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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

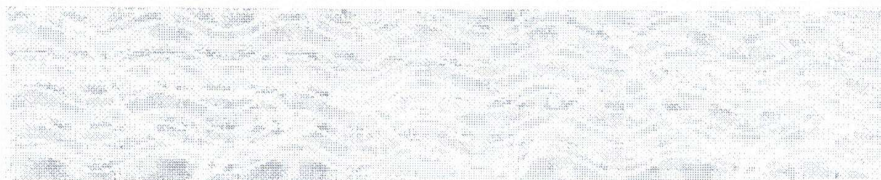
First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

: IN-DL41677387769030T
: 04-Feb-2021 09:03 PM
: IMPACC (IV)/ dl925103/ DELHI/ DL-DLH
: SUBIN-DL92510385437960443947T
: SHEETAL VOHRA
: Article 12 Award
: Not Applicable
: 0
: (Zero)
: SHEETAL VOHRA
: Not Applicable
: SHEETAL VOHRA
: 100
: (One Hundred only)



Please write or type below this line.

Sheetal Vohra

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.

**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY**

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA

[NIXI]

INDRP Case No: 1301

ARBITRAL TRIBUNAL CONSISTING OF

SOLE ARBITRATOR

DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW)

ADVOCATE, DELHI HIGH COURT

IN THE MATTER OF:

Rovio Entertainment Corporation

P.O. Box 65, FI-02151 ESPOO

Finland

inf@ssrana.com

...Complainant

VERSUS

ANGRY BIRDS TECHNOLOGIES

Angamaly, Ernakulam, Kerala - 683572,

India

angrybirds.technologies@gmail.com

...Respondent

ARBITRATION AWARD

Sheetal Vohra

COMPLAINT REGARDING DISPUTED DOMAIN NAME
<ANGRYBIRDS.NET.IN>

1. THE PARTIES

- (i) The Complainant in this administrative proceeding is Rovio Entertainment Corporation, having its corporate office at: P.O. Box 65, FI-02151 Espoo, Finland.
- (ii) The Complainant has in the complaint requested that all communications in relation to the subject matter be made through its attorneys, whose contact information is set forth in this paragraph below.

Vikrant Rana

S.S. Rana & Co., Advocates

Registered Office Address: 317, Lawyers Chambers, High Court of Delhi,
New Delhi – 110003, India

Telephone: +91 11 – 40123000; +91 84485 84681

Fax: +91 11 – 40123010

Email: inf@ssrana.com;

- (i) The Respondent is Angry Birds Technologies of the address Angamaly, Ernakulam, Kerala - 683572, India.
- (ii) The Complainant has given search results from the WHOIS database as available on the Registrar's website at Gooddomainregistry.com, which has revealed the below contact information about Respondent:

Domain ID: D414400000007047003-IN

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Creation Date: November 19, 2018

Expiration Date: November 19, 2021

Registrant Name: Angry Birds Technologies

Registrant Organization: Angry Birds Technologies

Registrant Address: Angamaly, Ernakulam, Kerala - 683572,
India

Registrant Phone: +91.9633888141

Registrant Email: angrybirds.technologies@gmail.com;

Copies of the print outs of the publicly available WHOIS information for as well as of the complete WHOIS information as received upon request to NIXI, have been filed as **Annexure C-2** and **Annexure C-2a** respectively.

2. THE DOMAIN NAME AND REGISTRAR

- (i) This dispute concerns the domain name identified below:

<ANGRYBIRDS.NET.IN>

- (ii) The Registrar with whom the domain name is registered is:

Registrar: Good Domain Registry Private Limited

Address: 34A Mainroad, Kennedy Square, Perambur, Chennai, Tamil Nadu,
India – 600011

Email: abuse@gooddomainregistry.com

3. PROCEDURAL HISTORY

November 18th 2020:

Date of Complaint.

December 17th 2020:

The .IN REGISTRY appointed Dr. Sheetal Vohra as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and

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independence.

December 17, 2020:

Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.

As the Respondent failed to file his response within the stipulated 15 days' time period intimated to all parties, the instant award is being passed.

4. FACTUAL AND LEGAL GROUNDS

- a) It was submitted by the Complainant that it is a global company engaged in creating world class entertainment with games, animation, licensing and other businesses. The Complainant was founded in 2003 as Rovio Mobile OY, which was renamed as Rovio Entertainment Limited and subsequently renamed as Rovio Entertainment Corporation. Headquartered in Finland, the Complainant is an industry-changing global entertainment and Media Company, and the creator of the globally successful **ANGRY BIRDS** franchise.
- b) It was submitted by the Complainant that the Complainant's games business was founded in 2003 as a student project, and since then has developed and released dozens of titles, including Battle Bay, Nibblers, and the well-known **ANGRY BIRDS** franchise. The Complainant released the first **ANGRY BIRDS** game in 2009, as a casual puzzle game for touchscreen smartphones and by 2010 the **ANGRY BIRDS** game had become a worldwide phenomenon. Inspired primarily by a sketch of stylized wingless birds, the game was first released for Apple's iOS in December 2009. Since that time, over 12 million copies of the game have been purchased from Apple's App Store which prompted the company to design versions of the game for other touchscreen-based smartphones, such as those using the Android operating system, among

