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S.No. 12237 Date 16/04/2021  
Sold to Dr. Vedula Gopinath, Arbitrator, V.K. Chaitanya  
For Whom Smt. V.K. Chaitanya  
T.N. SATYANARAYANA  
L.No.03-11-0112012, R.L.No.03-11-0150021999986 : Cell No. 9886555986  
Add: 18-12-8, Maharajipeta, Kurnool District  
VISA KHAPATNAM-530002  
L.No.03-11-0112012, R.L.No.03-11-0150021999986 : Cell No. 9886555986  
T.N. SATYANARAYANA  
DA 146318

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award No. INDRP/1377, Dated 14th May, 2021

In the matter of Arbitration Between:

Brandopus LLP  
Devonshire House  
60 Goswell Road  
London, EC1M 7AD  
United Kingdom

... Complainant

AND

Mr. Anurag Mishra,  
Bindwink Solutions Pvt. Ltd.,  
#39 1<sup>st</sup> Floor, ITI Layout,  
RMV 2<sup>nd</sup> Stage,  
Bangalore - 560054  
Karnataka, India.



Respondent

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**I. THE PARTIES :**

- a. Complainant M/s. Brandopus LLP Authorised representative in this administrative proceedings is:

Mr. Nick Bowie,  
Legal Director,  
Lewis Silkin LLP,  
5 Chancery Lane,  
Clifford's Inn,  
London, EC4A 1BL,  
United Kingdom  
Telephone No. +44 (0) 20 7074 8000  
E-mail : [nick.bowie@lewissilkin.com](mailto:nick.bowie@lewissilkin.com)


- b. Respondent:

Mr. Anurag Mishra,  
Bindwink Solutions Pvt. Ltd.,  
#39 1<sup>st</sup> Floor, ITI Layout,  
RMV 2<sup>nd</sup> Stage,  
Bangalore – 560054  
Karnataka, India.  
Telephone No.+91 9036364466  
Email : [anurag@blindwink.in](mailto:anurag@blindwink.in)

**II. DISPUTED DOMAIN NAME & REGISTRY:**

- a) The following Domain name is the subject of this Complaint is  
[www.brandopus.in](http://www.brandopus.in)
- b) The Registry is the National Internet Exchange of India (henceforth referred to as NIXI).
- c) The Sponsoring Registrar of the Impugned Domain name is  
Silo.com
- (Details given in Anx 5 of the Complaint.




  
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### III. PROCEDURAL HISTORY / BACK GROUND:

|            |   |
|------------|---|
| 15.04.2021 | The .1N REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure.  |
| 14.04.2021 | Consent of the Sole Arbitrator along with declaration was given to the .1N REGISTRY according to the INDRP Rules of Procedure.  |
| 15.04.2021 | .1N REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to Respondent. |
| 16.04.2021 | Notice of Arbitration was sent to all concern by the Sole Arbitrator.   |
| 17.04.2021 | Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .1N Registry.         |
| 05-5-2021  | Time Extension given to Respondent for defence statement  |
| 11-05-2021 | Explanation given by Respondent which is treated as Defence Statement   |
| 12-05-2021 | Reply to the Defence statement given by Complainant and Respondents given comments thereon.   |

All pleadings are communicated through Electronic mail.



  
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IV. 1.COMPLAINANT'S DETAILS:

a) The Complainant Organization is established in the year 2007. The Claimant claimed to be a pioneer in the field of providing services, inter alia, relating to brand creation, brand redesign and brand strategy. Respondent claims to be specialize in perception and behavior changing strategy, design and activation. Over the years the complainant has created numerous iconic and commercially successful brands that have transformed the business of its customers.

b) The Complainant in the owner of International Registration No. 1216139 for mark "Brand Opus" (designating protection in India) registered on 18<sup>th</sup> December, 2013

A.The Complainant is pursuing business of **(Class 35)** Advertising for Marketing, Advertising for Promotional and Public relations services; brand evaluation and brand creation services, brand evaluation services,

B.Th. Complainant is pursuing business **(Class 41)** activities such as audio and video recording services; publishing; production of radio and of television programmes; electronic publication; information, among others.



  
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C The Complainant's is also pursuing business in (Class 42) Design services and brand design services; computer aided design of video graphics; digital artwork, digital image manipulation; provision of websites relating to any of the aforesaid services; design, creation and database software.

A copy of the statement of grant of protection is attached at **Annexure - 3** of the Complainant

2. Respondent's details:

According to the WHOIS records, the disputed domain name www.brandopus.in is registered in the name of Mr. Anurag Mishra who is founder, promoter and director of Bindwink Solutions Private Limited having Registered Office at Bangalore, Karnatka, India. Respondent is also director of Brand Opus India Private Limited having registered office at Bangalore, Karnataka India.

