



सत्यमेव जयते

# INDIA NON JUDICIAL Government of Uttar Pradesh

## e-Stamp

Signature.....

ACC Name: RAHUL VERMA, ACC Code: UP14003004  
ACC Add: Sub-Registrar, Noida, Mob. 9810434882  
License No.: 115/10, Tehsil & Distt.- Dadri, G. B. Nagar, UP

<b>Certificate No.</b>	: IN-UP17272076440914S
Certificate Issued Date	: 18-Dec-2020 03:07 PM
Account Reference	: NEWIMPACC (SV)/ up14003004/ NOIDA/ UP-GBN
Unique Doc. Reference	: SUBIN-UPUP1400300427973894929546S
Purchased by	: PUNITA BHARGAVA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	:
First Party	: PUNITA BHARGAVA
Second Party	: Not Applicable
Stamp Duty Paid By	: PUNITA BHARGAVA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA  
.IN REGISTRY

Arbitral Award in Case No. 1311 dated February 23, 2021  
Ms. Punita Bhargava, Sole Arbitrator  
Disputed domain name: <hr-ibm.in>

**In the matter of**

INTERNATIONAL BUSINESS MACHINE CORPORATION  
1, New Orchard Road, Armonk,  
New York 10504-1722  
United States of America

... Complainant

v.

Dr. Shivakarthickeyan Kaliyamoorthy  
Sai Plaza, Pedda Cherukoor Post  
Allipuram, Nellore  
Andhra Pradesh, 524004  
India

... Respondent

**1. The Parties**

The Complainant in this proceeding is International Business Machines Corporation known as IBM of 1 New Orchard Road, Armonk, New York, 10504 – 1722 USA, represented by Sudeshna Banerjee of K&S Partners 4121/B, 6th Cross, 19A Main, HAL II Stage (Ext.), Bangalore 560038, India. The Respondent in this proceeding is Dr. Shivakarthickeyan Kaliyamoorthy of Sai Plaza, Pedda Cherukoor Post, Allipuram, Nellore, Andhra Pradesh 524004 India.

**2. Disputed Domain Name and Registrar**

This dispute concerns the domain name <hr-ibm.in> (the 'disputed domain name') registered on September 9, 2020. The Registrar with which the disputed domain name is registered is GoDaddy.com LLC.

**3. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (Policy), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated December 30, 2020 requested availability of Ms. Punita Bhargava to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure (Rules) on the same date i.e. December 30, 2020.

In accordance with Rules, NIXI vide its email of January 1, 2021 appointed the Arbitrator and also notified the Respondent of the Complaint. The Arbitrator sent an email to the Respondent on the same date i.e., January 1, 2021 informing him of



the commencement of the proceeding and providing him time of two weeks to file his reply.

No reply was received from the Respondent within the time prescribed and so the Arbitrator sent an email to all concerned parties on January 21, 2021 that the Arbitrator would proceed to pass its award ex-parte taking into consideration all the material presented before it.

The language of this proceeding is English.

**4. Background and rights of the Complainant in IBM as submitted by it**

The Complainant was incorporated in the State of New York, United States of America on June 16, 1911 as Computing-Tabulating-Recording Co. (C-T-R), being a consolidation of the Computing Scale Co. of America, The Tabulating Machine Co., and The International Time Recording Co. of New York. This new entity was named Computing-Tabulating-Recording Company (C-T-R), and in 1924 changed its name to "International Business Machines Corporation". This led to the birth of the name and mark IBM, being an acronym for "International Business Machines".

The Complainant is one of the world's leading technology and consulting organizations with presence in over 175 countries through its wholly owned subsidiaries with over 3,52,600 employees worldwide. It has been using the trademark IBM in relation to its products and services at least since 1924.

The initial offerings of the Complainant included office and research equipment such as punch machines, calculating machines, clocks, and scales. The year 1952 the Complainant launched its first large vacuum tube computer under the name "IBM 710". Over the years, the Complainant has continuously used the trademark "IBM" in relation to hosts of products and services including but not limited to computers and computer hardware, software and accessories. Today, the Complainant's technologies help in smarter ways to do business and create new opportunities and strategies to compete and win. The Complainant caters to various industries including aerospace and defence, automotive, banking and financial markets, education, electronics, energy and utilities, government, government – us federal, healthcare, insurance, life sciences, manufacturing, metals and mining, oil and gas, retail and consumer products, telecommunications, media and entertainment, travel and transport. Its 2019 full-year revenue was US \$77.1 billion and its net income was US\$11.4 billion.



