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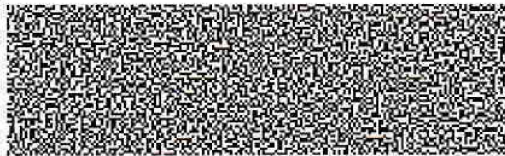
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Government of Karnataka

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Description : ARBITRATION AWARD
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Second Party : N A
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ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

.IN Domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name: <vfshelpline.co.in>

INDRP Case No. 1580

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

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Disputed Domain Name: <vfshelpline.co.in>

INDRP Case No. 1580

Before the Sole Arbitrator: Mr. Maram Suresh Gupta

IN THE MATTER OF:

VFS Global Services Pvt. Ltd.

9th Floor, Tower A, Urmi Estate, 95,
Ganpatrao Kadam Marg,
Lower Parel (W), Mumbai – 400013
Maharashtra, India.

.....Complainant

Versus

Tranding Hub

Vfshelpline
C, First Floor phase, Mohali 1338,
Chandigarh,
Punjab, 160022, India.

.....Respondent

1. The Parties

- a) The Complainant in the present arbitration proceedings is **VFS Global Services Pvt. Ltd.** (hereinafter referred as '**Complainant**'), with its office at 9th Floor, Tower A, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai – 400013, Maharashtra, India. The Complainant is represented by **Mr. Vipul N. Bhuta** of M/s. Aditya & Associates, 121, Hubtown Solaris, N S Phadke Marg, Andheri (E), Mumbai (Bombay) 400 069, Maharashtra, India. Phone: + 91 99677 62162 / +91 98200 97183, tm@adityaandassociates.com OR vipulb@adityaandassociates.com.



b) The Respondent in the present arbitration proceedings is **Tranding Hub** (hereinafter referred as '**Respondent**') having postal address: Vfshelpline, C, First Floor phase, Mohali 1338, Chandigarh, Punjab, 160022, India, having contact mobile number as (+91). 09877297984 and Email: trocky396@gmail.com. The above contact details of the Respondent were provided by the Complainant in its complaint dated 15th July 2022, wherein they collected these details from .IN registry. The same are also furnished by the Complainant under **Annexure – 3**.

2. The Disputed Domain Name and The Registrar

- a) The following information about the disputed domain name and the registrar is as per the information furnished by the Complainant in its complaint and supporting annexures thereof.
- b) The disputed domain name is <vfshelpline.co.in> which was created on 7th October 2021 and it was set to expire on 7th October 2022. Based on information from WHOIS database, the registrant client ID is TH914450-IN8028 and registrant ROID is C34A36FA9E051493E958FD596C73CCBC3-IN.
- c) The accredited Registrar with whom the disputed domain name was registered is Hosting Concepts B.V. d/b/a Openprovider.

3. Procedural History

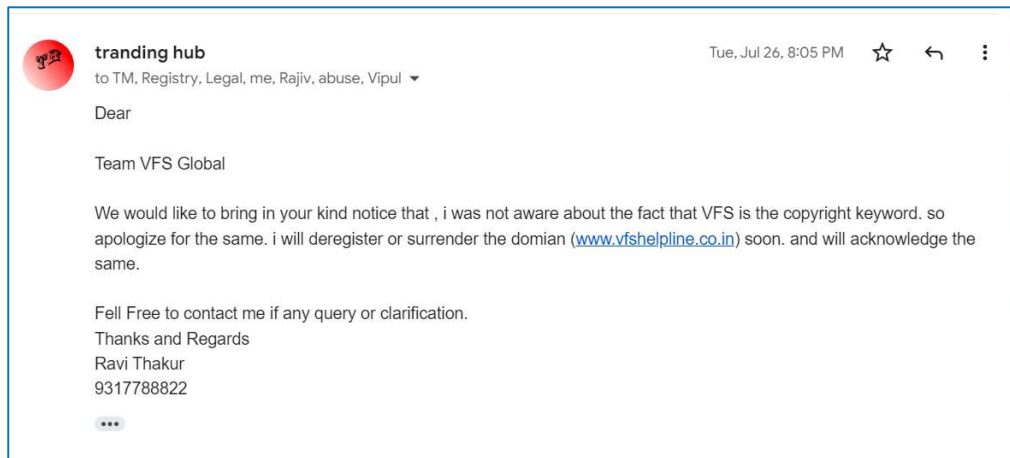
- a) The present arbitration proceeding is as per the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India [NIXI] and the INDRP Rules of Procedure (the "Rules"), under the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of disputes according to the Policy and the Rules thereunder.



