



தமிழ்நாடு தமில்நாடு TAMILNADU 10988 / 9.10.2017

பிசுபுக்கி
பெருக்கி

BE 485904
R. சேகராத்திர
S.V. Lic. No. 2/95
உத்தரமேரூர்

BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD
DATED: 13th October 2017

EH EUROPE GmbH
Switzerland

...

Complainant

Versus

Energys Energy Solutions Private Limited
Hyderabad

...

Respondent

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Respondent

1. The Parties

- 1.1 Complainant, EH EUROPE GmbH, is an entity organized and existing under the laws of Switzerland and having its office at BAARERSTRASSE 18, 6300 ZUG-SWITZERLAND 904. The Complainant is represented by its attorney Kochhar & Co at 17th Floor, Nirmal Building, Nariman Point, Mumbai-400 021, Maharashtra, India.
- 1.2 Respondent is Energys Energy Solutions Private Limited, a company incorporated under the Companies Act, 1956 having its office at 5-5-35-72-1 PLOT NO 20 Industrial Estate Prashanti Nagar, Kukatpally, Hyderabad - 500 072.

The Domain Name and Registrar

- 1.3 The disputed domain name <www.energysindia.in> created on 17.02.2015 is registered with the registrar, S.G.S. Technologie Pvt Ltd dba Netandhost.com (R28-AFIN).

2. Procedural History

- 2.1 On 15th September 2017, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 18th September 2017, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially. I sent signed declaration of independency and impartiality to NIXI.
- 2.2 On 22nd September 2017, NIXI by email informed the parties about the appointment of me as the arbitrator in the above dispute. In the same email, NIXI has also provided the contact details of the arbitrator.
- 2.3 On 25th September 2017, I received hard copy of the Complaint from NIXI. On the same day, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant.
- 2.4 I have not received any response from the Respondent till date.
- 2.5 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.
- 2.6 I have returned to NIXI by courier all pleadings / documents that I received from it. I have not received any pleadings / documents by courier/post from the Parties.

Sridharan

3. Factual Background

A Complainant

- 3.1 The Complainant is a subsidiary of Enersys Group, the world's largest manufacturer and distributor of industrial batteries, battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions. Enersys Group is headquartered in Reading, Pennsylvania, USA and has reinforced its presence with regional offices in United States of America, South America, Europe, Asia, Australia, Middle East and Africa.
- 3.2 In and around 2000 the Enersys Group incorporated a company for the manufacture of industrial batteries and chargers for material handling equipment, of wide variety of battery accessories and of electronic power equipment in Switzerland. The Complainant and the Enersys Group since its inception have been openly, continuously and extensively using the mark "ENERSYS" as part of trade name, corporate name, business name, trading style, trademarks worldwide.
- 3.3 The Complainant has registered its "ENERSYS" Trade Marks in over 120 countries – including India, Spain, Australia, United States of America, United Kingdom, Germany, Mexico, France, Middle East, to name a few.
- 3.4 In India, the Complainant has the following registrations.

Trade Mark No	Class	Date of Application
1932032	37	8.3.2010
1932033	09	8.3.2010
1932034	37	8.3.2010

- 3.5 In US, the Complainant has registered its mark ENERSYS under Registration No.74698625 in class 09 in 1995.
- 3.6 In India, the Complainant entered into a Joint Venture with Energy Leader Batteries India Pvt Ltd to manufacture and sell products in India. Subsequently, in March 2012, EnerSys acquired the remaining 50.5 per cent stake in Energy Leader Batteries India Pvt Ltd from the Indian partners and became the sole owner of the Indian Company and changed the name of the Indian Company to "Enersys Batteries India Private Limited". The products and services are offered in India under the trademark "ENERSYS" and the products sold under the ENERSYS trademarks have garnered immense goodwill and reputation amongst the public in India.
- 3.7 The Complainant is also owner of several domain names and websites which are accessible worldwide and are available for use by users globally including those in India. The said websites contain extensive information about the Complainant and its products marketed and sold under the "ENERSYS" Trade Marks worldwide. Following are a few of the domain names/websites owned by the Complainant.

