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Description of Document	: Article 12 Award - Movable
Property Description	: NIXI ARBITRATION AWARD BY SOLE ARBITRATOR
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First Party	: SRIDHARAN RAJAN RAMKUMAR
Second Party	: SRIDHARAN RAJAN RAMKUMAR
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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY
INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
INDRP CASE NO. 1437
ARBITRATIONAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR
MR. SRIDHARAN RAJAN RAMKUMAR,
ADVOCATE, DELHI HIGH COURT

IN THE MATTER OF:

Bank of America Corporation
100 North Tryon Street, Charlotte
North Carolina
United States of America
gaurav.mukerjee@remfry.com;
raghav.paul@remfry.com;

...Complainant

VERSUS

Apex Consulting
Hong Kong
suong@live.com;

...Respondent

AWARD

I. THE PARTIES:

1. COMPLAINANT

The complainant in these proceedings is Bank of America Corporation, one of the world's leading financial institutions, incorporated and organized under the laws of the State of Delaware, United States of America. Having its address at 100, North Tryon Street, Charlotte, North Carolina – 28255, United States of America, which has filed the present complaint under rules framed under INDRP. A copy of the .IN Domain Name Dispute Resolution Policy was annexed and marked as **Annexure-N**.



2. RESPONDENT

The Respondent is a company incorporated in Hong Kong whose details are unknown and no information as to the location of its office is available even on Whois website. A copy of the WHOIS record in respect of the domain name in question as received from NIXI was annexed and marked as **Annexure H**.

II. THE DOMAIN NAME AND REGISTRAR:

The disputed domain name: www.bankofamerica.in

The domain name registered with IN REGISTRY

III. PROCEDURAL HISTORY:

DATE	PARTICULARS
September 16, 2021	Date of Complaint
September 23, 2021	Sole Arbitrator was appointed to adjudicate the dispute
September 23, 2021	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.
October 08, 2021	Respondent was served with copies of the Complaint and annexure thereto but failed and neglected to file its response within the 15 days' time period intimated to all parties.

P. Kulkarni

Hence this award is proceeded with on basis of the available pleadings and documents only.

IV. FACTUAL AND LEGAL BACKGROUND:

1. The Complainant's authorized representative in this administrative proceeding is Remfry & Sagar. Copy of the authorization duly signed by the Complainant was provided as **Annexure M**.

THE COMPLAINANT

2. It was submitted that the Complainant is one of the world's leading financial institutions, serving individual consumers, small and middle-market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk management products and services. It was submitted that the Complainant adopted the trade mark/name 'BANK OF AMERICA' as early as the year 1928 and has since been continuously using the same. It was submitted that the Complainant provides unmatched convenience in the United States, serving tens of millions of consumers and small business clients with thousands of retail financial centers and ATMs, and award-winning digital banking with approximately tens of millions of active users, including mobile users. It was submitted that the Complainant also has international offices in 35 countries which support its global clientele including in India.
3. It was submitted that the Complainant is guided by a common purpose to help make financial lives better. It was submitted that an important part of the Complainant's business is forming strong partnerships with nonprofits and advocacy groups, such as community organizations, to bring together collective networks and expertise to achieve greater impact
4. It was submitted that the reputation and renown of the Complainant and its services is evident from the fact that it has been accredited with numerous awards/recognitions such as the following:



- a) The Most Innovative Bank in North America for the year 2020 by Global Finance magazine;
 - b) Global Private Banking Awards 2020 for the Best Private Bank in North America;
 - c) Ranked No. 2 on Forbes' 2018 "America's Top 250 Wealth Advisors" list;
 - d) Celent's 2018 Model Bank of the Year; and
 - e) Ranked No. 1 on Forbes' "America's Top 250 Wealth Advisors" list, published on September 26, 2017.
5. It was submitted that the Complainant in connection with its worldwide business, renders services under the trade/service mark BANK OF AMERICA. The trade/service mark BANK OF AMERICA also forms an integral part of the corporate name of the Complainant and serves as its principal trade/service mark and domain name. It was submitted that as a natural consequence of the Complainant's worldwide presence, the trade/service mark/name BANK OF AMERICA has come to be exclusively associated with the Complainant. Copy of the online extracts from the Complainant's website www.bankofamerica.com providing general information about the Complainant, its business etc. was filed as **Annexure-A** and the press releases and articles about the Complainant was filed as **Annexure-B (Colly)**.
6. It was submitted that the Complainant owing to the excellent quality of the Complainant's services under the trade / service mark / name BANK OF AMERICA, the same command tremendous popularity across the globe. It was submitted that the Complainant's revenue (net of interest expense) for the period 2018-2020 is as under and is demonstrative of the reputation and goodwill of its trade/service mark/name BANK OF AMERICA:

