2. The complainant has submitted that it is a private limited company incorporated on June 2016 under the Companies Act, 2013. The Complainant has filed the certificate of incorporation also. The complainant has further submitted that Prior to being incorporated as a private limited company, the Complainant carried out business activities under a proprietorship firm in the name of the Sanviv Services. The complainant has submitted that the Respondents were well aware of the existence, business and goodwill of the proprietorship firm since the partners of the Respondent firm were previously employed with such firm.

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3. The complainant has submitted that the contention of the Respondent that the disputed domain name www.dropmetaxi.in is not deceptively similar to the domain name used by the Complainant i.e. www.droptaxi.in is baseless and is merely contested to veil the mala fide intent with which the Respondent is using the disputed domain name. The complainant has further submitted that a reading of the domain name indicates that the Respondent has only added the word "me" to "Droptaxi" and changed it to "Dropmentaxi". Such minor modifications prima facie show that the Respondent who was aware of the brand name "Droptaxi" owing to their employment with Sanviv Services. The brand name of the Complainant i.e. Droptaxi was modified by the Respondent to Dropmetaxi to exploit the goodwill and customer base created by the Complainant over a period of time. Further, the Complainant has submitted that it has rights in the trademark "Droptaxi.in" bearing registration number 2693667 based on which it has been using the domain name www.droptaxi.in India in connection with its ongoing business. The registration of the said device mark is valid until March 7, 2024. The complainant has submitted that had "Droptaxi" been a generic mark as claimed by the Respondent, the Complainant would have been unable to get the said mark registered since it is a well settled point of law that generic words cannot be trademarked.
4. The complainant has submitted that the contention of the Respondent that the website of the Complainant and the Respondent are significantly different in terms of colour, layout etc. has no bearing on the fact that the usage of the domain name www.dropmetaxi.in by the Respondent creates unnecessary confusion amongst the general public with regard to the identity of the Complainant and also leads to brand dilution of the Complainant and the complainant has submitted that it has spent huge sums of money on developing its brand in South India. Further, the Complainant has submitted that it is not

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necessary that the websites of the parties differ, rather the Complainant has contended that the onus is on the Respondent to prove beyond reasonable doubt that the disputed domain name www.dropmetaxi.in is substantially different from the domain name www.droptaxi.in used by the Complainant which in the opinion of the Complainant, the Respondent has failed to do. The Complainant relied on the case of Alibaba Group Holdings Limited vs. Rickson Rodericks and Domaen Com [INDRP/073] and Puneet Vatsayan vs. Prajakt Raut [INDRP/512], wherein it was held that when a disputed domain name contains the trade mark in its entirety, the domain name is identical and confusingly similar. The complainant has submitted that a reading of the two domain names clearly indicate that the Respondent have incorporated the whole of the domain name of the Complainant into their domain name with an extremely minor modification, thereby indicating that they have adopted such name with a malafide intent. The Complainant has also relied on the case of HUGO BOSS Trade Mark Management GmbH & Co. KG and HUGO BOSS AG v. wang xiaonxiao wang (WIPO Case No. D2016-0805), wherein it has been held that the domain name incorporating a Complainant's registered trademark may be sufficient to establish identity or confusing similarity, despite the addition of other words to such marks. The complainant has further submitted that a reading of the domain name indicates that the Respondent has only added the word "me" to "Droptaxi" and changed it to "Dropmetaxi" and therefore, the Complainant has contended that this leads to irreparable damage to the goodwill and brand name of the Complainant owing to the confusion created in the minds of the general public.

5. The complainant has submitted that the claim made by the Respondent that the disputed domain name www.dropmetaxi.in as well as names such as droptaxi, dropmetaxi, calltaxi etc. are generic names and therefore, cannot be subjected to a claim of exclusivity is untenable in fact. The Complainant has reiterated that

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it has exclusive rights in the device mark "droptaxi.in" bearing registration number 2693667 and therefore, the disputed domain name www.dropmetaxi.in infringes the said registered mark over which the Complainant has a statutory right. The Complainant has relied on the decision of the Hon'ble Delhi High Court in the matter of Yahoo!, Inc. vs Akash Arora & Anr. [78 (1999) DLT285] where it has been held that the domain name serve same function as the trademark and is not a mere address or like finding number on the Internet and, therefore, it is entitled to equal protection as trademark.

