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No. 19866 Date 14/06/2021 Rs. 100/-

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

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award No. INDRP/1438, Dated 5<sup>th</sup> October, 2021

In the matter of Arbitration Between :

Bank of America Corporation  
100 North Tryon Street,  
Charlotte North Carolina 28255  
United States of America

Complainant

AND

Doublelist Limited  
Milwaukee Wisconsin,  
WI 53214 United States of America  
Email: ymgroupp@msn.com

Respondent



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Dr. VEDULA GOPINATH  
SOLE ARBITRATOR



**THE PARTIES :**

- a. Complainant Bank of America Corporation Authorised representative in this administrative proceedings is:

Remfry & Sagar

Remfry House at the Millennium Plaza

Sector - 27, Gurgaon - 122009 1 India

Email: remfry-sagar@remfry.com; gaurav.mukerjee@remfry.com;

Phone: 0124-2806100; 465610

- b. Respondent has not authorised any legal representative.

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

- a) The following Domain name is the subject of this Complaint is  
BANKOFAMERICA.CO.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 details are

Dynadot LLC

210 S Ellsworth Avenue #345

San Mateo California 94401 U.S.A.

E-mail: info@dynadot.co



  
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### III. PROCEDURAL HISTORY / BACK GROUND :

23.9.2021	The .1N REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure.
23.09.2021	Consent of the Sole Arbitrator along with declaration was given to the .1N REGISTRY according to the INDRP Rules of Procedure.
23.09.2021	.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.
24.09.2021	Notice of Arbitration was sent to all concern by the Sole .
25.09.2021	Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 7 days, marking a copy of the same to the Complainant's representative and .1N Registry.

The pleadings are communicated through Electronic mail

### IV. COMPLAINANT'S DETAILS

a) The Complainant Bank of America Corporation is incorporated under the laws of State of Delaware, United States of America. The Complainant is claimed to be World's leading financial institution serving all sectors of business having banking, investing, asset management and other financial products. The Complaint is serving large number of customers around the world. The Complainant is having offices/branches in 35 countries including India. The Complainant is also doing social services by way of partnerships with non profit organizations to achieve the object of better financial live. The company achieved approximate revenue of millions us\$85m528 in the year 2020.



*[Handwritten Signature]*  
**ARBITRAL TRIBUNAL**  
**Dr. VEDULA GOPINATH**  
**SOLE ARBITRATOR**



b) The Complainant adopted the trade mark BANK OF AMERICA as early as 1928 and continuously using the same. The Complainant renders services under the trade/service mark BANK OF AMERICA which is an integral part of the corporate name. On line extracts from the Complainant's website [www.bankofamerica.com](http://www.bankofamerica.com) providing general information about the complainant are given as Annexures A and B of the Complaint.

d) The Complaint entered Indian business way back in 1964 and having few subsidiary companies including Business Process Outsourcing Company .

e) The Complainant is having trade/service mark BANK OF AMERICA and has taken statutory rights through trade mark registrations in various jurisdictions in USA, France, Argentine, Brazil, Canada and UAE etc. Lists of trade mark certificates and applications for registrations are given in annexures D and E of the Complaint .Complainant is the owner of several trade mark registrations and details given below (Reference Annexure F of Complaint).

1. BANK OF AMERICA 1236790 class 36 dt. September 15, 2003. 2 Bank of America, BA Continuum Solutions Private Limited 1664057 classes 35, 36 and 42 dated March 12, 2008 3. Bank of America, Bank of Opportunity 1998234 class 36 dated July 23, 2010 BANK OF AMERICA MERRILL LYNCH INTELLIGENT RECEIVABLES 2398362 class 35 dated September 18, 2012



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f. The Complainant has registered numerous top level domain names and country level domain names around the world. such as bankofamerica.com, bankofamerica.co.uk et. The Complainant has registered an Indian-specific domain name i.e. www.bofa-india.com since May 11m 2017 which is operating to disseminate information about its activities in India.

#### **V. COMPLAINANT'S CONTENTIONS :**

1. The Complainant recently came to know of the impugned website bankofamerica.co.in registered on June 22, 2011 in the name of Doublefist Limited and the same is alleged to be the domain name parked for sale and there is no bona fide use of the same. The Complainant confirms that there is no affiliation at all with the Respondent. The impugned website contains only listings and thus the same is registered for monetary gains. (WHOIS record is attached as annexure H and printouts of website attached as annexure I of the complaint).
2. The Complainant alleges that the Respondent is a habitual cybersquatter and against whom INDRP decisions were rendered in respect of domains colgate.in, fiskers.co.in, mozilla.co.in etc c. (copies of few awards attached as Anx.J of the complaint).
3. As per the Complainant's version there are 450 domains names currently registered by the Respondent out of which 443 domains names are .IN domain names



  
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4. The complainant is diligent in protecting its intellectual rights And has successfully prosecuted many cases before various fora. Some of the decisions of the WIPO in favour of the complainant are attached as Anx-L of the Complaint.

2. The impugned domain name is used by Respondent illegally and dishonestly and the impugned domain name is identical and comprises in entirety, the complainant's trade mark BANK OF AMERICA which is registered in various countries.

The Respondent registered the impugned domain name with mala fide intent to trade upon the goodwill and reputation enjoyed by the complainant in his well known mark and domain name.

6. Further, the Complainant's earliest active trade/service mark registration in respect of the trade mark BANK OF AMERICA dates back to the year 1954. Regarding India, the Complainant's trade mark BANK OF AMERICA stands registered (active) since 2003 with user claim since 1999. Thus, the Complainant's adoption of the trade/service mark/domain name BANK OF AMERICA is much prior to the Respondent's registration. Thus the Complainant is prior user of the trade mark.

B. RESPONDENT:

The Respondent in spite of Notices didn't submit any response.

The Respondent appears to be preferring not replying to the notices and also do not have a valid counter argument.



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**VI DISCUSSION AND FINDINGS / REASONING:**

**(I) .IN Domain Name Dispute Resolution Policy (INDRP).**

The Arbitral Tribunal after examination of the matter in details arrived the following conclusion of Complainant's Compliance of INDRP Policy. In order to obtain the transfer of the Disputed Domain Name, Complainant should, accordingly, 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 faith.

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 proved the aforesaid aspects to the satisfaction of the Arbitral Tribunal.

- (II)** 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 complainant's trademark's goodwill.



  
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- III) There also have been few cases decided against the Respondent at various fora.
- (IV) In case of failure of default of Respondent in sending response or reply to the complaint, the Arbitrator is empowered to announce the judgment as he thinks proper and appropriate as per applicable laws.
- (V) The allegations levelled by Complainant against Respondent appears to have been proved basing on the evidential value of the documents submitted by complainant.

**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 BANK OF AMERICA and also the disputed Domain Name bankofamerica.co.in be transferred to the Complainant. There is no order as to costs.

National Internet Exchange of India (NIXI) are advised to take ancillary and incidental action required for transfer of the disputed domain name in favour of the Complainant.

Visakhapatnam

Dated 5<sup>th</sup> October 2021



**Dr. Vedula Gopinath**

Sole Arbitrator

Dr. Vedula Gopinath  
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Advocate(High Court) & Corporate Advisor  
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