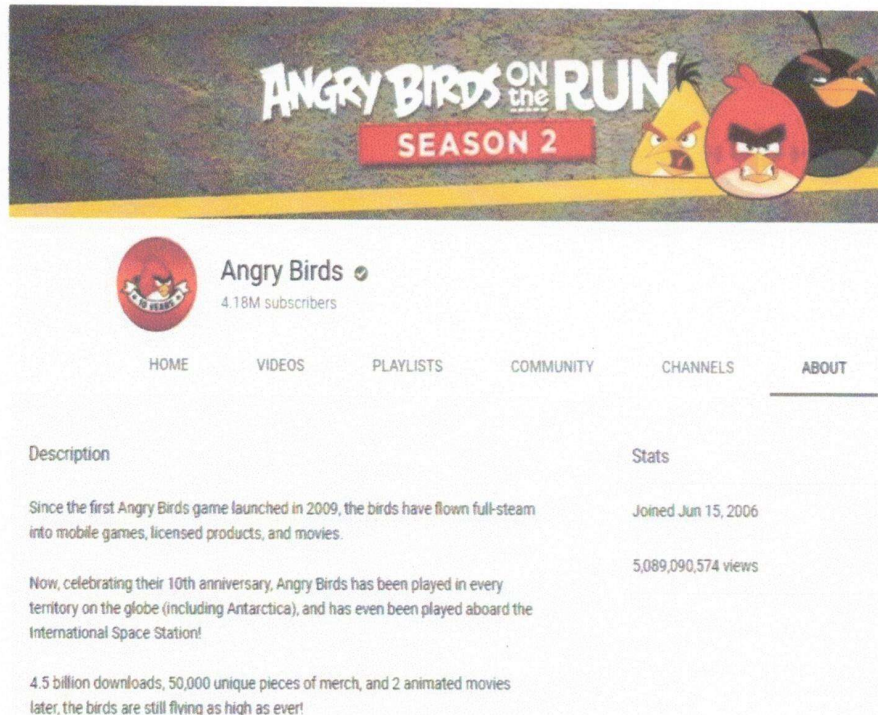
Shweta Vohra

others.

- c) It was submitted by the Complainant that the Complainant has launched numerous chart-topping games under the **ANGRY BIRDS** brand for different platforms such as Angry Birds, Angry Birds 2, Angry Birds Fight, Angry Birds Seasons, Angry Birds Rio, Angry Birds Space, Angry Birds Friends, Angry Birds Pop!, Angry Birds Epic, Bad Piggies, Angry Birds Star Wars, Angry Birds Star Wars II, Angry Birds GO, Angry Birds Transformers, Angry Birds Action!, and Angry Birds Blast. Details of the various **ANGRY BIRDS** games alongside other Rovio games have been filed as **Annexure C-3**.
- d) It was submitted by the Complainant that the **ANGRY BIRDS** games have enjoyed continuing worldwide success, and the franchise has since expanded to a variety of new business verticals including animation, toys and apparels.
- e) It was submitted by the Complainant that today, **ANGRY BIRDS** is the most downloaded series of games since 2009, making the Complainant a proven leader in mobile-first entertainment. The Complainant's ever-expanding global mobile entertainment portfolio has surpassed 3.5 billion downloads, with millions of monthly active users. The **ANGRY BIRDS** brand has a thriving licensing business with over 400 licensees all around the world, encompassing a variety of goods and services, from plush toys to live-action slingshot games, proving that the Complainant has acquired global goodwill and reputation for the brand.
- f) It was submitted by the Complainant that following the immense popularity of their **ANGRY BIRDS** games in the mobile gaming industry, the Complainant expanded the **ANGRY BIRDS** franchise in the entertainment, animation, publication and licensing industry, and has established itself as a valued international brand. The Complainant forayed into the entertainment industry with the release of original scripted shows based on the adventures of the popular characters from their **ANGRY BIRDS** game series. Some of the

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 animated shows released by the Complainant are **ANGRY BIRDS TOONS**, **ANGRY BIRDS STELLA**, and **PIGGY TALES**. Further, the Complainant has its own YouTube channel under the name **ANGRY BIRDS** wherein the latest episodes and videos of their various animated series, such as **ANGRY BIRDS BLUES**, **ANGRY BIRDS STELLA**, and **PIGGY TALES** and so on can be watched by their followers and fans. Relevant screenshots of Complainant's YouTube channel were given in paragraph 5 of the Complaint and are reproduced herein below:



Shweta Sharma

Description	Stats
Since the first Angry Birds game launched in 2009, the birds have flown full-steam into mobile games, licensed products, and movies.	Joined Jun 15, 2006
Now, celebrating their 10th anniversary, Angry Birds has been played in every territory on the globe (including Antarctica), and has even been played aboard the International Space Station!	5,089,090,574 views
4.5 billion downloads, 50,000 unique pieces of merch, and 2 animated movies later, the birds are still flying as high as ever!	
Links	
angrybirds.com	Angry Birds
@AngryBirds	@angrybirdsofficial
Download Angry Birds 2	rovio.com

