



सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

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Certificate Issued Date	: 08-Mar-2021 03:36 PM
Account Reference	: IMPACC (IV)/ dl859003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL85900316014986435267T
Purchased by	: PANKAJ GARG
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: PANKAJ GARG
Second Party	: Not Applicable
Stamp Duty Paid By	: PANKAJ GARG
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA  
[NIXI]**

**SOLE ARBITRATOR: PANKAJ GARG  
COMPLAINT NO.INDRP 1319/2021**



**CEAT LTD.  
V.  
CEATTYRESBUSINESS**

**ARBITRATION AWARD  
DISPUTED DOMAIN NAME:CEATTYRESALES.IN**

**Statutory Alert:**

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**CORAM:**  
**HON'BLE MR. PANKAJ GARG**

**REPRESENTATIONS:**

- a. The Complainant **CEAT LTD.**  
Through,  
Authorized Representative in these proceedings are :  
Kurian Joseph, Vice President (Legal), CEAT Ltd.  
Email: [kurian.joseph@ceat.com](mailto:kurian.joseph@ceat.com)  
CEAT Ltd., Worli, Mumbai, India
- b. The Respondent **CEATTYRESBUSINESS,**  
Rahul Singh Kumar,  
12, VIP Road,  
Kolkata Lake Town City,  
Kolkata (WB)-700021  
E-mail: [rahulsingh2458978@gmail.com](mailto:rahulsingh2458978@gmail.com)  
Through None- *Ex parte*

The present Complaint has been filed by the Complainant against the Respondent before the National Internet Exchange of India (NIXI) under the INDRP Rules of Procedure (The Rules of Procedure) with regard to the domain dispute [www.ceattyresales.in](http://www.ceattyresales.in) seeking the transfer of the impugned domain name to the Complainant, who is the legitimate owner of the trade mark "CEAT".



2. The NIXI referred this Complaint to this Tribunal and this Tribunal accepted the reference of the NIXI on 22.01.2021.

3. On 25.02.2021 this Tribunal passed an order proceeding *ex parte* against the Respondent after declaring the service of the documents and Complaint sufficient upon the Respondent in terms of the provisions of Rule 3 of the INDRP Rules.

4. The Complainant in this arbitration proceeding is a Public Limited Company, originally incorporated as CEAT Tyres of India Ltd. in 1958 under the provisions of Indian Companies Act, 1956. The Complainant's name was changed to its present name in the year 1990. The registered office of the Complainant is at 463, Dr. Annie Besant Road, Worli, Mumbai-400030, India. Complaint is based on the adoption and use of the registered well known trade mark "CEAT" of the Complainant and is used in connection with its domain name. The "CEAT" trade mark has also been registered under the Indian Trade Mark laws in favour of the Complainant.

5. The Complainant avers as under:-



i. The Complainant is one of the most well-known tyre manufacturers in the world. The Complainant's history traces back to 1924, when its predecessor in interest and title, CEAT S.p.A, was established in Turin, Italy. The Complainant carries on an old, established and reputed business engaged inter alia in manufacturing and marketing automotive tyres, tubes, flaps and other like goods, since almost six decades. The Complainant manufactures over 35 million tyres each year for passenger and commercial vehicles and motorcycles. It is stated that the trade/service mark CEAT of the Complainant is an acronym for Cavi Electrici Affino Torino i.e. Electrical Cables and Allied Products Turin and is therefore an invented word.

ii. The Complainant is also engaged in manufacturing sports goods including cricket bats besides offering retail services of distributing and selling its automotive tyres, tubes, flaps and other like goods





from more than 500 retail stores/outlets named CEAT Shoppe outlets located across India.

iii. The Complainant further states that over the years, its operations have expanded to more than 120 countries worldwide and it enjoys significant reputation worldwide. In addition to manufacturing tyres, the Complainant operates a dedicated customer service network for its consumers providing services including computerized alignment and balancing, nitrogen inflation, periodic tyre rotation etc. Therefore, the Complainant has been using continuously and extensively the mark CEAT as its trade name, trade mark and service mark.

