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AWARD

V. P. Pathak

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

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BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

DISPUTED DOMAIN NAME: WWW.TATAGRAVITAS.IN

IN THE MATTER OF INDRP CASE NUMBER 1364/2021

.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

Tata Motors Limited
24 Homi Mody Street,
Fort, Mumbai - 400 001
State of Maharashtra
INDIA

....COMPLAINANT

AND


Mr. Chunnu Ji
Faridabad
Haryana 121001
India

....RESPONDENT


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AWARD

1. The present domain name dispute relates to the registration of the domain name www.tatagravitas.in in favor of the Respondent.
2. The Complainant has filed the instant complaint challenging the registration of the domain name "tatagravitas.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. It is pertinent to mention here that this domain dispute was handed over to me due to the sudden unfortunate demise of the previous Learned Arbitrator. Hence, NIXI handed over the matter to the Tribunal after providing all the earlier proceedings held before the previous Learned Arbitrator to me. The previous Learned Arbitrator had been appointed on 30.03.2021 and had sent the notice to the Respondent twice i.e., on 30.03.2021 and 05.05.2021 even after which no response had come from the Respondent.
4. So, the Declaration of impartiality and acceptance was sent by the Tribunal on 07.06.2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly as per **Rule 5 of the INDRP Rules** and in the interest of justice I issued an order dated 11.06.2021 asking both the parties to submit any evidence/document they wish to submit within a week.
5. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of complaint. In accordance with this rule, the respondent was sent the complaint on the email shown in the domain name registration data in .IN



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Registry's WHOIS database, by NIXI as per the previous Arbitrator's email to the Respondent dated 30.03.2021, which has not returned so far.

6. Complainant has also sent a hard copy of the complaint to the Respondent on 19.03.2021, receipt of which is in record with the Tribunal. But, no reply was filed by the Respondent.
7. Since the complainant has been served through one of the modes as specified in Rule 2 (above mentioned), I am of the view that the service of the complaint upon the respondent is complied with.
8. Since, there has been no response from the Respondents to the Complaint, so according to **Rule 12 of INDRP Rules of Procedure** which states about default of parties wherein it is clearly mentioned that:

"In the event of any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided *ex-parte* by the Arbitrator and such arbitral award shall be binding in accordance to law."

9. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.
10. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.
11. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:


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- SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT: it was held that the Arbitrator has to inform the parties that he intends to proceed with the reference at a specified time and place , whether that party attends or not. If still a party does not attend, then only the Arbitrator is at liberty to proceed *ex-parte* against him.
- NAGASRINIVASULU v. GLADA FINANCE LTD. 2008 (11) TMI 724 MADRAS HIGH COURT: it was held that where a party did not appear on the adjourned date in spite of a note by the Arbitrator in the minutes of hearing that if the party does not appear on the appointed date and time, the hearing would proceed *ex-parte* and no separate notice is given, the ex-parte award in such a case is legal.
- P.S. OBEROI v. ORISSA FOREST CORPORATION LTD. 1982 (3) TMI 275- ORISSA HIGH COURT: has held that when from the conduct of the objectors to an award, it is abundantly clear that they had no intention of appearing before the arbitrators, the arbitrators are justified in proceeding *ex-parte*.
- DAISY TRADING CORPORATION v. UNION OF INDIA 2001 (10) TMI 1183- DELHI HIGH COURT: it was held that where the Arbitrator had allowed a period of three weeks to the appellant to file its counterclaim and reply to the claim statement of the Respondent, then it was the bounden duty of the Arbitrator to have ascertained the date on which service had been effected on the appellant before taking steps to proceed *ex-parte*.
- STATE OF U.P v. COMBINED CHEMICALS CO. (PO LTD. 2011 (1) TMI 1527- SUPREME COURT: it was held that where the appellant sought

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adjournment on the ground that he had filed an appeal against the order of the trial court on the question of maintainability of petition, the arbitrator granted adjournment but the appellant failed to obtain stay order from the appellant court and continued to abstain from the arbitral proceedings, the arbitrator was justified in proceeding *ex-parte* against such a party.

12. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, even though an order was again passed on 11.06.2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

CONTENTIONS

13. Since the Respondent has proceeded *ex-parte*, I shall deal with the contention of the Complainant. The complaint has been filed for transfer of the disputed domain name www.tatagravitas.in, which was registered by the Respondent. The Complainant also owns www.tatagravitas.com.

14. Primarily, the assertion of the Complainant in its complaint is that the disputed domain name is identical and similar to the trademark of TATAGRAVITAS. The Complainant in its complaint has stated that they are India's largest automobile company, with consolidated revenues of ₹ 2,61,068 Crores in 2019-2020. The complainant i.e. Tata Motors Ltd is among the top five commercial vehicle manufacturers in the world. The complainant is India's

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market leader in commercial vehicles and among the top three in passenger vehicles. The complainant is also the world's fourth-largest truck and bus manufacturer. The complainant belongs to the well known Tata Group of Companies.

15. The search result on the impugned domain name **www.tatagravitas.in** found in the records of 'WHOIS' is provided in 'ANNEXURE - A'.
16. The domain name in question is identical to the Complainant's trademark **TATAGRAVITAS**. That **TATAMOTORS** also forms a dominant part of the complainant's corporate name since the year 1945 and that the Respondent has no claims, rights or legitimate interests in respect of disputed domain name.
17. The domain name www.tatagravitas.in has been registered in bad faith and the Complainant has obtained registration for registration of the trademark **TATAGRAVITAS** in India.
18. The Complainant also owns and controls domain names such as www.tatagravitas.com. The Complainant has generated good and valuable reputation and vast amounts of goodwill has accrued to the Complainant in the name of **TATAGRAVITAS** through on-line presence.
19. The Respondent has adopted and registered the disputed domain name, which is identical to the trademark and/or corporate name of the Complainant, thereby wrongfully, illegally and dishonestly trading upon the reputation of the Complainant.
20. The Complainant, formerly known as Tata Engineering and Locomotive Company, began manufacturing commercial vehicles in 1954 with a 15-year collaboration agreement with Daimler Benz of Germany. It has, since, developed Tata Ace, India's first indigenous light commercial vehicle; the Prima

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range of trucks; the Ultra range of international standard light commercial vehicles; Safari, India's first sports utility vehicle; Indica, India's first indigenously manufactured passenger car; and the Nano, the world's most affordable car. The Complainant states that each of the above innovations has attracted positive reviews internationally and in India. The copy of incorporation certificate of Tata Motors Ltd is provided as 'ANNEXURE -C' to this Complaint.

21. The Complainant has also consistently expanded its international footprint, through exports since 1961. The Complainant has operations in the UK, South Korea, Thailand, Spain and South Africa through subsidiaries and associate companies. The Tata Motors commercial and passenger vehicles are being marketed in several countries in Europe, Africa, the Middle East, South Asia, South East Asia and South America. It has franchisee/joint venture assembly operations in Bangladesh, Ukraine and Senegal. The official website of the Complainant is www.tatamotors.com.

22. During the course of their business, the Complainant has adopted several distinctive trademarks, one such mark is **GRAVITAS** also represented as **TATAGRAVITAS** for a seven-seat sports utility vehicle. Copy of some of the Complainant's promotional materials on **TATAGRAVITAS** is annexed herewith as 'ANNEXURE -D'.

23. In respect of the business carried on by the complainant and its associated companies, their products and services have come to be associated by the consumers and the members of the public exclusively with the '**TATA**' Group of Companies. The word '**TATA**' was adopted as a trademark and has been extensively used in respect of the products and services manufactured and rendered by the companies belonging to **TATA** Group of Companies. The

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Complainant and its associated companies are the registered proprietors of various trademarks containing the word '**TATA**'. The said trademarks are registered in different classes and the earliest registrations date back to the year 1951.