Year	Approximate Revenue (net of interest expense) in USD (Million)
2018	91,020
2019	91,244

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2020	85,528
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7. It was submitted that the Complainant's presence in India can be traced back to nearly 6 decades i.e., year 1964 when the Complainant obtained approval from the Reserve Bank of India to commence banking operations in India on April 26, 1963 and started its business activities at Mumbai in the year 1964. Extract from the website of the Ministry of Corporate Affairs, India evidencing the establishing of the branch office of the Complainant was filed as **Annexure-C**. It was submitted that the Complainant on the date of the present complaint runs a number of branch offices in India in the cities of Mumbai (since 1964), Chennai (since 1968), New Delhi (since 1977) and Bangalore (since 2001). It was submitted that the Complainant is also licensed by the Securities and Exchange Board of India (SEBI) as an 'Investment Bank' and a 'Banker to an Issue'.
8. It was submitted that the Complainant's business activities in India cover a broad range of financial services – corporate banking (working capital financing, trade finance, terms loans, etc.); treasury (securities trading, foreign currency dealing and trading, forwards, swaps, etc.); and investment banking (loan syndications, private placements, distribution of corporate debt, etc.). It was submitted that the Complainant has also submitted that it has a close working relationship with the Government of India, regulators, term lenders and investment institutions and has strategic business relationships with more than 80% of the country's top corporations.
9. It was submitted that the Complainant further submitted that BOFA Securities India Limited (BOFA) is a 100% subsidiary of the Complainant/its affiliates and was incorporated as a limited company on October 23, 1975 with its registered office address at Ground Floor, A Wing, One BKC, G Block, Bandra Kurla Complex, Bandra (East) Mumbai, Maharashtra-400051. It was submitted that the BOFA is involved in debt market activities such as origination and distribution of corporate debt and money market issuances and is well established in the Indian market as a financial intermediary having business relationships with all major Indian debt market



issuers and investors.

10. It was submitted that the Complainant's affiliate also has a wholly owned non-banking subsidiary in India viz. BA Continuum India Private Limited (BA) which was incorporated on October 10, 2003. It was submitted that the BA is a Business Process Outsourcing (BPO) company dedicated to banking back-office operations and provides global back-end services for the Complainant/its affiliates in the Global Corporate Investment Banking and Consumer & Wholesale Banking spectrum. It was submitted that the BA also provides IT services to the Complainant Group. It was submitted that the BA has offices and BPO facilities located at Mumbai, Gurgaon and Hyderabad and currently employs about 2000 employees.
11. It was submitted that the Complainant's trade/service mark BANK OF AMERICA, being the Complainant's most valued intellectual property has taken utmost care to secure statutory rights therein through trade mark registrations in numerous jurisdictions of the world such as U.S.A., France, Argentina, Brazil, Canada, United Arab Emirates, Japan, Thailand, etc. It was submitted that the Complainant's earliest (active) registration for the trade/service mark BANK OF AMERICA dates back to the year 1954 in Bolivia. List of the Complainant's active worldwide registrations/applications for the trade/service mark BANK OF AMERICA was filed as **Annexure-D**. Copies of a few registration certificates on respect of the Complainant's trade/service mark BANK OF AMERICA from various jurisdictions were filed as **Annexure-E**.
12. It was submitted that the Complainant provided a table of relevant Indian trademarks/service marks under BANK OF AMERICA in respect of which it is the proprietor, details whereof are as under:

Mark	Registration No.	Class(es)	Date of Application
BANK OF AMERICA	1236790	36	September 15, 2003

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 BA Continuum Solutions Pvt. Ltd.	1664057	35, 36 and 42	March 12, 2008
 Bank of Opportunity	1998234	36	July 23, 2010
BANK OF AMERICA MERRILL LYNCH INTELLIGENT RECEIVABLES	2398362	35	September 18, 2012

Copy of the online extracts of the Trade Marks Registry in respect of the Complainant's aforesaid registrations were filed as **Annexure-F (Colly.)**.

