



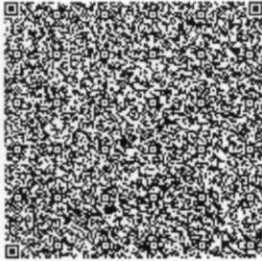
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL93521963363714L
Certificate Issued Date	: 21-Mar-2013 12:52 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL86620662159485L
Purchased by	: A K SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: A K SINGH ADVOCATE
Second Party	: NA
Stamp Duty Paid By	: A K SINGH ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF
Technoway Inc.
17125, Clementine Ct,
Charlotte, North Carolina
USA – 28277

Vs.

The Complainant

Daffodils Enterprises Pvt. Ltd.
C – 39, Housing Colony
Karkabagh, Patna
Bihar, India – 800020

The Respondent

THE PARTIES

The complainant in this present proceeding is Technoway Inc. 17125, Clementine Ct, Charlotte, North Carolina, USA – 28277.

The complainant in this present proceeding is represented through its authorised representative, M/s. Amarjit & Associates, Suite – 404, Law Arcade, 18 – Pusa Road, New Delhi – 110005.

The respondent in this present proceeding is Daffodils Enterprises Pvt. Ltd. C – 39, Housing Colony, Karkabagh, Patna, Bihar, India – 800020.

The respondent in this present proceeding is represented through its authorised representative, Mr. Pandey Ganesh Prasad, Advocate, 21/85 S. K. Nagar, Patna, Bihar – 800001.

THE DOMAIN NAME, REGISTRAR AND REGISTRANT

The Domain Name in dispute is “**indiagrid.in**”. The said domain name is registered by one Mr. Deepak Jaiswal (DO_20915418) for M/s. Daffodils Enterprises Pvt. Ltd. C – 39, Housing Colony, Karkabagh, Patna, Bihar, India – 800020. The Sponsoring Registrar is Directi Web Services Pvt. Ltd. (R118 – AFIN).

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the complainant, regarding the dispute over the domain name **indiagrid.in**

.IN Registry has supplied a copy of the complaint along with the attached annexures to me on November 9, 2012.

That on November 30, 2012, I issued a notice of commencement of Arbitration and sent an email to the parties informing them about my appointment as an Arbitrator.

That on November 30, 2012, I sent an email to the authorized representatives of the complainant requesting them to supply a copy of the complaint along with the annexures to the respondent and in case if they have already served it, then to provide me with the details of the service record.



That on November 30, 2012, I received an email from the representatives of the complainant, confirming the service of a copy of the complaint along with the annexures upon the complainant by email and by registered post. Accordingly a copy of the complaint was duly sent to the respondents both by way of email and registered post.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on November 30, 2012 with instructions to file his say latest by December 15, 2012.

That the respondent through his representative Mr. Gajendra Singh vide email dated December 17, 2012 agreed to vacate the disputed domain name and sought two (2) weeks time for completing the said activity and the respondent himself vide email dated December 22, 2012 further forwarded a copy of the email dated December 17, 2012 first filed/sent through his attorney confirming the vacation of the domain name within two (2) weeks.

The Tribunal did not receive any communication from the respondents for a period of two (2) weeks or reasonable time thereafter.

A few days later, the Tribunal received an email from the complainant stating that they have not received any response from the respondent and that the tribunal should therefore proceed with the passing of the award.

Further, the Tribunal received an email dated January 8, 2013 from the complainant addressed to the respondent agreeing to the proposal of the respondent for the settlement of the dispute without prejudice to their mark "INDIAGRID" and the domain name indiagrid.in

Later, the Tribunal received another email dated February 1, 2013 from the complainant addressed to the respondent, stating that if the respondent fails to respond to the terms of the letter dated December 17, 2012 the complainant shall withdraw the settlement talks.

The complainant vide its letter dated February 13, 2013 informed the Tribunal that the respondent has failed to respond to, and has not come forward to settle the dispute by amicable means. The complainant further requested that since it appears from the intent of the respondent that he is no more interested in settling the dispute by amicable means, the tribunal may be pleased to pass an award.



As the settlement talks failed to materialize between the parties, the Tribunal initiated the Arbitration proceedings.