iv. The Complainant has come up with the concept of operating and running a chain of retail stores/outlets named CEAT Shoppe, being a one-stop solution for all tyre related concerns. The Complainant has more than 500 exclusive CEAT Shoppe retail stores/outlets providing its aforementioned goods and services to



the customers across India. All details relating to Complainant's CEAT Shoppe are available on Complainant's website <https://www.ceat.com/ceat-shoppe>. The Complainant has done voluminous business in relation to its aforementioned goods using the said trade mark CEAT. The Complainant has also spent substantial sums of money towards advertisement, publicity and promotion of its trade mark CEAT across India. The trade mark CEAT is thus regarded as one of the premier brands in the automobile tyre and tube industry. Such is the high level of distinctiveness that the said trade mark CEAT commands. Owing to superior quality and efficacy of the Complainant's aforementioned goods coupled with the excellent distribution network and after sales service provided, the trade mark CEAT has achieved lot of name and fame and immense goodwill and reputation has accrued in the said trade mark and the same has come to be associated and identified with the Complainant and its goods. In the ordinary course of its use, the trade mark CEAT and any goods



branded thereunder are synonymous with and connote and denote to the goods of the Complainant's manufacture.

- v. The Complainant has launched 'CEAT' Cricket Rating in 1995, which has come to be recognized as one of the most comprehensive and credible rating systems in International cricket. Taking this initiative forward, in the year 1995-1996, the Complainant has also launched its 'CEAT' International Cricket Rating Awards, an annual event, to recognize excellence in International cricket. Distinguished cricketers, such as Brian Lara of West Indies [1995-96], Mark Waugh of Australia [1995-96], Sachin Tendulkar of India [1996-97], Jacques Kallis of South Africa [1998-99], Sourav Ganguly of India [1999-00], Muttiah Muralitharan of Sri Lanka [2000-01], Shane Warne of Australia [2001-02] and others have been felicitated at the Complainant's CEAT Awards. The Complainant is also a registrant of the dedicated website namely [www.ceatcricketrating.com/shop/](http://www.ceatcricketrating.com/shop/).



The Complainant also provides cricket bats bearing the trade mark CEAT for the endorsement to renowned cricketers, both male and female, such as Ms. Harmanpreet Kaur, Ajinkya Rahane, Ishan Kishan, Rohit Sharma and Shubman Gill.

- vi. The Complainant has also recently introduced the CEAT GoSafe S95 face mask, CEAT Gosafe Hand Sanitizer Gel and CEAT Gosafe Surface Disinfectant Spray to help India stay safe during the Covid-19 pandemic outbreak. With this, the Complainant has made a foray into the PPE business in line with its commitment to safety.
- vii. The Complainant states that it has widely promoted its goods and services under its trade/service mark CEAT.
- viii. The Complainant further states that since its inception it has used the mark CEAT as a trade/service mark and as its trade name extensively and continuously in India and foreign jurisdictions with exceptional





success and has generated huge revenues under the said trade mark. The Complainant has sold and continues to sell its goods under the trade mark CEAT on an extensive scale throughout India and has in the last financial year 2019-20 sold goods bearing the said trade mark CEAT in excess of Rs. 6470.32 crores and it has spent more than Rs. 160.96 crores for the year 2019-20 towards advertisements, promotion, publicity, etc.

- ix. Further, the Complainant has been presented various awards and has received accolades from various trade associations, committees in recognition of the stellar reputation and insurmountable goodwill subsisting in the Complainant's business. The following is an overview of the awards which have been accorded to the Complainant:



**Marketing and Advertising:**

- Creative Excellence Award, India Awards , 2017

- Silver Award, Big Bang Awards: Best Media Innovation Radio, Drive Safe Dad Campaign, 2016
- Silver Award, India Digital Media Awards: Best Integrated Media Campaign- Films/TV shows/Events, Chase The Monsoon-2016
- Gold Award, Media Abby Awards, Goa fest : Best Use of Mobile Media – Drive safe dad, 2015
- Gold Award, The Advertising Club, Envies: Best media Innovation-Digital-Mobile/Handheld Devices – Drive safe dad, 2015
- Gold Award, Abbys-Goa Fest: Best Non Fiction Series, Chase the monsoon – 2014
- Effies Silver: Superior Grip Sustained campaign – 2014

#### **Quality Awards:**

- ABK - AOTS 5S Excellence Award, Jan 2017
- ABK - AOTS 5S Excellence Award, Dec 2016



- British safety council : Sword of Honour, Nov 2016
- British safety council : 5 Star, Mar 2016
- 6th Annual Manufacturing & Supply Chain Award
- Employers Federation of India - National Excellence Award in Employee Relations

#### **(CAPEXIL) Awards**

- Complainant has received the prestigious Deming Prize, which was awarded recognizing the achievement of business transformation by implementing Total Quality Management (TQM). It is worthwhile to mention that Complainant became the first tyre company in the world, outside of Japan, to have the honour of achieving this award.
- The Complainant is ranked highest in India for Original Equipment (OE) Tyre customer satisfaction in a study by J.D. Power 2017.