IBM is the corporate/trading name of the Complainant and its various wholly owned subsidiaries. The Complainant is known world over by the name and mark

IBM and the same is well-known with consumers globally being aware of the Complainant's products and services under IBM. The Complainant has had business in India since 1951 and its name and mark IBM is well-known in India as well. It also has a prominent social media presence with 1100427 followers on Facebook, 557.1k followers on Twitter and over 332k followers on Instagram.

The Complainant is the registered proprietor of the mark IBM in USA under nos. 0640606, 1058803, 1243930 and 1696454 with its earliest registration dating back to the year 1957. It is the registered proprietor of the mark IBM in several classes in many other countries including in India as under:

S. N.	Registration Number & Class	Trademark Name	Filing date	Status
1	170687 16	<b>IBM</b>	September 03, 1955	Registered
2	428972 9		October 25, 1984	Registered
3	428973 16		October 25, 1984	Registered
4	865158 18		July 12, 1999	Registered
5	865159 16		July 12, 1999	Registered
6	903730 9		February 15, 2000	Registered
7	903731 9		February 15, 2000	Registered
8	903732 16		February 15, 2000	Registered
9	903733 16		February 15, 2000	Registered
10	1236379 37		September 15, 2003	Registered
11	1236380 38		September 15, 2003	Registered
12	1236381 42		September 15, 2003	Registered
13	1236382 41		September 15, 2003	Registered
14	1236383 35		September 15, 2003	Registered
15	1239148 35, 37, 38, 41, 42	<b>IBM</b>	September 23, 2003	Registered



16	1303262		August 17, 2004	Registered
17	2120172 6, 8, 9, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 28, 30, 35, 41		March 23, 2011	Registered

The Complainant also owns hundreds of domain names incorporating IBM, including <ibm.com>, which was created on March 19, 1986 and has an active website [www.ibm.com](http://www.ibm.com). The Complainant also owns the domain name <ibm.in>, which was created on February 14, 2005.

The Complainant's brand IBM is one of the most reputed and iconic brands worldwide. It has consistently ranked amongst the most valuable brands in the world. Forbes listed IBM in its "The World's Most Valuable Brands" rankings at 5th position for the year 2015; at 7<sup>th</sup> position for the year 2016 and at 13<sup>th</sup> position for the year 2017. BrandZ listed IBM in its list of "Top 100 Most Valuable Global Brands" at 3rd position for the year 2014; at 4<sup>th</sup> position for the year 2015; at 10<sup>th</sup> position for the year 2016; at 9<sup>th</sup> position for the year 2017 and at 13<sup>th</sup> position for the year 2019. Interbrand listed IBM at 5th position in its list of "Best Global Brands" for the year 2015; at 6<sup>th</sup> position in 2016; at 10<sup>th</sup> position in 2017 and at 12<sup>th</sup> position in 2019. Fortune listed IBM at 32nd position in its list of "World's Most Admired Companies" for the year 2016 and at 24<sup>th</sup> position in 2017. In 2017, IBM also featured at 32<sup>nd</sup> position in the list of Fortune 500 Companies at 32nd position and at 81<sup>st</sup> position in the list of Fortune Global 500. In 2019, the Complainant was listed as 114th largest company on the Fortune Global 500 list.

The Complainant has enforced its rights in its well-known mark IBM and has succeeded in several complaints filed before the WIPO Arbitration and Mediation Center and the .IN Registry against third party adoption of IBM or variations thereof as part of domain names. Decisions in WIPO Case No. D2018-2476, WIPO Case No. D2016 – 0546 and WIPO Case No. DCC2011 – 0006 were in favour of the Complainant. In decisions rendered in Case No. INDRP/854 for <ibmfinance.in> and INDRP/968 for <ibmglobel.in> it was held that Complainant has established that its mark IBM is known all across the globe including India and the respective disputed domain names was transferred to the Complainant.

Based on the above, the Complainant submits its IBM name and mark is well-known throughout the world with tremendous goodwill and reputation.

**5. Background to the Complaint**

The Complainant states that the disputed domain name is being used in connection with organized employment scams in India. The Respondent has registered the disputed domain name to create an email account [soudar.naryanan@hr-ibm.in](mailto:soudar.naryanan@hr-ibm.in) and in turn uses this to impersonate as an employee of the Human Resource department of the Complainant's India Office. The Complainant states that the Respondent lures prospective job seekers for employment with the Complainant and coerces money and photographs from them. This is not only against the policy of the Complainant but it has also received complaints against the Respondent from candidates who have been duped by the Respondent. The Complainant states that it has issued a notice on its website <https://www.ibm.com/in-en/employment/stay-alert/> regarding the scam hiring scam where it has also specifically stated that it does not ask candidates to deposit any money. Further, the Complainant has filed online takedown notices against the Respondent with Facebook, LinkedIn, Skype and Google and links related to the Respondent were removed by these platforms.