13. It was submitted that the Complainant has registered numerous top level domain names (TLDs) and country level domain names (ccTLDs) such as 'bankofamerica.com', 'bankofamerica.co.uk', 'bankofamerica.us' etc. It was submitted that the Complainant's websites are accessible across the globe including in India and are a comprehensive source of knowledge of its business activities and, therefore, it is apparent that the goodwill and reputation of the Complainant as regards the trade/service mark/name BANK OF AMERICA pervades both the real world as well as cyber space. It was submitted that the Complainant has registered an India-specific domain name i.e. 'www.bofa-india.com' since May 11, 2017 and is operating a website thereunder to disseminate information about its activities in the country. List of the domain names provided by the Complainant comprising the trade/service mark/name BANK OF AMERICA registered in favour of the Complainant was filed as **Annexure-G**.

14. It was submitted that the Complainant recently became aware of a domain name viz. 'bankofamerica.in' registered in the name of Apex Consulting (hereinafter referred to

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as the "**Registrant**"). It was submitted that the Complainant was shocked and dismayed to learn that the said domain was parked for sale by the Registrant and there is no *bona fide* use of the same. It was submitted that the Registrant of the domain name 'bankofamerica.in' has no affiliation with the Complainant. It was submitted that the said domain name was registered on June 22, 2011. Copy of the WHOIS record in respect of the domain name in question was filed as **Annexure-H**.

15. It was submitted by the Complainant that there is no active website under the impugned domain name 'bankofamerica.in'. It was submitted that website contains only sponsored listings and, therefore, it is clearly established that the same was registered by Registrant solely for the purposes of making monetary gains. Printouts of the impugned website www.bankofamerica.in were filed as **Annexure-I**.
16. It was submitted by the Complainant that the Registrant is a habitual cyber squatter and has been the subject of numerous other INDRP decisions including proceedings pertaining to the domains 'verifone.info', 'colgate.in', 'fiskers.co.in', 'goldmansachs.in', 'lesaffre.in', 'mozilla.co.in' etc. wherein Awards were passed against the Registrant with directions for transfer of the domains to the Complainants therein. Copy of awards / decisions were filed by the Complainant as **Annexure-J (Colly)**.
17. It was submitted by the Complaint that the reverse WHOIS lookup identifies over 300 domain names currently registered in the Registrant's name. It was submitted by out of the total 300 domain names, 218 are .IN domain names. It was submitted by the Complainant that the Registrant's pattern of extensive domain registrations and cybersquatting to prevent trade mark owners from reflecting their marks in corresponding domain names further demonstrates the Registrant's bad faith registrations including that of the domain in question. It was submitted by the exorbitant number of domain names that the Registrant has registered demonstrates that the Registrant has engaged in a clear pattern of registering domain names in bad faith to block the legitimate and superior rights of trade mark owners in those domain names only to later ransom the domain names to the trade mark owner as is the case of the Complainant. List of domains registered by the Registrant which comprises



various renowned marks/brand names such as Apple, Diageo, Pampers etc. were attached and marked as **Annexure-K**.

18. It was submitted by the Complainant that it was thus evident that the Registrant is using the objectionable domain name illegally and dishonestly to derive unjust pecuniary gains.
19. It was submitted by the Complainant is extremely diligent in protecting its intellectual property and has successfully prosecuted many cases before various fora. Decisions of the WIPO in favour of the Complainant were filed as **Annexure-L (Colly)**.
20. It was submitted by the Complainant that there is no *iota* of doubt that the impugned domain name is identical to the Complainant's trade/service mark/name BANK OF AMERICA. It was submitted by the in the circumstances, the Complainant submits that the Registrant's impugned domain name 'bankofamerica.in' may be transferred to the Complainant or the same may be cancelled forthwith on the following, amongst other grounds, which are exclusive and without prejudice to each other.

V. PARTIES CONTENTIONS:

A. COMPLAINANT

- (a) The Domain Name is identical or confusingly similar to a Trademark of the Complainant;
- (b) Respondent had no legitimate interest in the domain name;
- (c) Respondent had registered the domain name in bad faith.

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

VI. DISCUSSION AND FINDINGS:



I hold that the Respondent's domain name is identical to the trademark/ trade name in which the Complainant has absolute and sole rights.