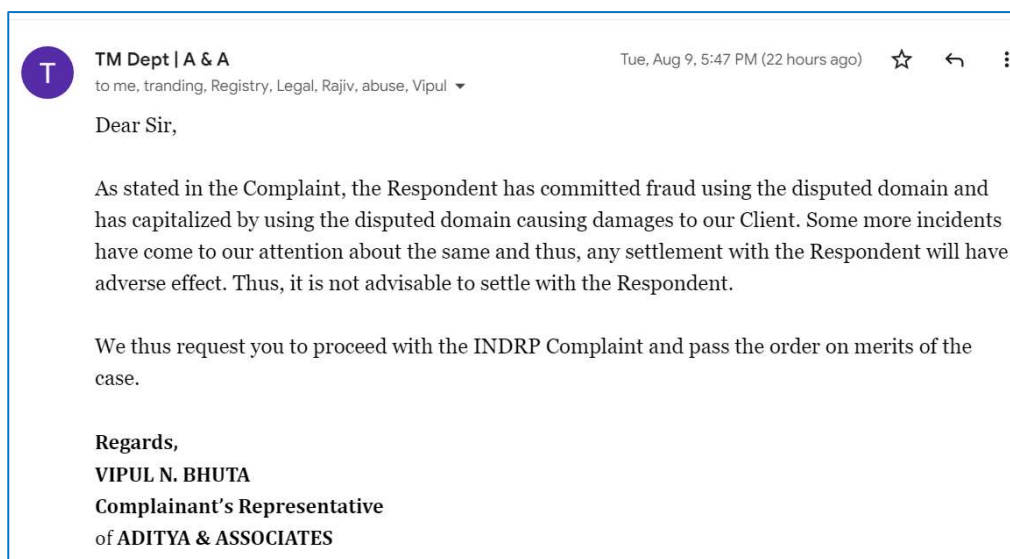
- b) NIXI vide its email dated 14th July 2022 requested the availability of Mr. Maram Suresh Gupta to act as the Sole Arbitrator in the present matter. In return, on the same day, the Arbitrator indicated his availability and accordingly submitted the fully signed Statement of Acceptance and Declaration of Impartiality and Independence, which complied with the .INDRP Rules of Procedure.
- c) Pursuant to the above acceptance and declaration of the Sole Arbitrator, NIXI appointed, vide in its email dated 14th July 2022, Mr. Maram Suresh Gupta as the sole Arbitrator and the same was also intimated to both the Complainant and Respondent (hereinafter '*parties*'). Thereafter, on same day, 14th July 2022, a notice having directions to both the parties was issued by me. In the said notice, the Complainant was directed to furnish copies of the complaint along with supporting annexures to the Respondent both via email and courier/ speed post. In addition, the Respondent was also directed to file his response to the complaint within 10 days from the date of the notice. The Complainant was also instructed to furnish confirmation copies of both the means of communication with the Arbitrator and a copy to NIXI.
- d) Pursuant to my directions, the Complainant has served copies of the Complaint and its supporting annexures both via email and courier to the Respondent. The confirmation copies were also submitted by the Complainant to the Arbitrator with a copy to NIXI, dated 20th July 2022. The SPEED POST consignment number for sending hard copies of the complaint and annexures is EN070909760IN dated 20th July 2022, 10:30 AM.
- e) Thereafter, on 26th July 2022, I received an email reply from the Respondent, which is provided as a **screen shot # 1**, wherein the Respondent expressed his willingness to surrender the domain. In light of the same, on the same day I have directed both the parties to discuss and amicably settle the matter and share the settlement agreement with the Panel by 2nd August 2022. Nonetheless, on 29th July 2022, the Complainant



confirmed that they are in the process of amicably settling the matter with the Respondent and also sought for additional time to share the settlement agreement with the Panel. Accordingly, I have accepted the request and provided additional time and asked to submit the settlement agreement before 10th August 2022. On 31st July 2022, I reminded the parties and asked about the status of the settlement. The Complainant replied on 9th August stating that they do not wish to settle the matter, when asked for the reasons, an email communication was sent to me which is provided as **screen shot # 2**, the Complainant did not explain the reasons in greater detail to help understand the Panel.



