

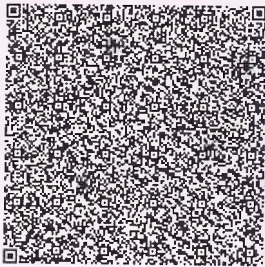


सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

e-Stamp

Certificate No. : IN-CH14225604373473Q
Certificate Issued Date : 20-Sep-2018 04:17 PM
Certificate Issued By : chvandani
Account Reference : IMPACC (GV)/ chimpsp07/ E-SMP MANIMAJRA/ CH-CH
Unique Doc. Reference : SUBIN-CHCHIMPSP0728403905851641Q
Purchased by : NITIN
Description of Document : Article 12 Award
Property Description : H NO 6 SHIVALIK ENCLAVE NAC MM CHANDIGARH
Consideration Price (Rs.) : 0
(Zero)
First Party : ASHWINIE KUMAR BANSAL
Second Party : Not Applicable
Stamp Duty Paid By : ASHWINIE KUMAR BANSAL
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



-----Please write or type below this line-----

ARBITRATION AWARD

(On Stamp Paper)

AB

UP 0002187319

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA
[NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF
SOLE ARBITRATOR:
DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.
Advocate, Punjab & Haryana High Court,
Chandigarh**

In the matter of:

Bennett Coleman & Co Ltd, Times of India Building, Dr. D. N.
Road, Mumbai, Maharashtra-400001

...Complainant

VERSUS

Ellaiah Pusa Pusa, Room No. 203, Sector 6, EC 147, Evershine
City, Vasai East, Vasai, Mumbai, Maharashtra - 401208

...Respondent/Registrant

REGARDING: DISPUTED DOMAIN NAME: ETWEALTH.IN

1. The Parties:

Complainant:

Bennett Coleman & Co Ltd, Times of India Building, Dr. D. N.
Road, Mumbai, Maharashtra-400001

AB

Respondent:

Ellaiah Pusa Pusa, Room No. 203, Sector 6, EC 147, Evershine City, Vasai East, Vasai, Mumbai, Maharashtra - 401208

2. The Domain Name and the Registrar:

The disputed domain name <etwealth.in> is registered with GoDaddy.com, LLC. 14455 North Hayden Road, Suite 219, Scottsdale, AZ 85260, United States (the "Registrar").

3. Procedural History [Arbitration Proceedings]

A Complaint has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the Registrar verification in connection with the disputed domain name <etwealth.in>. It is confirmed that at present the Respondent is listed as the Registrant and provided the administrative details for administrative, billing and technical contact. NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

NIXI has intimated that it had sent the complaint with Annexures by courier to the Respondent as mentioned in the INDRP complaint. Respondent had filed his response vide e-mail dated 31.08.2018 as the time for filing response was extended by me on his request. The Complainant had filed rejoinder to the Response vide e-mail dated

AB

12.09.2018 which is taken on record in the peculiar facts of the case.

4. Factual Background

The Economic Times is referred to by the public at large as ET. The Complainant commenced and is using the abbreviation ET as a trade mark and applied for several trademark registrations for the trademark ET and ET formative marks such as ET NOW, ET PLUS, etc. The Complainant is a part of 'The Times Group' which in the print business in India. This group was started more than 187 years ago with the business of publishing newspapers, journals, magazines and books.

The Respondent has registered the disputed domain name <etwealth.in> on 29.03.2011. Hence, present Complaint has been filed by the Complainant against the Respondent.

5. Parties Contentions

A. Complainant

The Times Group is a long standing leader in the print business, as well as an emerging leader in all other forms of media, including radio, TV, magazines, out of home, and more. The Group's key brands include The Times of India/ The Economic Times, the world's largest broadsheet English daily; The Economic Times, India's largest (and the world's second largest) financial daily; Femina, India's largest women's magazine; Filmfare, India's largest English film magazine; Radio Mirchi, India's largest FM radio network; Times Now and ET Now, India's leading English news and business news channels, Zoom, a leading general entertainment channel and Movies Now, and English movies channel.

AB

The Times Group's flagship business newspaper, namely THE ECONOMIC TIMES is India's most widely circulated financial English daily and the group's premier mega-brand which came into being since 1961. THE ECONOMIC TIMES is rated amongst the world's six best newspapers and attracts a daily circulation level of more than a million copies. THE ECONOMIC TIMES is published from Mumbai, Delhi, Bangalore, Calcutta, Pune, Chennai, Lucknow, Ahmedabad, Hyderabad, Jaipur, Kanpur, Nagpur, Goa, Mysore and Mangalore.

The Trademark THE ECONOMIC TIMES/ET has thus become a household name in India and associated solely with the Complainant.

The Trademark ECONOMIC TIMES/ET is synonymous with the Times Group's various activities related to business, finance and commerce and due to extensive and continuous use has thus acquired immense reputation and goodwill over the last several decades. Consumers around the world, in particular in Asia and in all other countries across the world, exclusively associate the mark ECONOMIC TIMES/ET with the Times Group and their various services under the mark ECONOMIC TIMES. The degree of national as well as international recognition and local as well as global association of the mark ECONOMIC TIMES/ET with the Complainant and the Times Group is evidenced by the sheer volume of its circulation, number of hits and visit of its website <https://economictimes.indiatimes.com/> from readers/customers.

One of the Complainant's publications under the umbrella of ECONOMIC TIMES is the newspaper titled ECONOMIC TIMES WEALTH which was **launched in 2010** (popularly known as ET WEALTH), and was granted RNI (full form) registration in 2011. The Complainant in the year 2011 also launched ET WEALTH, a web portal accessible under the domain www.economictimes.indiatimes.com/thewealth/etwealth. The web portal ET WEALTH gives detailed analysis of domestic as well as international financial markets. It provides news on various issues pertaining to finance management such as personal finance, mutual funds, fixed deposits, insurance, property loan, interest rates, credit cards and

AB ✓

tax saving etc. It also reports everyday stock exchange share quotes, indices "opening" and "closing" etc. The web portal ET WEALTH of the complainant is freely accessible and widely popular amongst the general public.