DOMAIN NAME	REGISTRATION DATE
www.enersys.com	September 07, 1997
www.enersys-hawker.com	November 07, 2002
www.enersys-energia.com	May 03, 2007
www.enersys-fmp.com	June 13, 2005
www.enersys.us	April 24, 2002
www.enersys.ch	December 06, 1999
www.enersys.uk	October 27, 2014
www.enersys.ca	October 06, 2000
www.enersys.fr	September 27, 2009
www.enersysinc.ca	January 04, 2001

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- 3.8 The Complainant is a global leader in stored energy solutions for industrial applications. The Complainant manufactures and distributes reserve power and motive power batteries, battery chargers, power equipment, battery accessories and outdoor equipment enclosure solutions to customers worldwide. The Complainant and its predecessors have been manufacturers of industrial batteries for over 100 years. The Complainant's diverse battery manufacturing experience makes it a global leader in advanced stored energy solutions for industrial applications. The Complainant operates 32 manufacturing and assembly facilities world-wide, the manufacturing plants are strategically located in France, Germany, Poland, and assembly facilities in Italy, Spain, Czech Republic deliver maximum efficiency and rapid responsiveness built on a culture of continuous improvement and added value for their business partners.
- 3.9 The Complainant's products bearing the trademark "ENERSYS" are well known and are sold in more than 120 countries, including India. ENERSYS Group has realized total global retail sales in excess of USD 2.4 billion. The Complainant has won many accolades and certificates. In 2010, the Complainant was awarded "SILVER Recognition of Excellence Award" by the US Defense Logistics Agency. In 2016, the Complainant was awarded the "2016 Most Valuable Supplier". In 2017, The Complainant was again awarded the "2017 Most Valuable Supplier" for the second time in a row.
- 3.10 The Complainant enjoys leading market share positions in North America, South America and Europe, and fast growing positions in Asia, Russia, Africa and Middle East. The Complainant's goods and services find application in diverse markets such as in material handling, railway and mining markets, telecommunications, uninterruptible power supply (UPS), electronics, aerospace and defence, reserve power, switchgear/utility and sports and leisure. The Complainant ensures irrefutable quality through its ISO 9001: 2008 registered Quality Management Systems in over 16 countries. The Complainant is closely associated with renowned brands like Renault, Pepsico, Michelin, Peugeot, Ericsson, Toyota, Nissan, GE, Emerson, Motorola, Orange, etc.
- 3.11 The Complainant's products under the trademark "ENERSYS" have been widely promoted inter alia through print and audio-visual media including advertisements, articles, write-ups appearing in magazines, journals, trade events, newspaper articles, social media websites such as Facebook, Twitter, YouTube, etc. all of which enjoy a wide viewership, circulation and readership all over the world, including India. Some of the international magazines, Internet, wherein the Complainant's products under the trademark "ENERSYS" have been advertised or have featured include OSPmag, Yumpu, Mission Critical, Eurobat, Battery power online, Bizjournals, Energy Storage, which are easily accessible to viewers, users and customers of the Complainant in India. The Complainant's products are also advertised at events and exhibitions such as IMHX which is United Kingdom's premier meeting place for intralogistics companies, CeMAT ITFM, Prologistics, Cleanexpo, to name a few.
- 3.12 As a result of the high stringent and non-compromising standards of quality offered by the Complainant, its goods and services have become highly popular and have garnered immense goodwill and reputation amongst consumers across the globe including India. By virtue of the widespread use, advertisement, publicity, promotion and active marketing by the Complainant, the trademark "ENERSYS" and the combination trademarks have come to be associated exclusively with the Complainant alone and no one else.
- 3.13 The Complainant recently became aware of the disputed domain name viz. <www.enersysindia.in> registered in the name of the Respondent. Upon search of the WHOIS domain name database, the Complainant noticed that the disputed domain name was registered in the name of the Respondent on February 17, 2015 with S.G.S. Technologie Pvt Ltd dba Netandhost.com (R28AFIN).
- 3.14 The Complainant has filed Annexure A to F in support of its Complaint.



