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Purchased by	: BINNY KALRA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BINNY KALRA
Second Party	: Not Applicable
Stamp Duty Paid By	: BINNY KALRA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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ARBITRATION AWARD .IN REGISTRY

(C/O NATIONAL INTERNET EXCHANGE OF India)
Before the Sole Arbitrator, Binny Kalra
Disputed domain name <www.daakia.in>

INDRP Case No: 1312

Bhawana Mitra

Complainant

VS

Manjeet Singh Arora

Respondent

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**ARBITRATION AWARD
.IN REGISTRY**

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <**www.daakia.in**>

In the matter of:

Bhawana Mitra,
Flat 8, Block 10/2,
11 Garden Reach Road,
BNR North Colony,
Kolkata-700043, West Bengal

Complainant

vs

Manjeet Singh Arora
dba Daakia Dak Evam Parivahan
Flat No 201, Prateek Apartment
F 16 MIG Colony,
Indore 452008, Madhya Pradesh
Email: amansolarenergy@gmail.com

Respondent

INDRP Case No: 1312

1. The Parties:

The Complainant is Bhawana Mitra who has filed the complaint in her individual capacity. The Respondent is Manjeet Singh Arora, individual / sole proprietor of M/s Daakia Dak Evam Parivahan. The Respondent has made representations in its defense through two emails but has not filed a formal statement of defense. Neither party is represented by legal counsel.

2. The domain name, Registrar, and Policy:

The disputed domain name is www.daakia.in (hereinafter referred to as the "**Disputed Domain Name**"). The Registrar for the Disputed Domain Name is Endurance Domains Technology LLP. The present arbitration is being conducted

in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

3. Procedural history:

- | | |
|-------------------|--|
| 31 December 2020: | Statement of acceptance along with a declaration of impartiality and independence was sent to the .IN Registry |
| 4 January 2021: | The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties. |
| 4 January 2021: | Notice of commencement of arbitration proceedings was sent to the parties and a period of 30 days, until 3 February 2021, was given to the Respondent to submit a statement of defense |
| 3 February 2021: | The Respondent sent an email communication questioning the jurisdiction of the forum and also briefly stated his case while attaching two documents in support thereof. |
| 5 February 2021: | The jurisdiction over the dispute under the INDRP was explained to the Respondent and he was asked to confirm by 6 February 2021 if he wished to submit a formal statement of defense. |
| 6 February 2021: | The Respondent requested the arbitrator for 15 days' time to seek legal advice. |
| 6 February 2021: | Based on the email representation and annexures submitted by the Respondent, the Panel deemed it appropriate to give a further extension of time so as to afford a fair opportunity to the Respondent to present |

- its case. The Respondent was given a non-extendable period of 3 weeks up to 28 February 2021 to file its statement of defense.
- 27 February 2021: The Respondent sent an email reiterating his previous statements though he did not file a formal statement of defense.
- 27 February 2021: The Complainant then requested an opportunity to submit "few final pleadings". In the interest of fairly balancing the opportunities given to each party, the Panel permitted the Complainant to give a limited rejoinder to the defenses raised in the Respondent's emails of 3 February 2021 and 27 February 2021.
- 28 February 2021: The Complainant made her concluding submissions. The matter was thereafter reserved for passing an award.

4. Complainant's case:

The Complainant has made the following submissions, which the Panel has paraphrased:

- i. The Complainant, Bhawana Mitra, states that she is the director and controlling shareholder of the company Daakia Pvt. Ltd. The Memorandum of Association and Articles of Association and the Certificate of Incorporation of Daakia Pvt Ltd were attached with the complaint. The company's GSTN and PAN Card were also attached.
- ii. The Complainant is the owner of copyright for a software App titled Daakia and a copy of the registration certificate issued by the Copyright Office was attached with the complaint.

- iii. The Complainant holds trademark registrations in Class 9 and Class 42 for the mark "Daakia" for IT, Software and Hardware related activities. Copies of the trademark registration certificates were attached with the complaint.
- iv. The Complainant is a full fledged software company in the field of Information Technology HW (hardware) and Software, Social Media App, Video Conferencing etc. Its current website can be accessed at daakia.co.in. Chat and video conferencing facilities are available on this.
- v. The Complainant's grievance is that the disputed domain name daakia.in has been taken by the Respondent. The Complainant says that it is also germane to point out that the name of the organisation of the Respondent is "Daakia Dak Evam Parivahan".
- vi. The Complainant having an incorporated company, PAN, GSTN, functional website, copyrighted software/App and appropriate trademark over "Daakia" under the relevant classes, with Daakia being part of the company name, naturally owns the associated domain name. Use of the same name by another party could potentially mislead users and create reasonable doubt in the minds of the users regarding contents on daakia.in website and their association with Daakia Pvt Ltd.
- vii. The Complainant avers that use of an identical domain name as the name of the Complainant's company by anybody else is prejudicial to interests of the owners of the company and another person would not have rights or legitimate interests in respect of daakia.in domain name. If the impugned domain name is registered and/or allowed to be used by anybody other than "owners of the company holding GSTN, PAN etc.", it would set a bad precedent and lead to mushrooming of instances of cybersquatting.
- viii. On this basis, the Complainant has sought transfer of the disputed domain name daakia.in to herself claiming to be the rightful owner.