- x. The Complainant states that its trade/service mark CEAT has acquired distinctiveness and is a well-known trade/service mark associated exclusively with the Complainant and its business. In fact the Honorable High Court of Bombay, India, in its order dated 25.03.2019 designated the Complainant's mark CEAT as a well-known mark. Further, the Honorable High Court of Bombay, Commercial Division has passed an order in IA NO: 1 of 2020 in CEAT Limited vs Tirupati Conveyors India Private Limited, wherein, CEAT is reiterated as well know trademark.
- xi. CEAT has also been recently included in the list of trade marks which are declared as Well-Known. The same has been published in the Trade Marks Journal 1978 dated December 14, 2020.





**THE COMPLAINANT'S STATUTORY AND  
COMMON LAW RIGHTS**

- xii. The Complainant states that by virtue of priority in adoption, long, continuous, uninterrupted and extensive usage of the mark CEAT for several decades, the Complainant has acquired substantive common law rights to use the CEAT mark.
- xiii. By virtue of its very nature, being an invented word, the mark CEAT is arbitrary in relation to the Complainant's business and has been uniquely adopted in relation of the business of the Complainant. On account of its unique adoption, coupled with the distinctiveness acquired by the mark CEAT by virtue of its use, the mark CEAT has become exclusively and solely associated with the Complainant. Details of the turnover and advertisement expenses incurred by the Complainant in relation to its trade/service mark, for the last five years are furnished hereunder:



S. No.	Period Ending	Annual Turnover (in INR, Crore)	Advertising Spend (in INR, Crore)
1.	2019-2020	6470.32	160.96
2.	2018-2019	6757.93	168.92
3.	2017-2018	6244.28	146.72
4.	2016-2017	6333.04	122.13
5.	2015-2016	6082.43	108.26

xiv. The promotional efforts of the Complainant have resulted in the CEAT mark becoming a well-known trade/service mark of the Complainant. Thus, use by any other person of the trade/service mark CEAT or any other phonetically, visually or deceptively similar mark would not only result in immense confusion and deception but would also be in violation of the Complainant's rights in the said mark.

xv. Apart from the common law rights in the trade/service mark CEAT, the Complainant is also the registered proprietor of the trademark CEAT in over 120 countries. It is stated that CEAT GOMMA SOC. PER AZ and CEAT SpA were the registered proprietors of the trademark CEAT since 1961. These rights were assigned to the Complainant in 1978. The



worldwide registrations for the trademark CEAT were held by CEAT SpA, which were subsequently assigned to Pirelli & C.S.p.A. It is stated that Pirelli & C. S.p.A assigned worldwide rights in the trademark CEAT to the Complainant by virtue of an assignment in 2010.

The Complainant in its complaint has also submitted a list disclosing the details of few trade mark registrations, secured by the Complainant in India.

The registrations for the Complainant's Mark and CEAT formative marks, as disclosed in the Complaint, are valid and subsisting.

- xvi. The grant of the aforementioned trademark registrations in favour of the Complainant for the trademark CEAT is in itself adequate recognition of the Complainant's proprietary rights in the trademark CEAT.



### **INTERNET PRESENCE**

xvii. The Complainant has devoted an enormous amount of time, effort and energy in promoting and advertising the said mark in the print and online media and the said mark is consequently identified solely with the Complainant. It is pertinent to note that the Complainant is itself the Registrant of the following domain names containing its trade/service mark CEAT:

- ☐ ceat.com
- ☐ ceatltd.com
- ☐ ceat.in
- ☐ ceattyres.in
- ☐ ceatonline.in
- ☐ ceatconnect.in
- ☐ ceatcricketrating.org

### **RECOGNITION OF THE COMPLAINANT'S RIGHTS IN ITS TRADE MARK/NAME CEAT**

xviii. The Complainant's rights in its trade mark/name CEAT has been recognized in a previous WIPO decision, being CEAT Limited v. Vertical Axis Inc. /





Whois Privacy Services Pty Ltd, WIPO Case No. D2011-1981, wherein the domain name ceat.com was transferred to the Complainant.

