

हरियाणा HARYANA

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BEFORE THE SOLE ARBITRATOR C.A. BRIJESH
.IN REGISTRY
C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA

Eko India Financial Services Private Limited

547, Mandakini Enclave

Alakhanda

New Delhi – 110 019

.... Complainant

versus

Donald Boyd

Lesedge Inc.

36 Glenpark Dr, Suite 319

Welland, Ontario

Canada

.... Respondent

1. The Parties

The Complainant is Eko India Financial Services Private Limited of 547, Mandakini Enclave, Alaknanda, New Delhi – 110 019 through its Authorised Representatives, Alpha Partners, C-48, GF, Sector 20, Noida – 201 301.

The Respondent is Mr. Donald Boyd of Les Edge Inc., 36 Glenpark Dr. Suite 319, Welland, Ontario, Canada. The Respondent is represented by himself.

2. The Domain Name and Registrar

The disputed domain name is <eko.in>. The said domain name is registered with 'Godaddy.com, LLC'.

3. Procedural Timeline

November 24, 2014 : The .IN Registry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure.

November 25, 2014 : Arbitrator has accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.

November 26, 2014 : Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover.

December 1, 2014 : Arbitral proceedings were commenced by sending notice to the Respondent



through e-mail, with a copy marked to the NIXI, directing the Complainant's Authorized Representative to forward a soft copy of the Complaint alongwith the Annexures to the Respondent within two days.

December 5, 2014 : Arbitral Tribunal addresses a notice to the Respondent, with a copy marked to the Complainant's Authorized Representative, directing the Respondent to file its response, if any, to the Complaint within ten days.

December 29, 2014 : On request of the Complainant's Authorized Representative and on account of no objection by the Respondent, the Complainant's Authorized Representative was allowed to file a brief Rejoinder by January 9, 2015.

The pleadings in the arbitration proceedings were closed on January 9, 2015.
The language of the proceedings shall be English.

4. Factual Background:

4.1 Complainant's Activities

The Complainant states inter alia that it is a company incorporated under the Companies Act, 1956 with its registered office at 547, Mandakini Enclave, Alaknanda, New Delhi – 110 019. Since its incorporation on September 2, 2007, Complainant claims to have become India's largest and most renowned business correspondent. Currently, Complainant states it undertakes transactions of over INR 9,00,00,000/- on a daily basis and has over 1,700 agents across India. It further states that it has been instrumental in enhancing financial inclusion in the Indian banking sector. The Complainant states that it caters to over 150,000 consumers through mobile-based platforms, offering services



relating to banking, saving, payment, merchant transactions, bill payments and cash collections, cash disbursement services to government enterprises, micro finance institutions as well as large, medium and small scale enterprises. The Complainant states that it provides low cost infrastructure powered by innovation technology to enable instant, secure and convenient financial transactions and is one of the most reputed companies with the finance and mobile commerce industry.

A perusal of the several advertisements/news articles annexed alongwith the Complaint as 'Annexure B (Colly)' reveals that the Complainant enables instant small value financial transactions over a mobile phone by leveraging existing retail shops, telecom connectivity and banking infrastructure to extend branchless banking services to unbanked neighbourhoods. Customers walk-in to neighbourhood stores which act as 'Customer Service Points' to open a savings account, securely deposit and withdraw from the account. Customer's mobile numbers act as an alias of the customer's bank account number and all transactions are conducted by dialling the said number. The said transactions are completed in real time with the customers getting instant confirmations through SMS. Complainant's pilot project with Sheikhpura's District Health Society (DHS) along with Sadar PHC and Chewara PHC in Patna, Bihar in collaboration with SBI Patna which commenced in January, 2011 appears to have an immense impact in empowering the Rural Health Activists in the areas.


4.2 Complainant's use of EKO

The Complainant states that it first adopted the mark EKO in the year 2007 and has since been using the same both as a trade mark and as a trading style. Consequent to such use, the Complainant claims that the mark EKO has established a distinct imagery in the minds of Indian as well as International population associated solely to the Complainant. It is the Complainant's assertion that the mark EKO is an invented mark and is inherently distinctive for the goods and services of the



Complainant. Evidencing the goodwill/reputation garnered by the Complainant's use of EKO, Complainant has annexed several advertisements/news publications as well as video grabs of television features as 'Annexure B (Colly)'

The Complainant further states that the mark EKO is registered in its favour in India under Registration No. 1618071 in Class 35 and several other applications for EKO/EKO formative marks are pending. Details of the said registration/application are been reproduced hereinbelow:

Sl. no.	Trade Mark	Appl./Reg. No.	Class/es
1.		1900825	35,36 and38
2.	EKO	1618071	35
3.	EKO	1618073	36
4.	EKO	1618075	39
5.	EKODIAL	2825455	36
6.	EKODIAL	2825456	38
7.	EKODIAL	2825457	42

Significantly, in connection with its business, the Complainant operates the website 'www.eko.co.in' in connection with its business. The homepage of the said website has been annexed to the Complaint as 'Annexure C'.