- g) It was submitted by the Complainant that in 2016, the **ANGRY BIRDS** franchise expanded into the animation industry when **THE ANGRY BIRDS MOVIE** was released by Sony Pictures Entertainment, Inc. The film was a 3D computer-animated action-adventure comedy that was meant to act as an original story or a direct prequel to the Complainant's original game **ANGRY BIRDS**. Screenshots of the official **ANGRY BIRDS MOVIE** website www.angrybirds-movie.com as were available for the movie have been given in paragraph 6 of the Complaint and are given herein below:-

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- h) It was submitted by the Complainant that the movie went straight to No. 1 at the Box Office in 52 countries, grossing over \$43 million, and set a record May Opening for an original animated film. The movie grossed \$107.5 million in North America and \$242.2 million in other territories for a worldwide total of \$349.7 million. Worldwide, it is the second highest-grossing video game film of all-time and the most successful Finnish film of all time. It was nominated for multiple teen choice awards and a Hollywood Music in Media Award.
- i) It was submitted by the Complainant that due to the immense popularity of the **ANGRY BIRDS** franchise, the Complainant has teamed up with various amusement parks around the world to bring the **ANGRY BIRDS** universe to life, by creating **ANGRY BIRD** themed sections and activity parks which incorporate elements from the **ANGRY BIRDS** universe so that fans of the **ANGRY BIRDS** franchise and their families can experience and enjoy games, rides and interactive plays, and participate in activities and challenges associated with the **ANGRY BIRDS** universe. Details of the various amusement parks around the world that offer the **ANGRY BIRDS** experience are as under:

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- a) Särkänniemi (Tampere, Finland)
- b) Thorpe Park (Surrey, England)
- c) Lightwater Valley (North Yorkshire, England)
- d) Gran Canaria (Spain)

Screenshots of the websites of the amusement parks are copied below for your ready reference.



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- j) It was submitted by the Complainant that the Complainant has grown alongside **ANGRY BIRDS** as a multifaceted entertainment house and currently employs over 400 professionals from all backgrounds at its offices located in Espoo, Finland; China and Sweden.
- k) It was submitted by the Complainant that following the immense popularity of the corporation's **ANGRY BIRDS** games in the mobile gaming industry, the Complainant expanded the **ANGRY BIRDS** franchise and started licensing and selling **ANGRY BIRDS CLOTHING AND MERCHANDISE** through various licensees. **ANGRY BIRDS CLOTHING AND MERCHANDISE** includes elaborate range of men's clothing, women's clothing, girl's clothing, boy's clothing, kids footwear, toys & games, baby care, bags & luggage, office supplies, DVD and Blu-rays, wall stickers, decorative and collectible figures, etc.
- l) It was submitted by the Complainant that **ANGRY BIRDS CLOTHING AND**

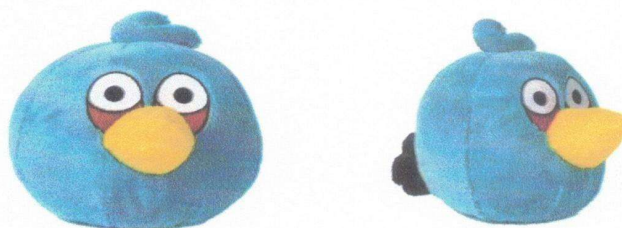
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MERCHANDISE have become popular and have generated considerable demand in the market. These **ANGRY BIRDS CLOTHING AND MERCHANDISE** is available for purchase on the Complainant Corporation's official website as well as various third party websites such as www.firstcry.com, www.amazon.com, www.amazon.in, www.snapdeal.com, www.flipkart.com etc. Relevant screenshots of the said websites were given in paragraph 11 and are given herein below:-

<https://www.firstcry.com/angry-birds/angry-birds-soft-toy-blue-height-20-cm/2481752/product-detail?ref=GoogleShopping>

Angry Birds Soft Toy Blue - Height 20 cm

2 to 10 Years, develops social and emotional growth, cartoon themed soft toy for kids Product ID:2481752 [See Details](#)



Roll over image to zoom in

Angry Birds Collectible Figure Mighty Eagle - Multi Color

by Angry Birds

★★★★☆ 14 ratings



10 Days
Returnable

Currently unavailable.

We don't know when or if this item will be back in stock.

📍 Deliver to New Delhi 110001

- Display Your Love Of Angry Birds With This Unique Mighty Eagle Collectible Figure.
- Detailed
- Realistic Figurines Pack A Ton Of Personality Into A Portable Design.
- Collect The Whole Flock For A Complete Set
- Including Red



[See more product details](#)

- m) It was submitted by the Complainant that in February 2010, **ANGRY BIRDS** was nominated for the "Best Casual Game" award at the 6th annual International Mobile Gaming Awards in Barcelona, Spain. In September 2010, IGN named **ANGRY BIRDS** as the fourth best iPhone game of all time. In April 2011,

Shweta Vohra

ANGRY BIRDS won both the “Best Game App” and “App of the Year” at the UK Appy Awards. At the 15th edition of the Webby Awards, **ANGRY BIRDS** was awarded “Best Game for Handheld Devices”. Details of some of the awards won by the Complainant and its **ANGRY BIRDS** franchise have been filed as as **Annexure C-4**.