6. This Complaint is based on the following grounds:

**A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

(Rules, Paragraph 4(b)(vi), Policy, Paragraph 4)

- i. The Respondent's domain name < ceattyresales.in > is confusingly similar to the well-known trade/service mark of the Complainant, CEAT. The Complainant has overwhelming common law as well as statutory rights in its trade/service mark CEAT in India and foreign jurisdictions. Therefore, the Complainant is the sole legitimate owner of the trade/service mark CEAT.
- ii. Respondent's registration of domain ceattyresales.in will induce members of the public and trade to believe that the web site belongs to the Complainant or that the Respondent has a trade connection, association, relationship or approval with/of the Complainant, when it is not so.



**B. The Respondent has no rights or legitimate interests  
in respect of the domain name:**

(Rules, Paragraph 4(b)(vi), Policy, Paragraph 4)

It is the Complainant's contention that the Respondent has no rights/ legitimate interest in the domain name <ceattyresales.in> for the following reasons:

- iii. The Respondent has no connection whatsoever with the Complainant and the Complainant has not licensed or otherwise permitted the Respondent to apply for any domain name incorporating the trade/service mark CEAT.
- iv. The Respondent has not made any legitimate offering of goods or services under the mark CEAT through the disputed domain name. In fact the Respondent's intention is only to cheat general public pretending to be a website hosted by the Complainant. The only purpose of the website very apparently is an invitation to the public in general to start their tyre dealership business in



their town with just a low investment. The contents of the website clearly support this view.

- v. It is further stated there could be no plausible explanation for the adoption and registration of the domain name <ceattyresales.in> by the Respondent since the Complainant's trade/service mark CEAT is an invented word other than to misappropriate the reputation of the Complainant's trade/service mark CEAT.
- vi. Therefore, the fact that the sole purpose of the Respondent's registration of the disputed domain name is to defraud general public in making them believe that it is a website hosted by the Complainant and to divert traffic from the Complainant's websites makes it apparent that the Respondent has no rights or legitimate interest in the disputed domain name.



**C. The domain name was registered in bad faith:**  
(Rule, Paragraph 4(b)(vi), Policy, paragraph 4)

It is the Complainant's contention that the Respondent has registered the impugned domain name in bad faith for the following reasons:

vii. The Respondent has adopted the domain name i.e. [www.ceattyresales.in](http://www.ceattyresales.in) only with an intend to defraud the Complainant's valued customers and for extracting money / personal details from them. The Complainant has come across instances where the Respondent has been approaching general public through various social media platform like facebook offering CEAT dealership against payment. The website [www.ceattyresales.in](http://www.ceattyresales.in) has been created to cheat those who enquire for our distributorship/dealership/sub-dealership.

viii. By adopting a domain name using the Complainant's well - known and distinctive trademark CEAT the Respondent has intentionally attempted to lure Internet users to the Respondent's website or other on-line location, by posing itself as the Complainant with the sole intention to cheat those who enquire for the Complainant's distributorship/dealership/sub-dealership.





- ix. The Respondent has not made any legitimate offering of goods or services under the Complainant's trade/service mark CEAT through the disputed domain name. On the Contrary the Respondent is posing itself as the Complainant to defraud gullible consumers and to make money by offering without any authority, dealership/distributorship of the Complainant against payment Hence, the Respondent is only trying to usurp the reputation and goodwill of the Complainant's trade/service mark CEAT through the disputed domain name.
- x. It is furthermore stated in various precedents that in this regard that the 'domain names' are fast emerging corporate assets and have evolved as a fulcrum of a company's visibility and marketing operations. Business transactions are primarily being carried out only through internet addresses rather than street addresses or post boxes or even faxes. Hence, it becomes critical that unscrupulous individuals are not allowed to usurp well-



known trademarks and domain names to unfairly benefit from such act to support their illegal act.

It is therefore submitted that the disputed domain name has been registered and is being used in bad faith.

7. The Complainant seeks the following reliefs:-

“In accordance with paragraph 4 of the Policy, for the reasons described in Section VI of the Complaint, and for the reasons stated in the Complaint, the Complainant requests the Arbitrator appointed in this arbitration proceedings to issue a decision that the ownership in ceattyresales.in be rightfully transferred to the Complainant herein OR the Registrant’s domain name ceattyresales.in shall be cancelled and pass any other appropriate favorable orders as it may deemed fit.”

