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**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1394
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996
FINAL AWARD**

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BEFORE THE .IN REGISTRY OF INDIA

INDRP CASE NO. 1394

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN
NAME DISPUTE RESOLUTION POLICY
THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION AND CONCILIATION ACT, 1996**

IN THE MATTER OF

Accenture Global Services Limited
3 Grand Canal Plaza
Upper Grand Canal Street, Dublin 4,
Ireland

...Complainant

versus

Axcenture Inc.,
III Amanora, Hadapsar,
Pune 411028 Maharashtra, India

...Respondent


AND

IN THE MATTER OF

A DISPUTE RELATING TO THE DOMAIN NAME AXCENTURE.IN

FINAL AWARD

Dated 11 August 2021
Venue: New Delhi, India



**ROBIN RATNAKAR DAVID
SOLE ARBITRATOR**

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I. PARTIES TO THE ARBITRATION

1. The Complainant

The Complainant is Accenture Global Services Limited, having its registered business address at 3 Grand Canal Plaza, Upper Grand Canal Street, Dublin 4, Ireland. The Complainant's attorney is Mr. Vikrant Rana, of S. S. Rana & Co., Advocates, 317, Lawyers Chambers, High Court of Delhi, New Delhi 110003, India.

2. The Respondent

The Respondent is Axcenture Inc., III Amanora, Hadapsar, Pune 411028 Maharashtra, India.

II. APPLICABLE LAW AND JURISDICTION

The .IN Domain Name Dispute Resolution Policy

1. The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name www.axcenture.in with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 16 September 2020 (the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.

Filing of the Complaint and Constitution of the Arbitral Tribunal

2. The Complainant filed a Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain



Name www.axcenture.in to the Complainant. On 10 June 2021, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in the said matter. On 11 June 2021, Mr. David gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator in compliance with the Arbitration and Conciliation Act, 1996.

3. On 14 June 2021, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator was constituted under Rule 5(b) of the Rules in respect of the Complaint filed by Accenture Global Services Limited against Axcenture Inc., the Respondent.
4. On 15 June 2021, the Arbitral Tribunal noted that the Complaint and Annexures, as filed in the first instance, were not paginated and not in accordance with the Rules. Accordingly, the Tribunal directed the Complainant to file the Complaint in compliance with the Rules by June 17, 2021.
5. On 16 June 2021, the Complainant refiled the Complaint and Annexures, stating that the same complied with the Rules.
6. On 17 June 2021, the Arbitral Tribunal issued the Notice of Arbitration under Rule 5 (c) of the Rules.
7. The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

Domain ID: D3962C1FB53F842C49ED0C026CCF7BFCF-IN

Creation Date: 05-12-2019

Expiration Date: 05-12-2021

Registrant Name: Axcenture Inc.

Registrant Organization: Axcenture Inc.

Registrant Address: 111, Amanora, Hadapsar, Pune, Maharashtra –



411028, India

Registrant Phone: (91) 9970128882

Registrant Email: axcenture.inc@gmail.com

Registrant ID: C2A9CF3FE2C644F5599B7220596706E35-IN

IV. PROCEDURAL HISTORY

1. On 17 June 2021, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent by email with the Complaint and Annexures enclosed. The Respondent was given an opportunity to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 27 June 2021. The Complainant was directed to serve a hard copy and a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complaint (including annexures) was sent to the email address of the Respondent shown in the WHOIS details, accordingly, the service on the Respondent was done in accordance with Rule 2 of the Rules.
2. On 26 June 2021, the Respondent in response to the notice of arbitration sent an email stating that it was willing to transfer the domain to the Complainant. The said email also referred to previous discussions between the Complainant and the Respondent and payment of settlement amount. The said email is reproduced under:

Subject: Re: INDRP Case No: 1394: Domain Dispute Complaint relating to the domain name - AXCENTURE.IN (Our ref. 760194)

Dear Sir/Madam,

With reference to your mail and discussion that took place on various occasions, I have informed you that I am ready and willing to close the entire establishment in the name of the above dispute domain, as per our discussion you were ready to pay the settlement amount and I have expected the settlement terms.



I am still ready to settle the matter at the earliest so that no inconvenience shall cause to anyone, I am ready to complete necessary documentation for closure and you have to do your needful.

Please do the needful for the same.