When the Tribunal was in the process of making the award the respondent vide email dated February 21, 2013 informed me about the change of their authorized representative and that Mr. Pandey Ganesh Prasard was to represent M/s. Daffodils Enterprises Pvt. Ltd. from February 21, 2013 in all proceedings related to **indiagrid.in** domain name. The respondent sought time for filing of the reply, which was granted in the interest of justice.

The respondents' representative, Mr. Pandey Ganesh Prasad informed the Tribunal about the willingness of the respondent to contest the case at hand and he then filed their reply to the complaint on February 27, 2013.

The complainant vide his email dated March 1, 2013 sought time to file the rejoinder to the response of the respondent and a time of four (4) days was granted to the complainant by the tribunal on March 10, 2013. The complainant filed the rejoinder to the reply/response filed by the respondent on March 21, 2013.

Thereafter, on March 22, 2013, the representative of the respondent sought permission and further time to file a reply to the rejoinder filed by the complainant, which was denied by the Tribunal for reasons stated in email dated March 30, 2013. No permission to file a reply to the rejoinder was granted and the pleadings stood concluded as on March 30, 2013.

Thus, the delay in making this award can be attributed to the facts narrated above.

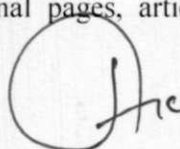
The Complainant and the Respondent have filed various documents as annexures in support of their contentions.

I have perused the record and the annexures/documents.

FACTUAL BACKGROUND:

COMPLAINANT

The complainant, Technoway Inc. adopted the mark "**INDIAGRID**" in the year 2000 in respect of services relating to personal pages, articles, classifieds, local groups, friends



networking, friends connect, chats and Indian news, videos, blogs, forums, real estate, shayari, user photos etc. along with radio and television links.

The complainant registered the domain name indiagrid.com on March 21, 2000 to offer India specific content in respect of news reports through its website indiagrid.com. The complainant offered classified advertisements and net working opportunities and further offered content specific news reports with the sole purpose of enabling friends and local groups to connect with one another.

The website of the complainant that is hosted on the domain name indiagrid.com ranks 29376 (worldwide) and 2061 (India) as per Alexa traffic and reputation rankings. The complainants' website indiagrid.com has approximately 91853 registered users, majority of which are added extensively on daily basis. The complainant also manages the facebook page "**IndiaGrid**" and the twitter account "**@IndiaGrid**".

The complainant has also registered various other Domain Names like "indiagrid.com", "indiagrid.net", "indiagrid.biz", "indiagrid.org", "indiagrid.info", "indiagrid.me" and "indiagrid.mobi" incorporating its mark **INDIAGRID** from time to time.

The complainant's website that is hosted on the domain name indiagrid.com has featured in "The Hindu" and the "Blog of Mr. Premlal Joshi" in the year 2005 and 2006 respectively and the complainant filed trade mark applications in respect of the marks "**INDIAGRID**" with the Indian Trade Mark Registry and USPTO.

The respondent registered the impugned Domain Name indiagrid.in on August 8, 2011 and the trademark rights of the complainant in the said mark and domain name were first brought to the notice of the respondent by way of a communication before proceedings sent by their attorneys' at the Muscovitch Law Firm on July 16, 2012.

RESPONDENT

The respondent contends that "**INDIAGRID**" is a generic name and is not entitled to trademark protection (the trademark application of the complainant is pending before the registry) and thus he was rightfully entitled to get a generic domain name – indiagrid.in blocked for hosting a website if it was open and available for registration.



The respondent wants to host a website on the domain name – indiagrid.in to offer social networking services and help create common platforms for academic, social and recreational activities with prime focus on utility services like shops, restaurants etc., emergency services like hospitals, blood donations etc., and other services like that of establishing virtual platforms for students of various schools, colleges, coaching tuitions, alumni associations etc.

The respondent has spent considerable amount of money for facilitating and collecting local data to make the website functional and has also placed an order (DJ-01) with Endue Technologies dated August 14, 2011 for website and software development and have further entered into an agreement to that effect on August 1, 2011 at Kolkata, West Bengal, India.

The term “**INDIAGRID**” is a generic term and cannot be monopolised as a trademark by the complainant.

That the term “**INDIAGRID**” is not exclusively identified with the complainant service that is made available through the website hosted on the domain name indiagrid.com.