- n) It was submitted by the Complainant that in order to protect its valuable intellectual property rights, the Complainant has filed applications and obtained registrations for its trademarks **ANGRY BIRDS** as well as **ANGRY BIRD characters** and variations thereof in various classes in various countries of the world. A representative list of the Complainant’s worldwide registrations has been filed as **Annexure C-5**.
- o) It was submitted by the Complainant that the trademarks **ANGRY BIRDS** and **ANGRY BIRDS characters** are also registered in India in various classes. The details of the Complainant’s registrations in India have been given in paragraph 14 of the Complaint and are given herein below:

Sr. No.	Application No.	Application Date	Class	Trade Mark
1.	1987883	July 1, 2010	9, 16, 28, 41	Angry Bird (Device) 
2.	1987884	July 1, 2010	9,16,28,41	ANGRY BIRDS
3.	2137093	April 28, 2011	3,14,18,20, 21, 24, 25, 27, 29, 30, 32,	Angry Bird (Device) 

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			33, 34, 35, 36, 38, 43	
4.	2137092	April 28, 2011	3, 14, 18, 20, 21, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 43	ANGRY BIRDS
5.	2980987	June 09, 2015	12	ANGRY BIRDS

Copies of the registration certificates of the above trademark registrations have been filed as **Annexure C-6**.

- p) It was submitted by the Complainant that the aforesaid registrations are renewed, valid and subsisting. By virtue of such registrations, the Complainant has exclusive statutory right to use the said trade marks in respect of the goods/services for which they are registered.
- q) It was submitted by the Complainant that it is a matter of common knowledge that, in these days of extensive use of the global communications network, the reputation of a trade mark is not limited by geographical or political boundaries as communications, people and reputations travel around the world crossing such boundaries as if they did not exist. With the advent and proliferation of satellite television and the Internet, the world is fast becoming a global village. The reputation of a trade mark flashes quickly throughout the world through the

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afore-mentioned medium of advance information technology. The goodwill and reputation enjoyed by the Complainant in its trademarks **ANGRY BIRDS** and the **ANGRY BIRD characters**, has accrued to Complainant by diverse means such as electronic and print media publicity, advertisements on television and in leading international dailies, magazines and journals, which enjoy circulation and readership across the globe. Further, the Complainant has massive presence online as its games are available and downloadable from the internet, and its websites and games are accessible to persons world over, including in India. The Complainant has registered a number of domain names which are accessible globally, and details of the same were given in paragraph 15 of the Complaint and are given herein below:-

Sr. No.	Domain Name	Registration Date
1.	www.rovio.com	June 19, 2002
2.	www.angrybirds.com	December 13, 2009
3.	www.stella.angrybirds.com	December 13, 2009
4.	www.angrybirdsmovie.com	October 17, 2010
5.	www.angrybirdsmovie.net	May 15, 2013
6.	www.angrybirds.in	November 13, 2010
7.	www.angrybirds.co.in	November 13, 2010

The WHOIS details of the aforementioned domains has been filed as **Annexure C-7**.

- r) It was submitted by the Complainant that, the **ANGRY BIRDS** brand and **ANGRY BIRDS characters** have been the focus of much media attention, including features in popular trade magazines and newspapers, with circulation not only in the U.S. but also in other countries, including India. A non-exhaustive list of the articles published about Rovio and its marks **ANGRY BIRDS** and **ANGRY BIRDS characters** in popular international/national trade magazines and newspapers along with their dates of publication have been filed with the Complaint as **Annexure C-8**.

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s) It was submitted by the Complainant that Complainant regularly issues press releases and posts blogs on its websites w www.rovio.com and www.angrybirds.com to keep the public as well as its customers informed of the developments and events in connection with their business and the **ANGRY BIRDS** franchise. A non-exhaustive list of the recent **press releases, articles** and **blogs** issued in respect of **ANGRY BIRDS, ANGRY BIRDS characters** and **ANGRY BIRDS franchise** has been filed with the Complaint as **Annexure C-9**.

t) It was submitted by the Complainant that the Complainant's reputation has reached the shores of India through its popular games, the above-mentioned websites, as well as through a myriad of other forms of publicity, media, advertisements and uses of the **ANGRY BIRDS** mark, and **ANGRY BIRDS characters** and variations thereof. It was further submitted that the Complainant also has significant presence on social networking sites such as **Facebook, Twitter, Instagram, YouTube**, etc. Details of the same were given in paragraph 18 of the Complaint and are mentioned hereunder:-

Sr. No.	Social Networking Site	Likes/Follows (as on November 20, 2019)
ANGRY BIRDS		
1.	Facebook	23M likes
2.	Twitter	294K followers
3.	Instagram	202K followers
ROVIO		
1.	Facebook	223K likes
2.	Twitter	98.3K followers
3.	Instagram	26.1K followers

It was submitted by the Complainant that accordingly, the trademarks **ANGRY BIRDS** and **ANGRY BIRDS characters** can be said to have acquired a trans-border reputation

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in India by virtue of their ubiquitous use and availability.