B Respondent

3.15 The Respondent has not filed any response till date of this award.

4. Parties Contentions

A Complainant

- 4.1 The disputed domain name <www.enersysindia.in> is identical and/or confusingly similar to the Complainant's prior registered, used and well-known trademark "ENERSYS" as it incorporates and reproduces the Complainant's trademark "ENERSYS" in its entirety and differs only in respect of addition of the country name 'India' and the country code Top Level Domain (ccTLD) extension ".in" which is insignificant.
- 4.2 A mere glance at the disputed domain name gives rise to confusion as to the origin of the domain name. The conduct of the Respondent would result in confusion and deception amongst the users and the public at large. The users are likely to visit the Respondent's domain name assuming it to be sponsored, affiliated, and authorized by the Complainant. Further, owing to the Joint Venture that the Complainant entered into in 2012 with Energy Leader Batteries India Pvt Ltd, the users and public at large may also assume the Complainant and the Respondent to be connected or affiliated with each other which is likely to harm the reputation of the Complainant.
- 4.3 The Respondent has blatantly copied the Complainant's entire trademark without changing even a single letter merely with the addition of the country name 'India'. This constitutes violation of the Complainant's rights in the trademark "ENERSYS" and this shows that the Respondent has registered the same in bad faith. Further, addition of the country name 'India' in the Respondent's domain name would cause confusion in the minds of the users allowing them to assume that the Respondent's domain is an Indian chapter of the Complainant's domain.
- 4.4 "ENERSYS" is distinctive and unique trademark. The mere mention of the said trademark establishes an identity and connection with the Complainant alone and none else. The Complainant submits that the members of trade and public all over the world including India are acquainted with the Complainant's well known trademark "ENERSYS" and hence any use of an identical/confusingly similar mark/domain name by the Respondent will cause confusion amongst the Internet users as to the origin or source of the domain name. The Internet users may believe that the Respondent's impugned website is associated/affiliated/connected to the Complainant or licensed/authorized by the Complainant. The Respondent's impugned domain name creates an impression of being operated by or associated with the Complainant.
- 4.5 The Complainant submits that it has been openly, continuously and extensively using the trademark "ENERSYS" across the world for over 100 years which establishes its prior rights in the trademark "ENERSYS". The disputed domain name completely incorporates the trademark of the Complainant, resulting in confusing similarity between the disputed domain name and the trademark "ENERSYS".
- 4.6 Given the immense goodwill enjoyed by the Complainant's trademark "ENERSYS" its use by any other person in respect of any goods or services or in any form what-so-ever is bound to create confusion and/or deception among the members of trade and public as to origin of the domain name.
- 4.7 The Respondent has no rights or legitimate interest in the Disputed Domain Name. The Complainant has never assigned, licensed or in any way authorized the Respondent to register or use its trademarks in any manner whatsoever.
- 4.8 The Respondent has registered the disputed domain name on February 17, 2015. By this time, the Complainant had already made use of the trademark "ENERSYS" and domain name and the said

trademark had gathered considerable goodwill and reputation amongst consumers across the world. Further, the said trademark is also part of the Complainant's corporate name. The Complainant being the prior user of the registered and well-known trademark "ENERSYS" is the lawful owner of the said trademark and the Respondent does not have any rights in the trademark law or any legitimate interest in the impugned domain name <www.enersysindia.in>.

- 4.9 The Respondent has uploaded a website on the disputed domain name <www.enersysindia.in>. Upon accessing the domain, the user is directed to a webpage where a message, "Welcome to Enersys" features. The Respondent is making an illegitimate and commercial use of the domain name by diverting the Complainant's consumers to its website. It is apparent that the use of a domain name identical to that of the Complainant's domain name and trademark is clearly an attempt to illegally profit from the repute of the Complainant's domain name and trademark.
- 4.10 The Respondent's website is an active website with information about the business carried out by the Respondent which confirms that the Respondent intends to use the domain name with a malafide intention and shows the Respondent's malicious intention in registering the disputed domain name.
- 4.11 Further, the Respondent has not applied for registration of the mark "ENERSYS" or any similar mark in India which clearly shows that the Respondent only intends on riding on the goodwill and repute of the Complainant.
- 4.12 Given the Complainant's established goodwill and reputation and rights in the trademark "ENERSYS", no one else can have legitimate rights or interest in the mark "ENERSYS". The Respondent has no rights to adopt the disputed domain name. The Respondent has registered and acquired the domain name to en-cash on the goodwill and reputation of the Complainant.
- 4.13 The Complainant states that the Respondent was aware of the Complainant's registrations as the same are a matter of the public record and due to the extensive use and wide publicity of Complainant's registered marks across the world including India. The Complainant states that the Respondent has deliberately registered or acquired the domain name <www.enersysindia.in> primarily for the purpose of misleading the users into believing that the Respondent is an affiliate or associated with the Complainant and hence free ride on the goodwill and reputation of the Complainant and as a result deceive the public at large thereby making undeserving gains by capitalizing on the well-established trademark "ENERSYS" exclusive rights of which are held by the Complainant. The Respondent's adoption and registration of the disputed domain name is dishonest and malafide.
- 4.14 The Respondent's webpage features information about the Respondent's company and the overview. The information available on the Respondent's website is likely to cause confusion or deception amongst Internet users as the nature of business of the Respondent is similar to that of the Complainant. The Respondent has registered the disputed domain name primarily for the purpose of making a profit arising out of the goodwill of the registered trademark "ENERSYS". A copy of the display of the Respondent's webpage is attached. Any such use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public who would assume a connection or association between the Complainant and the Respondent's website or other online locations of the Respondents or product/services on the Respondent's website, due to the use by the Respondent of the Complainant's trademark in the disputed domain name which mark has been widely used and advertised in India and all over the world by the Complainant and which are exclusively associated exclusively with the Complainant by the trade and public in India and all over the world.
- 4.15 The Complainant further states that, the webpage contains other links. The website also gives a brief about the products and services offered by the Respondent which are deceptively similar to the services offered by the Complainant which is bound to create confusion in the minds of the users regarding an association of the Respondent with the Complainant.