The complainant service at the website indiagrid.com includes placing links of various utility websites and provides a forum for discussion among its members. It is hard to find any direct nexus or link between the services provided and the term “**INDIAGRID**”.

That the term “**INDIAGRID**” is not a newly coined term and is being used by the Consortium GARR which is a non profit organization under the patronage of government in Rome. This organization has registered the domain name euindiagrid.eu and is actively involved in the promotion of educational and scientific research.

PARTIES CONTENTIONS:

COMPLAINANT

- a. The Complainant contends as follows in the Complaint:
 - i. The Respondent’s domain name is identical or confusingly similar to the trade/service mark in which the Complainant has rights.
 - ii. The Respondent has no right or legitimate interest in respect of the domain name.
 - iii. The Respondent has registered the domain name indiagrid.in with mala fide intention and is using it in bad faith.



- b. The Complainant has filed the following documents as annexure along with its response:
- i. Screenshot showing WHOIS search conducted on September 3, 2012.
 - ii. Screenshot showing Alexa ranking of the website indiagrid.com of the complainant.
 - iii. Screenshots showing the members of indiagrid.com, its facebook and twitter pages.
 - iv. Screenshot showing the list of registered domain names registered by the complainant.
 - v. Screenshots of various articles mentioning the website of the complainant.
 - vi. Screenshot showing the webpage of the respondents' website as being under construction.
 - vii. Screenshots of websites posted on the domain name indiagrid.com since the year 2002.
 - viii. A copy of the Power of Attorney.

RESPONDENT

- c. The Respondent contends the following in his reply to the Complaint:
- i. The Respondent is entitled to have a generic domain name registered if it is open and available for registration.
 - ii. The registered domain name indiagrid.in has not been registered with malafide intent nor is it being used in bad faith by the respondent.
 - iii. The respondent has legitimate interest and rights in the domain name indiagrid.in
 - iv. That the complainant has filed the complaint in bad faith with an intent to hijack the domain name indiagrid.in which is rightfully registered by the respondent.
- d. The Respondent has filed the following documents as annexure along with its response:
- i. WHOIS lookup details of euindiagrid.eu
 - ii. Screenshots of indiagrid.in on various dates beginning December 6, 2011.
 - iii. A copy of the website and software development agreement with Endue Technologies – Kolkata dated August 14, 2011.



- iv. A copy of the reply letter dated December 17, 2012 written by the respondent's representative – Mr. Gajendra Pratap Singh agreeing to vacate the domain name indiagrid.in and requesting two (2) weeks time.
 - v. Screenshot of homepage of indiagrid.in
 - vi. Screenshots of pages showing the data collected by the respondents.
 - vii. Screenshot of indiagrid.com showing its group website.
 - viii. WHOIS look up of all websites registered by domain administrator and domains by proxy for Technoway.Inc
 - ix. Screenshots of pages indicating the status of the websites registered for Technoway.Inc
 - x. A copy of the Vakalatnama.
- e. The Complainant filed its rejoinder on March 21, 2013 and contended the following:
- i. The complainant asserts that any person cannot register a domain name if it is open and available for registration and the registration of domain names is subject to the proprietary rights of third parties and is also subject to challenge if such third party rights are infringed.
 - ii. The complainant has denied that the term INDIAGRID is a generic term and that it has adopted the mark in respect of exclusive services and that the mark is distinctive in character and is capable of distinguishing its goods and services.
 - iii. The complainant has submitted that it is using the composite mark INDIAGRID as a whole and not using the words "INDIA" and "GRID" separately as is being contended by the respondent and that the mark should be taken as a whole to determine the distinctive character thereof.
 - iv. The complainant has submitted that the mark INDIAGRID does not have any dictionary meaning nor does it have any reference to the services provided by the respondents.
 - v. The complainant has submitted that the respondent has registered the domain name in bad faith and has not invested its judgment, labor, skill, capital nor have they hired employees for maintenance and development of the project.
 - vi. The Complainant has submitted that the respondent herein is intentionally trying to attract users to the impugned domain name indiagrid.in by creating likelihood of confusion and deception with the complainants' well known mark as to the source, affiliation and endorsement of respondents' website or of the services posted on the respondents' website.