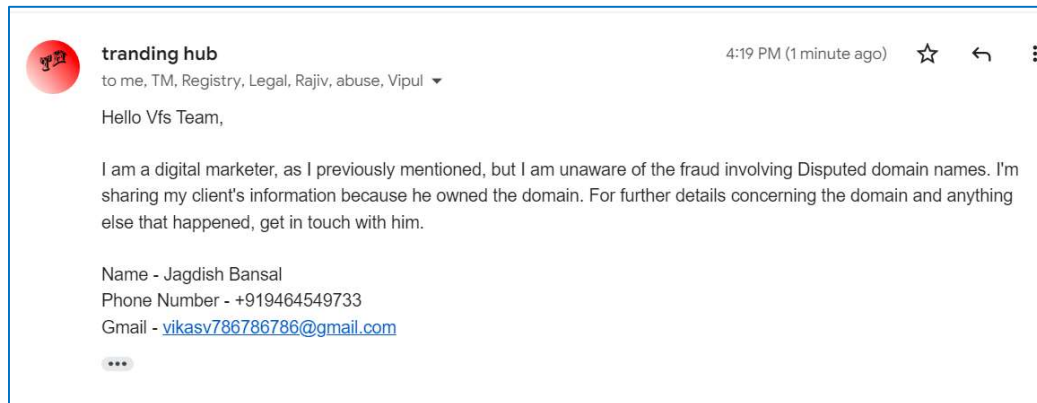
Screen shot # 1: Email communication from Respondent dated 26th July 2022



Screen shot # 2: Email communication from Complainant dated 9th August 2022

[Handwritten signature]

f) On 10th August 2022, I informed the Parties that they failed in settling the matter, I granted an additional time of 2 days to the Respondent to file its reply/ response if any, and that if no reply is filed by 12th August 2022, the award would be passed on merits. On the same day, 10th August 2022, the Respondent replied and the copy of the communication is provided as screen shot # 3.



Screen shot # 3: Email communication from Complainant dated 10th August 2022

g) In light of the above reply from the Respondent, I have decided to proceed with this matter based on the merits.

4. Factual Background and Parties Contentions

The Complainant has made the following submissions in support of its complaint against the Respondent. The contentions are detailed as follows:

- a) From the Complaint and the Annexures filed by the Complainant it is evident that the Complainant was incorporated in the year 2001 and its name has changed over a period of time and the same is evident from **Annexure – 4** of the Complaint. Besides, Annexure – 4 also provides insight about the Complainants objectives of the business and/or the related activities thereof. It also has several branches across the globe and the global companies are referred to as “VGS Global”. Further, **Annexure – 7** refers to ISO certifications received by the Complainant.
- b) The Complainant has also submitted that they are the first to conceive and adopt the mark “VFS” with or without the word “GLOBAL” since 2003 in relation to its services/

business. Additionally, a perusal of **Annexure – 5** confirms that the Complainant has registered the mark “VFS GLOBAL” and “VFS” *per se* in India and in other countries under different trademark classes. Some of the registered trademarks in India are provided below:

- ❖ TM Application No.: 1555893 in class 09 – “VFS GLOBAL”
- ❖ TM Application No.: 1126304 in class 16 - “VFS”
- ❖ TM Application No.: 1555892 in class 35 – “VFS GLOBAL”
- ❖ TM Application No.: 1726901 in class 16- “VFS GLOBAL”
- ❖ TM Application No.: 1455675 in class 09 - “VFS”
- ❖ TM Application No.: 1255698 in class 35 – “VFS”

c) The Complainant contends that the disputed domain name (vfshelpline.co.in) subsumes its registered trademark VFS thereby amounting to infringement. The Complainant submits here that the disputed domain name was registered by the Respondent in bad faith, as the distinctive and dominant element in the Respondents domain is the word **VFS**.

d) The Respondent did not reply to the Complainant’s contentions even after providing a fair opportunity. It is pertinent to reiterate that till today, this Panel has not received proper reply/ response from the Respondent’s, excluding the ones provided under screen shot # 1 and 3.

5. Discussion and Findings

a) As per Paragraph 4(i) of the Policy, the Complainant is required to show that it has a right in the trademark which it intends to assert. Based on the documents furnished by the Complainant it is abundantly evident that the trademark **VFS** is a registered trademark bearing application number 1255698, 1455675 and 1126304 and the same are used since July 2002. In addition, the Complainant has never authorized the Respondent in any

manner whatsoever to offer the services for sale under its registered trademark **VFS** either alone or in combination with any other word. Therefore, from the averments made by the Complainant, it is clear that the Respondent is neither a licensee nor has it otherwise obtained the authorization of any kind whatsoever to use the registered trademark **VFS**. Accordingly, the Respondent does not have any legitimate interest and it appears that the Respondent has registered the disputed domain name only to enrich itself unjustly from such unauthorized adoption and registration.