6. The complainant has submitted that it has also filed an application for registration of the word mark and device mark "Droptaxi" bearing application number 3721626 and 3721627 respectively and the same is currently pending before the Trademark Registry. The said applications have been filed in the year January 2018, thereby indicating the bonafide intent of the Complainant to expand its brand name and recognition in the market. Further, the Complainant has submitted that the word "droptaxi" is not a generic word and is a name and brand coined by the Complainant ever since it commenced business under the name of its proprietorship firm, Sanviv Services and which subsequently was incorporated as a private limited company namely Sanviv Services Private Limited. The Complainant submits that the mark "droptaxi" is being used by the Complainant since 2013 as evidenced by the registration of the device mark "droptaxi.in" in favour of the Complainant. The complainant has submitted that it is pertinent to note that it has been using the brand name "Droptaxi" even prior to the Respondents commencing business.
7. The complainant has submitted that the contention of the Respondent that the words "drop" and "taxi" are generic words and therefore, cannot be trademarked in combination are untenable in law. The Complainant relies on the decision of the Hon'ble Delhi High Court in the matter of Living Media India Limited vs

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Jitender V. Jain And Anr, on 21 May, 2002 [98 (2002) DLT 430] where the Delhi High Court held that the word "AAJ" and "TAK" may be individually descriptive and dictionary word and may not be monopolized by any person **but their combination does provide a protection as a trademark if it has been in long, prior and continuous user in relation to particular goods manufactured, sold by a particular person and by virtue of such user the mark gets identified with that person. It is so irrespective of the fact whether such a combination is descriptive in nature and has even a dictionary meaning.** In light of the said case, the Complainant has submitted that the combination of the words "drop" and "taxi" namely "droptaxi" can indeed be protected as a combination of words and the claims raised by the Respondent with regard to the generic nature of the words is baseless under law.

8. The complainant has submitted that in accordance with the arbitral award passed in the matter of INDRP/782 (Eterno Infotech Pvt. Ltd. V Zheng Wei), the arbitrator held that **"for any startup online, it is quite normal, given the introduction of the respondent company, to do some research before launching a new product or service. The foremost being Google Search and searching for keywords on the Google Search Engine. Further, this is a duty cast upon the Registrant/Respondent in terms of clause 3(b) of the INDRP Policy as well"**. The complainant has further submitted that the Respondent was aware of the existence of the Complainant in the market and the brand name used by it namely "Droptaxi" and that it has selected its brand name "Dropmetaxi" only with an intent to exploit the goodwill and brand name of the Complainant. The Complainant has relied on the decision in the matter of Sharman License Holdings, Limited v. Icedlt.com, [WIPO Case No. D2004-0713], where it was held that, deliberately using a misspelling variation in the Respondent domain name constitutes a further factor of the Respondent's bad faith in registering and using

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the domain name at issue and further demonstrates that the domain name of the respondent was designed to attract the commercial gain, Internet users to the sites at issue by creating likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the site of the products offered thereon. The complainant has further submitted that in light of the ratio of the said case, the Respondent has used the disputed domain name to confuse user about the identity of the Complainant with that of its own and to attract such users to its website as such the Complainant has submitted that the Respondent is using the disputed domain name with a malafide intent.

9. Further, the complainant has submitted that it has registered the domain name www.droptaxi.in on 30/08/2013 whereas the disputed domain name www.dropmetaxi.in was registered by the Respondent on 02/07/2017. Hence, such subsequent adoption and registration of the disputed domain name shows that the Respondent has no right or legitimate interest in the domain name www.dropmetaxi.in. It is highly unlikely that the Respondent is unaware about the market presence and popularity of the well-known mark "Droptaxi" which is registered in the name of the Complainant. The Respondent has utterly failed in providing any valid reason for adopting the impugned domain name for its services, other than the concocted claims relating to a generic use of the modified version of the Complainant's trademark "Droptaxi.in". The complainant has further submitted that there is no evidence on record to suggest that the Respondent is actually known under the mark "Dropmetaxi". The complainant has referred to the case of Swarovski A.G. v. Modern Empire Internet Ltd. [WIPO Case No. D2006-0148], it was held that if a Respondent's Domain Name incorporates a slightly misspelled version of a complainant's name and Trademark, there are likely to be circumstances where a person might unintentionally type in the Domain Name instead of the trademark term,

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particularly having regard to the potential for persons using the internet to "guess" at domain names. This is a typical "typo-squatting" case in which a finding of confusing similarity is appropriate.

10. The complainant has that relied on the case *Ste Des Produits Nestle vs. Nescafe Limited* INDRP/100 May 4, 2009, wherein it was observed that the use of domain name consisting of trademark to divert the users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interest upon the respondent. The Complainant has contended that the Respondent has commenced use of the impugned domain name www.dropmetaxi.in as an attempt to attract internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website. This can be evidenced from the fact that 7.09% of the traffic on the website of the Respondent is attributable to an internet user typing droptaxi on a search engine. The complainant has submitted that this is evidenced from an analysis of the results produced by Alexa which measures the traffic generation on websites.
11. The complainant has submitted that the founders of the Respondent were not merely working for an entity operating under the domain name www.droptaxi.in but were working with the Complainant while it was a proprietorship firm namely Sanviv Services. Further, the complainant has submitted that the partners of the Respondent firm were well aware of the value attached to the brand name and goodwill of the Complainant in the market and therefore, have commenced their own entity with a deceptively similar name and domain name in order to exploit the goodwill and brand value created by the Complainant in the market.