*Thanks & Regards,
Robert Francis*

3. On 30 June 2021, the Complainant filed a response stating as under: -

Subject: INDRP Case No: 1394: Domain Dispute Complaint
relating to the domain name - AXCENTURE.IN (Our
ref. 760194)

Dear Mr. David,

We are in receipt of the Respondent's reply dated June 26, 2021 wherein he has agreed, inter alia, to cease all use of the impugned name 'AXCENTURE' in respect of his business, and "complete necessary documentation for closure" (by which we may assume that he has agree to surrender/transfer the domain AXCENTURE.IN to the Complainant. However, with regard to the settlement amount as claimed by the Respondent, we may, on behalf of the Complainant reiterate once again that the Complainant feels in no way obliged to pay any settlement to the Respondent.

In any case, in view of the Respondent's apparent willingness to resolve the matter, we are not going into the merits of the Respondent's reply at this time and hereby communicate our agreement to also reach a resolution of the matter, subject to the Respondent's transfer of the disputed domain AXCENTURE.IN to the Complainant.



Accordingly, we would humbly request you to kindly pass an appropriate order.

However, in case the INDRP proceedings are re-instituted, the Complainant reserves its right to furnish a substantive response and rebut all claims/ allegations raised by the Respondent vide his afore-mentioned reply.

Thank you for your consideration.

We look forward to hearing from you.

Kind regards,

Ragini Ghosh | Arpit Kalra Sr. Associate Advocates

4. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as NIXI.



V. PARTIES' CONTENTIONS


COMPLAINANT

1. The Complainant, Accenture Global Services Limited states it is an international business that provides a broad range of services and solutions in strategy, consulting, digital, technology and operations under the name ACCENTURE and is the owner of the ACCENTURE trademark and company name, and marks fully incorporating the ACCENTURE trademark (collectively the "ACCENTURE Marks").
2. Complainant averred that it has been using the mark ACCENTURE since 1 January 2001. Complainant relied on INDRP decisions holding that it has rights in the mark ACCENTURE. The decisions mentioned are *Accenture Global Services Limited v. Sachin Pandey (INDRP/828)*, *Accenture Global Services Limited v. Mr. Upendra Singh (INDRP/829)*, *Accenture Global Services Limited v. Accenture Accenture (INDRP/998)*, *Accenture Global Services Limited v. Vishal Singh (INDRP/999)*, *Accenture Global Services Limited v. Tech Narayana Software Pvt. Ltd (INDRP/1250)* and *Accenture Global Services Limited v. Lokesh Kumar (INDRP/1270)*.

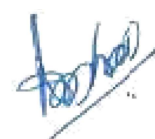


3. The Complainant asserts that it has goodwill in its ACCENTURE name and mark and its domain names ACCENTURE.COM and ACCENTURE.NET which were registered on 30 August 2000 and 09 October 2000 respectively. The said domains predate the domain name <Axcenture.in> by almost two decades. It is alleged that at the abovementioned websites, Internet users can find information about the services offered of the Complainant connection with the ACCENTURE marks.
4. The Complainant states that it owns the top-level Indian domain names ACCENTURE.CO.IN registered in 2004, ACCENTURE.IN registered in 2005, and ACCENTURE.NET.IN registered in 2012. The Complainant states that on 6 October 2000, the Complainant filed a United States trademark application (Application Serial No. 76/154,620) for the mark ACCENTURE, covering computer software, pamphlets, business consulting services, financial services, computer installation services, educational services and computer consulting services, among many other goods and services. The said application matured to registration (Reg. No. 3,091,811) on 16 May 2006. The Complainant also owns registrations for the mark ACCENTURE, and variations thereof, in other countries including Australia, Bangladesh, Canada, China, European Union, Hong Kong, Japan, Korea, Malaysia, New Zealand, Saudi Arabia, Singapore, Thailand, Turkey, UAE and U.K. The Complainant owns over 1,000 trademark registrations in over 140 countries for its various ACCENTURE marks.
5. The Complainant states that it owns registrations for the ACCENTURE Marks, and variations thereof in various classes in India as under.