- b) Once the Complainant makes a *prima facie* case showing its legal rights and lack of any kind of rights/ authorizations to the Respondent from the Complainant, the Respondent must come with proof of legitimate interest in the disputed domain name to rebut the presumption. Nonetheless, the Respondent has failed to file proper Response till today towards the Complaint, except the meaningless email replies as shown under screen shot # 1 and 3. According to Paragraph 8 (b) of the Rules I have given a fair opportunity to the parties to present their case. Though sufficient time was offered, the Respondent failed to file proper response/reply to the Complaint *per se*. Accordingly, under Paragraph 12 of the Rules, the proceedings are set to award *ex parte*.
- c) In light of the above circumstances, my decision is based upon the assertions; evidences presented by the Complainant and inferences drawn from the Respondent's failure to file/ submit a Response/ reply despite offering sufficient opportunity and time to do so.

6. Issues in the Dispute

The Complainant invoked Paragraph 3 of the Rules to initiate arbitration proceedings by filing a Complaint with NIXI. The Respondent in registering the disputed domain name has submitted to the mandatory arbitration proceedings in terms of Paragraph 4 of the Policy, which determines the essential elements for a domain name dispute, which are as follows:



- Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?
- Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?
- Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

All the above three essential elements are discussed in the following sections:

Essential Element No. 1: Whether the disputed domain name is identical or confusingly similar to the registered trademark (legal right) of the Complainant?

The test for confusing similarity involves a comparison between the registered trademark and the disputed domain name. In the present case, the disputed domain name incorporates the Complainant's registered trademark **VFS** in its entirety with the addition of suffix 'helpline'. The addition does not prevent a finding of confusing similarity. In order to assess confusing similarity, it is permissible for the Panel to ignore the country code Top-Level Domain ("ccTLD") ".co.in". Accordingly, the disputed domain name <vfshelpline.co.in> consists of the registered trademark **VFS** of the complainant. In addition, the Complainant has furnished sufficient evidence (registration certificate) in support of its registered trademark VFS, arising out of its use since July 2002. The Respondent's adoption of the registered trademark **VFS** immediately followed by a suffix HELPLINE will not distinguish Respondent's domain name. Such an attempt by the Respondent amounts to asserting that the services offered under the disputed domain name are the complainant's brand or is authorized licensee/ organization. Therefore, given the Complaint and its accompanying annexure documents and cited case laws, I am convinced beyond any ambiguity that the disputed domain name is confusingly similar to the Complainants registered trademark **VFS**. Accordingly, the disputed domain name is



identical to Complainant's registered trademark. The complainant has satisfied the first essential element.

Essential Element No. 2: Does the Registrant/ Respondent have any right or legitimate interest in the disputed domain name?

Firstly, from the submissions of the Complainant it is clear that they have never authorized the Respondent in any fashion or otherwise not licensed to use its registered trademark **VFS** for a domain name registration. Besides, it appears that the Respondent is an individual and a self-proclaimed services/ innocence (*see Screen shot # 1 and 3*). There is also no evidence to suggest that the Respondent is commonly known by the disputed domain name or that the individual/ Respondent has any rights in **VFS**. In short, the Respondent is not affiliated or related to the Complainant in any way whatsoever.

Secondly, the burden of proof to establish legitimate interest over the disputed domain name lies with the Respondent. However, the Respondent failed to submit proper reply to the Complainant within the allotted time. Thus, the Respondent fully and completely failed to establish legitimacy in registering the disputed domain name. Accordingly, in light of the Complaint with annexures and Respondents failure to file reply to the Complaint, I believe that the Respondent does not have a right and legitimate interest.

Essential Element No. 3: Does the disputed domain name of the Registrant/ Respondent is registered and is being used in bad faith?

The Complainant is the registered owner of **VFS** as an Indian Trade Mark and is used since July 2002. In addition, the panel accepts that the Complainant's mark **VFS** enjoys good reputation and also has wide presence in the internet and across the globe. At present, due to rapid advancement in information technology services, reputation of marks transcends national borders. In the present case, a simple cursory internet search for the disputed domain name **VFS** would have disclosed its ownership and its use thereof



by the Complainant. Accordingly, a strong presumption arises towards the aspect that the Respondent was very much aware of the existence of the Complainant's mark **VFS** at the time of registering the disputed domain name. Therefore, using the same known and registered mark of the Complainant strongly suggests opportunistic bad faith. Moreover, **Annexures – 11A and 11B** further provide evidence on opportunistic bad faith. Also, the fact that the Respondent has not replied to the Complainant's contentions, further points to bad faith. In light of the above, it is evident beyond reasonable doubt that the Respondent has adopted the disputed domain name in bad faith.

7. Decision

The Complainant has succeeded in establishing all the three essential elements of the .INDRP Policy.

In light of the above discussions and in accordance with the Policy and Rules, the Panel directs the transfer of disputed domain name <vfshelpline.co.in> to the Complainant with a request to NIXI to monitor the transfer.

This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceedings.



Maram Suresh Gupta

Sole Arbitrator

Date: 11th August 2022