#### **APPRECIATION & OBSERVATION:**

8. Since no reply was filed by the Respondent even after giving sufficient opportunities to the Respondent, this Tribunal now in terms of its order dated 25.02.2021, proceeds for passing an *ex parte* Award on merits.



9. The Complainant filed the Complaint along with all necessary documents and evidences. In the evidence, the Complainant proved the facts stated in the Complaint by way of documents duly annexed with the Complaint.

10. The dispute relates to the domain name ceattyresales.in, which is a trade mark backed domain name. The Respondent's domain name ceattyresales.in also amounts to an infringement of the statutory and common law rights of the Complainant in its registered 'CEAT' mark. The Trade Mark 'CEAT' is already registered in India and complainant has already acquired a legal right in the trade mark 'CEAT' in terms of the provisions of section 17 of The TM Act, 1999. It is also a settled law that domain name may have all the characteristics of a Trade Mark and could found a connection for passing of (*Satyam Infoway Ltd. Vs. Sify Net Solutions Pvt. Ltd.*, (2004) 6 SCC 145—Para 16).

11. For the purpose of examination that whether the reliefs sought by the Complainant can be allowed or not, it is much necessary to appreciate the legal position along with the facts submitted by the Complainant. In this regard it is much



necessary to discuss the provisions of Section 29 of the Trade Marks Act, 1999 (for short 'T M Act, 1999'). Section 29 of the T M Act, 1999 reads as under:-

*"29. Infringement of registered trade marks.—*

*(1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.*

*(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—*

*(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or*

*(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or*





*(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.*

*(3) In any case falling under clause (c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.*

*(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which—*

*(a) is identical with or similar to the registered trade mark; and*

*(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and*

*(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.*

*(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name*



*or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade mark is registered.*

*(6) For the purposes of this section, a person uses a registered mark, if, in particular, he—*

*(a) affixes it to goods or the packaging thereof;*

*(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;*

*(c) imports or exports goods under the mark; or*

*(d) uses the registered trade mark on business papers or in advertising.*

*(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.*

*(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising—*



*(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or*

*(b) is detrimental to its distinctive character; or*

*(c) is against the reputation of the trade mark.*

*(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly. ”*

12. Section 29 of The TM Act speaks the owner/proprietor of the registered trade mark claiming the infringement of the said mark by another person, who is neither a registered Proprietor in relation to the goods and services, for which the mark is registered, nor has permission to use such mark in the course of his trade. Under the provisions of Section 29(1), infringement results if the mark is identical with or deceptively similar to the already registered trade mark and is in relation to the goods and services, for which the trade mark has been registered.



13. Under Section 29(2)(b), infringement occurs where the impugned mark is similar to the registered mark and the goods and the services, for which is used is identical with or similar to the goods and services, for which the registered mark is used. Under Section 29(2)(c), infringement occurs where the impugned trade mark is identical to the registered trade mark and the goods or services, for which the impugned mark is used is also identical to the goods and services covered by the registered trade mark.

14. An additional ingredient in the above three situations for the infringement is that the use of impugned trade mark is likely to cause confusion on the part of the public or is likely to have an association with the registered trade mark. Under Section 29(3), when the impugned trade mark is identical to the registered trade mark and the goods/services, for which it is used, are also identical to the goods or services, for which the registration has been granted, then the adjudicating authority shall presume that it is likely to cause confusion on the part of the public.





15. Thus, under Section 29(1), (2) and (3) for infringement to result-

- (a) The impugned mark has to be either similar to or identical with the registered mark;
- (b) The goods or services, for which the impugned mark is complained, has to also either be identical with or similar to the goods or services, for which the registration has already been granted.

The scenario is different as regards Section 29(4) of The TM Act, 1999. For infringement to result under Section 29(4), the following conditions are required to be fulfilled:-

- (i) The person using the impugned mark is neither a registered Prop. in relation to the goods and services, for which the mark is registered, nor is using it by way of permitted use;
- (ii) The impugned mark must be used in course of trade;





- (iii) The impugned mark has to be either similar to or identical with the registered mark;
- (iv) The impugned mark is used for goods and services different from those, for which the registration has been granted;
- (v) The registered trade mark has a reputation in India;
- (vi) The use of impugned mark is without due cause and takes unfair advantage of or is detrimental to-
  - The distinctive character of the registered trade mark; or
  - The reputation of the registered trade mark.