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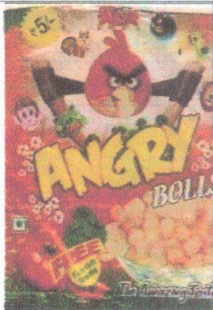
- u) It was submitted by the Complainant that the annual worldwide revenue generated under the **ANGRY BIRDS** franchise runs into many millions of Euros. The details of Complainant's worldwide revenues for the last few years was given in paragraph 19 and are reproduced below:-

<u>YEAR</u>	<u>REVENUES (€)</u>
2011	75.4 million
2012	152.2 million
2013	156 million
2014	158.3 million
2015	142 million
2016	190 million
2017	297.2 million
2018	281.2 million

- v) It was submitted by the Complainant that the Complainant has been extensively carrying on business and has been using the name and trademarks **ANGRY BIRDS** and **ANGRY BIRD characters** and variations thereof all over the world for almost the last 11 years i.e. since **December, 2009**, and the said marks, by virtue of such continuous and expansive use, have become synonymous with the Complainant, and its goods and services, and are well-known within the meaning of Section 2 (1)(zg) of the Trade Marks Act, 1999. The courts have recognized the existence of trans- border reputation and the Trade Marks Act, 1999, provides for the protection of well-known and famous trademarks.
- w) It was submitted by the Complainant that the Complainant considers the name and trademarks **ANGRY BIRDS** and **ANGRY BIRD characters**, and variations thereof, as well as various domain names owned by Complainant

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consisting of the marks **ANGRY BIRDS**, to be their valuable intellectual property, and makes every effort to protect them. Protection of Complainant's trademarks extends beyond registration activities to enforcement actions, which range from filing domain complaints (including before the instant forum) and opposing trade mark applications for same/similar marks, to sending cease and desist letters to infringers of identical/similar marks, all over the world and the commencement of legal action, in a court of law, if necessary. Details of few of the successful actions taken by Complainant have been mentioned in paragraph 21 of the Complaint which are as under:-

Applicant Name	Application No.	Trade Mark	Action Taken	Remarks
Mahendra Triapthi Trading As : Adybird	3010179	ADYBird	Opposition filed	Application abandoned vide order dated September 26, 2018
Sanjay Kumar Garg Trading As : Shri Radhe Impex	2551254	ANGRY BIRDS	Opposition filed	Application abandoned vide order dated October 03, 2018
Kapil Khatri Trading As : Gurunanak Food Products	2512210		Opposition filed	Application abandoned vide order dated November 12, 2018
Thomas Lee	INDRP/5 36	angrybirds.in	INDRP complaint filed	Domain name transferred.

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Thomas Lee	INDRP/5 37	angrybirds.co.in	INDRP complaint filed	Domain name transferred.
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5. DISPUTED DOMAIN NAME

- x) It was submitted by the Complainant that it was recently brought to Complainant's attention that a domain name, namely < Angrybirds.net.in >, was registered on **November 19, 2018** by Respondent. It was further submitted that a perusal of the said domain revealed that a website purportedly offering "*promotional bulk SMS services*" is operating therefrom. Relevant snapshot of the impugned webpage as of **September 14, 2020** has been given at paragraph 22 and has been pasted below:




6. CORRESPONDENCE WITH RESPONDENT

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- y) It was submitted by the Complainant that as the said domain name is phonetically, visually, conceptually, deceptively and confusingly identical to the marks **ANGRY BIRDS** and **ANGRY BIRD characters**, the Complainant reached out to the Respondent vide email on August 03, 2020 inter alia putting them to notice of the Complainant's rights in the marks **ANGRY BIRDS** and **ANGRY BIRD characters** and further apprising them of the objectionable nature of use of the name/mark **ANGRY BIRDS TECHNOLOGIES/**



and the domain name <Angrybirds.net.in> by them.

As no response was received from the Respondent, the Complainant sent a reminder (via email) on August 21, 2020 inter alia reiterating the contents of their previous notice and once again calling upon the Respondent to cease use of the marks **ANGRY BIRDS** and the **ANGRY BIRDS characters** with immediate effect including ceasing all use of the names/marks **ANGRY BIRDS TECHNOLOGIES** /  as well as voluntarily transferring the disputed domain name <Angrybirds.net.in> to the Complainant. However, no response was received from the Respondent thereafter as well. Copies of the email correspondence between the Complainant and Respondent as described above has been filed as Annexure C-10.

- z) It was submitted by the Complainant that given the Respondent's deliberate silence alongside their non-cooperation with the matter, as well as having view of the fact that the domain is phonetically, visually, deceptively and confusingly identical to the Complainant's registered marks **ANGRY BIRDS** and the **ANGRY BIRDS characters**, the Complainant is constrained to file the present complaint, in order to safeguard its valuable Intellectual Property rights.