Apart from a common law proprietary right, the Complainant is the registered, owner, user and proprietor of THE ECONOMIC TIMES/ET/ET formative marks along with their variants in India as well as in several jurisdictions worldwide. An illustrative list of trade mark registrations of the mark THE ECONOMIC TIMES/ET/ET and/or its derivatives favour of the Complainant in India is as under:

Trademark	TM Number	Class	Dated	Status
The Economic Times Wealth (Device)	3140430	36	28/12/2015	Registered
ET Wealth	3140488	36	28/12/2015	Registered
The Economic Times Wealth	3140489	36	28/12/2015	Registered
THE ECONOMIC TIMES	2025595	38	20/09/2010	Registered
The Economic Times Panache	2693419	38	06/03/2014	Registered
ET TV	1273865	38	19/03/2004	Registered
ET NOW	1643599	38	21/01/2008	Registered
ET BUSINESS NOW	17626686	38	11/12/2008	Registered
ETINSURE	3376829	38	29/09/2016	Registered
The Economic Times (Device)	552520	09	11/06/1991	Registered
ET	1174743	09	13/02/2003	Registered
ET	1216948	09	23/07/2003	Registered
ET PLUS	996200	09	13/03/2001	Registered
ET PLUS TV	996196	09	13/03/2001	Registered
ET NOW (DEVICE)	1716906	09	31/07/2008	Registered
ET NOW	1643602	09	21/01/2008	Registered
ET (DEVICE)	1216949	16	23/07/2003	Registered
ET	1174744	16	13/02/2003	Registered
ET PLUS TV	996197	16	13/03/2001	Registered
ET NOW	1643601	16	21/01/2008	Registered
ET NOW (DEVICE)	1716907	16	31/07/2008	Registered
ET NOW (DEVICE)	2053374	09	15/11/2010	Registered

ABL

ET THE ECONOMIST	609440	16	13/10/1993	Registered
ET STOCKMATCH	684453	16	20/10/1995	Registered

The complainant has been extensively promoting and advertising the trademark ET WEALTH through its website/web portal www.economictimes.indiatimes.com/thewealth/etwealth. People from all over the world including India can access the website. Therefore, it can be stated that the trademark ET WEALTH has earned extensive goodwill and reputation among the members of the public and is one of the well-known brand under the umbrella of THE ECONOMIC TIMES/ET.

The complainant being the proprietor of the trademark ECONOMIC TIMES/ET/ET WEALTH has thus the exclusive right to use the same under the Trademarks Act 1999, and also common law. Therefore, any unauthorized imitation/use of the said trademark of our client ET WEALTH would constitute passing off as such would inevitably lead to confusion or deception qua source of such website/portal/website/domain name.

The Google search for "ET" or "THE ECONOMIC TIMES" reveals links to the Complainant and the Times Group. It is also noteworthy that a Google search for "ET Wealth" predominantly reveals links to the Complainant and the Times Group.

The Complainant, to its credit, also has domain name registrations for various domain names that include the ET trade mark. The following is an illustrative list of a few such domain name registrations as per Whois:

Domain Name	Dates of Registration
www.economictimes.com	12.04.1996
www.et-ilc.com	2016-09-16
www.etcfo.com	2013-03-02
www.et-gbs.com	2014-01-22
www.ettech.com	2006-07-18
www.etmasterclass.com	2017-04-06
www.etpanache.com	2014-03-11
www.etauto.com	2000-01-26
www.etcio.com	2013-03-02

ABL

The Complainant, to its credit also has registrations of its newspapers with the Registrar of Newspapers with regard to the subject mark "ET WEALTH" which is published and circulated in the states of Maharashtra, UT of Chandigarh, Delhi etc. The details of the registrations with Registrar of Newspapers for India (RNI) are given below:

Verified Title	State	City	Title Code	Number
The Economic Times Wealth	Andhra Pradesh Karnataka Gujarat Tamil Nadu Delhi Maharashtra West Bengal	Hyderabad Bangalore Ahmedabad Chennai Delhi Mumbai Kolkata	TELENG/2014/57441 KARENG/2014/55882 GUJENG/2014/55568 TNENG/2014/55782 DELENG/2011/37994 MAHENG/2014/57046 WBENG/2014/55567	7
The Economic Times	Chandigarh Maharashtra Tamil Nadu Maharashtra Karnataka West Bengal Odisha Maharashtra Madhya Pradesh Gujarat Maharashtra Jharkhand Kerala Andhra Pradesh Delhi Uttar Pradesh Gujarat Delhi Rajasthan Delhi Bihar	Chandigarh Pune Chennai Mumbai Mangalore Kolkata Bhubaneshwar Mumbai Indore Ahmedabad Nagpur Ranchi Ernakulum Hyderabad Delhi Lucknow Ahmedabad Delhi Jaipur Mumbai Patna	CHAENG/2008/24588 MAHENG/2003/12184 55339/1994 MAHBIL/2007/24125 45467/1985 29973/1976 ODIENG/2014/55566 MAHGUJ/200823178 MPENG/2014/56169 48620/1990 MAHENG/2010/35165 JHAENG/2014/56256 KERENG/2014/55384 62135/1995 DELBIL/2008/23521 UPENG/2006/20073 GUJBIL/2007/19282 26749/1974 RAJENG/2012/45320 6252/1961 BIHENG/2014/56869	21
The Economic Times on Saturday	Maharashtra Gujarat Chandigarh Delhi Maharashtra Odisha Karnataka Andhra Pradesh Madhya Pradesh Maharashtra Tamil Nadu Jharkhand Kerala Maharashtra West Bengal	Mumbai Ahmedabad Chandigarh Delhi Mumbai Bhubaneshwar Bangalore Hyderabad Indore Nagpur Chennai Ranchi Ernakulum Pune Kolkata	MAHENG/2007/24438 GUJENG/2007/18677 CHAENG/2008/26678 DELENG/2006/16423 MAHBIL/2007/24066 ODIENG/2014/56862 KARENG/2008/24369 APENG/2006/28671 MPENG/2014/56152 MAHENG/2010/35166 TNENG/2006/30096 JHAENG/2014/55976 KERENG/2014/60113 MAHENG/2014/61075 WBENG/2011/38238	20

A B

	Delhi Uttar Pradesh Gujarat Rajasthan Bihar	Delhi Lucknow Ahmedabad Jaipur Patna	DELBIL/2008/23523 UPENG/2006/19446 GUJBIL/2007/27767 RAJENG/2013/49308 BIHENG/2014/56635	
The Economic Times on Sunday	Gujarat Chandigarh Karnataka Maharashtra Delhi Maharashtra Tamil Nadu West Bengal Uttar Pradesh	Ahmedabad Chandigarh Bangalore Mumbai Delhi Nagpur Chennai Kolkata Lucknow	GUJENG/2007/27738 CHAENG/2008/26707 58114/1994 57120/1994 57348/1994 MAHENG/2010/35315 TNENG/2006/28559 WBENG/2010/39675 UPENG/2006/19410	9
The Economic Times Magazine	West Bengal Delhi Andhra Pradesh Odisha Karnataka Madhya Pradesh Gujarat Jharkhand Tamil Nadu Maharashtra Maharashtra Maharashtra Uttar Pradesh Rajasthan Bihar Chandigarh	Kolkata Delhi Hyderabad Bhubneshwar Bangalore Indore Ahmedabad Ranchi Chennai Nagpur Mumbai Pune Lucknow Jaipur Patna Chandigarh	WBENG/2014/54538 DELENG/2012/48648 TELENG/2014/62258 ODIENG/2014/55565 KARENG/2014/55880 MPENG/2014/56154 GUJENG/2014/54814 JHAENG/2014/55378 TNENG/2014/55781 MAHENG/2014/55860 MAHENG/2014/56842 MAHENG/2014/56973 UPENG/2014/56220 RAJENG/2013/54144 BIHENG/2014/56898 CHAENG/2014/57060	16
The Economic Times Mansion	Delhi	Delhi	DELENG/2014/62378	1
The Economic Times Annual	Maharashtra	Mumbai	31913/1972	1
ET Realty	Karnataka	Bangalore	KARENG/2009/30076	1
ET Travel	Delhi	Delhi	DELENG/2006/17688	1
ET Investor Guide	West Bengal	Kolkata	WBENG/2010/34378	1

It is thus apparent that the Economic Times/ET trademarks and their formative marks have earned wide recognition, immense reputation and enormous goodwill among the discerning public at large within and outside India due to continuous usage, quality of their contents and sustained marketing and promotion to an extent that ET/Economic Times are immediately associated with the complainant.

