



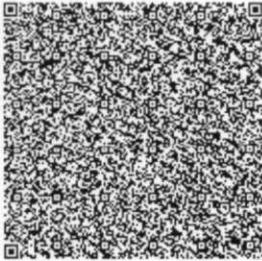
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL36901881141495L
Certificate Issued Date	: 15-Jul-2013 12:15 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLTL-SHCIL72696801313668L
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: NA
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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Please write or type below this line

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"emiratesairlines.in"

between

EMIRATES

MICHAEL CAIN

AND

AWARD

...COMPLAINANT

...RESPONDENT

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 09/05/2013. 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 and also there is no PoA in favour of M/s Kochhar & Co. the Counsels for the Complainants. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to 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 compliance of the order was done by the Complainants vide email dated 10/05/2013 sent by the Counsel for complainant giving the scanned copy of the DHL Courier receipt sent by NIXI to the Respondents and sought time for POA having been sent for compliance to the Client. The tracking of DHL courier shows that the Respondent has received the same

on 15/05/2013. On 20/05/2013, this Tribunal has received the scanned copy of POA of the complainant and the hard copy on 21/05/2013. This Tribunal has also received an email dated 20/05/2013 from the Respondents alleging *inter alia* infraction of Rule 4 of INDRP Rules of Procedures and the said allegation was refuted by the complainant through the email dated 23/05/2013. The bone of Respondent's contention *qua* Rule 4 of INDRP Rules of Procedures were meritless and misconceived as these related to the procedure to be followed in NIXI and not the Arbitrator. Hence, they were rejected vide order dated 25/05/2013 passed by this Tribunal. Accordingly, the Respondent was directed to send his response (Statement of Defense) together with documentary evidence within 7 days of receipt of the email and also by sending the soft copy by email and a hard copy by Courier.

3. That in this duration this Tribunal received an email dated 30/05/2013 from the Respondent requesting extension of time for filing his S.O.D. He was given time till 09/06/2013. The Respondent complied and sent the soft copy by email on



06/06/2013 and hard copy vide post. This Tribunal directed the Complainants to file their Rejoinder within 3 days which was received on 13/06/2013 as the Counsel for the Complainant requested for an extension of further 3 days to submit their Rejoinder as they had sent the same for the comments of their clients. This Tribunal received by post the SOD of the Respondents on 19/06/2013 but the same was unsigned, hence this Tribunal had to direct the Respondent to send a signed copy of the SOD by courier upto 24/06/2013. The Respondent replied vide email that his financial condition did not permit him to take the financial burden of sending by courier, **hence this Tribunal looking into the problem gave an extension for pronouncing the award by 20 days vide order dated 25/06/2013 so as to enable the Respondent for sending his SOD by ordinary post.**

4. In view of these peculiar facts and circumstances of the present matter this Tribunal after the receipt of the signed hard copy of



SOD along with Supplementary SOD on 08/07/2013 reserved the award.

CLAIM

5. The claim as put forward by the complainant is briefly as under:
 - A. The Complainant is Emirates, a corporation organized and existing under the laws of Dubai, United Arab Emirates, which also include the predecessors and associates in business, interest and title, having its principal place of business at Emirates Group Headquarters, P.O. Box 686, Dubai, United Arab Emirates. It is also claimed that it is a world renowned, award winning international airline of United Arab Emirates and the largest airline in the Middle East and due to its extraordinary growth it has become one of the most trusted transcontinental passenger airlines brand.
 - B. It is claimed that the complainant has a fleet of over 199 aircrafts, under the brand EMIRATES and it flies to over 132 destinations in 77 countries around the world besides being in

travel, tourism and leisure business. The complainant claims that it employs more than 42,000 people around the world. Reliance is placed on **Annexure 3**.

- C. The Complainant claims that it spends significant resources in promotion and advertisement worldwide, including in India, and has established significant Internet presence over the years by Advertisements pertaining to the trade mark/trade name EMIRATES in print and electronic media which also includes internet. It is stated that due to above its name EMIRATES enjoys tremendous reputation and goodwill in the minds of the consumers as well as the members of the trade all over the world, including India. The complainants by relying on **Annexure 4** canvass that they have been sponsoring many events, seminars, exhibitions, conferences etc., where the trade mark/trade name EMIRATES is displayed conspicuously through banners, hoardings, or online displays.

