

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.indeedcareers.co.in

between

INDEED INC.

...COMPLAINANT

AND

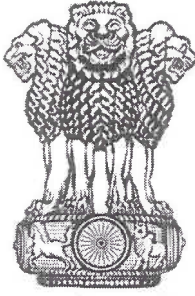
RAHUL KUMAR

...RESPONDENT

AWARD



**VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
NEW DELHI**



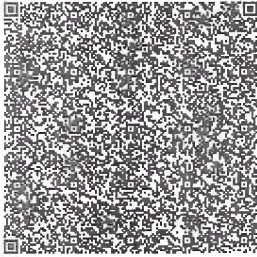
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL70467704195167Q
Certificate Issued Date	: 28-Aug-2018 12:19 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ SAKET/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1745096015780832Q
Purchased by	: V SHRI VASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRI VASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRI VASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

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1

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.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 02/08/2018. This Tribunal was in receipt of an email from NIXI dated 31/07/2018 showing the dispatch of the complaint vide Overnite Express Courier. On tracking the said courier this Tribunal found that it had been undelivered. Accordingly vide the aforesaid communication this Tribunal directed the Respondents to supply their complete postal address.
2. This Tribunal have on 27/08/2018 received an email of NIXI , which states that the complaint has been returned undelivered due to "*incomplete / wrong address*".
3. The address given in the "WHO IS" is the last known address of the Respondent, hence as per law it is deemed service on the Respondent. It was noticed that the emails sent to the Respondent by this Tribunal and by NIXI have been received by him as the same have not bounced back. Hence, this

Tribunal holds the Respondents as served but the Respondent failed to comply with the orders till 09/08/2018. This Tribunal vide the same order also directed the Complainants to send their Evidence by way of Affidavit in support of their complaint by 19/08/2018.

4. This Tribunal received email dated 10/08/18 from the Complainant stating that they have never filed any Evidence by way of Affidavit and were not aware of any provisions of giving the same in INDRP. Hence, vide detailed order dated 10/08/2018 this Tribunal cited the provisions of INDRP, Arbitration & Conciliation Act, 1996, CPC and Evidence Act directed the Complainants to file their Evidence by way of Affidavit. The Complainant then vide email dated 13/08/2018 requested for further time as their Clients were based in Texas. Hence, this Tribunal granted time to the complainants till 27/08/2018 to file their Evidence.



5. The Complainants on 23/08/2018 sent the soft copy as well as hard copy of their Evidence by way of Affidavit. The award was reserved vide order dated 27/08/ 2018. This Arbitral Tribunal notices that till 27/08/2018 there is no communication from the side of the Respondent and hence, it proceeds to examine the claim statement of the Complainant and the Evidence including documentary evidence filed in the present proceeding.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
- A. It is claimed that the complainant is **Indeed, Inc.**, having its address at 6433 Champion Grandview Way, Building 1, Austin, Texas 78750, United States of America (hereinafter 'Complainant' or 'Indeed') and it is claimed to be the world's largest job site, with over 200 million unique visitors every month from over 60 different countries and it helps companies of all sizes hire employees and helps job seekers find employment opportunities. It is further claimed that complainants owns and has used indeed.com with an

employment related search engine since at least the year 2004, and continues to do so. Reliance is placed on **Annexure 3**.

B. It is also claimed that w.r.t. India, the Complainant has significant presence of its brand and trademark **INDEED** in the market through various promotional and advertising activities. By relying on **Annexure 4** the Complainant submits that in 2017 it had sponsored the 'Talent Acquisition Summit' in Mumbai during which talks were organized by top industry leaders on next generation digital skills. Further, the Complainant claims to have entered into an agreement with Yash Raj Film to integrate its brand and trademark **INDEED** in a film (purportedly released in India in March 2018) wherein the Complainant's brand was central to the premise.

C. By relying on **Annexure 5** it is claimed that the Complainant has been rated as the top source of external hires and interviews by the Human Capital Management company, Silk Road, for 6 years in a row.

D. The complainants by relying on **Annexure 6**, also depicted in a tabular form [in para no. 1.5 of the complaint], has given a list of its Trade Mark Registered in US and India.

E. It is claimed that the Complainant owns the domain name **<indeed.com>** and operates its corresponding primary website at www.indeed.com, through which it conducts a significant portion of its business and where information about Indeed and its business is easily accessible and available to internet users, who may be current or potential consumers and also that the domain name **<indeed.com>** is based on the corporate name of the Complainant's company, Indeed Inc., and was created / registered on and has been regularly renewed since March 30, 1998. Reliance is placed **Annexure 7**.

F. By relying on **Annexure 6** it is further claimed that the Complainant is also the owner of the India specific domain **<indeed.co.in>**, which was created / registered on and has been regularly renewed since December 14, 2006. An extract

from the WHOIS database supporting the aforementioned date is enclosed as **Annexure 8** with the complaint.