S. No.	Registration No.	Trademark	Class	Date
1.	967046	ACCENTURE	9	October 30, 2000
2.	967047	ACCENTURE	16	October 30, 2000
3.	1008458		9	May 10, 2001
4.	1008459		16	May 10, 2001

5.	1240311		35, 36, 37, 41, 42	September 29, 2003
6.	1271049	ACCENTURE HIGH PERFORMANCE DELIVERED	16, 9, 35, 36, 37, 41, 42	March 8, 2004
7.	1520281	ACCENTURE	16	December 26, 2006
8.	1521351	ACCENTURE	35, 41	January 2, 2007
9.	1758410	ACCENTURE	35	November 27, 2008
10.	2034134	ACCENTURE (WITH DEVICE)	9	October 7, 2010
11.	2034135	ACCENTURE (WITH DEVICE)	16	October 7, 2010
12.	2034136	ACCENTURE (WITH DEVICE)	35	October 7, 2010
13.	2034137	ACCENTURE (WITH DEVICE)	36	October 7, 2010
14.	2034138	ACCENTURE (WITH DEVICE)	37	October 7, 2010
15.	2034139	ACCENTURE (WITH DEVICE)	41	October 7, 2010
16.	2034140	ACCENTURE (WITH DEVICE)	42	October 7, 2010
17.	2035847	ACCENTURE (WITH DEVICE)	35	October 11, 2010

6. It is averred that the Complainant's Indian predecessor company was incorporated under the Indian Companies Act, 1956, on 05 July 1999. On 05 December 2000, the name of this predecessor company was changed to



Accenture Services Pvt Ltd. Complainant has offices in major cities of India such as Mumbai, New Delhi, Noida, Gurgaon, Bangalore, Chennai, Pune, Hyderabad and Kolkata.

7. The Complainant states that it initiated proceedings under the Policy in respect of domains incorporating Complainant's mark ACCENTURE as under.

S. No.	Infringing Party	Trademark / Domain Name	Action taken	Remarks
1.	Abhishek Das (India)	Accenture.net.in	INDRP complaint filed	Domain name transferred.
2.	Sachin Pandey (India)	Accenturerecruitment.in	INDRP complaint filed	Domain name transferred.
3.	Upendra Singh (India)	Accentureinfo tech.in	INDRP complaint filed	Domain name transferred.
4.	Accenture Accenture (India)	Accentures.in	INDRP complaint filed	Domain name transferred.
5.	Vishal Singh (India)	Accenturesoftware.co.in	INDRP complaint filed	Domain name transferred.
6.	Tech Narayana Software Pvt. Ltd. (India)	Accenture.org.in	INDRP Complaint filed	Domain name transferred.
7.	Lokesh Kumar	Accenture.ind.in	INDRP complaint filed	Award passed in favour of the Complainant.

8. It is alleged that the Complainant recently came to know that the domain name <Axcenture.in>, was registered on 05 December 2019 by Respondent and an Internet search as on 21 February 2020 revealed that a template

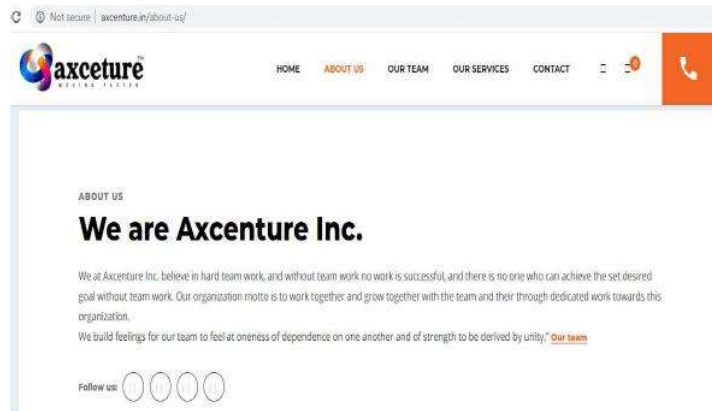
website is operating therefrom. A snapshot of the webpage as on 21 February 2021 is below.



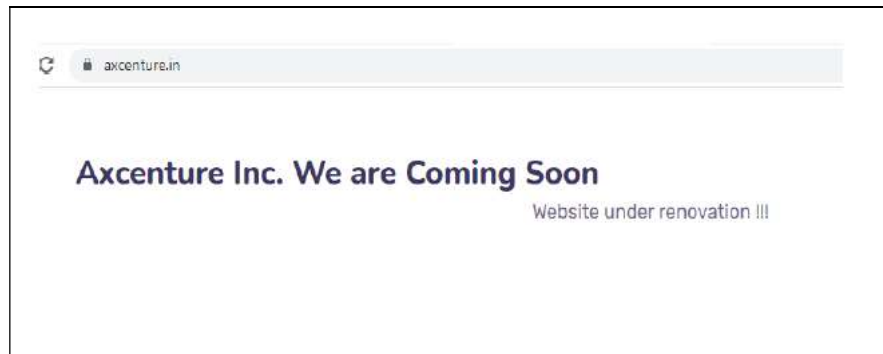
9. It is stated that on 15 May 2020 the Complainant came to know that the Respondent started operating a business website with the name Axcenture/Axceture and purporting to provide finance and business consulting services from the said domain. A snapshot of the webpage as of 15 May 2020 is below.