5. Respondent's case:

The Respondent has made the following submissions, which the Panel has paraphrased:

- i. Manjeet Singh Arora is sole proprietor of the firm "Daakia Dak Evam Parivahan".
- ii. The trademark "DAAKIA" was registered under the Trademarks Act on 17 January 2008 bearing registration no. 1642212 in class 39. This registration has been renewed on 21 January 2018 for the next 10 years. Copies of the trademark registration and renewal certificates were annexed.
- iii. Thereafter the Respondent registered a domain "DAAKIA.IN".
- iv. The Complainant "Daakia Pvt. Ltd." was registered only in 2020.
- v. The Complainant's action of objecting to the Respondent's domain name is illegal as well as misplaced. The Respondent had full authority to register the domain "daakia.in" and according to law there cannot be any challenge on this domain name, because the domain name and trademark both were registered much prior to the Complainant's incorporation and registration of trademarks.
- vi. The Respondent in these circumstances has full authority to use his trademark and domain name without any interruption. In the present era it is essential for every business to have an online presence to promote its business and hence the domain name daakia.in is essential for the Respondent.
- vii. On this basis, the Respondent has sought dismissal of the complaint and a direction to the Complainant not to use "daakia.co.in" which is similar to the Respondent's domain name because it creates confusion and can adversely affect the Respondent's tradename and business.

6. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:

- (a) the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (c) the Disputed Domain Name has been registered or is being used in bad faith.

7. Discussion and findings:

The Panel has gone through the complaint and final submissions of the Complainant along with the documents on which she relies. The Panel has also gone through the Respondent's defenses in his emails along with the documents on which he relies. Each of the three elements that the Complainant must meet are discussed below.

A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <www.daakia.in>. The Complainant, Bhawana Mitra, has expressly filed this complaint in her individual name albeit on the letterhead and under the seal of the company Daakia Pvt. Ltd. The Complainant has used the expression "we" interchangeably for herself and for the company. The Complainant has not adduced her authorization to file the complaint on behalf of the company, if this was the intention, and without this authorization the complaint cannot be considered to be on behalf of Daakia

Pvt. Ltd. Since the Complainant has registered the trademark DAAKIA in her individual capacity, has not filed any authorization in her favour from the company, and has not attempted to establish a connection between her personal ownership of the trademark and the related or independent rights, if any, of the company in the mark DAAKIA, the documents such as certificate of incorporation, GSTN, PAN, etc. relied on by the Complainant pertaining to the company Daakia Pvt. Ltd. do not serve any purpose.

The Panel shall further evaluate Issue A in two parts:

a. Whether the Complainant has rights in the mark DAAKIA

The fundamentals of trademark law wholly apply to the determination of rights in a disputed domain name. The Complainant has two trademark registrations for DAAKIA in classes 9 and 42 in her name. The copyright registration obtained by the Complainant is immaterial for the purpose of determining its rights in the trademark or domain name. The Complainant has not filed any document showing the registration of the domain name www.daakia.co.in in her name, neither has the date of creation of the domain name record been disclosed, nor even a printout of the website under the said domain name been filed.

The Panel deemed it imperative to ascertain the date of registration of the Complainant's domain name in the unusual circumstances of this dispute. Accordingly, the .IN Registry's WHOIS record was checked for the domain name daakia.co.in which the Complainant has asserted belongs to it. The registrant details of the said domain name are masked but the creation date was noted as 6 May 2020. The Panel cannot conclude from these records if the domain name daakia.co.in belongs to the Complainant in her individual capacity.

While the Complainant has obtained registrations of the trademark DAAKIA in her name in two classes, and the said registrations confer statutory rights in respect of the said mark on the owner in the relevant classes, these registrations do not defeat the rights of a prior owner and / or a prior user of an identical mark/name nor can the enjoyment of these rights by the Complainant be to the exclusion of another registered owner of an identical trademark in another class or a prior owner of an identical mark under common law.