The present case pertains to the unauthorized use of the proprietary right of the Complainant in its well-known trademark ECONOMIC TIMES (ET)/ET WEALTH which has been consistently used as a component of various trademarks/names/domain name by the Complainant and the Times Group for various goods and services as described hereinabove. On account of such extensive and varied use, the mark ECONOMIC TIMES (ET)/ET WEALTH has acquired secondary meaning and distinctiveness as a trade mark distinguishing and signifying its origin and source of varieties of businesses, goods and services including publication, broadcasting, television, internet, educational, media, entertainment, financial services, advertising and marketing, event management, retail business etc. associated with the Complainant alone. The mark ECONOMIC TIMES (ET)/ET WEALTH has further come about to acquire formidable reputation and goodwill in the minds of the public at large as well as members of the trade and media. The said trade mark thus constitute a valuable intellectual property owned by the Complainant, which is entitled to protection in law, against misuse and misappropriation.

That by virtue of the regular, continuous and extensive use and registrations of the mark ET WEALTH and domain names in India, coupled with the efforts taken by the Complainant in popularizing its brand/mark and services, and by reason of superior quality and efficacy of the goods/services provided by the Complainant, the public at large associated the mark TIMES/ECONOMIC TIMES/ET/ET WEALTH with the Complainant alone. Further, by virtue of the aforesaid registrations/applications for registrations, continuous usage and the provisions of the Trade Marks Act, 1990, the Complainant has the exclusive right to use the aforesaid trademarks inter-alia in respect of the goods and/or services for which the said trademarks are registered. Additionally, by virtue of the registrations and the provisions of Section 31 of The Trade Marks Act, 1999, the above mentioned registration(s) are prima facie evidence of their validity. Further, owing to the prior, continuous and uninterrupted use of the mark TIMES/ECONOMIC TIMES/ET WEALTH for many decades the Complainant is vested with Common Law rights in the mark as well.

AB ✓

The Complainant also enjoys Common Law Rights in the mark ET WEALTH. The Complainant's mark ET WEALTH is a well-known mark and enjoys tremendous trans-border reputation and goodwill in India and is known to a substantial segment of society in India. Therefore, any unauthorized use of the name/mark ET WEALTH by a third party as a mark, name, 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 mark.

The Complainant has zealously guarded their Intellectual Property Rights in the mark ET WEALTH and have obtained protection from Courts, Tribunals and other authorities around the world, including in India. The Complainant to its utter surprise and shock came to know that the Respondent herein has obtained a domain name registration for <etwealth.in> (the disputed domain name). The Complainant had served a legal notice upon finding out that the Respondent herein has obtained a domain name registration for www.etwealth.in, on the Respondent herein, but received no response to the same. Further, it is pertinent to note that the website appears to be dormant, which despite appearing as a result on the Google search page, opens to a blank page with hardly any content on it.

The name of the disputed domain name i.e. <etwealth.in> itself suggests that it has been registered with the mala fide intention and without any legitimate interest. There is no justification for the respondent to adopt the mark ET in the domain which shows that the acts of the Respondent are per se dishonest and calculated to create confusion and deception in the market and trade on the goodwill and reputation of the Complainant. The same has been registered by the Respondent with ulterior motives and being fully aware of the rights of the Complainant in its trade mark ET WEALTH and further, with intent to capitalize on the same. Not only has the Respondent adopted the Complainant's trade mark ET WEALTH, but also its domain name consists of "in.", which is essentially used only for Indian domains targeting Indian which shows that there exists a malafide intent on the part of the Respondent herein due to which there is actual and through the impugned website and trading name

falsely representing to be associated and being part of the Complainant, which is harming the Complainant's hard earned goodwill and reputation irretrievably.

The complainant as well as the disputed domain name have a commonality of targeted customers as well as a common scope of services i.e. news dissemination with regard to financial matters and therefore, the disputed domain name is riding upon the goodwill of the Complainant thus causing grave damage and severely affecting the trust, reputation and goodwill which the complainant that has painstakingly built over a century.

The mala fide intent of the Respondent is writ large inasmuch as the said Respondent has no affiliation or connection with the Complainant, despite which the Respondent has registered the disputed domain name, which contains the well-known and registered trade mark of the Complainant. The Respondent is beyond a doubt, intentionally and methodically attempting to confuse and deceive consumers at the expense of the Complainant.

The adoption of the impugned mark ET Wealth by the Respondent for the disputed domain name is entirely dishonest and has been made with wholly mala fide intentions solely to unfairly enrich from the hard earned reputation and goodwill associated with the Complainant's well-known mark "ECONOMIC TIMES/ET". In respect of the said violation, the present Complaint is being filed for transfer of the domain name <etwealth.in> in favour of the Complainant.

The Complainant in good faith and due to non-availability/inadequate address of the Respondent did not initiate any judicial/quasi-judicial proceedings earlier on the belief that the impugned website was dormant. But now having come to know that the impugned website is renewed year after year and containing slanderous contents, the complainant is now left with no other option but to initiate these proceedings.

ABL

B. Respondent

The Respondent has submitted response to the complaint which is reproduced hereunder:

"It is clear that the Board at Bennett and Coleman have ignored the importance of the .in Top level domain for many years.

The .in Top level domain registration started in India from the year 2005. In spite of that fact the company(Times Group) has been more focused on giving importance to domains with .com as TLD.

This is clear from the fact that they have almost all domains registered mentioned in the complaint under the .com TLD.

Domain Name	Date of Registration
www.economicstimes.com	12-04-1996
www.et-ilc.com	2016-09-16
www.etcfo.com	2013-03-02
www.et-gbs.com	2014-01-22
www.ettech.com	2006-07-18
www.eti-masterclass.com	2017-04-06
www.eti-anache.com	2014-03-11
www.etauto.com	2000-01-26
www.etcio.com	2013-03-02

(all the domains above are .com domains and not one of them is a .in domain)

In the present year of 2018, now that the important of websites with .in Top level domain has suddenly come to the limelight and that Search engines like Google, Bing, and others are giving more credibility for Indian websites with .in as Top level domain and are showing up web pages which are served from servers hosted by .in domains in Top search results and thereby this is resulting in better positioning in search results, the Board at Bennett and Coleman see an opportunity in owning .in domains.