A handwritten signature in blue ink, appearing to read 'Jeeva', with a horizontal line underneath it.



10. It is stated that as the said domain name is phonetically, visually, conceptually, deceptively and confusingly similar to Complainant's registered trademark ACCENTURE, the Complainant by email of 29 May 2020, informed the Respondent of its rights in the mark ACCENTURE and of the objectionable nature of use of the name/mark Axcenture and the domain name <Axcenture.in>. On 01 July 2020 the Respondent's counsel replied and argued about the differences between the two marks and also showed his client's desire to discuss the matter with Complainant.
11. The Complainant, by reply its reply dated 21 July 2020 refuted Respondent's claims, and called upon Respondent to stop the use of the mark Axcenture and transfer the same to Complainant. The Complainant also pointed out that Respondent has been incorrectly incorporating the word "Inc." as a part of its business name Axcenture Inc as the Respondent's business is not an incorporated entity. Further, the use of the descriptive term "Inc." does nothing to distinguish the name Axcenture/Axcenture from the ACCENTURE trademark or from improperly associating the use of Axcenture/Axcenture with Complainant. The Complainant sent reminders to the Respondent on 20 August 2020, 14 September 2020 and 12 November 2020.
12. It is stated that on 24 November 2020, the Respondent temporarily took down its website from the said domain and appears to be in the process of re-designing/renovating the same. The landing page stating that "Axcenture Inc. We Are Coming Soon" is currently featured thereon as under.



13. It is alleged that on 01 December 2020, Mr. Robert Francis, proprietor of Axcenture Inc. stated that the name Axcenture Inc. has been operational since 1997 and is registered under government regulations and possesses all adequate legal company registration documentation, including a registration under the “Ministry of Micro, Small and Medium Enterprises” (MSME). It was further stated that the business Axcenture Inc. has a considerable employee strength and a large client base in the state of Maharashtra and in other parts of India and to compensate co-workers, partners etc., as well as to start their business from scratch, they will require funds.
14. It is asserted that on 09 December 2020, the Complainant sent an interim reply to Mr. Francis. Thereafter, on 15 December 2020 the said Mr. Francis asked Complainant to not send him reminders but to contact him if the Complainant is willing to consider his settlement/compensation proposal.
15. It is contended that the Complainant received calls from Mr. Francis repeatedly inquiring about the status of his settlement proposal. On 16 December 2020 Mr. Francis emailed stating that he has “*decided to close the matter amicably at a feasible and very least amount of Rupees 25 lacs (25,00,000) Indian Rupees (INR)*”. Complainant sent a reply to the Respondent on December 30, 2020. On 02 January 2021, an email was received from the Respondent denying allegations of extortion.
16. It is asserted that the impugned domain name <Axcenture.in> comprises of the AXCENTURE name and mark which is phonetically identical and visually deceptive. The same is confusingly similar to the Complainant’s registered trademark ACCENTURE. The only difference between the two

A handwritten signature in blue ink, appearing to be 'Rohit', with a horizontal line drawn underneath it.

marks is the substitution of the first “C” in the Complainant’s mark with an “X,” which results in the phonetically identical AXCENTURE mark. Reliance is placed on *ESPN, Inc. v. XC2* (Case No. D2005-0444) where it was held that the respondent’s domain name is virtually identical to complainant’s famous ESPNEWS trademark differing only with the addition of a second letter “N” as the registration of the disputed domain name constitutes typo squatting, the domain at issue is, by definition, confusingly similar to Complainant’s trademarks.

17. The Complainant states that a phonetic search for the AXCENTURE mark on the Public Search page of the India Trade Marks Registry’s website identifies the Complainant’s ACCENTURE marks, which is further evidence of the confusing similarity between the Respondent’s AXCENTURE name and mark, and the Complainant’s ACCENTURE marks. A screenshot of the said search of the Trademarks Registry’s website is below.