- vii. The complainant has submitted that the malafide intent of the respondents is evident from the fact that the respondent is providing social networking services which are identical to the services as are being provided by the complainant and that the respondents failed to honor the commitment as provided for by the letter dated December 17, 2012 so that they could extract a higher price from the complainant or from their competitors at a later date.
- viii. The complainant has submitted that the respondent has never made any bonafide offering of goods and services to the public from the impugned domain name, but has rather indulged himself in collecting of sensitive information from the users in contravention of the provisions of the Information Technology Amendment Act, 2008 & Rules framed thereunder en-cashing upon the complainants' well known mark INDIAGRID.
- ix. The complainant has submitted that the respondent entered into an agreement for website and software development with Endue Technologies Kolkata on August 14, 2011 for hosting a website on indiagrid.in after having knowledge of the proprietary rights of the complainant in the mark INDIAGRID and that no work has ever commenced on the development of the website till date.
- x. The complainant has submitted that the only intent of hosting a website on the impugned domain name of the respondent is to collect the user data of the visitors and/or users of the complainants' website indiagrid.com by making them believe that the complainant's website is associated in some manner with the respondents' based on the impugned domain name.
- xi. The complainant has submitted that the respondent would incur no financial costs by transferring the said domain name and that such a submission shows the malafide intent of the respondent as the respondent is trying to make money by negotiating a price at this platform for selling the domain name to the complainant or any of its competitors at a higher price.
- xii. The complainant has submitted that the respondent by registering the well-known mark of the respondent with the intent to seek direct or indirect commercial gain by en cashing upon the goodwill of the mark INDIAGRID. This demonstrates the bad faith and malafide intent of the respondent.
- xiii. The complainant has submitted that the malafide intent of the respondent is evident fro the fact that the respondent is trying to change his mind by refusing to honor his commitment vide letter dated December 17, 2012 to en cash upon the reputation and goodwill of the mark INDIAGRID.



- xiv. The complainant has submitted that the respondent is trying to en cash upon the goodwill and reputation of the complainant's mark by offering identical services to intentionally divert the traffic of the complainant's website to the impugned domain name with clear intent to infringe upon the complainant's well known mark.
- xv. The complainant has submitted that the mark under the law is to be taken as a whole to determine the descriptive character thereof. The composite word INDIAGRID is distinctive and is capable of distinguishing the services of the complainant and is duly protected under the common law on account of prior coining, adoption and use.
- xvi. The complainant has submitted that there is no bar of registering domain names having generic terms provided the same have not been registered with a view to en cash upon the good will and reputation of the mark as owned by third parties and is against the laws of the country.
- xvii. The complainant in light of his submissions has requested that, the domain name indiagrid.in be transferred to the complainant in accordance with the procedures as laid down under INDRP Policy and the rules framed thereunder and; to dismiss the response submitted by the respondent after the period of limitation and; to impose heavy costs on the respondent for misleading the panel and the complainant by his email dated December 17, 2012 and; to pass any other order as the panel may deem fit in the interest of justice.

DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above fair opportunity has been given to both the Parties to file their contentions and after perusal, the following Arbitration proceedings have been conducted.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*



In the present circumstances, the decision of the Arbitrator is based upon the contentions and evidence filed by both the parties respectively and conclusion is drawn from the same.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that he has statutory and common law rights in the mark "INDIAGRID" and the assertion by the respondents that they have registered a generic domain name which was open and available for registration does not hold much ground as it is understood that the respondents ought to have conducted reasonable due diligence before registering the disputed domain name and a man of ordinary prudence having knowledge of using the world wide web would have surely come across the registration of an identical domain name.

The Complainants' rights as a prior user of the mark "INDIAGRID" have also been established beyond doubt and the tribunal in light of the evidence produced notes that the Respondent must have known or was aware of the rights of the Complainant in the domain name indiagrid.com at the time of registering the disputed domain name indiagrid.in

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

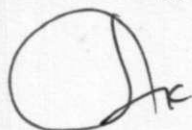
- i) the registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the registrant has no rights or legitimate interests in respect of the domain name; and
- iii) the Registrant's domain name has been registered or is being used in bad faith.