This is demonstrated in the fact that the company has made all the booking of previously listed domains at .com TLD.

And that the Board wants to capitalize the newly found opportunity and earn more advertising revenues and increase their top line.

This is mala fide intent, this is being opportunistic, and this is being "exploitative" at the cost of legally stealing a domain from a poor individual like me.

AB

Further I would like to humbly submit to the Arbitrator that the complainant is not disclosing a key fact in their considerations.

Their business model is to charge huge sums of money for advertising on their so above mentioned domains at a very very high costs. The costs range in crores for each single day.

The company sends out agents to visit corporate houses in India and abroad to sell advertising space on their domains.

There have been instances where Times group has stoop to such low levels to increase revenues that they would allow advertisers to put logo in their trademark also. For example. Assuming for a moment that the prospective client is Lavasa group and wants to promote their newly constructed property in lavasa.

The brand "The Times of India" as mentioned by the complainant is their mark. The company would charge a very heft fees from advertisers for changing their mark from The Times of India to "The Times of lavasa"

Times group will use their brand to deceive people by putting a brand name in their mark. They do this even after Govt of India giving them exclusive rights to use the Mark and preventing other entities in India from using this mark. By using exclusive rights over the mark to sell it for a huge consideration of money defeats the very purpose for which the group acquired trademark rights over the mark in the first place.

Further, On a special day like say the day when the Indian budget is present, when the finance minister and other ministers of India are debating the budget in the parliament of India, on these special days, the times groups goes further in packaging the advertising space as deals across a host of domains and sell them as a package, as a collective advertising space, as a wholesale advertising space across multiple domains. And this is where they need multiple domains around their business to portray themselves as have more than one web portals which can attract specific niche type of customers. Hence the group is bent on legally stealing domains from other innocent people like us by using legal mechanism and by confusing the legal mechanism in India.

These are some facts

AB

In the year 2015 economic times online advertising space for Gold sponsorship on Budget day was sold at 1.4 crores for a single day. And

the silver sponsorship was sold at 0.7 crores for a single day. And

the Base sponsorship was sold at 0.4 crores for a single day.

Not only was this being done.

The homepage of economic times , etrealty, et cio was cluttered with ads with digital banner overlapping each other and it is at time impossible to get access to news which the group claims to be its prime purpose of business.- News dissemination.

This is being dishonest not only to advertisers, but also to the general public which trusts Times of india and economic times to have the basic courtesy to serve News to them and not throw advertising banners when they visit their home page.

As long as this is fair in terms of fair competition, I would have been Ok. But to steal a domain from a poor individual like myself and planning to "milk" extra advertising revenues is NOT ok.

I call upon the learned sole arbitrator to consider the importance given to .in domains by search engines like Google.

Further I would like to bring to notice that as on today, Google is the number one search engine in India and by acquiring the domain etwealth.in by portraying legitimate rights over it, it would give the Times group a tremendous level of advantage. Not to mention the crores of money they will mint using this domain.

It is this fact that the complainant on behalf of Times group is trying to hide and instead shifting the focus of the argument elsewhere and hiding the inherent corporate greed of times group and camouflaging it by saying that I have a domain name that is identical or confusingly similar to a trademark they themselves registered in 2015(while I had the domain registered in 2011)

I would like to say that, the domain is not identical, and the complainants clients(Times Group) see an immense opportunity

A B L

to mint a few billion dollars by capturing this domain in light of the newly found ecosystem in which .in TLD's in india get more preference on search engines over a .com TLD.

This is something that the complainant client (Times Group) is camouflaging under the pretext of " the Registrants Domain name is identical or confusingly similar to a name, trademark ...etc " clause Para 4.(i). Of INDRP.

It is this mistake, this act of ignoring , this nonchalant attitude towards the .in Top level domain i want to point out, for which they have to bear the consequences, and not launch an array of lawyers to "witch hunt" poor individuals like me for a domain.

Further as stated by the complainant that they go to extraordinary measures to protect their Intellectual property, I would like to ask them, have they lodged a similar complaint for the domain etwealth.com with an international authority or institution or court of law. And if so, what has been the outcome of such an dispute. I have attached a snapshot of etwealth.com . It is a domain registered with a Hong Kong based wealth management company.

In-line with their fascination for .com Top level domains, I would once again like to ask the times group if they have initiated any proceedings against www.etwealth.com

Further in point number 14 of the complaint, there is no registration for the newspaper supplement ET Wealth with the Registrar of newspapers of India (RNI) which the complainants clients are so vehemently aggressive in protecting the intellectual property for.

The complainants clients may well enjoy common law rights in the mark ET Wealth, but they are misinterpreting my domain registration etwealth.in as something that is going to be used in an unauthorized manner. I do not plan to use their mark in any unauthorized manner except that i have already registered a

A B —

domain with the words www.etwealth.in in the explanation of which is given below (refer in regards to INDRP Point 7.i and 7.iii).
As such I am aware that any use of their mark in the form in which it is registered constitutes a violation of their rights.

The complainant is using the common law rights in the mark ET, to say that they have rights on any or all the permutations and combinations one can make with the word ET preceeding other generic products and services.

The complainant assumes that just by registering the mark ET, he/she has now exhaustive and never ending rights on all words starting with the alphabets "et". This is a mistake in the understanding of the complainant.

See

D2016-0596 (WIPO July 13, 2016) (<duchemical.com>) where the Panel held

DuPont's rights to DUPONT cannot be reasonably expanded to cover uses of DU alone, a term that can also be viewed as a simple French article. Further, there is no evidence that would suggest that DUPONT is commonly abbreviated or referred to as DU alone.

In a similar way ET marks registration before my booking of my domain, does not give the complainant, the right to say that they have right over all and every permutation and combinations of words that start with the alphabets "et".

The complainant cannot claim rights over words like etplaygroup, etlamps, etdatabase, etholdings, etcorporate, etXXXXX, where XXXXX stands for any and everyword in the english dictionary.

The sadness of the plan is so wretched that they have used gobbyl goose way of proving all the three points to acquire the domain though this complaint. The serpentine way in which the complainant has used one small element of the content on etwealth.in to prove all provisions of INDRP which include section 4.i, 4.ii, and 4.iii. Is quintessential of Times Group and their lawyers.

A B 

They have used the same technique to prove points in section 6.i, 6.ii, 6.iii, 7.i, 7.ii, and 7.iii.

Bias against small individuals in .in domain disputes.

It is seen that sole arbitrators are inclined to take decisions in favor of multinational corporations and leave Individual domain owners high and dry.

This is clearly reflected in the number of awards awarded in favor of multinational corporations. I call upon the sole arbitrator in this case to please see for yourself, the number of awards given in favor of multinational corporations.

In today's world, a company, an individual is "Global" from day one. One does not need to have offices around the world to be global in nature. One just needs to have access to the internet to be Global, as such today customers are buying goods from around the world and talking freely around the world with a touch of a button. I want to once again say the sentence. "In Today's world, you are Global from Day One of your business". And you dont need swanky offices and swanky furnitures and have an office in a specialized business district. You can start a company from "Palo Alto -California" as much as you can start a company in Yeshwanthpur-Bangalore.