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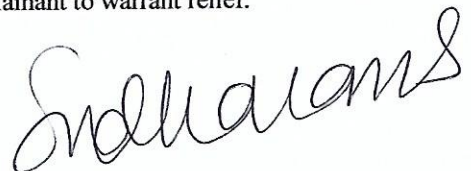
- 4.16 The Complainant fears that the domain name could be used to mislead and divert Internet users or to tarnish the trademarks and goodwill of the Complainant. The Respondent could transfer or sell the domain name to a competitor of the Complainant who would damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant. This could lead to tarnishment of the Complainant's image if the domain name falls into the hands of the competitors of the Complainant. Further, the competitor may also be motivated to provide his goods and services under the trademark of the Complainant thereby increasing the competitor's sales by misleading and confusing consumers as to the true seller of the goods and services.
- 4.17 The Complainant states that the Respondent's registration of the disputed domain name is in violation of the .IN Registry which included the provisions in the .IN dispute Resolution Policy (INDRP) for domain name registration, maintenance and renewal.
- 4.18 The Complainant further states that the Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favor of the Complainant. Breach of this provision of the Policy therefore infringes the legal rights of the Complainant.
- 4.19 The Complainant states that bad faith is apparent from the facts and circumstances of the case and therefore the Respondents is disentitled to maintain and/or renew the impugned domain name.
- 4.20 The Respondent's intention is to commit fraud and mislead innocent and gullible users by unfair and dishonest means.
- 4.21 The Respondent has no justification in adopting the name as its domain name, other than for wrongful and illegal gains.
- 4.22 The Complainant repeats and reiterates that it is the prior adopter, registered proprietor and user of the trademark and domain name "ENERSYS" and the said trademark has garnered voluminous goodwill and reputation across the world so much so that the consumers across the world associate the trademark and the products sold thereunder with the Complainant alone and no one else. Therefore, the Complainant is entitled to protection under the INDRP Policy. Use of the name by the Respondent as a domain name or in any other form constitutes violation of Complainant's rights. The Complainant requests for the transfer of the domain name to the Complainant in accordance with the Policy and for costs of the present proceedings, in the interim the Complainant requests for the de-activation of the domain name and prevent its transfer by the Respondent to any third party.

B Respondent

- 4.23 The Respondent has not filed any response.

5. Discussion and Findings

- 5.1 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:
- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
 - (II) Respondent has no rights or legitimate interests in respect of the domain name; and
 - (III) Respondent's domain name has been registered or is being used in bad faith.
- 5.2 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.



Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.3 The Complainant is the proprietor of the Enersys Trade Marks. The Complainant has been using the Enersys Trade Marks since 1995 in relation to products. The Complainant has registered its Enersys Trade Marks in India and other jurisdictions around the world. The Complainant's first registration in India under Application No. 1932032 for Enersys mark in class 37 dates back to 8.3.2010. The Complainant also owns several domain names involving Enersys marks. The Complainant's domain name www.enersys.com was created on 07.09.1997. The disputed domain name <enersysindia.in> was created on 17.02.2015. Obviously, the Complainant is the prior adopter of Enersys Trade marks. The above facts have established that the Complainant has statutory and common law rights in respect of its Enersys Trade marks.