24. In the facts and circumstances, it is explicit and obvious that the word '**TATA**' which forms part of corporate name of the Complainant and other companies belonging to **TATA** Group of Companies connotes the distinctiveness, reputation, quality and goodwill acquired over several years and is understood as connoting an association with the iconic **TATA** Group.
25. The adoption and/or usage of **TATA GRAVITAS** by others would amount to not only dilution of the Complainant's right over the mark **TATA**, but would also result in misuse of the trademark for individual benefit and is liable to be prevented by Law.
26. The trademark **TATA** has acquired both statutory right and Common Law right, Copy of the trademark Renewal certificate for the trademark **TATA** and copy of the trademark Registration certificate for the trademark **TATAGRAVITAS** are marked as 'ANNEXURE - E'.
27. The respondent has no connection with the complainant and other Tata Group of Companies, it is further stated that the complainant and/or any entity belonging to the Tata Group of Companies has not licensed or otherwise permitted the respondent to use **TATAGRAVITAS** nor has it permitted the Respondent to apply for or use any 'Domain Name' incorporating the mark **TATA**.
28. The complainant relies on the decision of this honorable court and Arbitration and Mediation Centre passed in the cases of Gulshan Khatri Vs Google Inc O.M.P (COMM) 497/2016 www.googleee.in, and in **MOZILLA**

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FOUNDATION Vs Mr. CHANDAN INDRP/642 www.mozilla.in marked as 'ANNEXURE F'. The disputed domain name will give unwary visitors to the domain an impression that the disputed domain name has been authorized by the complainant.

29. The complainant claims enormous presence on the Internet and ownership of various domain names consisting of the words 'TATAMOTORS' which are mentioned herein below:

Sl. No	Domain Name	TLD	Country	Holder	Validity
1	Tatamotors	.com	Global	Tata Motors Ltd	May 9, 2023
2	Tataace	.co.tz	Tanzania	Tata Motors Ltd	September 9, 2021
3	Tataxenon	.co.tz	Colombia	Tata Motors Ltd	September 9, 2021
4	Tataace	.com.np	Nepal	Tata Motors Ltd	September 13, 2021
5	Tatanano	.com.np	Nepal	Tata Motors Ltd	September 13, 2021
6	Tataxenon	.com.np	Nepal	Tata Motors Ltd	September 13, 2021
7	Tatanano	.lk	Sri Lanka	Tata Motors Ltd	September 19, 2021


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8	Tataxenon	.lk	Sri Lanka	Tata Motors Ltd	September 19, 2021
9	Tataace	.lk	Sri Lanka	Tata Motors Ltd	September 19, 2021
10	Tatasafari	.com	Indonesia	Tata Motors Ltd	September 14, 2021
11	Tatatigor	.com	Global	Tata Motors Ltd	February 9, 2021
12	Tatanexon	.com	Global	Tata Motors Ltd	May 7, 2021

ANALYSIS

30. Since the domain www.tatagravitas.in is registered by Respondent, and he has not turned up even after service of summons.


31. As the proceedings are set *ex-parte*, I shall deal with the complaint on its prayer for transfer of the disputed domain name. The disputed domain name www.tatagravitas.in consists of the mark 'TATAGRAVITAS', which is the registered trademark of the Complainant. "TATAGRAVITAS" has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainants right over the name 'TATAGRAVITAS'. Therefore, the Complainants claim that it has a right over the disputed name stands proved.


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32. Moreso, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant well known mark "TATAGRAVITAS" and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark TATAGRAVITAS by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

33. The following case laws also prove that similar or identical domain names lead to confusion amongst the customers, while the customers think they are buying from the original website, they are being cheated on by the unknown domain owner who will have all the related products.

- **Yahoo Inc v. Akash Arora & Anr. 78 (1999) DLT 285:**
The Hon'ble High Court of Delhi noted that the two marks/domain names i.e., 'Yahoo!' of the Plaintiff and "Yahoolndia" of the Defendant were almost similar and there was "every possibility and likelihood of confusion and deception being caused". It is no different here.
- **In Satyam Infoway Ltd. v. Sifnet Solutions Pvt. Ltd. (2004) 6 SCC 145:**
The Hon'ble Supreme Court noted that "The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain instead of another."


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CONCLUSION:

34. Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the Complainant has proprietary right over the mark "TATAGRAVITAS" followed by the Complainants registered Trademark "TATAGRAVITAS" will not distinguish the Respondents disputed domain name. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.tatagravitas.in in favor of the Complainant.

35. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration Act, 1996 has been fully followed by the Tribunal.

ORDER

36. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.tatagravitas.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.

37. This award is passed today at New Delhi on 23.06.2021.

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DATE: 23.06.2021