Two websites viz.; 1, brandopusindia.com and brandopus.in are under the control of Respondent

(Ref. Annexure-V of Complainant containing extract of WHO IS search extract)

V. PARTIES CONTENTIONS:


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A.COMPLAINANT:

- a. The Registrant's Domain Name is an exact match of the Complainant's rights. According to the WHOIS details provided at Annexure - 1 the Domain Name was registered on 21<sup>st</sup> August, 2019, Six years after the Complainant secured registered trade mark protection for BrandOpus in India.
- b. The Registrant's Domain Name is an exact match of the Complainant's rights. According to the WHOIS details provided at Annexure - 1 the Domain Name was registered on 21<sup>st</sup> August, 2019, Six years after the Complainant secured registered trade mark protection for BrandOpus in India.
- c. The Complainant has alleged that domain name of the Respondents is identical and confusingly similar to their trademark in which it has rights.
- d. The complainant has alleged that respondents does not have rights or legitimate interest in respect of domain name and also the respondents have no registered trade mark rights of the said domain name. The complainant has alleged that respondents clearly intend to mislead potential customers of the complainant to its website.
- e. The Complainant has further alleged that the domain name is registered by the respondents and is used by them in bad faith.

  
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f. The complainant has submitted that its trademarks are well known in India. The complainant has further alleged that the respondent's intention is not to act in good faith but has got registered the disputed Domain name in bad faith.

g) The Complainant (Brandopus LLP) doesn't have any business relationship with Respondent.

B. RESPONDENT:

a. In reply dated 18-11-2020 to the cease and desist notice dated 17-11-2020, denied the allegations levelled by complainant and informed that their services are different from those of Complainant.

b. According to Paragraph 4(c) (iii) of INDRP policy, Respondent possess full rights to use domain name brandopus.in as a legally registered company in India (Brand Opus India Private Limited)

c. They are using domain name only after company registration on 4<sup>th</sup> Sept 2019 and the domain name was parked with the Registrar after registration on 22-08-2019 and commenced using from 3<sup>rd</sup> June 2020

d. Respondent denied using the domain name in bad faith and says using it to represent his company viz., Brand Opus India Pvt. Ltd.

e. Respondent asserts that their company name is Brand Opus India Private Limited whereas the complainant company name is BRANOPUS as single word. Thus the difference is



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Respondent domain name consists of two words whereas the Complainant name and trade mark is single word.

- f. |References of following WIPO cases by Complainant are not applicable to Respondent and facts of those cases are different and inapplicable to the Respondent.

a.WIPO case No.D2004-0890 b.WIPO case No.D2007-1713

VI. Discussion Findings and Reasoning:

- a. Admittedly the corporate name of Respondent and trademark of the Complainant are same. It is immaterial whether the name differs in words or punctuation as per established decisions.
- b. WIPO case No.0468/2012 filed against Respondent WIPO Panellists gave decision in favour of Complainant to transfer the domain name www:brandopusindia.com vide decision order dated 16-02-2021. Thus the Respondent appears to have been guilty of infringement.
- c. The Arbitral Tribunal believes that the Complainant is having right of appeal to change the name of the Company of Respondent having their trade mark name as Company's name of Complainant under Section 16(1)(b) of Indian Companies Act 2013 . Under this proviso promoters of companies are prohibited to use the registered trade mark names as their intending Companies' names.

.IN Domain Name Dispute Resolution Policy (INDRP).



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In order to obtain the transfer of the Disputed Domain Name, Complainant should, according, prove all the following three elements to paragraph 4 of the Policy.

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faithful.
- (iv) Further pursuant to paragraph 6 & 7 of INDRP Policy, the Respondent have no legitimate interest and the same have been used in bad faith.

The complainant has satisfied with all the aforesaid elements.

- (g) It has been contended that Respondent is only using the Disputed Domain Name in a way of create a likelihood of confusion in the minds of the public as to the source of the products and services offered on its website, and thus to misleadingly attract users to its website at Complainant's detriment and to benefit from the Respondent trademark's goodwill.
- (h) Without valid authorization or valid license the Respondent resorted to assertions of dealings in servicing of products and using trade mark of complainant which amounts to clear deceit and infringement of the mark.



  
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- (i) Respondent transferred the domain name from Bindwink Solutions Pvt. Ltd. to Brand Opus India Private Limited. Thus the domain name and the business name is not commonly known at the time of registration of the domain name. Further the respondent is not entitled to take defense of being 'commonly known'. The Arbitral Tribunal earnestly believes that child is not born before mother came into existence'.
- (j) The contention of the Respondent that the brand name is used by registered legal company and their parking the domain name with the Registrar prior to usage appears to be invalid and unsustainable...

VII. In view of the foregoing discussion, the Arbitral Tribunal arrives at a Logical conclusion of accepting the prayer of the Complainant.


#### VIII. DECISION:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "brandopus" and also the disputed Domain Name i.e., www.brandopus.in be transferred to the Complainant.

Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the Domain Name as directed.

Visakhapatnam

Date: 14<sup>th</sup> May 2021

  
Dr. Vedula Gopinath

Sole Arbitrator

Dr. Vedula Gopinath  
B.L., F.C.S., F.I.C.A., Ph.D.  
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