**6. Respondent's default**

Despite notice of the present proceeding in terms of the Rules and an opportunity to respond, no response has been received from the Respondent in this matter by the Arbitrator.

**7. Grounds for Complaint**

The Complainant submits that the domain name <hr-ibm.in> is identical to its registered mark IBM for which the Complainant has registrations in India, USA and other countries. Apart from such statutory rights, the Complainant submits that it enjoys common law rights in its coveted and well-known name and mark IBM. It also submits that pursuant to the long, continuous and extensive use of the IBM mark internationally as well as in India, the IBM mark has come to be associated exclusively with the Complainant and its business activities. The Complainant accordingly submits that the disputed domain name <hr-ibm.in> is identical to the Complainant's trademark IBM.

The Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name. It states that the Respondent is located in India and has no connection with the Complainant in any manner and the Complainant has no knowledge of the Respondent. The Complainant contends that it has not licensed, authorized or permitted the Respondent to apply for, register, or use the disputed domain name which incorporates the Complainant's registered mark IBM for use with HR to refer to the Complainant and its HR division. The Respondent has no due cause for registering the disputed domain name <hr-ibm.in> and has only registered the same to create a direct association and



connection with the Complainant. By registering the disputed domain name <hr-ibm.in> and the email id soudar.naryanan@hr-ibm.in the Respondent has illegally and fraudulently attracted applicants for jobs with the Complainant and coerced money and photos from such applicants. These applicants have fallen prey to the fraudulent activity of the Respondent and many have paid money to the Respondent thinking they would secure job with the Complainant. Further, the Respondent is not commonly known by the disputed domain name and is not making any legitimate non-commercial or fair use of the domain name. The disputed domain name is only being used by the Respondent to create an impression of direct association and connection between the Respondent, the Complainant and job applicants. The Respondent does not have any trademark or service mark rights in the expression IBM.

Finally, the Complainant contends that the disputed domain name is registered and is being used in bad faith as the Respondent knew well about the Complainant and its registration and use of IBM prior to registering the disputed domain name. The Complainant has been known by the name and mark IBM since 1924 globally and in India since 1951. The Complainant's mark IBM is extremely well-known globally and the Complainant has established international reputation that extends not only in USA but to India as well and is a household name in India as well. The disputed domain name was registered on September 9, 2020 by the Respondent which is after more than 69 years since the Complainant started its business in India under its mark IBM. The Complainant contends that being fully aware of the goodwill and reputation of the Complainant's name and mark IBM, the Respondent registered the disputed domain name to ride upon the goodwill associated with the Complainant's well-known trademark and create an impression of direct association and connection with the Complainant to dupe job seekers by extracting and coercing money from them in exchange of jobs with the Complainant. By registering the disputed domain name and creating the email id soudar.naryanan@hr-ibm.in, the Respondent has posed as a Human Resource employee of the Complainant, conducted interviews and deceived job seekers by coercing them and taking money in exchange of job with the Complainant. The Respondent's said activities have created a likelihood of confusion with the Complainant and misled job applicants by creating the impression that the Respondent is directly associated with the human resource division/recruitment division of the Complainant and is an employee of the Complainant. The Respondent's use of the disputed domain name is solely to create a false impression of direct association with the Complainant among the job seekers. By this, the Respondent has commercially gained and taken undue advantage of the immense reputation and goodwill enjoyed by the Complainant in its world famous and well-known mark IBM. The Complainant states that registration by the Respondent of

the word IBM as part of the disputed domain name prevents it from reflecting the Complainant's trademark in corresponding domain names.

#### 8. Discussion and Findings

The Arbitrator has reviewed the Complaint and the Annexures filed by the Complainant as well as the decisions cited by the Complainant. The Arbitral Tribunal has been properly constituted.

The Policy requires that the Complainant must establish three elements *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.

On a combined reading of the grounds of complaint and after studying the case pleaded by the Complainant and documents filed in support, the Arbitrator finds that all three elements are satisfied as required by the Policy.