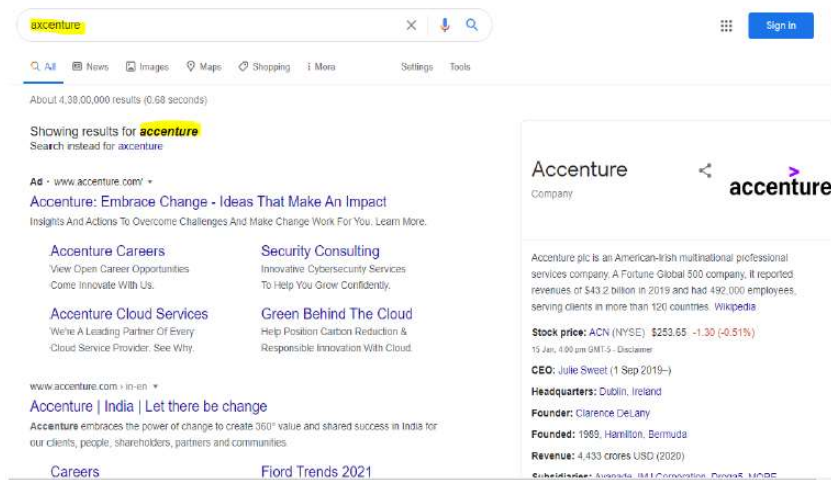
Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
Controller General of Patents Design & Trade Marks
Public Search of Trade Marks

Class Details | Well Known Marks | Prohibited Marks | Vienna Code Classification | International Non-Proprietary Names(INN) | Help

Search Criteria: Phonetic Search String: accenture Class: 35 Search Date: 07-Jul-2020

APPL NO	CLASS	CONFLICTING MARK	No	PROPRIETOR NAME	PROPRIETOR ADDRESS	STATUS	Image
1240311	35	ACCENTURE (DEVICE)	1328	ACCENTURE GLOBAL SERVICES GmbH	Herrenacker 15, CH-8200 Schaffhausen, Switzerland	Registered	
<p>APPLICATION DATE : 29/09/2003 USER DATE : 01/01/2001</p> <p>GOODS SERVICES : BUSINESS MANAGEMENT CONSULTING, BUSINESS PROCESS MANAGEMENT AND CONSULTING, MARKETING CONSULTING SERVICES, PROCUREMENT SERVICES, NAMELY, PURCHASING COMPUTER HARDWARE AND SOFTWARE FOR OTHERS; PROVIDING INFORMATION IN THE FIELDS OF BUSINESS MANAGEMENT CONSULTING, OPERATIONAL PROJECT MANAGEMENT; BUSINESS ACQUISITIONS CONSULTING, MARKET ANALYSIS, BUSINESS APPRAISALS, NAMELY FINANCIAL ANALYSIS, CONDUCTING BUSINESS AND MARKET RESEARCH SURVEYS, PROVIDING BUSINESS INFORMATION, BUSINESS MANAGEMENT PLANNING, CONDUCTING MERGER CONSULTATION, BUSINESS NETWORKING, CONDUCTING BUSINESS RESEARCH AND SURVEYS, BUSINESS SUPERVISION, COMMERCIAL AND INDUSTRIAL MANAGEMENT ASSISTANCE, ECONOMIC FORECASTING AND ANALYSIS, PERSONNEL MANAGEMENT CONSULTATION, PREPARING BUSINESS REPORTS, ARRANGING AND CONDUCTING TRADE SHOWS AND CONFERENCES IN THE FIELD OF BUSINESS AND BUSINESS MANAGEMENT, PROVIDING INFORMATION IN THE FIELD OF BUSINESS CONSULTING IN CLASS 35</p> <p>Vienna Code(s) : 260418, 290106, 290108, 270524</p>							
1240312	35	ACCENTURE	1328	Accenture Global Services Limited	3 Grand Canal Plaza, Upper Grande Canal Street, Dublin 4, Ireland	Registered	
<p>APPLICATION DATE : 29/09/2003 USER DATE : 01/01/2001</p>							

18. It is further contended that a Google search for the name and mark “AXCENTURE” reveals search results for “ACCENTURE” instead. Further, all search results depict information about Complainant and its ACCENTURE marks. Relevant extract of the search results is below.