And if a company has offices around the world that does not make them more global in nature by any means. Take the case of company www.geico.com insurance. They don't have a single physical office in usa, but they are global sellers of insurance. They have just office to do back office work for insurance, processing papers, processing claims etc. But still they are the number 2 insurance company in the united states with no physical front to sell a product like insurance.

I could have given an example close at home in India like Amazon.in which does not have physical stores in India, but Amazon.in is more of an online marketplace than a retailer themselves.

With the Govt of India trying every bit to try and create more employment opportunities and trying to create more small and

ABL

medium enterprises, it looks like the panelist and arbitrators listed by NIXI is doing just the opposite, by awarding transfer of domain names in the name of multinational corporations- Why??? because they have lot of proofs, lot of annexures, lot of licences, lots of trademarks and lots of money to lodge complaints with esteemed institutions like NIXI- and thereby shunting all the little possibilities of starting up small businesses by small and poor and less fortunate individuals like me. (By saying these words, I do not intend to disrespect anybody or any institution, or attempting to show and impropriety, I am just laying out the facts as they appear to be).

Dear learned Sole arbitrator, In the state of telangana, it is very common to encroach upon the lands of poor farmers, by rich and well to do encroachers.

The encroacher uses his local clout and "Pehchaan" to get the land revenue records modified in their names. Once this is done, the encroacher uses brute force and possess the land of the poor farmer. Then he knocks the doors of the courts complains that his land is being encroached upon by the poor farmer. And gets and injunction order in his favour. At times the poor farmer does not have the money to attend court proceeding, he does not have the money to hire a lawyer, he does not have the money to pay bus fare to visit the courthouse to present his case.

The point is: The encroacher plays victim to a crime which in reality he initiated.

I would like to ask the learned arbitrator, what annexures, proofs, documents, and licences does one need to have in India if one is out of college and one plans to launch an institution.

The launching of an institution can at times take years for one does not have all the resources like land, office, computers, furniture. Is it safe to say that at times all this takes a few years?

I am an individual with individual capacity.

I am a citizen of India, mother tongue is telugu and I was born in warangal.

ABL

As an individual and a citizen of india I do not need licences or trademarks from any office of authority to write on the web about the greatness of my state Telangana

My Aadhar card is enough to prove my identification.

My citizenship of India gives me the legitimate right to write and post articles of my own thoughts on the web about my state Telangana.

Failure to Prove Bad Faith

In regards to Para 4.(iii)

The complainant has deliberately tried to portray a wrong picture to suitably fit the requirements of the INDRP procedures.

They have said the link is dormant, thereby trying to say that ellaiahpusa has no legitimate rights to hold the domain continuously year after year.

They at one point say that the website contains slanderous material to prove that the website is hosting some content which is illegitimate and illegal. This point very disturbingly fits into the realm of "lets hook or crook prove that the domain is being used in bad faith".

I would like to submit that neither is the link dormant nor does the website contain slanderous material . I urge upon the arbitrator to himself visit the link or look at the screenshot captured by the complainant. It is a work in progress portal. In other words the content is being developed.

If the arbitrator insists I can send him screenshots of multiple websites which are of similar type and which are not dormant.

There is online forum section being created and how does this look like a dormant portal is something for the complainant to explain.

I further submit that the complainant mark in its image form has never been used in any form or manner. I request the complainant to produce evidence of the same.

Trade Mark No. 3140490

Appellate of Certificate No. 1509149
Date 28/12/2015

THE ECONOMIC TIMES
wealth

ATB —

I would like to bring to notice some rules of UDRP on which INDRP is framed.

5. Applicable Rules

Paragraph 4a of the Policy directs that Complainant must prove each of the following:

- (i) the domain name in issue is identical or confusingly similar to Complainant's trademark; and
- (ii) Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Further it is submitted after the complainants "cease and desist" legal notice to me in the year 2016, no attempts have been made by my to sell or rent out the domain to the complainants in any way. No attempts to engage in any form or discussion were engaged upon. This again proves that there was no bad faith involved.

Further it is brought to the notice that

- *Just holding on to a domain and doing nothing with it does not prove bad faith.*
- *Nor does it prove conclusively that there is no legitimate use of the domain to the respondent.*
- *Failure to do both by the complainant is a again prove that he/she has failed to prove bad faith.*

In regards to Para 6.(i) Of INDRP rules:

I have not registered or acquired the domain primarily for the purpose of selling, renting or otherwise transferring the domain to anyone else.

If that was the intention, i would have book et-weath.in , etwealth.co.in, etwealth.net, etwealth.org.in etcetc -- I would have had the chance to book all these domains, but I did not do these bookings. Such a pattern of domain-booking-behaviour is not seen in my case.

The acquisition of the domain by me occurred before me having had the knowledge that such a trademark existed(which in any case would not have been possible because the trademark term ET wealth was registered in 2015)

AB

See:

Allocation Network GmbH v. Gregory (allocation.com) D2000-0016, in which the Arbitrators ruled in favor of a registrant on the grounds that the respondent had a legitimate interest in using a common word as a domain name for sale. As per ICANN rules 4(b)(i) rule it is required that the marketing/purchase of the domain should occur prior to the registrant's knowledge that the trademark existed.

Neither is there any evidence that I have used the domain to redirect users to the complainant competition (websites of financial times, Business standards, The Mints).

Even while the "act of registration" was being done, there was no malice in my mind.

Further ICANN UDRP 4.a.iii requires that the domain be registered and is being used in bad faith.

In other words, I have neither purchased nor made any sort of commercial use of the spelling variation domains like etweath.in , etwealth.co.in, etwealth.net, etwealth.org.in

In regards to Para 6.(ii) Of INDRP rules

The complainant registered his trademark ET Wealth in 2015. How would I have known that this domain infringes upon his rights in 2011. It is the mistake of times group and they have to bear the consequences and not try to acquire the domain through me. I have in 2011 in no way prevented the owners of a trademark ET Wealth (which was itself registered in 2015) from reflecting their mark in the disputed domain name. They had ample opportunity to book the domain. See *Grodberg v. Rugly Enterprises LLC* (phonespell.com, phonespell.net, phonesspell.com, phonspel.com, phonespel.org) FA92975 (where the arbitration panel questioned complainant's interest because he "did little in a timely manner to protect his exclusive interest in the domain names he now seeks to claim")

In regards to Para 6.(iii) Of INDRP rules

ABL

I have NOT tried to attract internet users to my website by way of any promotion online or offline. The complainant has is merely stating this fact without providing any concrete evidence. The low traffic on my website proves that I have not spent any money on any promotion activities. The complainant has to provide evidence of me profiting on their clients goodwill - which the complainant has failed. I have not earned one naya paisa by riding on their accrued good will.