- D. The complainants claim to have been conferred with numerous prestigious awards for excellence worldwide. Reliance is placed on **Annexure 5**.
- E. The Complainant by relying on **Annexure 6** claim to be the registered proprietor of the name EMIRATES and various other Emirates-formative marks in numerous jurisdictions of the world including countries like Algeria, Armenia, Argentina, Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Benelux, Canada, Cyprus, OHIM-CTM (European Union), Egypt, Ethiopia, France, Germany, Georgia, Greece, Hank Kong, **India**, Indonesia, Iran, Italy, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Kuwait, Lebanon, Libya, Malaysia, Mauritius, Mexico, Moldova, Morocco, Morocco-Tangiers Zone, New Zealand, Nigeria, Norway, African Intellectual Property Organization (OAPI), Oman, Pakistan, Philippines, People's Republic of China (PRC), Qatar, Russia, Singapore, Saudi Arabia, South Africa, South Korea, Spain, Sri Lanka, Switzerland, Syria, Tajikistan, Taiwan, Thailand, Tunisia, Turkey, Ukraine, UAE, UK, USA, Uzbekistan, Venezuela,

Vietnam, Yemen, Zimbabwe and many other nations in various international classes. Therefore, the Complainant claims that it has a well-established proprietary claim over the trade mark/trade name EMIRATES and people all over the world associate the same exclusively with the Complainant. Reliance is placed on **Annexure 6**.

- F. The complainants claims that due to the popularity of the trade/service name/mark EMIRATES, it has acquired the status of a well-known trade mark under **Section 2(1) (zg) of the Trade Marks Act, 1999** read with the said **Section 11 (6) of the Trade Marks Act, 1999**. Reliance is placed on **Article 6 b is of the Paris Convention and Annexure 7**. They claim that a mere mention of the said marks establishes an identity and connection with the Complainant and none else. The Complainant submits that they own the Trade Mark & Service Mark EMIRATES and any use of the said marks by a third party either as a mark, name and domain name, or in any other form whatsoever constitutes infringement and passing

off and is a violation of the Complainant's rights in the said marks. They allege that the use of the disputed domain name by the Respondent amounts to misrepresentation and the Respondent by doing so is indulging in unfair trade practice.

G. It is stated by the complainants that they established their presence on Internet by registration of "**emirates.com**" on July 25, 1996 which is a natural extension of its corporate name.

H. The Complainant also claim to have registered/acquired a number of domain names containing the word "EMIRATES" such as www.themiratesgroup.com, www.emiratesholidays.biz, www.emiratesgroupcareers.com, www.emiratesholidays.info, www.emiratesholidays.co.uk, www.emiratesholidays.us, www.emiratesholidays.asia, www.emiratesholidays.com, www.emirates-holidays.info, www.emirates-holidays.org, www.emirates-holidays.in, www.emirates-holidays.co.uk, www.emirates-holidays.us, www.emirates-holidays.co.in, www.emiratesaviationcollege.com, www.emirates-airline.com,

www.emirates-airline.ru, www.emirate-airlineservices.com,
www.emiratesairlines.ae, www.emiratesairline.at,
www.emiratesairline.com, www.emiratesliveevents.com,
www.emiratesairline.co; www.emiratesairlinefoundation.org,
etc.

In addition to the above, the Complainant have relied upon the decisions passed in their favour which are given as:

- “ i. Emirates Corporation v. 2220 Internet Coordinator**
<emiratescareers.com> (WIPO Case No. D2005-1311).
- ii. Emirates v. Michael Toth <emirates.co.uk> (Nominet**
Dispute Resolution Service Case No. D00008634).
- iii. Emirates v. Melanie A. Orchard <emirateairline-**
groups.com> (WIPO Case No. D2008-1837).
- iv. Emirates Group Headquarters v. Domain Discreet /**
Ahmed Bin Subaih <emiratesholidays.com> (WIPO Case
No. D2010-0811).
- v. Emirates vs. Chella Groundappan <www.emirates.in>**
(INDRP-372)



- vi. **Emirates Group Headquarters v. Erica Vennum**
<emirate-airlineservices.com> (WIPO Case No. D2008-0883).
- vii. **Emirates v. WhoisGuard Protected** <emiratestaff.com>
(WIPO Case No. D2006-0433).
- viii. **Emirates v. Domain Admin** <flyemirates.com> (WIPO Case No. D2007-1674)."