5.4 The Complainant's Enersys Trade Marks are famous and well known all over the world. It is obvious that the disputed domain name <enersysindia.in> wholly incorporates the prior Enersys Trade Mark of the Complainant. The expressions, "india" and ".in" need to be discarded while comparing the marks with the domain names. Further, the disputed domain name <enersysindia.in> is similar to the domain name www.enersys.com of the Complainant. Here again, Enersys is the distinctive part and the expression "India" , ".in" and ".com" need not be considered while comparing the domain names.

5.5 I, therefore, find that:

- (a) The Complaint has common law and statutory rights in respect of its Enersys Trade Mark.
- (b) The disputed domain name <enersysindia.in> is similar to the Complainant's prior registered Enersys Trade Marks, and the domain name www.enersys.com .

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.6 It is already seen that:

- (a) The Complainant is the prior adopter and user of Enersys Trade Marks. The Complainant's Enersys Trade Marks are well known in many countries across the globe including India.
- (b) The Complainant's Enersys Trade Marks were adopted in 1995. The first Indian registration for the mark Enersys was obtained on 8.3.2010. The Complainant's domain name www.enersys.com was created on 07.09.1997. The disputed domain name <enersysindia.in> was created on 17.02.2015.

5.7 Respondent did not register the disputed domain name until 17.02.2015. Complainant has adopted and started using Enersys Trade Marks well before the Respondent registered the disputed domain name <enersysindia.in>. It is unlikely that the Respondent was unaware of existence of Complainant's trademark rights and domain name rights before registering the disputed domain name <enersysindia.in>.

5.8 I tried to visit the web site of the Respondent under the disputed domain name <enersysindia.in> on 10th October 2017 using Google Chrome Browser. It did not resolve into any web page. The browser returned with the message: "enersysindia.in's server DNS address could not be found." It is evident that the Respondent has stopped using the disputed domain name. The web site under the disputed domain name <enersysindia.in> was available / active when I received the Complaint i.e. on 25.09.2017. But it is not there today.

5.9 In the absence of any response from the Respondent, I agree with the contentions of the Complainant:

- (a) The Respondent has registered the disputed domain name on February 17, 2015. By this time, the Complainant had already made use of the trademark "ENERSYS" and domain name and the

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said trademark had gathered considerable goodwill and reputation amongst consumers across the world. Further, the said trademark is also part of the Complainant's corporate name. The Complainant being the prior user of the registered and well-known trademark "ENERSYS" is the lawful owner of the said trademark and the Respondent does not have any rights in the trademark law or any legitimate interest in the impugned domain name <www.enersysindia.in>.

- (b) The Respondent uploaded a website on the disputed domain name <www.enersysindia.in>. Upon accessing the domain, the user was directed to a webpage where a message, "Welcome to Enersys" features. The Respondent was making an illegitimate and commercial use of the domain name by diverting the Complainant's consumers to its website. The use of a domain name identical to that of the Complainant's domain name and trademark is clearly an attempt to illegally profit from the repute of the Complainant's domain name and trademark.
- (c) Respondent's website was an active website with information about the business carried out by the Respondent. The Respondent intended to use the domain name with a malafide intention and shows the Respondent's malicious intention in registering the disputed domain name.
- (d) Further, the Respondent has not applied for registration of the mark "ENERSYS" or any similar mark in India which clearly shows that the Respondent only intends on riding on the goodwill and repute of the Complainant.
- (e) Given the Complainant's established goodwill and reputation and rights in the trademark "ENERSYS", no one else can have legitimate rights or interest in the mark "ENERSYS". The Respondent has no rights to adopt the disputed domain name. The Respondent has registered and acquired the domain name to en-cash on the goodwill and reputation of the Complainant.

5.10 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name <enersysindia.in>.

Respondent's domain name has been registered or is being used in bad faith.