Therefore, while the Panel finds that the Complainant has rights in the mark DAAKIA based on her registrations in classes 9 and 42, there are no documents or facts on record to conclude that her rights extend to goods and services beyond classes 9 and 42.

b. Whether the Disputed Domain Name is identical and/or confusingly similar to the mark DAAKIA

There is no question that the Disputed Domain Name is identical to the mark DAAKIA. However, in the facts of the case the identity of the Disputed Domain Name to the mark DAAKIA does not lead to any adverse inference against the Respondent.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

The Panel has noted from the reply submitted by the Respondent in his email dated 3 February 2021, that he has a registration dated 17 January 2008 for the trademark DAAKIA in class 39. The disputed domain name www.daakia.in was created by the Respondent on 11 February 2014 as per the WHOIS data.

It is also evident from the registration certificate filed by the Respondent that he uses the trading style DAAKIA DAK EVAM PARIVAHAN in which the word

DAAKIA forms a key and prominent part. While the Respondent has not given any details of the business that he conducts, the trademark registration certificate in class 39 filed by him suggests that he is in the field of “courier, postal services, transport; freight forwarding & logistics packaging and storage of goods; tour & travel arrangements”.

It is self-evident from the documents relied on by the Respondent and admittedly from the WHOIS data relied on by the Complainant that the Respondent is prior in adoption and registration of the mark / domain name DAAKIA and has rights and legitimate interests in respect of the disputed domain name. It is apparent that the Respondent’s rights in the trademark DAAKIA and the disputed domain name www.daakia.in were crystallized several years prior to the adoption / use and registration by the Complainant of an identical mark/domain name.

C. Whether the Disputed Domain Name has been registered or is being used in bad faith

In view of the Panel’s findings in Issue B above, it is very clear that the Respondent has legitimate rights in the disputed domain name.

The Complainant cited the following decisions in support of her claims:

- i. N.C.P. Marketing Group, Inc. v. Entredomains Case No. D2000-0387 (<https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0387.html>)
- ii. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0194.html>
- iii. <https://www.adrforum.com/DomainDecisions/94798.htm>
- iv. <https://www.adrforum.com/DomainDecisions/95547.htm>

However, none of these decisions are applicable or relevant given the unique facts of this dispute. None of the respondents in the cited cases were, both, prior registered owners of the marks subject matter of the dispute, and also prior registrants of the disputed domain names.

Given the factual matrix of this dispute, the Panel considers it self-explanatory to place the timelines of the key documents of each party in a comparison table:

DATELINE	COMPLAINANT	RESPONDENT
Domain name	daakia.co.in	daakia.in
Record creation	6 May 2020	11 February 2014
Trademark registration	DAAKIA Registration No. 4491109 in Class 9 Dated: 24 April 2020 Registration No. 4491110 in Class 42 Dated: 24 April 2020	DAAKIA Registration No. 1642212 in Class 39 Dated: 17 January 2008

Accordingly, the Panel finds that the Disputed Domain Name www.daakia.in is not registered in bad faith nor is it being used in bad faith by the Respondent.

On the contrary, the Complainant has proceeded on a very misplaced sense of the scope of her own rights in the trademark DAAKIA even with the full knowledge that the Disputed Domain Name was registered by the Respondent over 6 years before the Complainant adopted the mark/domain name DAAKIA.

The Complainant ought to have exercised due diligence and collated further information on seeing the word DAAKIA in the Respondent's organization name "Daakia Dak Evam Parivahan" in the WHOIS data. The fact that the Respondent's organization name starts with the word DAAKIA, as pointed out by the Complainant herself in para (v) of her complaint, should have been a signal for the Complainant to pause and investigate further.

8. Decision:

For the reasons discussed above, the Panel finds that the Complainant has failed to satisfy all three elements required under Paragraph 4 of the Policy to obtain the remedy of transfer of the Disputed Domain Name. It is not within the scope

of the dispute or the jurisdiction of the Panel to pass any order in respect of the Respondent's prayer.

No order is made as to costs.

Note:

In the interest of full disclosure, the Panel wishes to place on record that an effort was made by the Respondent to contact the Sole Panelist on her mobile phone. However, the Panelist pre-confirmed the identity of the unknown caller by a limited text message and upon learning from a text message in reply that the caller was the Respondent, immediately informed him that it was improper to contact the Panel and that his call would not be entertained. The Respondent then apologized for his conduct via a text message.

The Panel is aware that this award being passed a few days over the timeline of 60 days from the commencement of the Arbitration proceedings, as prescribed in the Rules. However, seeing that neither party appeared to have legal representation, and also seeing the nature of the claims in reply and the documents adduced by the Respondent, the Panel considered it necessary to give a fair and adequate opportunity to each of the parties to present their case. The unusual facts and circumstances of the case necessitated invoking of the provisions of Rule 5 (e) of the Rules.

Signed:



(Binny Kalra)

Arbitrator

Date: 5 March, 2021