A. Prior Rights and Trade Mark Registrations of the Complainant

1. I hold that Paragraph 3(b) of the INDRP enjoins the Registrant to ensure that 'to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party'. I hold that in support of paragraph 4 of the INDRP and paragraph 4(b)(vi) of the INDRP Rules of Procedure, that the Registrant's domain name is identical to the trade mark in which the Complainant has rights for the following reasons:

- (i) I find that Registrant's impugned domain name 'bankofamerica.co.in' is identical to, and comprises in entirety, the Complainant's trade/service mark BANK OF AMERICA which is registered in numerous countries including India. I find that the Registrant has registered the impugned domain name 'bankofamerica.in' with the *malafide* intent to trade upon the immense goodwill and reputation enjoyed by the Complainant in his well-known mark/domain name comprising BANK OF AMERICA and thereby gain undue leverage from it and make illicit pecuniary gains. I find that it was evident that the objectionable domain name has no meaning or significance independent of the Complainant's trade/service mark BANK OF AMERICA. I find that this is a clear case of infringement and passing off which is in violation of the rights enjoyed by the Complainant in his well-known and established trade/service mark/domain name comprising BANK OF AMERICA. I find that the Registrant's use of the Complainant's trade/service mark BANK OF AMERICA clearly establishes that the Registrant registered the impugned domain name with full knowledge of the Complainant, its business activities and intellectual property.
- (ii) I find that the impugned domain name 'bankofamerica.in' is identical to, *inter alia*, the following domain names registered in the name of the Complainant:

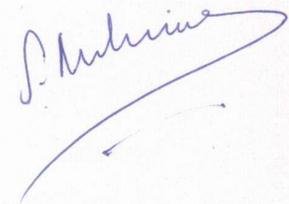


S. no.	Domain names	Registrant's domain name
1.	bankofamerica.us	bankofamerica.in
2.	bankofamerica.org.tp	
3.	bankofamerica.com	
4.	bankofamerica.co.cr	
Note: The list is illustrative and not exhaustive.		

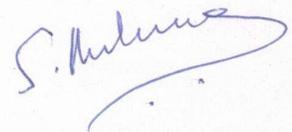
(iii) I find that the Registrant registered/adopted the impugned domain name 'bankofamerica.in' on June 22, 2011 whereas the Complainant's primary domain 'bankofamerica.com' was registered on December 27, 1998. I also find that the Complainant's earliest active trade/service mark registration in respect of the trade mark BANK OF AMERICA dates back to the year 1954. I find that the Complainant's trade mark BANK OF AMERICA stands registered (active) since 2003 with user claim since 1999. I find that its adoption of the trade/service mark/domain name BANK OF AMERICA is much prior to the Registrant's registration of the impugned domain name 'bankofamerica.in'. In view of the same, I hold that it is crystal clear that the Complainant had prior rights in the trade/service mark/domain name BANK OF AMERICA *vis-à-vis* the Registrant.

B. Registrant's Rights and Legitimate Interest in the Domain Name

2. I hold that the Registrant has to establish one or more of the circumstances enumerated in paragraph 6 of the INDRP to assert proprietary rights over the domain in question. I hold that the Registrant cannot take refuge in any of the referred conditions as demonstrated below:



- (i) With regard to Paragraph 6(a) of the INDRP, I find that the Registrant is not offering any goods/services under the domain name 'bankofamerica.in'. I find on a review of the website under the objectionable domain name 'bankofamerica.in' it reflects only a few sponsored listings. Hence, I find that by no stretch of imagination can the Registrant demonstrate any use relating to *bona fide* offering of goods or services before any notice of this dispute or at any point in time whatsoever.
- (ii) Regarding paragraph 6(b) of the INDRP, I find that the Registrant is not commonly known by the domain name 'bankofamerica.in' and is not authorized or licensed by the Complainant to use its trade/service mark/name BANK OF AMERICA. I find that the Complainant conducts business under the trade/service mark/name BANK OF AMERICA which is inextricably interwoven and identified exclusively with the Complainant by the trade and public at large. I further find that the Complainant is not only using the trade/service mark/name BANK OF AMERICA since the 1920s but has also registered the said mark and various domain names comprising the trade/service mark BANK OF AMERICA in numerous jurisdictions including India. I find that due to the extensive, longstanding and continuous use of the trade/service mark/name BANK OF AMERICA for many years, the same has become well-known and come to be exclusively associated with the Complainant and no one else. Hence, I hold that the Registrant cannot establish any association with the domain name in question for any reasons whatsoever.
- (iii) With respect to paragraph 6(c) of the INDRP, I find that the Registrant is not making any legitimate non-commercial or legitimate fair use of the domain name 'bankofamerica.in'. I find that the conduct of the Registrant as highlighted above cannot come under the definition of *bona fide* use. I find that the Registration of the impugned domain is aimed at gaining leverage from the immense goodwill and reputation of the Complainant's trade/service mark/name BANK OF AMERICA, diverting visitors/customers by creating initial internet confusion and thereby commercially profiting from use of the Complainant's trade/service mark/name BANK OF AMERICA. Thus, I hold that the Registrant is indulging



in: (i) unfair use of the domain name with an intention to reap profits therefrom; (ii) misleading/diverting customers to third party websites, competitors etc.; and (iii) tarnishing the goodwill and reputation enjoyed by the Complainant's well-known trade/service mark/name BANK OF AMERICA. I hold that the Registrant cannot justify any legitimate interest in the domain name 'bankofamerica.in'.