In regards INDRP Point 7.(i)

Have you heard about T-Hub?. Have you heard about TS registration of vehicles in the state of Telangana? . Have you heard about the formation of a new state in India called Telangana?. Have you heard about the strides it makes every day in terms of developments?

Have you heard about the leader of our state formation, MrKCR. ?

It is the number one state as rated by central governments own institutions as on 2018 on many parameters.

I am a bonafide resident of that state. I was born in Telangana. I am a citizen of Telangana. I am the son of soil of Telangana.

The mere mention of the letter T in telangana means it has something to do with it itself.

There are posters and placards with the letter T inscribed on it in Telangana.

My domain should have been T-wealth. Meaning Telangana wealth.

Unfortunately I added the letter e preceding to T-wealth and registered a domain etwealth.in trying to mean (eT-wealth.in)

It is supposed to be a chronicle of the vast amounts of wealth in the state of Telangana material and immaterial wealth, tangible and intangible, natural wealth and other forms of wealth.

Just like the word T-hub, words like T-gov mean a lot in Telangana. (T-gov refers to Telangana government).

The website that I envisaged to put was (e Telangana wealth.in)

Where e has come to be adjoined with a lot of other common law of property type of words like mail forming email, and there is also a website called erail.in and words like ecommerce etc etc

The concept of e-challan has been long prevalent in Mumbai, where anybody breaking traffic rules in mumbai are issued an

echallan, where the letter e means electronic. The letter e is has acquired secondary meaning to mean that it has something to do with the internet and it has something to do with the upcoming developing digital ecosystem.

Another example is the case of the word e-filing. This is used for filing income tax returns using the internet.

Just in a similar manner I wanted to be a bit savvy, a bit modern and a bit more digital and I added the word e to the words Telangana wealth to form etwealth.in

See:

EAuto, L.L.C. v. Triple S. Auto Parts (eautolamps.com) D2000-0047. In that case, the Respondent, an operator of a long-standing business that sold autolamps, decided to begin selling the same products on the Internet. The panelist held that "the letter 'e' preceding [a product] has come to be understood as an electronic, Internet-based form of the same" product or service. Therefore, "eautolamps" is an example of internet-based description of a generic product.

Further the words T Hub, T Gov, T News, etc have gathered secondary meaning in the sense that they reflect vital public interest scopes of interests about the state of Telangana.

In the case of T Hub it is an incubator for startups in Telangana and the words TS on the number plates of each new vehicle in Telanganameans that the vehicle is registered in the newly formed state of telangana as opposed to the earlier numbering of vehicles in erstwhile Andhra pradesh where in vehicle numbering pattern began with the letter "AP".

In regards INDRP Point 7.(ii)

In addition I am also an expert in finance and have am try to keep myself up to date with a lot of new happening in the world of public finance and private finance along with the area of wealth creation in India and overseas.

This is reflected very well in the fact that I own other domain namely www.overseasinvestments.in

However not being able to raise enough capital and resources (both financial and human resources along with other tangibles) I have not been able to put up something of a value on the above mentioned domain. This clearly indicates a demonstrable

AB

preparation to use such domains in connection with bonafide rights and offerings of financial information services.

I have attached a whois of the above listed domain also for the learned Arbitrator to review.

Further I have repeatedly stated that I am a poor individual and i do not have the wherewithal resources to hire legal lawyers to fight a legal case against multinationals like Times Group.

This defences presented in this matter are through arduous reflection and recollection of my intellectual capacities which i have acquired by way of reading a lot of books(in the thousands). As such my time is extremely valuable and by disturbing the courts of law by times of India and disturbance of my peaceful possession of my domain, times of india group is inflicting servers losses and stress to me both financially and emotionally.

Further as informed that I am an individual with individual capacity, there is a family medical emergency in my house and forcing me to spend hours to reply to a dispute over a peaceful possession of a domain, times of india has caused immense loss to me which cannot be measured in money terms.

In regards INDRP Point 7.(iii).

I am making a legitimate non-commercial or fair use of the domain name without the intent of commercial gain to misleadingly divert consumers or to tarnish the trademark or image of anyone.

It is supposed to be a chronicle of the vast amount of wealth in the state of Telangana material and immaterial wealth, tangible and intangible, natural wealth and other forms of wealth.

My domain is to list out the government scheme for poor and economically backward sections of Telangana. These include agricultural schemes, Insurance schemes for farmers of telangana (which by the way has been launched by our honorable chief minister Mr KCR and which by the way is the only insurance scheme for farmers in the entire of india to be implemented by any federal state in the union of India)

My domain is to list out the taxation incentives to be given to small enterprises in telangana

AB

My domain is to list out the various schemes launched by the government of telangana and to help people how to take advantage of them. And in the process if my website contains links to other portals.

It is a work-in-progress website.

I would like to state:

Times of India cannot use this website for their own corporate greed by thinking that they can increase their advertising revenues by getting better rankings on search engines by getting the domain etwealth.in easily from Ellaiah Pusa by overwhelming him with a legal notice .

Traffic to the website:-

A small website is bound to have small traffic. It is bound to have less number of users. This by no means indicate that the website is dormant. This by no means evidence that i do not have legitimate rights over my website.

Whois Details

Attached is a document that shows my contact details on whois page of godaddy where this domain is booked. I have not hidden my contact details they are freely available for anyone to view and contact me.

In their complaint point 25, the complainant is lying that they do not know my address. My address is there in whois records. Again here the complainant is bluffing their way in front of the court of law and trying to feign innocence.

Association with Times Group

In point 23 of the complaint, the complainant says that I do not have any affiliation or connection with times group and hence my intents in registering the domain etwealth.in is malafide.

Even I too state that I do not have any affiliation with times group. But my intentions of registering a domain chronicling the wealth of telangana state is not malafide

Objection to Point 22.

I do not have commonality in scope of services inasmuch as Timesgroup has, as they are registered with the Registrar or

A B J

newspapers of India and neither are we into the area of news dissemination. We are in the area of writing articles and providing good-willed information to the poor and economically backward classes of Telangana and general public in telangana.

Objection to Point 20:

In point 25, the complainant says they did not have my address to prosecute me legally, and in point 20 they say that they served a legal notice. There is ambiguity here. Again they are trying to mislead the courts of law.

Objection to Point 18:

The complainant has not obtained any protection for the mark ET Wealth strictly.

For the complainants perspective www.etwealth.in is equal to ET Wealth.

For Me it means e-Telangana Wealth.

Objection to Point 19:-

In this case a clear combination of descriptive terms like "The" and "Economic" and the word "Times" into one phrase results in a name which is more distinctive than descriptive and an Internet user entering www.theeconomictimes.com is more likely to expect that it belongs to times Group and Economic times. . Hence there is no doubt that this belongs to your Intellectual property. Furthermore the trademark for the main flagship mark of The Economic times would have been registered a few decades ago.

The success in this UDRP proceeding does not translate into "right" of getting a similar hearing from the learned arbitrator in the case of domain www.etwealth.in, because of the lack of "distinctiveness" and lack of "descriptiveness"

Furthermore, In the present case the trademark was registred in the year 2015, five years after myself booking the domain.