G. Further by relying on **Annexure 9** it is claimed that the Complainant has set up several other dedicated country-specific domain names and websites in major markets such as Canada <indeed.ca>, Columbia <indeed.com.co>, France <indeed.fr>, Hong Kong <indeed.hk>, Japan <indeed.jp>, New Zealand <indeed.co.nz>, Peru <indeed.com.pe>, Portugal <indeed.com.pt> and <indeed.pt>, Quebec <indeed.quebec>, South Africa <indeed.co.za>, Taiwan <indeed.tw>, Turkey <indeed.com.tr>, Ukraine <indeed.com.ua> and United Kingdom <indeed.co.uk> through which it lists specific job opportunities in these markets.

H. Besides the above it is also submitted the Complainant owns several other domain names containing its registered trademark **INDEED** viz. <indeed.net>, <indeed.online>, <indeed.org>,

<indeed.career>, <indeed.jobs> and <indeed.ceo>. Reliance is placed on **Annexure 10**.

- I. It is alleged by the Complainant that it has recently learnt of the Respondent's registration of the Disputed Domain Name and use of its corresponding website at www.indeedcareers.co.in, which is being used for offering online career search and recruitment services. It is also alleged that the website under the Disputed Domain Name mentions the trading name of the Respondent as Shine / Shine Jobs Pro / Shinejobspro.com is given and to buttress the allegations. Reliance is placed on **Annexure 11**.

- J. It is alleged that the Disputed Domain Name is identical with and/or confusingly similar to the Complainant's **INDEED** Trade Marks and it has been registered to cause confusion and deception owing to the similarity in the nature of services there under.



K. The Complainant has relied upon **Annexure 12** to show that it has fought many legal battles w.r.t. the disputes pertaining to its Registered Trade mark. Reliance is placed upon the cases given hereunder:

- ***Six Continent Hotels, Inc. v. The Omnicorp, WIPO Case No. D2005-1249***
- ***Britannia Building Society v. Britannia Fraud Prevention, WIPO Case No. D2001-0505***
- ***PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS) - WIPO Case No. D2003-0696;***
- ***Hoffmann-La Roche AG v. Andrei Kosko, WIPO Case No. D2010-0762;***
- ***Farouk Systems, Inc. v. QYM, WIPO Case No. D2009-1572;***
- ***Orange Personal Communications Services Ltd. v. Luttringer Alexander, WIPO Case No. D2008-1979***



- ***Philip Morris USA Inc. v. Andy McMillan / Registration Private, Domains by Proxy, LLC WIPO Case No. D2016-1278***

L. It is alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and reliance is placed on

- ***Deutsche Telekom AG v. Phonotic Ltd. (WIPO Case No. D2005-1000)***
- ***Kmart of Michigan, Inc v. David J. Terracciano (WIPO Case No. FA 651113)***
- ***Alpha One Foundation, Inc. vs. Alexander Morozov, NAF Case No. 766380,***
- ***William Grant & Sons Limited v. Ageesen Sri, Locksbit Corp. / WhoisGuard Protected, WhoisGuard, Inc. (WIPO Case No. D2016-1049),***
- ***Six Continents Hotels, Inc. v. Patrick Ory, WIPO Case No. D2003-0098***

- ***The Dow Chemical Company v. Hwang Yiyi, WIPO Case No. D2008-1276,***
- ***Facebook, Inc. v. Domain Admin, Whois Privacy Corp. WIPO Case No. D2016-1832***

- M. It is claimed that the Complainant enjoys exclusive rights in the word 'INDEED' qua its specific services and products.
- N. It is alleged that there is no justification for the Respondent's registration and/or use of the Disputed Domain Name.
- O. The complainants further rely upon **WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0")** in support of their contentions.
- P. It is further alleged that the Registrant's domain name has been registered or is being used in bad faith and reliance is placed on:-



- **Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager (WIPO Case No. D2011-1951)**
- **Morgan Stanley v. M/s Keep Guessing, INDRP/024**
- **Orange Brand Services Limited v. Anshul Agarwal / Orange Electronics Pvt. Ltd. <orangeindia.in> INDRP/579**
- **Marriott International, Inc. vs. MommAmed IA, NAF Case No. FA95573.**
- **Amazon.com Inc., Amazon Technologies, Inc. v. Giovanni Laporta / Yoyo.Email (WIPO Case No. D2015-0009)**

Q. It is further alleged by relying on **Annexure 14, 15 & 16** that the description of the Respondent under the 'Recruit Us' section on its website is verbatim to what is mentioned on another website www.shineonlinejob.com under its 'About Us' section.

R. It is alleged that the Respondent is using the Disputed Domain Name for the purpose of illegitimately extracting money and

personal information from innocent job seekers, who believe the Respondent to be the Complainant.

ORDER

7. This Tribunal has perused the complaint / Evidence and the documents relied upon by the complainants and the same has not been controverted by the Respondents despite opportunity being given to them by this Tribunal. Hence, in view of the un-rebutted evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name www.indeedcareers.co.in, hence this Tribunal directs the Registry to transfer the domain name www. indeedcareers.co.in to the complainants.
8. The Complainants too are free to approach the Registry and get the same transferred in their name.
9. There is no order as to the cost as no details of the cost / damages have been specified / detailed in the complaint nor have the complainants disclosed their revenue figures.

10. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 30th day of August, 2018.

NEW DELHI
30/08/2018



V. SHRIVASTAV
ARBITRATOR