I. It is claimed that the Complainant came to know that Respondent has obtained a domain name registration for **www.emiratesairlines.in.** through the Registrar **Directi Internet Solutions (P) Limited d/b/a Publicdomainregistry.com.** and *interalia* allege that the domain name in question is identical to a trade mark or service mark or trade name in which the Complainant has rights.

J. They allege that the disputed domain name, <emiratesairlines.in>, consists of the Complainant's registered trade mark for or including EMIRATES in combination with the descriptive term "airlines", thus the use of the Complainant's

trade mark EMIRATES does not distinguish the disputed domain name from Complainant's trade mark. Further, the Respondents with *malafide* intention incorporated the Complainant's mark/name EMIRATES in its entirety. They alleged that by use of a generic term "airlines" does not dispel the confusing similarity between the mark and the domain name. The complainants rely upon various WIPO Arbitration & Mediation Center cases like [**Red Bull GmbH v. Chai Larbthanasub** (WIPO Case No. D2003-0709), **Britannia Building Society v. Britannia Fraud Prevention** (WIPO Case No. D2001-0505), **Red Bull GmbH v. PREGIO Co., Ltd.** (WIPO Case No. D2006-0909), **Emirates Group Headquarters v. Erica Vennum** (WIPO Case No. D2008-0883) wherein "*the term "airlineservices" was held as a descriptive term"*] besides **F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.** (WIPO Case No. D2006-0451), **Telstra Corporation Limited v. Nuclear Marshmallows** (WIPO Case No. D2000-0003), **Magnum Piering Inc. v. The Mudjackers and Garwood S. Wilson** (WIPO Case No.

D2000-1525) and **Rollerblade Inc. v. Chris McCrady** (WIPO Case No. D2000-0429).

- K. The Complainants further allege that the Respondent has no rights or legitimate interests in respect of the domain name. They allege that the Respondent is in the business of holding domain names and selling them whereas the Complainant is an established business entity doing business under the mark/name EMIRATES. It is further claimed that the Respondent has no legitimate interests in the disputed domain name and is merely hoarding the same without doing any business from it. Besides there has never been any business relationship between the Complainant and the Respondent. It is also alleged that the Respondent has no proprietary or contractual rights in any registered or common law trade mark corresponding in whole or in part to the disputed domain name. Reliance is placed on decisions in **Charles Jourdan Holding AG v. AAIM** (WIPO Case No. D2000-0403), **The Caravan Club v. Mrgsale** (National

Arbitration Forum/FA95314) and **Microsoft Corporation v. Chun Man Kam** (INDRP 119.

- L. It is alleged that since the disputed domain name incorporates the whole of the Complainant's trade mark EMIRATES hence the domain name on its face suggests that it is associated with a website affiliated with, or otherwise connected to, the Complainant and thus it cannot be considered *bona fide* or performed in good faith and it constitutes infringement and passing off.
- M. Besides Respondent's website at "www.emiratesairlines.in" displays various sponsored links/sponsored ads, some to competitors of the Complainant hence it is not *bona fide* use of the disputed domain name.
- N. The Complainant allege bad faith as the Respondent registered the disputed domain name years after the registration of the Complainant's domain name <emirates.com>. Besides he is not running any website on

the disputed domain name. Reliance is placed on **Annexure 8.**


- O. The Complainant further apprehend that the Respondent by activating a website, may be able to represent itself as the Complainant or its authorized representative and cause damage to some innocent party by entering into transactions or contracts with them under the garb of being associated with the Complainant. Besides he can transfer or sell the domain name to some competing interest of the Complainant who may damage the goodwill and reputation of the Complainant by inserting prejudicial material in relation to the Complainant. It is further stressed that the Respondent is not using the website associated with the disputed domain name <emiratesairlines.in> since its creation for any apparent purpose. Reliance is placed on the decision of Bayer Aktiengesellschaft v. Henrik Monssen (WIPO Case No. 2003-0275), HSBC Holdings plc. v. Hooman Esmail Zedeh (INDRP- 32) and Bloomberg Finance L.P. v. Kanhan Vijay V (INDRP 110).

P. It is pleaded that the Respondent has registered the disputed domain name for the purpose of disrupting the Complainant's business which can be evinced from the fact that the disputed domain name only offers pay-per-click links to various websites and in so doing, the Respondent has been attempting to attract Internet users, for commercial purposes, to the Respondent's website by creating a likelihood of confusion with the Complainant's trade/service mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website besides the sponsored links on the Respondent's website belong to the businesses that offer goods and services that compete with, or rival, those goods and services offered by the Complainant. Reliance is placed on **Annexure 9**.