Objections to the legal ground raised by complainant

11.A.i

ABL

The mark was not registered in its entirety until 2015. Only the word ET was registered prior to me booking the domain www.etwealth.in in the year 2011 to chronicle the facts about Telangana state.

So it will not create any confusion. Moreover people would have been generally been aware of your link because by your own say you spend enormous amounts of money on promotion of your parent mark which is ECONOMIC TIMES.

The mark ECONOMIC TIMES/ET/ET Wealth is not being depicted in any form confusing or confusingly similar on the site content on the link www.etwealth.in

11.A.ii

An internet user who wishes to visit the complainants website for information, and not being familiar with the exact web address may well be taken to the respondents website.

This might happen by mistake by the internet users and as such the number of people would be very very less. Even if they came to etwealth.in and found material which is not genuine, or approved by the complainant, they would realize their folly, their mistake when they see that the website is about Telangana State immense wealth tangible and intangible .

This would NOT in anyform gravely prejudice the interest of the complainants because the complainant has purposefully ignore the registration of .in Top level domains and neither has the complainant shown any evidence of having sought a similar protection againsts a similar domain which is www.etwealth.com which is held by a hongkong based wealth management firm.

As such I have stated to see

See Grodberg v. Rugly Enterprises LLC (phonespell.com, phonespell.net, phonesspell.com, phonspel.com, phonespel.org) FA92975 (where the arbitration panel questioned complainant's interest because he "did little in a timely manner to protect his exclusive interest in the domain names he now seeks to claim")

Objection to Point 11.A.iii

The complainants registration of the Mark ET Wealth does NOT predate the registration of the domain. The domain was registration was done in 2011 and the registration of the clearly

distinctive trademark term ET Wealth was done in 2015. The complainant is trying to misled the learned arbitrator by lying. The usage of the mark ET Wealth could well have been predated than the date when the domain was registered.

Objection to Point 11.A.iv

The complainant himself submitted screenshots of Google for the search terms ET wealth and it clearly shows up their links on the first page. So how does the complainant again turn back and say that search engines are likely to turn up hits for respondents domain.

Objection to Point 11.A.vii

No it would not be considered identical/confusingly similar to the complainants mark and name ECONOMIC TIMES/ET/ET Wealth and domain name

www.economictimes.indiatimes.com/thewealth/etwealth and i would not be lieable unless i use the domain to sell similar services and goods or if i use the said domain to direct customers and internet users to a competition of yours. As long as it is being used in a fair use manner, www.etwealth.in is not liable to be considered identical/confusingly similar to the complainants mark ECONOMIC TIMES/ET/ET Wealth and domain name

www.economictimes.indiatimes.com/thewealth/etwealth

Objection to Point 11.B.i

If the respondent has no legitimate interest in the disputed domain, why would the respondent intentionally attract, or attempt to attract internet users?.

Logic says that if a domain holder is not interested in maintaining a website, he would leave it to be left in the vast world wide web network of computers and not care a dime about it.

Why would he then intentionally attract internet users to visit his website. The complainant here again is using a web of obfuscation and deflection tactics to say a point just to be in line with the INDRP section 4 rules. As a bonafide citizen and having being born in the state of telangana and having seen the rise and the clear vision of the formation of the telangana state, I have all

the moral and legal right to write content on the telangana state and publish it on the web on a domain which is similar to Telangana's secondary meaning short cut-which is the Letter T.

Objection to Point 11.B.ii

The complainants complaint is full with prejudice that the domain www.etwealth.in prejudicially affects his clients credibility. I too submit I have no affiliation with Economic times.

Objection to Point 11.B.iii

I have a legitimate right and interest to make fair use of the domain www.etwealth.in (e-telangana wealth)and that the distinctiveness of the mark ET Wealth got more distinctive with its registration in 2015. The letter e preceding most common words like email, etailing, and in websites erail.in and other alias has acquired a secondary meaning to be associated with electronic and as such is served and delivered on the web and internet using digital media and mobile devices. Further the letter T in the context of the state of telangana has also acquired secondary meaning to be associated with the state's scope of interests.

Objection to Point 11.B.iv.

The link is not dormant it is a work in progress website. Hence legitimate right and interest is proved.

Objection to Point 11.B.v.

This statement is a full of prejudice.

Objection to Point 11.C.i.

The complainant is talking in slogans and not presenting any facts or proofs which evidence that there are millions of viewers who are being deceived by my act of merely registering the domain at issue.

As explained above it is the other way around. The times group wants to mind billions of dollars of more advertising money by way of acquiring this domain.

Objection to 11.C.ii.

A B L

I did not register the domain primarily for the purpose of disrupting and interfering the business of the complainant. I submit this because as stated in my response above in the section titled (In regards to Para 6.(i) Of INDRP rules:), I was unaware of the mark of the complainant the prime purpose of registering the domain was to write articles about the Telangana state which was bound to be created.

Further Search of the website on any browser and any search engine does not redirect customers to the domain www.etwealth.in.

Only and only if the an internet user is aware of the existence of a domain by the link www.etwealth.in shall he or she type that link on browser softwares and he will be directed to Telangana's abundant wealth(material and immaterial) kind of website.

As indicated by the complainant itself and as evidently provided in the screenshots a search for the term etwealth.in on search engines like google, bing, and yahoo turns up webpages from economic times itself and this is what works best in the complainants interest.

In other words if someone type www.etwealth.in in google search engine the search results direct customers to economictimes.indiatimes.com domain and NOT to www.etwealth.in.

How is this a redirect is something else is unfathomable.

This is clearly again an attempt by the complainant to create confusion in the eyes of the learned arbitrator and an attempt to say lies and portray things in bad light to influence decision in their favor. A copy of the screenshot is annexed for reference.

Objection to Point 11.C.iii

The mere "act of registration" cannot be termed as prima facie act done in bad faith unless the complainant can prove that I as a respondent was made very aware of their ET Wealth Mark.

The complainant companies are known by various names the name of times of india, The economic times, Times groups and Bennett and coleman and other subsidiaries like Times Internet and Indiatimes and times Music.

Registration of a domain name is NOT illegal.

AB

Further I request the learned arbitrator to reflect on the observations made in this regard on the case between Satyam Infoway Ltd vsSifynet Solutions Pvt Ltd; AIR 2004SC3540 In which the theHon'ble Supreme Court observed that

"distinction lies in the manner in which the two operate. A trademark is protected by the laws of a country where such trademark may be registered. Consequently, a trade mark may have multiple registrations in many countries throughout the world. On the other hand, since the internet allows for access without any geographical limitation, a domain name is potentially accessible irrespective of the geographical location of the consumers. The outcome of this potential for universal connectivity is not only that a domain name would require worldwide exclusivity but also that national laws might be inadequate to effectively protect a domain name".

Objection to Point 11.C.iv.a.

I as a respondent did not send or make an offer of sale of the domain to the complainant or any representatives of the complainant in any form before and on the date of the filing of the complaint with NIXI.