BASIS OF FINDINGS:

The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant contends in the complaint that the domain name of the respondent i.e. "indiagrid.in" is identical and confusingly similar to its domain name "indiagrid.com", as both the domain names make exclusive use of the word "INDIAGRID" for which trademark applications have been filed by the complainant.

It is further stated that the complainant is the registered proprietor of the domain name "indiagrid.com" since the year 2000 and trademark applications for the word "INDIAGRID"



are pending registration in India and have been registered with UPSTO, therefore, the word “INDIAGRID” has gained significant reputation and the mark can be termed as a well known mark. The complainant is also the registrant and proprietor of similar domain names across the world as is ascertained from the attached annexures.

After analyzing the domain name of the complainant “indiagrid.com” and the disputed domain name “indiagrid.in”, keeping in mind the fact that trademark application for the mark “INDIAGRID” is pending registration in name of the complainant, the Tribunal is of the opinion that there is no difference between the two domain names and they make use of exact same mark/word as prefix. The only difference/distinguishing factor between the two domain names is the suffix that follows them being .com and .in in this case.

The Tribunal further notes that the Respondents’ domain name is confusingly similar to that of the complainants’ domain name with an addition of cCTLD “.in” at the end of the domain name. Such is not sufficient to make the domain name distinct and hence the disputed domain name is confusingly similar to the Complainants’ domain name and trademark.

Mere use of a different suffix does not help an bonafide user to distinguish between the domain names indiagrid.com and indiagrid.in.

Moreover such use of the word INDIAGRID would cause a bonafide user to believe that he is using the same service or an affiliate service under license or assignment that is hosted at the domain name indiagrid.com.

The Tribunal also gets support to the finding from the following cases:

1. Lego juris A/S v. Robin Martin, INDRP/118 (February 14, 2010), it was held that the addition of country code (“CTLD”) in the domain name is not sufficient to distinguish from the mark and does not change the overall impression of the designation as being connected to a trademark of the complainant.

The other aspect, which is asserted by the parties, is that the spheres of user of trademark and domain name, and the manner in which they are used or sought to be use. The respondent has alleged that the disputed domain name is related to and will be used in a different manner compared to that of the complainant.



The Tribunal concludes that domain name and trademark, which may be used in a different manner and for different business purposes or field, or sphere, can still be confusingly similar or identical and that respondent stands to gain advantage by exploiting the goodwill of the complainant by registering the name “INDIAGRID” as his domain name with an addition of cCTLD “.in” at the end of the domain name.

This proposition was also upheld in the following cases:

1. J.D. Edwards & co. Vs. Nadeem Bedar, WIPO Case D-2000-0693, wherein it was held that its irrelevant that domain name or trademark carry on business in different fields, when they are similar phonetically or in appearance.
2. M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd, [AIR 2004 SC 3540], it was held that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a bonafide user to a service, which he is not looking for.

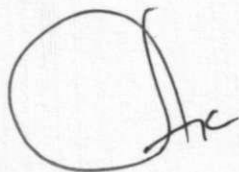
Thus the conclusion is that the domain name of the respondent is identical and confusingly similar to the domain name and trademark of the complainant.

The Registrant has no rights or legitimate interests in the respect of the domain name.

It is clear that once a complainant makes a prima facie case, then the burden shifts to the Respondent to provide evidence to establish his right or legitimate interest in the disputed domain name.

This proposition was also upheld in the following cases:

1. Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO case No. D2003-0455, where it was held that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of proving rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4 (a) (ii) of UDRP.



2. Hanna- Barbera Productions, Inc. Vs. Entertainment Commentaries, FA 741828 (National Arbitration Forum, September 25, 2006), where it was held that the complainant must first make a prima facie case showing that the respondent does not have rights or legitimate interest in the subject domain name. If the complainant satisfies its burden, then the burden shifts to the respondent to show that it does have rights or legitimate interests in the subject domain name.