- 5.11 The Complainant is the proprietor of Enersys Trade Marks. Complainant has been using Enersys Trade Marks continuously since 1995. The first Indian registration for the mark Enersys was obtained on 8.3.2010. The Complainant's domain name www.enersys.com was created on 07.09.1997. The disputed domain name <enersysindia.in> was created on 17.02.2015. The Respondent could not have ignored, rather actually influenced by, the well-known Enersys Trade Marks of the Complainant at the time he acquired the disputed domain name <enersysindia.in>.
- 5.12 The Respondent has not filed any response. He has not come up with any answer or justification for the adoption of the disputed domain name. He stopped using the disputed domain name <enersysindia.in> after receiving notice of this complaint. The web site under the disputed domain name <enersysindia.in> was available / active when I received the Complaint i.e. on 25.09.2017. But when I checked it today, it is not there.
- 5.13 In the absence of any response from the Respondent, I agree with the contentions of the Complainant. Some contentions are related to the period when the web pages were kept alive under the disputed domain name <enersysindia.in> by the Respondent.
- (a) The Respondent was aware of the Complainant's registrations as the same are a matter of the public record and due to the extensive use and wide publicity of Complainant's registered marks across the world including India. The Respondent has deliberately registered or acquired the domain name <www.enersysindia.in> primarily for the purpose of misleading the users into believing that the Respondent is an affiliate or associated with the Complainant and hence free ride on the goodwill and reputation of the Complainant and as a result deceive the public at large thereby making undeserving gains by capitalizing on the well-established trademark

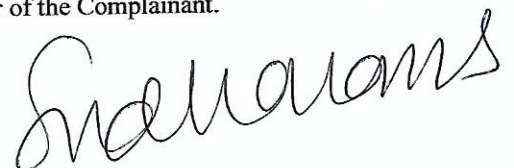
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“**ENERSYS**” exclusive rights of which are held by the Complainant. The Respondent’s adoption and registration of the disputed domain name is dishonest and malafide.

- (b) The Respondent’s webpage features information about the Respondent’s company and the overview. The information available on the Respondent’s website is likely to cause confusion or deception amongst Internet users as the nature of business of the Respondent is similar to that of the Complainant. The Respondent has registered the disputed domain name primarily for the purpose of making a profit arising out of the goodwill of the registered trademark “**ENERSYS**”. Any such use of the disputed domain name by the Respondent, would result in confusion and deception of the trade, consumers and public who would assume a connection or association between the Complainant and the Respondent’s website or other online locations of the Respondents or product/services on the Respondent’s website, due to the use by the Respondent of the Complainant’s trademark in the disputed domain name which mark has been widely used and advertised in India and all over the world by the Complainant and which are exclusively associated exclusively with the Complainant by the trade and public in India and all over the world.
- (c) The webpage contains other links. The website also gives a brief about the products and services offered by the Respondent which are deceptively similar to the services offered by the Complainant which is bound to create confusion in the minds of the users regarding an association of the Respondent with the Complainant.
- (d) The Complainant fears that the domain name could be used to mislead and divert Internet users or to tarnish the trademarks and goodwill of the Complainant. The Respondent could transfer or sell the domain name to a competitor of the Complainant who would damage the goodwill or reputation of the Complainant by inserting material prejudicial to the Complainant. This could lead to tarnishment of the Complainant’s image if the domain name falls into the hands of the competitors of the Complainant. Further, the competitor may also be motivated to provide his goods and services under the trademark of the Complainant thereby increasing the competitor’s sales by misleading and confusing consumers as to the true seller of the goods and services.
- (e) The Respondent was under an obligation to conduct a trademark search, which would have clearly revealed the trademark registrations in favor of the Complainant. Breach of this provision of the Policy therefore infringes the legal rights of the Complainant.

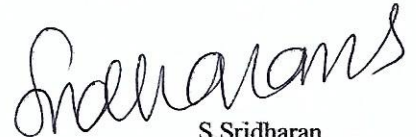
5.14 Thus it is clearly established that Respondent registered the disputed the disputed domain name <enersysindia.in> in bad faith.

5.15 The actions of the Respondent should not be encouraged and should not be allowed to continue. The Respondent has not even chosen to respond to the Compliant. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.



6. **Decision**

- 6.1 For all the foregoing reasons, the Complaint is allowed as below.
- 6.2 It is hereby ordered that the disputed domain name <enersysindia.in> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.1,00,000/- (Rupees One Lakh Only) towards costs of the proceedings. If the Respondent fails to pay, the Complainant may recover this amount by initiating execution proceedings in the Civil Court having jurisdiction over the Respondent in India.
- 6.4 **Effective Date:** This Award will be effective from the date of receipt of Arbitrator Fee by me from NIXI. Time for filing appeal, implementation, taking court action for recovery of costs etc shall start from this Effective Date. Immediately on receipt of the Arbitrator Fee from NIXI, I will issue an email acknowledging receipt of Arbitrator Fee from NIXI. After this mail, NIXI will intimate the date of implementation by separate email to all.


S.Sridharan
Arbitrator