7. LEGAL GROUNDS AND SUBMISSIONS

- aa) The Complainant has given following three Legal Grounds, as required by the INDRP:

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**THE DOMAIN NAME <ANGRYBIRDS.NET.IN> IS IDENTICAL TO
THE COMPLAINANT'S TRADE MARK ANGRY BIRDS IN WHICH
THE COMPLAINANT HAS RIGHTS**

(Paragraph 4(i) of the INDRP)

bb) It was submitted by the Complainant that the Complainant is the registered proprietor of the marks **ANGRY BIRDS** and the **ANGRY BIRDS characters** in many countries around the world, including in India, and has been continuously and exclusively using the same in relation to its business for many years. As noted in the foregoing paragraphs, Complainant adopted the mark **ANGRY BIRDS** in 2009, i.e., 9 years prior to the date on which Respondent registered the domain <Angrybirds.net.in>. It was submitted by the Complainant that by virtue of long-standing use and registration, Complainant's marks **ANGRY BIRDS** and the **ANGRY BIRDS characters** qualify to be well-known marks, and are liable to be protected as such in India, as per the relevant provisions of the Trade Marks Act, 1999.

cc) It was submitted by the Complainant that the impugned domain name <Angrybirds.net.in> comprises of the Complainant's registered trade mark **ANGRY BIRDS** in toto, and is therefore visually, phonetically, deceptively and confusingly identical to the Complainant's prior registered trade mark **ANGRY BIRDS** as well as its various existing domains containing the name/mark **ANGRY BIRDS**. It was submitted by the Complainant that the disputed domain name < Angrybirds.net.in >, owing to its identity with the Complainant's trademarks and domain names, and is therefore all the more likely to mislead, confuse and deceive the Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name.

It is a well-settled principle and has been held by prior panels deciding under the INDRP that where the disputed domain name wholly incorporates the Complainant's trade mark, the same shall be sufficient to establish deceptive similarity. In this regard, the Complainant relied on *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Inter-Continental Hotels Corporation v.*

Shruti Vohra

dd) It was submitted by the Complainant that country code top level domains (ccTLD), such as “.in” or “.net.in” are an essential part of a domain name. Therefore, it cannot be said to sufficiently distinguish the Respondent’s domain name <Angrybirds.net.in> from the Complainant’s registered marks **ANGRY BIRDS** or its various existing domain names comprising prominently of the name/mark **ANGRY BIRDS**. In this regard, the Complainant relied on decisions given by prior panels in numerous cases, including but not limited to *Dell Inc. v. Mani, Soniya INDRP/753*.

ee) It was submitted by the Complainant that the Complainant along with the present complaint, has also submitted copies of its trade mark registrations for the mark **ANGRY BIRDS**, in various jurisdictions of the world, including in India. It is a well-settled principle, through various decisions under the UDRP and the INDRP, that submitting proof of trade mark registrations is considered prima facie evidence of enforceable rights in a mark. The Complainant relied upon *TransferWise Ltd. v. Li, Chenggong, INDRP/1122*, *Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER, WIPO Case No. D2010-0858*, *Backstreet Productions, Inc. v. John Zuccarini, WIPO Case No. D2001-0654*.

ff) It was further submitted by the Complainant that additionally, Paragraph 3 of the INDRP states that, “it is the Registrant’s responsibility to determine whether the Registrant’s domain name registration infringes or violates someone else’s rights.” The Complainant relied upon the decision given by the panel in *Lockheed Martin Corporation v. Aslam Nadia (INDRP/947)* <lockheedengineering.in>, since the Respondent failed to discharge such responsibility, the panel concluded that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP. It was submitted by the Complainant that in the present dispute as well, the Respondent, at the time of registering the impugned domain name, has clearly failed to reveal that the name/

Shweta Sharma

mark **ANGRY BIRDS** and the rights subsisting therein vest exclusively with the Complainant.

gg) It was submitted by the Complainant that in view of the foregoing paragraphs, it has been suitably established that the disputed domain name <Angrybirds.net.in> is identical and confusingly similar to the Complainant's **ANGRY BIRDS** prior registered trademarks and domain names incorporating the name/ mark **ANGRY BIRDS**, in which the Complainant has rights.

It was submitted by the Complainant that therefore, the conditions under INDRP Paragraph 4(i) stand suitably established.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME


(Paragraph 4 (ii) and Paragraph 7 of the INDRP)

hh) It was submitted by the Complainant that that the Respondent has no rights or legitimate interests in the impugned domain name <Angrybirds.net.in>. It was submitted by the Complainant that the Complainant has not authorized, licensed or otherwise allowed the Respondent to make any use of its registered marks **ANGRY BIRDS** or **ANGRY BIRDS characters** and the Respondent does not have any affiliation or connection with the Complainant nor to the Complainant's products/ services under the name/mark **ANGRY BIRDS** and/or forming a part of its **ANGRY BIRDS franchise**; and the same constitutes prima facie proof in favour of the Complainant under Paragraph 4(ii)– that the Respondent does not have any rights or legitimate interests in the domain name. The Complainant relied upon *CareerBuilder, LLC v. Stephen Baker, Case No. D2005-0251*. It was further submitted that the Respondent cannot assert that they are using the domain name in connection with a bona fide offering of goods and services in accordance with Paragraph 7(i) of the INDRP, as they are not operating any website from the impugned domain.