The Tribunal determines that the complainant has made positive assertions and adduced evidence establishing a prima facie case showing that the respondent does not possess any right in the disputed domain name. Hence, the burden shifts on the respondent to prove that it has legitimate right or interests in the disputed domain name. Whereas the respondent has not discharged the onus positively, which had shifted upon him as the respondent did not put forth such evidence, except the fact that he only made assertions that the word "INDIAGRID" is a generic name and that dictionary meaning of the words "INDIA" and "GRID" can be ascertained if the words are seen independently:

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show registrant rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i) *before any notice to the registrant of the dispute, the registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

- a. While considering paragraph 7 (i) of the .IN Dispute Resolution Policy, "*before any notice to the registrant of the dispute, the registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services*", the complainant contends that the respondent has no intentions or purpose to use the disputed domain name for bona fide offering of goods and services in relation to it. The complainant claims that the respondent has not produced any document to

show its actual working, the only assertion that is made by the respondent is that they have entered into an agreement with Endue Technologies – Kolkatta on August 14, 2011 and that the testing of its website is in beta stage. This clearly signifies that the respondent is not carrying on any legitimate or bonafide business under the contested domain name at present.

The respondent has argued that before any notice of the dispute, it was using, or had demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. It has further contended that the respondent had first registered the domain name in August 2011 and that has a bonafide intention of hosting a website that provides an exchange platform and promotes social networking and on these grounds the Respondent argued that he has proved and satisfied the conditions of paragraph 4(ii) & 7 of INDRP.

The respondent, to show its bona fide offering of goods or services has produced by way of evidence screenshots of its start page/homepage etc.

The Tribunal does not find such evidence and documents to be sufficient to show or demonstrate bona fide offering of goods or services in the name of the disputed domain name. It is pertinent to note that the Tribunal had directed the respondent to furnish hard evidence of its continuous working and offering of its services since its incorporation. But on the other hand, the Respondent has not provided any positive, cogent and specific evidence that is known or recognized by domain name, by its user and that he in fact uses it for providing goods or services. Further note shall be taken of the fact that the respondent failed to honor its commitment to vacate the disputed domain name and has further failed to provide any service from the disputed domain name.

Hence, the Tribunal concludes that the Respondent has failed to provide any substantial evidence to show that the respondent is engaged in or demonstrably prepared to engage to offer or provide any goods or bonfide service from the disputed domain name.

This proposition was also upheld in the following cases:

1. Pfizer Inc. Vs. Deep Soni and Ashok Soni, (Case No. D2000-0782), it was held that the respondent to prove his right or legitimate interest in domain name, must show that he is



using the domain name for offering of goods and services or that he is making a demonstrable preparation to use the domain name for offering goods and services.

2. Madonna Ciccone v. Dan Parisi, ICANN Case No.D2000-0847, in which it was held that a use which intentionally trades on the fame of another cannot constitute a 'bona fide' offering of goods or services.

While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, "*the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights*", the Complainant has stated that Respondent is neither commonly known by the disputed name, nor it is a personal name.

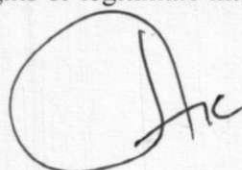
The Respondent has argued that the Complainant failed to register the domain name indiagrid.in and that since the name was openly available the respondent had every right to register the said domain name.

The Tribunal thus concludes that the Respondent has failed to provide any substantial evidence to show that he has substantial rights to use the domain name indiagrid.in and that it is difficult to believe that the respondent was not aware of the domain name indiagrid.com at the time of registration of the domain name indiagrid.in

In order to establish its merit the Respondent must supply material evidence ascertaining as to why he chose the name indiagrid.in rather than asserting his right to register a generic name. The respondent has failed to provide such evidence that would help differentiate the mark "INDIAGRID" of the Complainant from the disputed domain name of the Respondent.

The Tribunal also gets support to the finding from the following cases:

1. Morgan Stanley v. Keep Guessing, INDRP/024 (June 27, 2007), has been relied upon, where it was held that Respondent has failed to show that he has a right or legitimate interest in the domain name, as he is neither known by the domain name, nor is it his personal name.
2. Pauleka Vs. Paula Korenek, (WIPO Case No. D2003-0453, July 24, 2003), it was held that "in order to have rights or legitimate interests under the "commonly known"



provision of the policy the Respondent must be commonly known by the domain name prior to registration of the domain name in issue”.

Thus the Tribunal concludes that the Respondent has failed to show evidences to prove that it is commonly known by the disputed domain name.

