



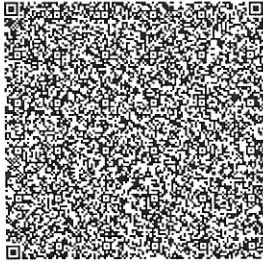
सत्यमेव जयते

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Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: NIKILESH
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ARBITRATION CASE NO. 2 OF 2015

IN THE ARBITRATION MATTER OF:-

OLX, B.V

COMPLAINANT

VERSUS

Himanshu Sekhri

RESPONDENT

DISPUTED DOMAIN NAME: **freeOLX.in**

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Himanshu

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AWARD:

The present dispute relates to the registration of the domain name **freeOLX.on** in favour of the Respondent.

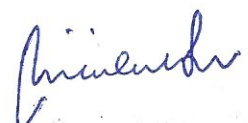
The Complainant has filed the instant complaint challenging the registration of the domain name **<freeOLX.on>** in favour of the Respondent. Pursuant to the In Domain Name Dispute Resolution Policy (INDRP) and the rules framed there-under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.

I gave my consent on the 12th October 2015 to adjudicate the instant domain name dispute. I was handed over the complaint on the 14th October 2015. Accordingly, I issued notice on the 15th October 2015 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter. However, the respondent has chosen not to file any reply and has also not entered his appearance even after him being served the notice on his address supplied by the Complainant, obtained from WHOIS. I, therefore, proceed to adjudicate this complaint ex-parte.

In its complaint, the complainant has stated that it operates as an online classified site that enables users to buy and sell goods, including vehicles, real estate, tickets and electronics; solicit an offer services such as babysitting, event services, repairs; design ads to post on its website; display ads on profiles across social networking sites, such as Facebook; and search for jobs across numerous locations and industries. The Complainant's platform has over 200 million unique users monthly and it has registered over 1000 domain names incorporating the OLX trademark in several countries across the world.

ANALYSIS:

The Complainant also states that "OLX" was founded in 2006, based in Hoofddorp, The Netherlands. The Complainant has registered over 1000 domain



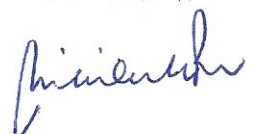
names incorporating the OLX trademark in several countries as well. It has placed in record the details of the registration of the said trademark in various countries. Complainant has contended that it operates in over 40 countries and has over 1,200 employees, its services available in 100 countries in 50 languages making the complainant one of the largest online marketplaces in the world, and the largest online market place in several countries for example India, Brazil, Pakistan, Poland, Ukraine and Portugal. The Complainant maintains offices in Buenos Aires, Cape Town, Delhi, Sao Paulo, Rio de Janeiro, Lisbon and New York, and New York, and operates subsidiaries in Argentina, Pakistan and in China where the Respondent is located.

The Complainant registered its trademark "OLX" dated 30th June, 2014 IN Classes 9, 35, 36, 38 & 42. Apart from this, the Complainant has registered domain names incorporating the OLX trademark in numerous countries across the world, including under the country code top level domain (cc TLD) ".in" , namely the domain name OLX.in.

In its complaint, the grievance of the complainant is that the Respondent has registered the disputed domain name < **freeOLX.in** > which is confusingly similar to the Complainant's well known "OLX" trademark. The mere addition of the prefix "free" does not negate the confusing similarity between the domain name and Complainant's trademark.

Before I proceed to deciding the case at hand, I must decide the issue that the Respondent has chosen not to controvert the contentions raised in complaint and the consequence of such action on the part of the Respondent is that it leads to an adverse inference and the statements and records placed in support stands proved.

I now proceed to decide the claim on merits. Firstly I shall deal with the ground regarding the rights of the Complainant vis-à-vis that of Respondent's over the domain name < **freeOLX.in** >. The domain has the mark **OLX**, which



according to the complainant is the owner. "**OLX**" is a unique and distinct word and has acquired distinctiveness both in India and various other countries. It has been shown by the complainant that the use of the said mark has been for quite some time and that too for world over. The Complainant has registered domain names incorporating the **OLX** trademark in numerous countries across the world. From the records submitted before me, it is seen that it has registered its trademark in various countries, the earliest being in the year 2014. The complainant has shown the various trade mark registration details world over. Although the Respondent has not appeared in these proceeding to present his case, but it is borne out from the records that Respondent has no bonafide or legitimate right over the mark "**OLX**".

The OLX trademark, in respect of online classified services provided by the Complainant, has the status of a well-known trademark with a substantial and widespread reputation throughout the whole community where it operates. The Respondent registered the Domain Name on February 18, 2015, subsequent to when the vast majority of the trademarks for OLX were registered. The Complainant's website www.olx.in is the most visited website worldwide.

Thereby, it is quite clear that the Respondent knew of the Complainant's legal rights in the name of OLX at the time of registration. Thus, the Respondent cannot claim to have been registered or used the trademark OLX, without being aware of the Complainant's rights to the said trademark.

The addition of a hyphen followed by a prefix "free" does not obviate the possible confusion in the mind of users. This in itself reflects the fact that the respondent wanted to create confusion in the minds of the public. Hence the Respondent's action to register the said domain name is not bonafide as he has no right over the mark < **freeOLX.in** >.

Secondly as the Respondent's action to register the said domain name is not bonafide, therefore the said registration is done in bad faith. Neither the Respondent is associated as an individual, business or organization with the name "**OLX**" nor the



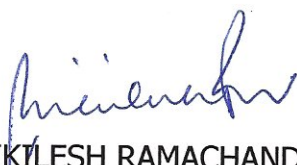
complainant has authorized in any way the use of the trademark "**OLX**". The Complainant has specifically stated that it has no relation with Respondent, commercially or otherwise. So therefore the use of trade mark Respondent "**OLX**" is not legal. Therefore the Respondent has no legitimate right over the said domain name.

Also the Complainant has registered websites consisting the word "**OLX**", for which it has ownership, in various CCTLD. And this in itself becomes a good ground for the Complainant to claim transfer of the disputed domain name in its favour. The Complainant has relied upon several decisions of its own to show that it has been diligent in protecting its rights against unscrupulous infringers and users. Apart from that, it has relied upon several decisions which is in its favour for enforcing the claim in transfer of ownership in the disputed domain name.

CONCLUSION:

Considering the facts and circumstances of the present matter and taking view of the law and the precedents in this context, I am of the view that the complainant has proprietary right over the mark "**OLX**". Therefore, under the facts and circumstances and on the basis of records, I deem it fit and proper to allow the prayer of the Complainant in its favour and direct the Registry to transfer the said domain name i.e. < **freeOLX.in** > in favour of the complainant.

Parties to bear their respective costs of this litigation.


(NIKILESH RAMACHANDRAN)
ARBITRATOR

Dated 16th DECEMBER 2015.