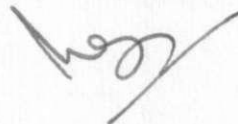
Q. It is further alleged by relying upon **Annexure 10** that the Respondent's website "www.emiratesairlines.in" displays several advertisements, where Internet users can click on an advertisement which takes them to a web page where



goods/services are sold/offered and it carries advertisements/sponsored links for clreartrip.com, makemytrip.com, yatra.com, goibibo.com, skyscanner.co.in, aptechaviationacademy.com, clubmahindra.com, hellotravel.com, etc., including competitors of the Complainant as mention in the preceding paragraphs of this complaint is thus profiting or intending to profit from the adoption of a famous mark in which it has no rights, by generating a misleading impression of some legitimate connection between the disputed domain name and the Complainant. Reliance is placed on the decision of the WIPO Arbitration & Mediation Center in Encyclopedia Britannica Inc. v. Sheldon.com (WIPO Case No. D2000-0753) and Edmunds.com v. Ult.Search Inc. (WIPO Case No. D2001-1319) & Sanofi-Aventis v. Abigail Wallace (WIPO Case No. D2009-0735) & Tata Sons Limited v. TATA Telecom Inc/Tata-telecom.com, Mr. Singh (Case No. D2009-0671) & Edmunds.com, Inc. v. Ult. Search Inc. (WIPO Case No. D2001-1319)



- R. The Respondents on the other hand has stated that he has got this domain name registered in good faith on the premise that he would create an airline related website where people from India and United Arab Emirates could get information about airlines that fly to and from both countries.
- S. He has further averred that there is a big market of travelers that go from India to UAE and from UAE to India so he wanted to have a website that could help out the travelers with the best airlines to choose, where to purchase tickets, information about where to stay once they arrive, testimonials of which airlines are the best to fly, and also to have an open forum where they could speak freely, etc. He has further averred that he planned a website where information could be shared by travelers and he contends that he would reap the benefits from Google AdSense / sponsored advertisements. He averred that he has many business ventures but he could not focus on his website and he further placed reliance on **Attachment No.1.**



- T. The Respondent has averred that *"I am willing to remove the header which had the image of the Emirates jet. I am also willing to add a disclaimer to the website which will notify web users that the website is not affiliated with the complainant's website, and I am willing to provide a link back to the complainant's website for those users who by chance were originally searching for the complainant's website."*
- U. The Respondent gave a small write up about **Domain History** of emiratesairlines.in which according to attachment no. 2 was registered by Vipin Verma with the organization Yatra.com on 01/03/2009 and on August 31, 2009 ownership changed to Bus Wala with the organization Red Media and thereafter there were series of new registrations and change of hands till it was registered by the Respondent. Reliance is placed on **attachments 2,2.1,2.2,2.3,2.4,2.5 & 2.6.**
- V. Respondent avers that the complainants attitude was lackadaisical towards the domain name as during the aforementioned period they could have got the domain name



registered in their name. The Respondent avers *"The reason I point out this registration history is to draw attention to the fact that the complainant could have stepped in to register the domain on several occasions during the lapse of time between each domain holder failing to renew. However, several months went by where the domain was available for anyone to register. The complainant failed to register it during this opportune time. They decided to wait until now when it is registered by someone to try to obtain the domain name."*

W. Respondent further alleges that *"The complainant has made it known to this Tribunal that they have registered many domain names in different variations with the intention to safe keep their mark and not allow others to register them. Yet they fail to register Emiratesairlines.in prior to March 2009 when they had many years to do so."*

X. Respondent also alleges that the complainant had earlier withdrawn their complaint to domain name at <http://www.registry.in/Policies/DisputeCaseDecisions> and he is



still searching for the documentary evidence. He further alleges that the domain name emirates.co.in contains the entire identical mark of the complainant with no extra words before or after the mark yet the complainant made the decision to withdraw their complaint whereas his domain name emiratesairlines.in contains the mark in 50% of the entire length of the domain name and that the word Airlines is not a word that is part of the complainants mark. He further lists names of various domain registrations which are held by other registrants and which are up for sale. The list as given by him is :

- Emiratesairlines.com
- Emiratesairlines.net
- Emiratesairlines.org
- Emiratesairlines.info
- Emiratesairlines.us
- Emiratesairlines.biz

Reliance is also placed on **attachment 4, 4.1 & 4.2.**

Y. The Respondent avers that he never listed emiratesairlines.in for sale at any time or anywhere as he did not have any intention to sell the domain name. If that was his intention he



would have by using domaintools.com or any other domain history searching tool would have listed the domain for sale. He emphatically states that the complainants mark domain name emirates.com is a top level domain in the .com extension where as his emiratesairlines.in is in the .in extension. He alleges that in case complainant is taking the plea of confusingly similar why is there a domain name emiratesairlines.com (**attachment 4.3**) for sale.