C. Bad Faith

3. I hold that as per Paragraph 4(b)(vi)(3) of the INDRP Rules of Procedure states that the Complainant needs to provide '*reasons justifying that the impugned domain name is being registered and/or used in bad faith.*' I hold that '*Bad faith*' is a legal term which the Black's Law Dictionary (Seventh Edition) defines as "*dishonesty of belief or purpose also termed as malafides*". I hold that the Complainant's case is established under the circumstances covered in Paragraph 7 (a), (b) and (c) of the INDRP as under:

- (i) Insofar as Paragraph 7(a) of the INDRP is concerned, I find that the Registrant has registered the impugned domain name 'bankofamerica.in' with the sole purpose of selling/transferring the same for excessive consideration to make illicit gains which is evident from the fact that the website under the impugned domain contains only sponsored listings and a form for purchase of the domain **(Annexure-I)**.
- (ii) Insofar as Paragraph 7(b), I find it to be beyond doubt that the Registrant registered the impugned domain name 'bankofamerica.in' knowing fully well of the Complainant and its business. I find that the registration of the domain name 'bankofamerica.in' by the Registrant has resulted in the Registrant's (mis)use of the Complainant's trade/service mark/domain name comprising BANK OF AMERICA for undue pecuniary gains. I further find that the Complainant has established that several TLDs/ccTLDs comprising the trade/service mark BANK OF AMERICA including the domain



'bankofamerica.com' is owned and managed by the Complainant.

(iii) As regards Paragraph 7(c), I find that the Registrant's website has been constructed in a manner so as to portray an association/affiliation with the Complainant. I find that the confusion is further enhanced by the presence of links to the websites of third parties, competitors etc. I find that the conduct of the Registrant clearly proves its *mala fide* of attracting internet users to its website by using the mark of the Complainant and consequently creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Registrant's website and/or of a product on the Registrant's website. I find that the internet users desirous of accessing the Complainant's website may get confused and resultantly be led to the impugned website. I find that it is possible that the domain 'bankofamerica.in' resolving to the website www.bankofamerica.in may be accessed by internet users believing it to be a part/unit of the Complainant or to have originated from the Complainant.

D. Other Grounds

4. I find that the contact details provided by the Registrant are incomplete and bogus in violation of Paragraph 3(a) of INDRP. I hold that in the instant case, the contact details provided by the Registrant appear to be incomplete and bogus. I hold that the address provided by the Registrant 'Hong Kong', is far from complete.
5. In view of Paragraph 3(b) of INDRP, I hold that the Registrant's domain name 'bankofamerica.in' comprising the Complainant's registered trade/service mark BANK OF AMERICA impinges upon the statutory and proprietary rights of the Complainant vesting in the said trade mark.
6. In view of Paragraph 3(c) of INDRP, I hold that the Registrant has registered the impugned domain name 'bankofamerica.co.in' with *mala fide* intention to mislead innocent customers and prospective customers of the Complainant to its website thereby making unjust pecuniary gains therefrom and in the process tarnish the



Complainant's goodwill and reputation vesting in the trade/service mark/name
BANK OF AMERICA.

7. In view of Paragraph 3(d) of INDRP, I hold that registration of the impugned domain name 'bankofamerica.in' violates not only INDRP/INDRP Rules of Procedure but is also in violation of the provisions of the (Indian) Trade Marks Act, 1999 and opposed to the principles of business ethics.
8. That I did not receive a Response/ Reply to the Complaint dated 16th September, 2021 on behalf of the Respondent, hence I am constrained to pass this award on the basis of available information and documents submitted by the Complainant only.

VII. DECISION:

- a) In view of the above facts and circumstances, it is clear that the Complainant had succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "**www.bankofamerica.in**" to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 15th day of November, 2021.


Sridharan Rajan Ramkumar
Sole Arbitrator

Date: 15/11/2021