4.3 Respondent's Activities

The Respondent states that he operates a business under the name style of 'Eko Network Group of Companies'. In furtherance of its global aspirations/presence, it has signed a Memorandum of Understanding with the Environmental Affairs Agency of Egypt to develop renewable energy projects in Egypt, a copy whereof has been annexed with the Reply. It claims to have received invitations from Goa in connection with renewable energy solutions at the time of purchase of the disputed domain <eko.in>. However, no such invitations have been filed on record. An undated document has been filed in this connection which appears to be self-generated.

4.4 Respondent's use of EKO

The Respondent states that 'Eko Network Group of Companies', though not limited to, consists of the following companies:

- i) Ester-EKO energia Polska Sp. Z. o o - Poland
- ii) Eko Energy UK Ltd. - United Kingdom
- iii) OEKO Edge GmbH - Germany
- iv) Baraq-Eko Energy Ltd. - Israel

However, no material evidencing their incorporation and/or incorporation details has been placed on record. Further, the Respondent states that at the time of purchase of the domain name in dispute, the Respondent was using the mark EKO on a global scale.

It can be further gathered from the submissions of the Respondent that it claims to have been using EKO since the year 2010.



Apart from the aforementioned, the Respondent has not placed any other material on record *re* its business activities in India or abroad.

5. Parties Contentions as summarised in the Pleadings:

5.1 Complaint:

a) **The domain name is identical or confusingly similar to a trade mark in which the Complainant has rights**

- i) Complainant submits that the disputed domain include the mark EKO, which is identical/confusingly similar to Complainant's well-known and registered trade mark EKO.
- ii) Further, it is the Complainant's assertion that by virtue of long standing and continuous use of the mark EKO, the same has acquired distinctiveness and is exclusively associated with the Complainant. Consequently, the use of the same as a part of a domain name by a third party would only perpetuate confusion amongst consumers looking to access information about Complainant. Reliance is placed on *KFC Corporation v. Webmaster Casinos Ltd.* (INDRP/O66).

b) **The Respondent has no rights or legitimate interest in respect of the domain name**

- i) It is the Complainant's contention that the Respondent has only registered the disputed domain to encash upon the goodwill of the Complainant's mark EKO. Complainant alleges that the Respondent has registered the domain for a profit or alternately, prevent the Complainant from registering the same which is evidenced by the fact that no website is



hosted at the domain name and the same revolves around the Complainant's web page. Reliance is placed on *Google Inc v. R. Jain (INDRP/077)*.

- ii) Neither the Respondent has any legitimate interest in the mark nor is the lawful owner of any right relating to the Complainant's mark. Further, the Respondent does not have any relationship to the business of Complainant neither as a licensee nor has the Respondent obtained any authorization whatsoever to use the Complainant's mark EKO in any manner whatsoever including as a domain name.

c) **The domain name was registered and is being used in bad faith**

- i) According to the Complainant, the trade mark EKO is a well-known trade mark and the Respondent must have been aware of the long standing reputation of the Complainant's mark EKO. Based on the said presumption, the Complainant states that such a registration of the domain is *prima facie* evidence of Respondent's bad faith.
- ii) The Complainant states that a legal notice dated August 14, 2014 was served on the Respondent informing it of the rights vesting in the mark EKO and called upon it not to use the domain name in dispute. The said legal notice has been annexed to the Complaint as 'Annexure G'. No response to the said notice was received.
- iii) The fact that the domain <eko.in> automatically redirects itself to another website viz. 'www.ekonet.com' is further evidence of the *mala fide* of the Respondent.
- iv) The Complainant finally states that there exists great likelihood that visitors to the Respondent's website or to any webpage hosted there under would mistakenly believe that



the same is under the license/consent of the Complainant or that there exists some nexus / affiliation of the Respondent with the Complainant.