Z. The Respondent avers that though the complainants display that they are aggressively trying to protect their mark then they should first file complaint against other domain holders as well.

AA. Respondent avers that as per the free dictionary.com the word Emirate is "The nation or territory ruled by an emir" and since there are many emirates within the UAE the same is a dictionary word which means a nation.

BB. The complainants in their Rejoinder lay a stress that according to Para 3 of INDRP it is the responsibility of the Respondent to find out before registration that the domain name he/she is

going to register and also see whether it violates the intellectual property rights of any proprietor/owner.

CC. Complainants further rejoin to submit that the Respondent, who claims to be aware of the big market of travelers that go from India to UAE and vice-versa, ought to have been aware when he/she registered the disputed domain name that such registration would impede the use of the domain name by the legitimate owner of the trade mark, such practice is found to be in bad faith. Reliance is placed on **Ferrai S.p.A v. Beryhold Bitchier** (WIPO Case No.D2003-0981), **Graco Children's Products Inc. v. Oakwood Services Inc.** (WIPO Case No. D2009-0813), **Nike, Inc. v. B.B. de Boer** (WIPO Case No. D2000-1397) and **Carolina Herrera, Ltd. v. Alberto Rincon Garcia** (WIPO Case No. D2002-0806). Besides the Respondent has not disputed that the domain name in question <emiratesairlines.in> displays various sponsored links/sponsored ads, some to competitors of the Complainant, hence, does not constitute *bona fide* use of the disputed domain name.

DD. The Complainant further submits that the Respondent, is not using the website associated with the disputed domain name <**emiratesairlines.in**> for any apparent purpose and that the evidence/reply furnished by the Respondent does not give a plausible explanation as to why there was no use of the disputed domain name for more than eight months. They rely on **Bayer Aktiengesellschaft v. Henrik Monssen** (WIPO Case No. 2003-0275), **HSBC Holdings plc. v. Hooman Esmail Zedeh** (INDRP- 32) and **Bloomberg Finance L.P. v. Kanhan Vijay V** (INDRP 110) & **Audi AG v. Hans Wolf (AUDI-LAMBORGHINI.com)**, wherein it has been held that the passive holding constitutes a bad faith use. They further rely upon decisions of the WIPO Arbitration & Mediation Center in **Tata Sons Limited v. TATA Telecom Inc/Tata-telecom.com, Mr. Singh** (Case No. D2009-0671) and **America Online Inc. v. Chinese ICQ Network** (WIPO Case No. D 2000-0808), wherein it is held that when a domain name is so obviously connected with the Complainant and its

goods/services, its very use by someone with no connection to the Complainant suggests 'opportunistic bad faith'.

EE. The complainants rebut the contentions raised by the Respondent and allege that he (the Respondent) had dishonest and *malafide* intension in adopting the word EMIRATES in combination with the descriptive term "airlines" as a domain name. Complainants lay a stress on a maxim "*an imitation remains an imitation whether it is done by one or by many. It requires no legitimacy. A wrong is not righted by the following it musters*".

FF. The Complainants filed Supplementary Rejoinder to the Reply filed by the Respondent to the Complaint in disputed domain name: www.emiratesairlines.in. alleging that Respondent had registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-

of-pocket costs directly related to the domain name as he offered the anonymous agent of the Complainant to buy the disputed domain name. It is averred that the first offer was made via an email dated 7th March, 2013 for USD 6000 and the second offer was made via an email dated 24th April, 2013 for USD 4000 and the Respondent made the last offer to the anonymous agent of the Complainant to purchase the disputed domain name <emiratesairlines.in> for USD 2500 via an email dated 3rd May, 2013. Reliance was placed on **Annexure SR1.**

GG. The Respondent's also sent a supplementary S.O.D. to the supplementary Rejoinder of the Complainant *interalia* attaching 35 emails and alleging that the complainants through their agent made the Respondent enter into correspondence *qua* sale of the disputed domain name and states :

"If this anonymous agent would not have approached Respondent with an offer to buy emiratesairlines.in, Respondent would never have given it any thought of selling it. Respondent's interest was to keep the domain name.