16. The question to be adjudicated by this Forum is whether the person using the impugned mark has obtained it *bona fide*ly or whether the permission given for the impugned trade mark/mark does not violate the conditions, as discussed



hereinabove. For the purpose of analyzing this, the expression “mark” has to be understood. The mark has been defined under Section 2(m) of The TM Act to include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of good, packaging or combination of colour and any combination thereof. Thus, for the purpose of Section 29(4), the use of mark which is a part of domain name would also attract infringement. What is important is that the registered trade mark must be shown to have been used by the infringer. It should be shown without such adoption or use as resulted into infringer taking unfair advantage of the registered trade mark or is detrimental to the distinctive character or reputation of the registered trade mark.

17. Section 2(zg) of The TM Act defines a well-known trade mark in relation to any goods or services to mean a mark, which has become so popular to the substantial segment of the public, which uses such goods or receives such services that the use of such mark in relation to either goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services



and a person using the mark in relation to the first mentioned goods and services.

18. In *Apple Computer Inc. Vs. Apple Leasing and Industries*, 1999 SCC Online Del. 308 it is held that where improper use of the name or trade mark is considered, then the confusion created between the two trade mark has to be considered. Further, coming to Section 29(5) of The TM Act, it is seen that it relates to a situation where the infringer uses his trade mark as his trade name or part of his trade name and the business concerned of the infringer is for the same goods or services, in respect of which the trade mark is registered. In view of this Tribunal, the provisions of Section 29(5) cannot be said to render Section 2(4) of The TM Act, 1999 as infructuous. Even when the infringer is the registered user of the same mark, then the question arises for the purpose of adjudication is whether the registration of the mark was obtained in good faith or whether it is being used in good faith or whether it is creating a confusion in the public or whether it is a creature of the infringer or not or whether it is copied by the infringer from the mark of the Complainant.



**CONCLUSION:**

19. After considering the material placed on record and the averments made in the Complaint and also in the annexed evidences and documents, which have been proved in evidence since unrebutted and admitted by the Respondent and also in view of the cited case laws, it is evident that the trade mark “CEAT” is a well known trade mark. The same is known to most of the people of the entire world. No one is entitled and can be authorized to use the same either as a domain name or as a trade mark in relation to the similar or dissimilar business, as the said domain name/trade mark has got a unique goodwill and reputation.

20. The impugned domain name consists of a prefix word ‘CEAT’, which is already a registered trade mark of the Complainant. Henceforth, it is immaterial whether the impugned domain name was registered prior to or after the registration of the ‘CEAT’ trade mark. The impugned domain name pertains to the territory of India and the Complainant’s trade mark ‘CEAT’ is not only worldwide recognized but also a registered trade mark in India, therefore, only the Complainant



can be the legitimate owner of the trade mark 'CEAT' and impugned domain name and not the Respondent.

21. In the opinion of this Tribunal, the impugned domain name is a trade mark backed domain name and it not only violates the provisions of The TM Act, 1999 but also violates Clause 4 of the INDRP policy issued by the NIXI. The impugned domain name conflicts with the legitimate rights and interest of the Complainant on the following premises:-

- (a) The impugned domain name is identical and confusingly similar to a named trade mark as well as service mark, in which the Complainant has a right;
- (b) Respondent has no right or legitimate interest in respect of the impugned domain name;
- (c) The Respondent's impugned domain name has been registered and is being used in bad faith by using the registered trade mark of the Complainant and giving a pecuniary loss to the





Complainant by using the name and trade mark of the Complainant.

22. The evidences filed by the Complainant have gone un rebutted as well as proved by the Complainant, therefore, the statements and documents filed by the Complainant are accepted as correct deposition. In view of the facts and settled law, with the deposition and documents of the Complainant placed before this Tribunal, the Complaint deserves to be allowed for an Award on merits in favour of the Complainant, as prayed in Para No.VII of the Complaint by the Complainant.

### **DECISION**

- a) In view of above, it is directed that the domain name ceattyresales.in be transferred in favour of the Complainant by the Registry. As a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name ceattyresales.in or any other deceptively similar trade mark, which may amount to infringement of



Complainant's registered trade mark and also from doing any other thing, which is likely to create confusion and deception with the goods/services of the Respondent for any connection with the Complainant;

- b) The Complaint is allowed in the above terms;
- c) Respondent is hereby directed to pay to the Complainant a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards costs of the proceedings; and
- d) National Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the domain name, as directed.



  
**(PANKAJ GARG)**  
**SOLE ARBITRATOR**

**Place: New Delhi**  
**Date : 08<sup>th</sup> March, 2021**