5.2 Reply to the Complaint:

- i) The Respondent in his reply states that unlike the Complainant, it enjoys an international presence and that at the time of purchase of the disputed domain the Respondent and his business were successfully operating on a global scale. The Respondent has relied upon the 'Memorandum of Understanding' entered into between Les EDGE Inc. & Oeko Edge GmbH of Germany and The Government of Republic of Egypt & The Egyptian Environmental Affairs Agency.
- ii) The Respondent further states that it had purchased the disputed domain from a public auction for a price as low as USD 150, which for a business entity purportedly doing as well as the Complainant is a reasonable amount. It is, hence, the contention of the Respondent that had the Complainant evinced any interest in the domain at that point in time, it could have reasonably purchased the same.
- iii) Respondent asserts that it had no knowledge of the Complainant or its business prior to the date of the present dispute. Further, the Respondent/its affiliates have made no attempts to sell or lease the disputed domain to the Complainant and the domain in question is used solely in connection with its own business activities.
- iv) Respondent also states that there are several entities existing in India which are using the mark EKO which are prior to the Complainant as well as the Respondent. Name of one such entity is mentioned in the reply i.e. Eko-Diagnostic Pvt. Ltd.



- v) The Respondent has made an offer for purchase of the domain at USD 1,700 and states that correspondence on the issue of settlement has already been exchanged between the parties. The said correspondence dated December 1, 2014 to December 22, 2014 (post initiation of the arbitration proceedings) has been annexed with the Reply as an unmarked annexure.

5.3 Rejoinder

- i) The Complainant reiterates that the Respondent has only registered the disputed domain name to profit by selling the same. The same is evidenced by the fact that the Respondent approached the Complainant as soon as the panel took cognizance of the complaint.
- ii) Complainant contends that the Respondent has failed to disclose any *bona fide* use of the domain name <eko.in> and is only passively holding the same by redirecting traffic to 'www.ekonet.com'. Such circumstances are a *prima facie* evidence of bad faith. To further substantiate its claim, reliance is placed on *Nevada State Bank v. Modern Limited-Cayman Web Development a.k.a Administrator Domain and Infospace Inc. v. Modern Limited- Cayman Web Development*.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution 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 rights;



- ii) 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.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusing similar trade/service mark:

The Complainant has claimed to have adopted "EKO" as a trade mark and trade name in the year 2007. To substantiate the same, the Complainant has relied upon the trade mark registration under No. 1618071 in Class 35 which was filed on November 5, 2007 (Annexure "A"). The Complainant has also filed numerous pending applications for registration of the mark 'EKO' and EKO formative marks. Further, the Complainant was incorporated on September 17, 2007 under the name/style of 'EKO FINANCIAL SERVICES PVT. LTD.'. The disputed domain name incorporates the mark/name ("EKO.IN") in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed (INDRP/278)* as well as in *Indian Hotels Company Limited v. Mr. Sanjay Jha (INDRP/148)* that when a disputed domain name incorporates a mark in entirety it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. In addition, the Complainant has registered a domain name "EKO.CO.IN" on January 25, 2007 and is doing business there under. The Respondent on the other hand acquired rights in the domain name by purchasing it from another entity only in October 2010.

In view of the foregoing discussions, the Complainant has satisfied that:

- i) it has both statutory and proprietary rights in respect of the mark "EKO"; and



- ii) the domain name in question “EKO.IN” is phonetically, structurally as well as visually identical as well as similar to the Complainant’s prior registered trade mark “EKO”.

6.2 Rights and legitimate interests

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (*in particular but without limitation*) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, the same shall demonstrate its rights to or legitimate interest in the disputed domain name. The said paragraph is reproduced herein under:

“Registrant’s Rights to and Legitimate Interests in the Domain Name – Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant’s rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

- i) before any notice to the Registrant of the dispute, the Registrant’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”*



- i) As observed by the Panel in the case of *Intercontinental Hotels v. Abdul Hameed* (INDRP/278) it is well established, that trade mark registration is recognised as *prima facie* evidence of rights in a mark. Infact, the said Principle stems from Section 31 of the Trade Marks Act, 1999. Complainant, in the instant case, is the owner of the registered trade mark EKO in India and has sufficiently demonstrated its rights in the trade mark EKO in India. The documentary evidence filed by the Complainant further show that it has used the mark extensively since its inception in the year 2007.
- ii) From the pleadings/documents filed by the Respondent, it is evident that the domain name 'EKO.IN' is not used by the Respondent. Importantly, the domain name 'EKO.IN' does not resolve into a website "www.eko.in". In this regard, it is pertinent to note that the Respondent has claimed to have worked for developing a renewable energy project in Egypt and accordingly signed a Memorandum of Understanding with the Government of Republic of Egypt and the Egyptian Environmental Affairs Agency sometime in April 2010. The said MOU was entered into by Respondent and its affiliates Oeko Edge GmbH of Germany. The Respondent has also invited the attention of the Panel to the fact that it was invited to present a proposal for energy from waste project in Goa, India. However, no such invitation or correspondence has been filed with this panel. The Respondent has filed an undated document titled EKO India – Sustainable Development Solution which appears to be self-generated. In the absence of any documentary evidence to support such averments, it is difficult to come to a conclusion that the same represents use of or demonstrable preparations to use the domain name or a name corresponding to the domain name in India.
- iii) As the disputed domain name does not resolve to a website 'www.eko.in' and in the absence of any document to show that the Respondent is commonly known by domain name in India,