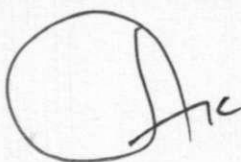
- a. While considering paragraph 7 (ii) of the .IN Dispute Resolution Policy, “*the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue*”, the Complainant has contended that Respondent is not making a legitimate non commercial or fair use of the domain name.

According to Complainant, the disputed domain name indiagrid.in has been adopted by the Respondent for commercial gain and further alleges that the sole purpose of the Respondents’ use of the disputed domain name is to divert bonafide Internet Users wanting to use the services of the Complainants website to his web site. The Complainant further alleges that the Respondent is guilty of the practice of “Cyber-squatting” by adding a cTLD .in to the trademark of the Complainant “INDIAGRID” in order to divert the potential customers to its website.

The Tribunal notes and concludes as stated earlier that the Respondent has not produced any substantial evidence to show its bonfide use or offering of goods and services in the said disputed domain name. The Tribunal believes that even if the Respondent has different working sphere compared to that of the Complainant, it may still lead to confusion among the internet users. This may lead to diversion of the potential customers and users of the Complainant to the website of the respondent.

The Tribunal also gets support to the finding from the following cases:

1. M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd, [AIR 2004 SC 3540], it was held that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.
2. Alliance & Leicester Plc Vs. Henao Berenice, WIPO Case D-2005-0736, it was held that use of the domain name by the Respondent should be bonafide without the intent to mislead internet users or consumers or to divert them to his website and without our intent to tarnish trademark of Complainant.



The Tribunal finds that the above submission of the Complainant have not been rebutted by Respondent in a proper way and by giving insufficient evidence, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

The Registrant domain name has been registered or is being used in bad faith

The Complainant alleges that the Respondent has registered the domain name only with the intention to create confusion in the mind of the internet users and to attract them to its impugned domain name. The Complainant has contended that the Respondent has full knowledge of its website that is hosted on indiagrid.com and is intentionally attempting to divert the users from the website of the Complainant and also to deceive the consumers /customers /visitors /members into believing that there is a connection/association/link between the Complainant and the Respondents website.

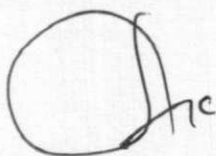
The Respondent has refuted the above contentions of the Complainant by stating that it had registered the disputed domain name by offering bonafide services and goods and has not registered the domain name in bad faith.

The Tribunal notes that the Respondent as stated above has failed to produce any evidence or document showing that the said domain name was not registered in bad faith and for providing bonafide services and goods.

The tribunal further notes and finds support from the fact that at one point he respondent was willing to transfer the domain name and all rights accruing from it to the complainant. If the respondent held genuine interest and legitimate right in the disputed domain name, the respondent would have not offered to settle and transfer the domain name to the complainant.

The Tribunal concludes that the Complainants' mark "INDIAGRID" is a well known mark and that they have filed the necessary trademark applications for registration of the mark in India.

The Complainant has provided substantial evidence showing that they have registered a couple of domain names with the word "INDIAGRID" and it seems that the respondent is trying to capitalize on the goodwill associated with the Complainants' mark.



The Tribunal also gets support to the finding from the following cases:

1. Barney's Inc. Vs. BNY Bulletin Board, (WIPO Case No. D2000-0059), it was held that registration of a domain name containing a famous mark is strong evidence of bad faith.

The Tribunal further concludes that the Respondent has registered the domain name in bad faith as it has failed to produce any concrete evidence to show the reason behind the adoption of the disputed domain name.

The Tribunal is of the view that as per the facts and circumstances it is clear that the Respondent has countered many contentions of the Complainant but it is also evident that they got the domain name registered in bad faith.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in his complaint. In light of the facts and circumstances of the case it can be presumed that only purpose for the registration of the disputed domain name indiagrid.in was to capitalize on the fame and reputation of the complainant mark indiagrid.com and to make monetary benefit.

The Respondent got the disputed domain name indiagrid.in registered in bad faith knowing fully well of the existence of the trademark rights of the complainant in the mark "INDIAGRID".

The .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. "indiagrid.in" to the Complainant.

No cost or penalty is imposed upon the Respondent.

The Award is accordingly passed on 18th April, 2013.


A.K. SINGH
SOLE ARBITRATOR
DATE: 18.04.2013