19. The Complainant relies on *Accenture Global Services Limited v. Tech Narayana Software Pvt. Ltd (INDRP/1250)* wherein the Panel found Complainant has rights in the name/ mark ACCENTURE and the impugned domains incorporating ACCENTURE or variations thereof were transferred to Complainant.
20. It is alleged that the identity of the impugned domain name <Axcenture.in> with Complainant's mark ACCENTURE is bound to cause confusion and deception in the minds of the public that Respondent has some association or affiliation with the Complainant. Reliance is placed on WIPO panel in *Centerbrook Sales, Inc. v. FIG Vietnam, (WIPO Case No. D2007-0627)*, that "Typo squatting" involves the intentional registration and use of a domain name that is a common misspelling or predictable mistyping of a distinctive mark. In *Dow Jones & Co. v. Powerclick, Inc., (WIPO Case No. D2000-1259)*, the panel held that the deliberate introduction of errors or changes would not render Respondent's domain name less confusingly similar to the core trademark held by the Complainant. Further, a generic TLD/ccTLD such as ".in" is a standard registration requirement and therefore cannot be said to distinguish Respondent's domain name <Axcenture.in> from Complainant's registered trademark ACCENTURE.
21. It is stated that the Complainant has extensive business operations in India and its reputation worldwide, and the ubiquitous presence of Complainant's mark ACCENTURE on the Internet, Respondent was, or should have been,

aware of Complainant's trademarks long prior to registering the domain name. Complainant asserts that the Respondent had constructive notice of Complainant's mark ACCENTURE. Complainant relies on *Caesars World, Inc. v. Forum LLC* (WIPO Case No. D2005- 0517), *HUGO BOSS Trademark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka*, (WIPO Case No. D2015-0640). Reliance is also placed on a INDRP decision of *Accenture Global Services Limited v. Sachin Pandey (INDRP/828)* to show that the respondent was well aware of the Complainant's business, its products and services, its reputation and rights in the trademark ACCENTURE on worldwide basis.

22. It is stated that the mark ACCENTURE is a coined word that has no dictionary meaning. Respondent's bad faith is evident as, Respondent is using the confusingly and phonetically identical domain name <Axcenture.in>. There can be no other plausible explanation how Respondent arrived at the impugned domain name <Axcenture.in> which incorporates a confusingly similar version of Complainant's mark ACCENTURE. Considering the continuous and exclusive use of the mark ACCENTURE by Complainant over decades, this mark can have no meaning other than as an identifier of Complainant. Reliance is placed on a prior decision of this Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* to show that the choice of the domain name does not appear to be a mere coincidence, but a deliberate use of a well-recognized mark such registration of a domain name, based on awareness of a trademark shows bad faith registration.
23. The Complainant refers to *India Parenting Private Limited v. Raj Kumar Jalan (INDRP/020)* wherein it was stated that.

"The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant"

24. With regard to the demand for payment of settlement amount the Complainant referred to *Design Escrow, Inc. v. Weatherite Roofing (WIPO Case No. D2001-0703)*, which ruled that the respondent's conduct of offering



for sale the domain names at issue to the complainant for an amount far in excess of its reasonable out of pocket expenses, clearly demonstrates a classic case of opportunistic cyber squatting. *The Flannels Group Limited v. Imran Ahmed (WIPO Case No. D2018-0557)*, held that requesting a payment for transfer of a domain name of a sum substantially above the out-of-pocket costs of registration of the domain names at issue was reflective of bad faith and *mala fide* intent and falls within the ambit of paragraph 4(b)(i) and (ii) of the Policy. Thus, the Complainant contends that the registration of the impugned domain name violates the Policy.

25. The Complainant reiterated that as the domain name axcenture.in is phonetically, visually, deceptively and confusingly similar to Complainant's corporate name Accenture Global Services Limited and its registered trademark ACCENTURE, and is being used with no authorization, license or permission.

THE RESPONDENT

1. The Respondent filed a response and expressed its willingness to transfer the domain name to the Complainant by email of 26 June 2021. It is significant to note that the Respondent also mentioned about the expectation of payment of a "settlement amount" from the Complainant to close the entire establishment in the "name of disputed domain". Relevant portions of the mail from Robert Francis of the Respondent are extracted below:

With reference to your mail and discussion that took place on various occasions, I have informed you that I am ready and willing to close the entire establishment in the name of the above dispute domain, as per our discussion you were ready to pay the settlement amount and I have expected the settlement terms.

I am still ready to settle the matter at the earliest so that no inconvenience shall cause to anyone, I am ready to complete necessary documentation for closure and you have to do your needful.

Please do the needful for the same.