such an inference cannot be drawn in favour of the Respondent. The disputed domain name re-directs to a website namely 'www.eko.net.com' which is a fully functional website. The said website also refers to an online blog <http://www.eco-energy.net>. Thus, strictly speaking there is nothing on record to show that the Respondent is commonly known by the disputed domain name EKO.IN in India. At any rate, it has to be borne in mind that the Complainant's trade mark rights is prior in point of time as compared to the Respondent's acquisition of the domain EKO.IN.

- iv) As mentioned earlier, in the absence of use of EKO.IN *per se* - it simply redirects to the website www.eko.net.com - it cannot be inferred that Respondent is making legitimate 'non-commercial' or 'fair use' of the domain name. In fact, the only inference which can be drawn with respect to 'use' is that NO use of the disputed domain is being carried out by the Respondent.
- v) It is trite law that mere parking or redirection will not amount to *bona fide* use of the disputed domain name. In the case of *Mothercare UK Limited, United Kingdom vs. Mr. Rajkumar Jalan, New Delhi (INDRP/061)*, the Panel took cognizance of the fact that the Respondent could not show cause for redirecting from the disputed domain name to a third domain name. Mere re-direction cannot constitute a fair use of the domain name. Such a conduct also points towards the fact that the Respondent has no legitimate interest in the domain name. In my view, lack of a well developed website, even after a lapse of so many years indicates lack of *bona fide* and interest.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith.



- i) It is pertinent to note that after the commencement of the arbitration proceedings the Respondent has approached the Complainant and has offered to sell the domain name for USD 1700. In fact, the Respondent in its rejoinder has filed documentary evidence in this regard. On the one hand the Respondent has argued that it has legitimate interest with respect to the disputed domain name and its global aspirations include development of projects in India while on the other, it has offered to sell the same and even complete transactions within 2 days. The Respondent has also filed documents evidencing that it has purchased the domain name for USD 150 from a Chinese entity and that it is now valued at USD 6300. Though there is nothing on record to show that the Respondent is engaged in the business of renting or selling of domains, the Respondent, upon realizing that the domain name is identical to the prior registered trade mark of the Complainant has resorted to sell the domain for a valuable consideration in excess of the cost actually incurred for acquiring the domain. The Panel is of the view that such conduct of the Respondent tantamount to bad faith.
- ii) The disputed domain name comprises the registered trade mark of Complainant in its entirety and Complainant has proved by way of documentary evidence its prior statutory and proprietary rights in the same. In this regard, reference may be had to *Satyam Infoway Ltd. Vs. Sifynet Solutions Pvt. Ltd. (AIR 2004 SC 3540)* wherein the Apex Court ordered transfer of the domain name in a case where both parties to the dispute were carrying on a legitimate business with a direct nexus to the domain name. However, the Court observed that weighed in the balance of comparative hardship, no irreparable injury would be caused to Respondent by proscribing him from using the domain name. It instead believed that Complainant had garnered immense goodwill associated with its business, and therefore denying it the use of its domain name would render injustice to it.
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As in the instant case, given the nature of the Complainant's business and the fact that a vast majority of its clientele are based in rural areas and may not be technologically savvy, the chances of confusion/deception by Respondent's continued possession of the disputed domain 'eko.in' cannot be ruled out. No irreparable harm and injury would be caused to the Respondent since the domain name does not even resolve to a website www.eko.in and is merely re-directed to Respondent's another website www.eko.net.com.

- iii) EKO being the registered and reputed trade mark of Complainant, chances of internet users being misled and redirected to the Respondent's aforesaid website cannot be ruled out. Internet users may falsely believe that the Respondent's domain name as well as the redirected website are being operated and/or endorsed by the Complainant (*Bharti Airtel Ltd. Vs. Rajiv Garg INDRP 285*).

7. Award

- i) The Respondent is ordered to immediately transfer the disputed domain name to the Complainant.
- ii) The Complainant is ordered to reimburse to the Respondent actual fees incurred for registering/acquiring the domain name as against the documentary evidence produced by the Respondent alongwith its Response dated December 24, 2014.
- iii) The parties shall bear their own cost.



C.A BRIJESH

Sole Arbitrator

Dated: January 28, 2015.