



उत्तर प्रदेश UTTAR PRADESH

AL 392542



Bodhisatva Acharya
ARBITRATOR

(Appointed by .IN Registry-National Internet Exchange of India)

Case No.....Of 2010

ARBITRATION AWARD: DISPUTED DOMAIN NAME: www.einstein-college.in

In the matter of;
Yeshiva University,
500 West 185th Street.
New York **1033-3201.**
USA,

Filed by its authorized representative attorney -
Bidyut Bikash Tamufy,
Archer & Angel,
K-4, South Extension-II,
New

Delhi-110049

...Complainant.

BL

Vs.

Director,
Einstein College,
Seethaparpanadur,
Tirunelveli
Tamil Nadu-627012
India.
Email:einstein@einstein-college.in.Respondent.

A W A R D

1. The Parties:

The **complainant** in this arbitration proceeding is YESHIVA **UNIVERSITY**,500 West 185th Street, New York 10033-3201, **USA**, filed by its authorized representative attorney Bidyut Bikash Tamuly, Archer & Angel, K-4, South Extension-II, New Delhi-110049

Respondent in this arbitration proceeding is Director, Einstein College, Seethaparpanallur, Tirunelveli, Tamil Nadu - 627012, INDIA, and Email: einstein@einstein-college.in' .

2. The Domain Name. Registrar & Registrant:

The disputed domain name is



3. Procedural History:

The complainant, through its authorized representative, filed this complaint to NIXI *regarding* the disputed domain name www.einstein-college.in following the clause 4 of the policy of .IN Registry and .IN Registry appointed Mr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence on September 23rd 2010. The complaint was produced before the Arbitrator on September 28th, 2010 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on October 2nd, 2010, with a 10 days deadline to submit his reply but the email address was found wrong and a notice failure was received by the Arbitrator hence the AWARD is being declared on the November 16th, 2010 as Ex-parte.

4. Factual Background:

(A) YESHIVA UNIVERSITY, The Complainant, is one of the world's leading Educational Campus where the undergraduate, graduate and affiliated schools and divisions are running and it include the ALBERT EINSTEIN COLLEGE OF MEDICINE, YESHIVA COLLEGE, STERN COLLEGE FOR WOMEN, BENJAMIN N. CARDOZO SCHOOL OF LAW, WURZWEILER SCHOOL FOR SOCIAL WORK.....etc and it has SIX major libraries and about 7000 students from 38 states and 55 countries including INDIA, study at Complainant's four Campus which are THE WILF CAMPUS, THE ISRAEL HENRY BEREN CAMPUS, BROOKDALE CENTER in MANHATTAN and PEARL RESNICK CAMPUS in the BRONX. The Complainant has 4714 full time and part time faculty and 5000 Alumni, who have achieved success and made significant contribution to society as well as JEWISH community.



(B) The Complainant's graduate school named as The ALBERT EINSTEIN COLLEGE OF MEDICINE (herein after EINSTEIN) is worldwide premier institutions for medical education, basic research and clinical investigation where 2775 faculty members 722 M.D. students, 243 Ph.D. students, 128 students for M.D./Ph.D. combine program. By an extensive network EINSTEIN runs one of the largest post-graduate medical training programs in the UNITED STATES and looking to the future EINSTEIN has embarked on a major program which Will amplify the size just double of its campus.

(C) EINSTEIN has established Global Health Fellowship program to encourage its students to participate and gain experience in clinical and public health in Developed and Undeveloped countries. In INDIA Complainant had done a training program by its 14 students with Institute of Public Health Sciences (IPHS) and copies thereof extracts from EINSTIENS web site. From 2004 EINSTEIN has been organizing symposiums in INDIA to enhance HIV/AIDS research capacity, extensive research, trials and treatments. In 2008-09 The Complainant explored the many facets of Indo-Israel Relationship and Complainant and EINSTTEN published many publications in this regard and have been quoted in leading Indian News-papers and Magazines.

(D) Complainant's Marks are mostly registered or have pending registrations in U.S.A., INDIA, EUROPEAN COMMUNITY and ISRAEL. The Complainant is the original, sole and executive owner of the trade marks - "ALBERT EINSTEIN' and 'ALBERT EINSTEIN COLLEGE OF MEDICINE' since December 31st 1955 while the 'EINSTEIN (Design) is being used **by** the Complainant **since** November, 2008. The Complainant has spent about US \$250,000,00 in promoting its services under the aforesaid Trade Marks worldwide **by** its various web sites viz. www.einstein.yu.edu, www.einstein.co.in, www.einstein-college.co.in, www.einsteinindia.com, www.einsteinindia.in, www.alberteinsteincollegeofmedicine.yu.edu.....etc.



(E) In July 2010, the Complainant came to know that Respondent had registered the disputed domain name _____ while complainant has its legitimate rights and its V? Rights with this Trade Mark through the world, then Complainant sent a Cease and Desist Notice on July 13th, 2010 to the Respondent through its technical contact.

(F) Lastly on September 17th, 2010 complainant authorized its representative by power of attorney to file a complaint for an Arbitration Proceeding and hence the complaint was produced before Arbitrator of NIXI for Arbitration Proceeding on September 28th, 2010.

5. Parties Contentions:

(a) Complainant contends that

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- GO** The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name b§ transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response and produced no reply.



6. Discussion & Findings:

Under the Paragraph 4 of the Policy (INDRP) Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the IN Registry on the following premises:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has right,
- (is) The Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used with bad faith

After having gone through the records, documents.
Complainant, Arbitrator's findings are:

- (i) That the Respondent's performance was clearly *ab initio* in bad faith because in July 2010, when the Complainant came to know that Respondent had registered the disputed domain name then Complainant sent a Cease and Desist Notice on July 13th, 2010 to the Respondent through its technical contact, and same was received Mr. Joy Dhivakar on July 17th, 2010 but after this the Respondent had amended the name of registrant as DIRECTOR instead of Mr. Joy Dhivakar who was the previous registrant while the said notice was received by Mr. Joy Dhivakar which proves that the name, trademark or mark in which the Complainant has right, the Registrant's domain name is identical or confusingly similar to the Complainant's Mark and has been registered or being used in bad faith,
- (ii) That the Name/Mark EINSTEIN is distinctive unique and has reputation worldwide and the mere mention of the said Mark establishes an identity and connection with Complainant and none else.

- (iii) The Complainant owns all the rights in the said Mark and the Complainant has incurred huge expenses worldwide on websites like www.einstein.yu.edu, www.einstein.co.in, www.einstein-college.co.in, www.einsteinindia.com, www.einsteinindia.in, www.alberteinsteincollegeofmedicine.yu.edu,.. etc therefore Complainant is entitled to protection for the aforesaid Mark, and
- (iv) The Complainant has proved all the aforesaid premises as mentioned in Paragraph 4 of Policy in his favor and he has produced all the documentary proof in his favor to satisfy the is not with clean hand and his intention is wrong by giving the false information about him and by deleted his name from the registrant area. Therefore he has no right to use the disputed domain name.

7. Decision:

Hence the Arbitrator decides, 'the Disputed Domain Name www.einstein-college.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.einstein-college.in shall be transferred to the Complainant with immediate effect.


BODHISATVA ACHARYA
SOLE ARBITRATOR
NIXI

DATED: November 16TH, 2010,
PLACE: NEW DELHI,
INDIA.