Objection to Point 11.C.iv.b.

As stated above in section named (Response to section Objection to 11.C.ii.) I did not register the domain to prevent the owner of the trademark or service mark from reflecting the mark in the corresponding domain name

Objection to Point 11.C.iv.c.

I do not plan to transfer or sell the domain name to some competing interest of the complaint. There is no evidence to prove this. The complainant has prejudged a scenario and the competing interest would insert prejudicial material in relation to the complainant. It is completely hypothetical and with prejudice and assumption.

Objection to Point 11.C.iv.d

A B 

I have not attempted to attract internet users to our website or any other online location by way of redirects, or by creating a likelihood of confusion with the complainants name or mark. The small amount of traffic to the website as stated is evidence that no active attempts to use the complainants mark or reputation or good will has been used to fraud internet users to visit www.etwealth.in , there by proving that none of the good will has been rode upon or non of the good will of the complainant has been exploited upon.

Objection to Point 11.C.iv.e

I as a respondent submit that I had no awareness of the prior existence of the mark ET Wealth.

Objection to Point 11.C.iv.f

This is not a "clear" case of cybersquatting. Neither is the domain registered in bad faith nor is it presently being used in bad faith nor was it ever used in bad faith, Nor is there any offer to sell it to the complainant at a price which are above their out of expenses limit.

The board of times of India were focussed elsewhere and they did little to protect their interest.

It is once again repeated that the prime reason why Time of India is after the domain etwealth.in is a change in the internet ecosystem when it comes to .in Top level domains and the change in the importance given by search engines especially Google to websites with .in TLD over .com TLD in Indian context. Had this change in the internet ecosystem not happened they (Times of India) would not have cared a dime for the domain name. As such from prima facie evidence it appears that they do not care to disturb the ownership of etwealth.com which is owned by a Hong Kong Economic Times Holdings."

6. Discussion and Findings

It is an incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three

elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"4. Types of Disputes

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.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

The Arbitrator will address the three aspects of the Policy listed above.

A. Identical or Confusingly Similar

The Respondent had adopted the disputed domain name <etwealth.in> on 29.03.2011 as per WHOIS report. The main contention of the Respondent is that he had registered the disputed domain name in the year 2011 whereas trademark ETWEALTH has

ABJ

been registered subsequently in the year 2015.

The trademark THE ECONOMIC TIMES was coined by the Complainant in the year 1961 and the complainant's newspapers has been referred to and known by its abbreviation ET. The Complainant commenced and is using the abbreviation ET as a trade mark for over several decades and applied for several trademark registrations for the trademark ET and ET formative marks such as ET NOW, ET PLUS, etc. The Complainant has registered various trademarks and produced certificates issued by the Registrar of Trademarks.

The Trademark ET has been registered on 13.02.2003 under class 9 vide TM No. 1174743 and under class 16 on 13.02.2003 vide TM No. 1174744. These registrations are prior to registration of domain name in the year 2011.

The disputed domain name incorporates the Complainant's trademark **ET** in its entirety, together with the suffix "**wealth**". The Complainant's trademark **ET** is clearly recognizable in the disputed domain name, and the addition of "**Wealth**" does not serve to avoid a finding of confusing similarity particularly ET Wealth is name of the newspaper/supplement launched by the Complainant in the year 2010 about personal wealth, financial planning, tax, investment, managing money, insurance, loans etc.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7 provides the consensus view of panelists: "While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain

AB ✓

name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The Complainant has registrations of its newspapers with the Registrar of Newspapers, including the Economic Times Wealth between the period 2011 to 2014 in various states /cities. The newspaper Economic Times Wealth is registered in Delhi vide DELENG/2011/37/994. Subsequently, the Complainant had also registered the trademark ET WEALTH on 28.12.2015. Merely registration of one of many trademarks i.e. ETWEALTH in 2015 is no ground for the Respondent to register domain name incorporating already existing Trademark ET of the complainant and also incorporating entire name of the newspaper supplement of the complainant i.e. ET Wealth.

The Trademarks of the Complainant have become associated by the general public exclusively with the Complainant. The Complainant also has domain name registrations as well as websites incorporating the Trademarks. Due to continuous and uninterrupted use of the marks since long the Complainant is vested with Common Law rights in the mark as well. Therefore, any unauthorized use of the name/mark ET WEALTH by the Respondent in his domain name constitutes infringement and passing off and is a violation of the Complainant's rights in the said mark.

A trademark registered with the Registrar of Trademarks is *prima facie* evidence of trademark rights for the purposes of the Policy.¹ Internet users may be confused about the association or affiliation of the disputed domain name with the Complainant.

¹ See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.1.

The Respondent has registered the disputed domain name <etwealth.in> wholly incorporating name of the newspaper of the Complainant ET Wealth and also the Trademark ET as well as Trademark ET WEALTH of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy². Internet users who enter the disputed domain name <etwealth.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Arbitrator finds that the disputed domain name <etwealth.in> is confusingly similar to the website and Trademark ETWEALTH of the Complainant.

B. Rights or Legitimate Interests

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by

² See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

demonstrating rights or legitimate interests in the domain name³. The Respondent has registered the disputed domain name consisting of the name of newspaper as well as the Trademarks owned by the Complainant. The Complainant has not authorized or permitted the Respondent to use the Trademark ETWEALTH.

The Respondent has failed to produce any evidence of right to use trademarks of the Complainant and he failed to demonstrate any rights or legitimate interests in the disputed domain name <etwealth.in> as per Paragraph 7 of the Policy.

In view of above, the Arbitrator finds that the Complainant has made out a *prima facie* case.

Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <etwealth.in>.

C. Registered and Used in Bad Faith

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

"6. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the

³ See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has registered the domain name in order to prevent the owner of the Trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the

AB ✓

registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered the disputed domain name <etwealth.in> and he also maintains a website 'www.etwealth.in'. The Complainant has not granted the Respondent permission, or, a license of any kind to use its Trademarks and register the disputed domain name <etwealth.in>. Such unauthorized registration of the Trademarks by the Respondent suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <etwealth.in> which incorporates the name of newspaper ET Wealth, Trademark ET as well as Trademark ETWEALTH of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <etwealth.in> has been registered by the Respondent in bad faith.

The Trademarks ET and ETWEALTH has been a well-known name. The domain disputed name <etwealth.in> is confusingly similar to the Complainant's Trademarks ET and ETWEALTH, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <etwealth.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name <etwealth.in> from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <etwealth.in> be transferred in favour of the Complainant.

7. Decision

AB

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <etwealth.in> is similar to the Trademarks ET and ETWEALTH in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.etwealth.in> be transferred to the Complainant.

The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 20.09.2018



Dr. Ashwinie Kumar Bansal
Sole Arbitrator

Advocate, Punjab and Haryana High Court
Arbitration House 6, Shivalik Enclave, NAC, Manimajra,
Chandigarh, India-160101
Mobile: 9915004500
Email: akbansaladvocate@gmail.com