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- ii) It was submitted by the Complainant that the Respondent herein has registered the disputed domain <Angrybirds.net.in> 9 years after the adoption of the **ANGRY BIRDS** trade mark by the Complainant. It was submitted by the Complainant that under the circumstances of this case, Respondent's use of the disputed domain name is not "bona fide" within the meaning of Paragraph 7 (iii) of the INDRP since there is no apparent legitimate justification for Respondent's registration of the <Angrybirds.net.in> domain name that is visually, phonetically, conceptually, deceptively and confusingly identical to Complainant's trade name/mark.

It was submitted by the Complainant that further, the continued ownership of the disputed domain <Angrybirds.net.in> by Respondent, despite not having any legitimate or fair reason to do so, prevents Complainant from reflecting its trademark in the subject domain name. The Complainant relied upon *Motorola, Inc. vs NewGate Internet, Inc.* (WIPO Case D2000-0079), wherein it was held that use of the trademarks can not only create a likelihood of confusion with Complainants' marks as to the source, sponsorship, affiliation or endorsement of its web site, but also creates dilution of the marks.

- jj) It was submitted by the Complainant that the Respondent, in addition to using the **ANGRY BIRDS** mark as a part of the disputed domain name, is also carrying out the unauthorized use of the Complainant's registered marks **ANGRY BIRDS** or **ANGRY BIRDS characters** (most prominently as part of its trade logo,  on the website being operated from the said domain in order to derive illegitimate commercial gains at the cost of the goodwill and reputation accrued to the Complainant in its aforementioned registered trademarks. Such further unauthorized and unconsented use of registered trademarks amounts to infringement of the said marks and makes it evident that the Respondent is not making any legitimate or fair use of the impugned domain name so as to fall within the ambit of Paragraph 7 (iii) of the INDRP.

- kk) It was further submitted by the Complainant that for the reasons stated in the

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foregoing paragraphs, it is not possible to conceive of any plausible use of the domain name <Angrybirds.net.in> by Respondent that would not be illegitimate as it would inevitably create a false association and affiliation with Complainant and its marks **ANGRY BIRDS** and **ANGRY BIRDS characters**, when there exists none whatsoever. It was submitted that therefore, the Respondent has no rights or legitimate interest in the impugned domain name.

- ll) It was submitted by the Complainant that the element under Paragraph 4(ii) and Paragraph 7 of the INDRP necessitates that the Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the same by providing evidence of its rights or legitimate interests in the domain name. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

Therefore, it was submitted that the Respondent has no rights or legitimate interests in respect of the impugned domain name <Angrybirds.net.in>.

Hence, the condition under Paragraph 4(ii) of the INDRP stands suitably established.

THE DOMAIN NAME WAS REGISTERED OR IS BEING USED IN BAD FAITH

(Paragraph 4(iii) and Paragraph 6 of the INDRP)


- mm) It was submitted by the Complainant that As per paragraph 6(iii) of the INDRP, it is stipulated that a "bad faith" registration and use of a domain name can be established inter alia by showing circumstances indicating that the Respondent has registered and was previously using the domain name to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to

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the source, sponsorship, affiliation or endorsement of Respondent's website or location, or of a product or service on Respondent's website or location.

nn) It was submitted by the Complainant that In consideration of Complainant's reputation worldwide, and the ubiquitous presence of Complainant's marks **ANGRY BIRDS** and **ANGRY BIRDS characters** on the Internet, Respondent was, ~~or should have been, aware~~ of Complainant's trademarks long prior to registering the domain name. In view of the aforesaid, ~~it was submitted that~~ Respondent had constructive notice of Complainant's mark **ANGRY BIRDS**. The Complainant relied upon *Caesars World, Inc. v. Forum LLC* (WIPO Case No. D2005-0517), *HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka*, (WIPO Case No. D2015-0640).

oo) It was submitted by the Complainant that in light of the continuous and exclusive use of the mark **ANGRY BIRDS** at least since **2009** and registration/ bona fide use of various domain names (discussed hereinbefore) incorporating the mark **ANGRY BIRDS**, these marks/ domain names have become exclusive identifiers of the Complainant and its products/ services. Hence, the Respondent could have had no reason to adopt an identical name "**ANGRY BIRDS**" with respect to the disputed domain name, except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, and to thereby intentionally ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

pp) It was submitted by the Complainant that the bad faith on part of the Respondent to unjustly benefit from the Complainant's reputation is further evident from the fact that alongside using the name/mark **ANGRY BIRDS** as a part of their trade and domain name, the Respondent is also using the **ANGRY BIRDS characters** (most prominently as part of its trade logo, ) which creates an undeniable association between the Respondent's services and the Complainant's well-known and recognized **ANGRY BIRDS franchise** in


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the minds of the consuming public, when in fact no such connection exists.