VI. DISCUSSIONS AND FINDINGS

1. Paragraph 4 of the Policy requires that the in order to successfully secure the transfer of the disputed domain name, the Complainant will have to prove that. -the Respondent's domain name is identical or confusingly similar to a name or trademark in which the Complainant has rights; the Respondent has no rights in respect of the domain name; and the Respondents' domain name has been registered and is being used in bad faith.
2. The Respondent has consented to transfer the disputed domain name to the Complainant by email dated 26 June 2021. However, the Respondent has expressly stated that there were previous discussions wherein the Complainant was ready to pay the "settlement amount" and the Respondent "expected the settlement terms". The Respondent also mentioned that something more was expected of the Complainant by stating "*I am ready to complete necessary documentation for closure and you have to do your needful*". The mail concluded with "*Please do the needful for the same*".
3. The Respondent was granted an opportunity to respond to the Complaint, however, it has not controverted or denied the contentions and allegations in the Complaint in its short reply dated 26 June 2021. The email read as a whole appears to be a consent to transfer the disputed domain name subject to payment of a settlement amount.
4. The Arbitral Tribunal notes that consent to transfer by the Respondent can provide the basis for an order for transfer without the need for consideration of the grounds required in paragraph 4 of the .INDRP Policy as held in the matter of Merck Sharp & Dohome Corp. v Marketing Munch Pry Ltd under the .IN Dispute Resolution Policy award dated 3 August 2011. However, in the present case the email of the Respondent dated 26 June 2021 refers to discussions on various occasions and payment of settlement amount and is not an unconditional offer for transfer of the disputed domain name. The said letter dated 26 June 2021 addressed to the Arbitral Tribunal is in fact a conditional



offer to transfer the disputed domain subject to payment of a settlement amount from the Complainant.

5. Considering that there is no settlement between the parties, the Complainant must still establish each of the three elements required by paragraph 4 of the Policy.
6. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy¹ namely:
 - a) The Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.
 - b) The Respondent has no rights or legitimate interests in respect of the domain name; and
 - c) The Respondent's domain name has been registered or is being used in bad faith.
7. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:
 - a) **The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**
 - (i) The Complainant provided evidence to establish that it has been using the Accenture Mark as since 1991. A perusal of the trademark registration certificates and WHOIS records shows that the Complainant owns registration and domain

¹ 4. Class of Disputes

4. Class of Disputes: Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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



names in several jurisdictions globally with the mark ACCENTURE.

- (ii) The Complainant has relied on phonetic search result for the AXCENTURE mark on the public search page of the India Trade Marks Registry's website and also a Google search result.

The India Trade Marks Registry result and the Google search result show that the searches for AXCENTURE throw up results with ACCENTURE. A comparison of the disputed domain name axcenture.in of the Respondent with the Complainant's name, trademark, brand ACCENTURE and the domain names Accenture.com, Accenture.net, Accenture.in and Accenture.co.in., show that the disputed domain name is phonetically similar, the only difference being the substitution of the first "c" in the Complainant's mark with "x".

- (iii) Further, the Complainant has placed reliance on several INDRP rulings resting with *Accenture Global Services Limited vs. Tech Narayana Software P. Ltd. (INDRP 1250)* where it was held that the Complainant has rights in the name ACCENTURE.
- (iv) The Arbitral Tribunal notes that WIPO panels have held that disputed domain names comprising of phonetic variations of trademarks are confusingly similar [*VeriSign v VeriSign CA* WIPO Case number D2010-0303, *Microsoft Corporation v Mike Rushton* Case No. D2004-D123; *Sierra Health Supplies LLC v Modern Limited – Cayman Web Development* Case No. D2006-0020 and *Viacom International Inc. v Ramon Burnell* Case No. D2018-0261. A Similar view was held in the case of *Skycanner Limited v Qingda Yan* INDRP Case No.1219 dated 30 June 2020.
- (v) A careful consideration of the Trademark registrations and extracts of the WHOIS records filed by the Complainant



establish that the Complainant owns and holds intellectual property rights in the name, trademark and brand Accenture in India and other jurisdictions and the domain names Accenture.com, Accenture.net, Accenture.in and Accenture.co.in.