Respondent let this anonymous agent know that it would take a decent size offer for Respondent to want to sell it."

ORDER

6. This Tribunal has perused the Claim Statement, SOD, Rejoinder, Supplementary Rejoinder, Supplementary SOD and the documents filed by both the parties and have given anxious consideration to the contentions of both the parties and thus hasten to give its findings.
7. Allegation - Non usage of website on domain name by Respondent denotes bad faith. At the outset this Tribunal sees a lot of approbation reprobation and shifting stand taken by the Respondents ever since start of the proceeding. The Respondent's stand that he could not build out the website into what he had imagined. *"However, I have many business ventures because my focus was broad, I had not yet built out the website into what I had imagined"* This plea of the Respondent

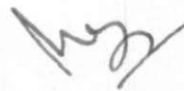
stand annulled by his email dated 14/06/2013 wherein he took the stand that he does not have the money to pay for postage to a courier company so far as dispatch of his SOD is concerned. A person having "many business ventures" can surely pay courier charges. Hence the contention of Respondent regarding non building of the website due to his involvement in many business merits to be rejected.

8. The Respondent have in their SOD para no.3 stated that he registered emiratesairlines.in only contains the mark in 50% of the entire length of the domain name. The word Airlines is not a word that is part of the complainants mark. The undisputed documentary evidence clearly shows that the complainant amongst other activities is an airline and the SOD of the Respondent also confirms the same as he in para (1) of his SOD has averred *"I am willing to remove the header which had the image of the Emirates jet. I am also willing to add a disclaimer to the website which will notify web users that the website is not affiliated with the complainant's website, and I am willing to provide a link back to the complainant's website for those users*



who by chance were originally searching for the complainant's website."

9. Respondents stand that the complainants have been non serious and lackadaisical *qua* protection of their trademark EMIRATES is *per se* perverse as it only indirectly points that the Respondents were fully aware of Complainants trademark as can be seen by perusal of emails filed along with the Supplementary SOD wherein his intention has been made amply clear. Moreover, the Respondent in the email attached with his Supplementary affidavits starting from email (1) to (35) clearly display his intention which are aimed only to sell the domain name in question for profit and there is a clear cut haggling *qua* the price at which it should be transferred. The Respondent has tried to show in his supplementary SOD *"If this anonymous agent would not have approached Respondent with an offer to buy emiratesairlines.in, Respondent would never have given it any thought of selling it."*



10. The Respondents entire statement given above is an after thought. If he had genuine interest in the domain name he would not have haggled with a third party *qua* sale price of the disputed domain name. His answer to the offer should have been in the negative. In his email no.2 he has categorically stated that *"I make money on daily basis with this domain name. It would take a decent size offer for me to want to sell it"*

11. The above mentioned facts show the approbation & reprobation of the Respondent which is in stark contrast to the SOD dated June 5, 2013 4th para where in he has categorically stated *"I want to bring to the attention of this Tribunal that I, Michael Cain have never listed emiratesairlines.in for sale at any time or anywhere. It has never been my intention to sell the domain name as the complainant suggests in their complaint documents. They have not provided proof that I have an intention to sell it. They only assume that it is my intention. However, a simple search online using domaintools.com or any other domain history*

searching tool will prove that I have never listed the domain for sale during my registration period. It just simply is not my intention to sell it."

12. This Tribunal also finds that the disputed domain name is confusingly similar to the complainants Trade/ Service Mark EMIRATES. Moreover, admittedly the picture of complainants jet plane is also put which buttress the above finding.
13. Hence, it is clear that not only was the registration of the instant domain name by the Respondent done in bad faith but also the domain name is confusingly similar to complainants registered trade/ service Mark and thus against the INDRP. This complaint succeeds.
14. This Tribunal holds that the respondents did not have any claim on the domain name <emiratesairlines.in>, hence this Tribunal directs the Registry to transfer the domain name <emiratesairlines.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. There is no order as to the cost.

15. 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.

Signed this 18th day of July 2013.

NEW DELHI
18/07/2013



V. SHRIVASTAV
ARBITRATOR