qq) It was submitted by the Complainant that further, the fact that **ANGRY BIRDS** is a coined term incorporating a unique juxtaposition of the words 'ANGRY' and 'BIRDS', which by virtue of its continuous and expansive use in respect of the Complainant's products and services, has become synonymous with the Complainant. Therefore, use of the mark **ANGRY BIRDS** by the Respondent as a part of the disputed domain <Angrybirds.net.in> is a clear evidence of malafide subsequent adoption to unjustly benefit from the goodwill and reputation associated with the Complainant's **ANGRY BIRDS** mark. Therefore, there can be no other plausible explanation as to how Respondent arrived at the impugned domain name < Angrybirds.net.in> which incorporates Complainant's mark **ANGRY BIRDS** in toto. The Complainant placed reliance on a prior decision of this Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

It was submitted by the Complainant that hence, Respondent had no reason to adopt an identical name with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that Respondent is somehow associated with or endorsed by Complainant, with the sole intention to ride on the massive goodwill and reputation associated with Complainant and to unjustly enrich from the same.

rr) It was submitted by the Complainant that the propensity of bad faith on part of the Respondent is further exacerbated by the fact that in addition to registering the disputed domain, the Respondent is also using the Complainant's registered marks **ANGRY BIRDS** or **ANGRY BIRDS characters** (most prominently as part of its trade logo,  on the website being operated from the

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said domain. It was submitted by the Complainant that further, the website being operated by the Respondent is clearly a commercial venture, targeted at offering promotional bulk SMS services and soliciting business for profit under the Complainant's registered and well-known trademarks. Such conduct on part of the Respondent is reflective of a blatant attempt to ride on the association and goodwill of the Complainant's brand as acquired among the consuming public, and thereby drive traffic towards the Respondent's domain and website by misleading, confusing and deceiving Complainant's customers and the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name and website as hosted thereon. It was submitted by the Complainant that the facts and contentions enumerated above establish that Respondent's domain name registration for <Angrybirds.net.in> is clearly contrary to the provisions of Paragraph 4(iii) of the INDRP.

8. DISCUSSION AND FINDINGS:

ss) I have given considerable thought to the totality of the circumstances in this case and considered all relevant factors in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the domain name may be put. I thereafter have no hesitation to hold that in the present case, all factors are satisfied.

I have gone through all the case laws cited by the Complainant as well as the Annexures filed with the Complaint.

I note that inspite of the Complainant's efforts to contact the Respondent prior to submitting the present Complaint, the Respondent has failed to engage with the Complainant or otherwise come forward with any actual or contemplated good-faith use of the Domain Name the Respondent 'knew or should have known' of the registration and use of the Complainant's well-known trademarks and acronyms of

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the same prior to registering the disputed domain name <Angrybirds.net.in>. The Respondent has not replied to demand letter dated August 03, 2020 nor reminder thereof dated August 21, 2020. The Complainant is using the trademark ANGRY BIRDS since the year 2009 when it first released **ANGRY BIRDS** game. I note that the Complainant's Angry Bird trademark in India for word per se in classes 09, 16, 28 and 41 dates back to July 1st 2010. The Complainant also has other Indian trademark registrations for **ANGRY BIRDS** device marks. From paragraph 15 of the Complaint, I note that the Complainant has domain name www.angrybirds.com registered from December 13, 2009. The Complainant has been using and registering the mark since December 2009 and due to use and advertisement the marks **ANGRY BIRDS** are associated with the Complainant.

I hold that the registration by the Respondent of the disputed domain name <Angrybirds.net.in> is dishonest and misleading.

I further hold that, the Respondent's registration of the disputed domain name <Angrybirds.net.in> is contrary to and is in violation of paragraph 4 of the INDRP Policy.

In view of all the above facts and well-known legal propositions and legal precedents I find and hold as under:

- that that the Respondent's domain name is misleading to the acronym of the trademark in which the Complainant has rights.
- that the disputed domain name <Angrybirds.net.in> is registered identical with the registered trademarks **ANGRY BIRDS**.
- that due to the fame of the distinctive and reputation of the trademarks/ domain name **ANGRY BIRDS** of the Complainant, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- that the Respondent has no rights or legitimate interests in respect of the domain name.
- that none of the exemptions provided under paragraph 7 of the .IN

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Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.

- that Complainant has not authorised, licensed, or permitted the Respondent to register or use the Domain Name <Angrybirds.net.in>
- that the Complainant has prior rights in the trademark / acronym which precedes the registration of the disputed domain name by the Respondent.
- that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- that the disputed domain name has been registered in bad faith
- that the disputed domain name is identical to the acronym of the Complainant's registered trademark in their entirety, in which the Respondent cannot have any rights or legitimate interest.

That I received no Response / Reply to the Complaint on behalf of the Respondent though proper service was effected to the Respondent's email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit his reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

9. DECISION

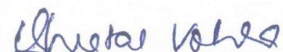
- i. In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- ii. That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent <Angrybirds.net.in> to the Complainant;



- iii. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 31st January 2021.

Place: Delhi

Date: 08.02.2021



Dr. Sheetal Vohra

(PHD Law)

Sole Arbitrator

K-62, Jangpura Extension

New Delhi-110015

Email: sheetal@vohraandvohra.com;