- (vi) The registered trademark “ACCENTURE” and the domain names Accenture.com, Accenture.net, Accenture.in and Accenture.co.in. are distinctive and the Respondent’s domain name “AXCENTURE.IN” is phonetically identical to the Complainant’s registered trademark “ACCENTURE”. Considering the similarity between the Complainant’s trademark and domain name “ACCENTURE” and the disputed domain name “AXCENTURE.IN” of the Respondent, the Arbitral Tribunal finds that an average consumer would be led to believe that the Complainant and the Respondent and/or the disputed domain name are related. After taking into consideration the facts of the present case and the settled law on the issue, the Arbitral Tribunal finds that the disputed domain name axcenture.in is phonetically identical and confusingly similar to the Complainant’s registered trademarks “ACCENTURE” and as also to the domain names – Accenture.com, Accenture.net, Accenture.in and Accenture.co.in. Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy paragraph 4(a) is satisfied.

b) The Registrant has no rights or legitimate interests in respect of the domain name

- (i) To pass muster under paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights to and legitimate interests in the disputed domain name under paragraph 6 of the Policy.



(ii) According to paragraph 3² of the Policy, it is the obligation of the Respondent (registrant) to provide complete and accurate particulars and find out before registration that the domain name intended for registration does not violate the rights of any third party. The Complainant has been able to establish that the Complainant and its trademark, service mark and brand name have been in use since 2001 and is commonly known by the name “ACCENTURE” and that it owns and holds intellectual property rights in the name, trademark and brand name in India and several other jurisdictions. Further, the Complainant owns the domain names Accenture.com, Accenture.net, Accenture.in and Accenture.co.in and has a global presence. However, the disputed domain name www.axcenture.in was created on 05 December 2019.

(iii) Accordingly, the Arbitral Tribunal finds that the Complainant has made out a *prima facie* case that the Respondent has no rights and legitimate interests in respect of the disputed domain name www.axcenture.in and has satisfied the second element under paragraph 4 (b) of the Policy.

c) The Registrant's domain name has been registered or is being used in bad faith

(i) The Complainant has claimed that ACCENTURE is well known and has a strong global presence. The Respondent has

² Paragraph 3 of the INDRP:

3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of domain name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.



not controverted the assertions of the fame and presence of ACCENTURE. It is therefore inconceivable that the Respondent did not have actual notice of the Complainant's trademark rights. The Respondent knew of and targeted Complainant's trademark and Respondent has registered and used the Disputed Domain Name in bad faith. In *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, D2014-1754 (WIPO Jan 12, 2014) has been considered by *Valvoline Licencing and Intellectual Property LLC v. Jau Khan* WIPO Case No. D2018-1486 based on the balance of facts set forth above and the latitude of the trademark, it is more likely than not that the Respondent knew of and targeted that Complainant's trademark and Respondent should be found to have registered with an opportunistic intention and used the disputed domain name in bad faith. The Arbitral Tribunal therefore concludes that the Respondent knew of and targeted Complainant's trademark ACCENTURE and Respondent has registered and used the Disputed Domain Name in bad faith.

- (ii) Further the use of the term AXCENTURE in the disputed domain name www.axcenture.in is phonetically no different and is deliberate attempt to attract Internet users to its website by creating a likelihood of confusion with the Complaint's trademark and website to infringe and violate the rights of the Complainant and is therefore a clear violation of paragraph 7(c) of the Policy.
- (iii) Significantly, the undisputed demand for sale or payment for the disputed domain reflects the bad faith and malafide registration by the Respondent as held in WIPO Case No. D2001-0703 *Design Escrow*, WIPO Case No. D2018-0557, *The Flannels group*. The INDRP decisions *Prada SA v Zhao Ke* dated 13 January 2015 and *Jisna Karnik v Li Ziaohou* dated 1 September 2011 ruled that the domain name was registered for the purpose of selling or transferring for valuable consideration as in the present case. The



uncontroverted demands for payment for transfer of the disputed domain name by the Respondent are clear evidence of bad faith registration of the disputed domain name www.axcenture.in, which is phonetically no different from the well-known trademark and name “Accenture”.

- (iv) Considering the findings above, Arbitral Tribunal holds that the Respondent’s domain name www.axcenture.in has been registered with an opportunistic intention and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

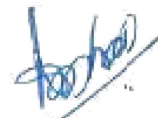
VII. DISPOSITIONS

The Arbitral Tribunal holds that the Respondent’s domain name www.axcenture.in is identical and confusingly similar to the name, trademark and brand name “AXCENTURE” owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name www.axcenture.in and the same has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant.

The Arbitral Tribunal directs that the disputed domain name www.axcenture.in be and is transferred to the Complainant, Accenture Global Services Limited, 3 Grand Canal Plaza, Upper Grand Canal Street, Dublin 4, Ireland.

Place of Arbitration: New Delhi, India

Date: 11 August 2021



Robin Ratnakar David
Sole Arbitrator
The Arbitral Tribunal