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12. With regard to the contention of the Respondent that the Respondent has filed for a trademark, the complainant has submitted that it is to be noted that the Respondent has filed for registration of the mark "Dropmetaxi" under class 39 only on the 5th of May 2018 with a user claim from 25th July, 2017. It is therefore evident that not only is the adoption of the mark "dropmetaxi" in bad faith as it was subsequent to the adoption and use of the mark "droptaxi" by the Complainant and use but the trademark application filed by the Respondent has been filed only after the filing of said complaint before the INDRP.
13. The Complainant has contended that the claims made by the Respondent are baseless and not legally tenable. The Respondent has failed to appreciate the rights vested in the Complainant with regard to the device mark "droptaxi.in" and also the fact that the domain name www.droptaxi.in was registered by the Complainant before the Respondent even commenced business activities. Therefore, the Complainant contends that the usage of the disputed domain name www.dropmetaxi.in is used by the Respondent in bad faith and without exercising due caution and with an intent to cause damage to the Complainant.
14. The complainant has submitted that the Respondent has mentioned a case law in the counter statement which has been decided by the Delhi High Court in the Big Tree Entertainment Private Limited case. The Complainant submits that the case does have contain a citation or any relevant facts including the ratio decendi in the case and therefore, the Complainant submits that such case cannot be relied upon for want of relevant facts.

AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's disputed Domain name **www.dropmetaxi.in**.

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3. On 11-05-2018, I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. On 14-05-2018, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *TEN* days from receipt of the notice.
6. On 20-05-2018, the respondent requested for 15 days' time to file document and proofs.
7. On 21-05-2018, the complainant's authorized representative requested for reasonable time to file rejoinder.
8. On 30-05-2018, respondent's request for 15 days' time was considered and I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *TEN* days from receipt of the notice.
9. On 31-05-2018, the respondent submitted the response to the complainant of the complainant.
10. On 5th June 2018, the complainant sent an email stating that the rejoinder would be filed latest by 9th June.
11. The complainant filed the rejoinder to the reply / counter statement of the respondent.

OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Siffy" were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in Indian case JT.2004 (5) SC 541, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

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Now the other important aspect that needs consideration is, as to whether the complainant has legitimate right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark on the said domain name and has no affiliation with the trademark. Considering the complainant's submission that the domain name "**www.droptaxi.in**" was registered by complainant on 30-08-2013 and the disputed domain name "**www.dropmetaxi.in**" directly and entirely incorporates Complainant's well-known mark. The complainant has rightly contended that the Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant's well-recognized products. The complainant has submitted that it owns and communicates on the internet through various websites worldwide and has registered domain name similar to the trademark / well-known mark.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical. Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

This principle is settled in many Indian cases and referred cases JT 2004(5) SC 541 and 2004(5) SCC 287 and the cases relied upon by the complainant.

The complainant has further submitted that a reading of the domain name indicates that the Respondent has only added the word "me" to "Droptaxi" and changed it to "Dropmetaxi" and therefore, the Complainant has contended that this leads to irreparable damage to the goodwill and brand name of the Complainant owing to the confusion created in the minds of the general public.

Thus the conclusion is that the domain name "**www.dropmetaxi.in**" is identical and confusing similar to the trademark of complainant "**www.droptaxi.in**" and the complainant has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

The paragraph 4(ii) of INDRP is to read with paragraph no.7. As already stated that paragraph 4(ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can

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discharge the onus by direct congest and positive evidence which are in his special knowledge and power.

In the instant complaint the complainant has made positive assertions that respondent has no legitimate right in domain name and there is no evidence of its use and the respondent has no trademark on the domain name neither he has affiliation with it in India. The complainant has made positive assertions regarding the fact that respondent has got registered domain name, in the .IN Registry for which the respondent has no right or trademark. The respondent has got registered disputed domain name as stated above. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has failed to provide any positive, cogent and specific evidence that he is known or recognized by domain name, by its user and that he in fact uses it for providing goods or services. The respondent has neither put forth nor provided such evidence. The assertion of complainant is that the respondent at time of registering his domain knew or ought to have known about his trademark and so he has violated complainant's right. The respondent has filed trademark application only after the filing of the present complaint by the complainant before the INDRP. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

Whether the respondent's domain name has been registered or is being used in bad faith

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant. The complainant has contended that the respondent has got registered the domain name in bad faith and the continuation of the ownership of the disputed domain name will render irreparable harm to the complainant.

Further by using the said domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

Keeping in view above facts and circumstances and in view of the complaint, the response of the respondent it is thus clear that the respondent has registered domain name and he has not provided any substantial evidence of using them for business or for offering of goods and services. The obvious purpose for registering domain names is to sell, rent or transfer it or to prevent other owner of mark from reflecting it in

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corresponding domain name. Thus the conclusion is that the respondent has got registered his domain name "**www.dropmetaxi.in**" in bad faith.

In view of above facts of the complaint, the response of the respondent, the rejoinder of the complainant to the counter statement of the respondent, the law of the land and the case laws relied upon by the complainant as discussed above it is clear that the complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him.

RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The respondent also does not have right or legitimate interest in the domain name. The complainant is entitled for transfer of domain name "**www.dropmetaxi.in**" as it has established its bonafide rights in trademark. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 10-07-2018.

(Sanjay Kumar Singh)

Arbitrator