The Complainant has established that it has rights in the IBM corporate/trade name and trademark which it has used since 1924 internationally and since 1951 in India for its technology and consulting business. It has presence in 175 countries and 3,52,600 employees worldwide. Its revenue for the year 2019 was US \$77.1 billion and its net income for the said year was US\$11.4 billion. The IBM name and mark is known to consumers globally and the Complainant also has substantial social media presence. The Complainant has registered IBM mark in numerous countries around the world as also in India in various classes under registration nos. 170687, 428972, 428973, 865158, 865159, 903730, 903731, 903732, 903733, 1236379, 1236380, 1236381, 1236382, 1236383, 1239148, 1303262, 2120172. IBM has been also regarded as and has been held to be a well-known and reputed mark and is one of the most valued brands in the world. The Complainant obtained registration for <ibm.com> on March 19, 1986 and holds hundreds of domain registrations that incorporate the IBM designation. It also operates the website [www.ibm.com](http://www.ibm.com). The Complainant has also enforced its rights in the IBM name and mark and has been successful in seeking transfer or cancellation of domain names registered by others which incorporated the IBM designation including <ibmfinance.in>, <ibmglobal.in>, <onlineibm.com>, <br-ilbm.com>, <ibm.cc> and others. There is no dispute as to the Complainant's ownership of its registered and well-known name and mark IBM.

The Arbitrator notes that the disputed domain name wholly incorporates the Complainant's IBM name and mark with the HR and a hyphen. It has been routinely held that where the disputed domain name is confusingly similar to a



complainant's trademark where it incorporates the complainant's trademark in its entirety and addition of common, descriptive or non-distinctive elements is insufficient to avoid a finding of confusing similarity. See Compagnie Generale des Etablissements Michelin v. Christian Viola, WIPO Case No. D 2012-2102. The disputed domain name combines the Complainant's IBM name and mark as its distinctive element with non-distinctive elements HR and a hyphen, neither of which serve to distinguish the disputed domain name from the Complainant's IBM name and mark in any way. Rather, HR is indicative of the Complainant's human resources department and is calculated to increase the element of confusion. It is also well established that ccTLD is not relevant for the purpose of determining identity or confusing similarity. Thus, the Arbitrator finds that the disputed domain name is confusingly similar to the Complainant's name and mark IBM.

The Complainant has established that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor authorized by or connected with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Respondent has not been granted any license or authorization to apply for registration of and use the disputed domain name. The disputed domain name also resolves to a parking page with no details. Further, the Respondent has no due cause to register the disputed domain name and has only done so to create an impression of direct association/connection with the Complainant. The Respondent impersonates as an employee of the Complainant and has also created an email account [soudar.naryanan@hr-ibm.in](mailto:soudar.naryanan@hr-ibm.in) to lure prospective job seekers for employment with the Complainant and has coerced money from them. The Complainant has received complaints against the Respondent and has taken steps to issue a notice on its website as also issued take down notices against the Respondent to different entities including Facebook, LinkedIn, Skype and Google in an effort to limit the damage caused by the activities of the Respondent. These activities do not accrue any rights on the Respondent and do not confer any legitimacy on him. Based on the undisputed contentions made by the Complainant as stated above, it has made a prima facie case with regard to the second element. Further, as the Respondent has not countered or objected to the Complainant's claim and has failed to come forward with any information that could support his rights or legitimate interests in the disputed domain name, the Complainant is deemed to have satisfied the second element. See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149. The Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

As regards the third element of bad faith, based on the contentions of the Complainant describing its extensive registrations for the IBM name and mark, long standing use thereof and associated business, the Arbitrator accepts that the IBM name and mark is indeed well-known including in India and exclusively associated with the Complainant. Its rights significantly predate the registration of the disputed domain name by the Respondent. Therefore, it is the view of the Arbitrator that the Respondent was clearly aware of the Complainant's IBM name and mark at the time of registration of the disputed domain name. The disputed domain name creates a misleading impression of association with the Complainant. Not only that, in the present case, the Complainant has also shown that the Respondent has used the disputed domain name and an email address connected to the same to deceive job seekers into believing that he is associated/affiliated with the Complainant, received payments and gained commercially and created confusion about the IBM name and mark. The disputed domain name and the email id [soudar.naryanan@hr-ibm.in](mailto:soudar.naryanan@hr-ibm.in) were created and are being used in bad faith and not for any bona fide offering of goods or services. It cannot be said that the Respondent is making any legitimate or fair use of the disputed domain name. See *Carrefour v. Contact Privacy Inc. Customer 0153830825 / Milen Radumilo, WIPO Case No. D2019-1591*. Thus, the Arbitrator concludes that the Respondent's conduct constitutes bad faith registration or use of the disputed domain name within the meaning of the Policy.

#### 9. Decision

For all the foregoing reasons, the Complaint is allowed and it is hereby ordered in accordance with paragraph 10 of the Policy that the disputed domain name be transferred to the Complainant. There is no order as to costs.

This award has been passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Punita Bhargava

Sole Arbitrator

Date: February 23, 2021