



सत्यमेव जयते

INDIA NON JUDICIAL

**Chandigarh Administration**

e-Stamp

Certificate No. : IN-CH47725017132960W  
Certificate Issued Date : 12-Feb-2024 12:50 PM  
Certificate Issued By : chjeevanu  
Account Reference : NEWIMPACC (GV)/ chspicg07/ E-SMP KIOSK SEC-43/ CH-CH  
Unique Doc. Reference : SUBIN-CHCHSPICG0793405573995859W  
Purchased by : RAJESH KUMAR  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SAJAL KOSER  
Second Party : Not Applicable  
Stamp Duty Paid By : SAJAL KOSER  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



Please write or type below this line

**ARBITRATION AWARD**

**BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH**

**INDRP CASE NO. 1808 OF 2024**

**DISPUTED DOMAIN NAME: < MFS.NET.IN>**

**Statutory Alert:**

1. The authenticity of this Stamp certificate should be verified at 'www.shoilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate
3. In case of any discrepancy please inform the Competent Authority.

RD 0021291805  
1



**MASSACHUSETTS FINANCIAL SERVICES COMPANY, a Delaware Corporation, 111, Huntington Avenue, Boston, Massachusetts 02199, United States of America.**

**...Complainant**

**Versus**

**SI Mandowara, Mandowara Finance, 502, Marble Arch Complex, Race Course Circle, Vadodara Gujarat 390005, India Phone: +91 2652324920 Email: si\_mandowara@rediffmail.com**

**...Respondent**

**1. INTRODUCTION:**

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain Dispute Resolution Policy (INDRP), and the INDRP Rules of Procedure framed there under.

**2. PROCEDURAL HISTORY:**

- i) In response to the email dated 11.01.2024 appointing undersigned as an Arbitrator and on the same date, the undersigned submitted Statement of Acceptance and Declaration of Impartiality and Independence.
- ii) Vide email dated 14.01.2024, Notice to the Respondent was issued in the prescribe format calling upon the Respondent to give reply to the complaint within 15 days from the date of notice.
- iii) In response to the notice sent to the Respondent vide mail dated 14.01.2024, the undersigned alongwith complainant, NIXI and others received a response from Respondent vide



email dated 25.01.2024 and thereafter, there was no response or reply within the period granted to the Respondent for filing reply/response, therefore, vide order/email dated 01.02.2024, the Complainant was reserved for passing the award, ex-parte.

3. Complainant's Information, Respondent's Information, the Domain Name and Registrar are mentioned in para 1 to 4 of the Complaint which are not reproduced here for the sake of brevity. The disputed domain name is <WWW.MFS.NET.IN>. Exhibit 1 is the WHOIS extract provided by the NIXI for domain name WWW.MFS.NET.IN and the copy of relevant pages from the website WWW.MFS.NET.IN are exhibit 2 with the Complaint.

4. FACTUAL AND LEGAL GROUNDS

The factual matrix of the Case leading to the filing of the present Complaint and the submissions made by the Complainant in support of his case are as under:-

- a) Founded in 1924 in Boston with the name of Massachusetts Investors Trust (MIT), the Complainant is a global investment company.
- b) In 1969, MIT was reorganized as Massachusetts Financial Services (MFS), allowing the firm to diversify its product offerings and client base. In 1970, it offered its first balanced fund, MFS® Total Return Fund, and has been extensively using the term MFS since then in respect of its range of financial services, investment advisory services, management services, and other services relating to the



administration of its investment products (e.g., mutual funds, collective investment trusts, institutional accounts, etc.). In 1972, MFS created its first institutional separate account. MFS has been majority-owned by Sun Life, a global financial services provider, since 1982, and formed its first subsidiary outside of the US to serve offshore fund clients in 1989, MFS International Ltd.

- c) The Complainant has been commonly known as "MFS" since at least 1969 and extensively uses the said acronym as both a trade name and a trade mark in respect of its financial products and services across the world. The Complainant offers a broad selection of financial products and services, including mutual funds, retirement plans, college savings plans, and insurance-related plans, to address investors' varying needs over time-as well as the needs of the investment professionals with whom it works-to create investment opportunities both in the United States and abroad.
- d) In 2010, the Complainant was named Equity Manager of the Year by *Global Pensions* magazine. In 2011, the Complainant was named top firm in the Overall Large Company category in the US Lipper Fund Awards. In 2012, for the third year in a row, the Complainant received top honours in the Equity Asset Management Firm of the Year category in *Financial News'* Awards for Excellence in Institutional Asset Management. In 2013, the Complainant was named Best Specialist Equity Fund House by *Morningstar UK* and was also presented with the inaugural Equity Fund House award by *Morningstar Hong Kong*. In



2016, Barron's named the Complainant among the "Best Mutual Fund Families", based on its active risk management approach and investment results, for the eighth consecutive year. The details and/or information about the Complainant's business activities related to MFS products and services in various jurisdictions around the world is available on its website located at [www.mfs.com](http://www.mfs.com). Relevant extracts from the Complainant's website are annexed as **Exhibit 3** with the Complaint.

- e) The Complainant has further submitted that as of December 31, 2022, the Complainant managed more than US\$547 billion in assets for clients globally, including US\$327 billion in funds (US and offshore), US\$180.6 billion for global institutional clients and US\$38.3 billion for other retail products clients. The Complainant has a team of approximately 400 investment professionals globally in Boston, London (est. 1995), Singapore (1998), Tokyo (1998), Mexico City (2004), Sydney (2008), Toronto (2011), Sao Paulo (2012) and Hong Kong (2012). The Complainant has more than 2,000 employees worldwide. The Complainant's Corporate Fact Sheet has been annexed as **Exhibit 4 with the Complaint.**
- f) With regard to the ownership and right of the Complainant upon MFS Trademark, the Complainant has submitted that the Complainant is the registered proprietor of MFS *per se* and MFS formative marks in Class 36 in several countries worldwide including Australia, Canada, China, Germany, Indonesia, WIPO, Italy, New Zealand, Spain, Switzerland, the United States, etc. to name a few. The Complainant's earliest



registration dates back to as early as April 5, 1983 in the United States with a claim of use since 1969. The details of some of the registrations have been provided by the Complainant in the Complaint in sub para (f) of para 5 of the Complaint and copies of a selection of worldwide registration certificates and/or extracts downloaded from the official websites of the respective Trade Marks Offices for MFS *per se* and MFS formative marks in Class 36 are annexed as **Exhibit 5 with the Complaint**.

- g) The Complainant has also submits that the Complainant is the proprietor of the few registrations for MFS *per se* and MFS formative marks in Class 36 as has been mentioned in sub para (g) of para 5 of the Complaint and the same are annexed as **Exhibit 6 with the Complaint**. According to the Complainant, the aforesaid trademarks are valid and subsisting and in full legal force, conferring on the Complainant, the exclusive right to their use and to restrain use of any identical or deceptively similar mark(s) by unauthorized persons.
- h) The Complainant has further submitted that the Complainant owns the website/ domain name [www.mfs.com](http://www.mfs.com), which is accessible throughout the world including India. The said domain name was registered by the Complainant on July 23, 1994. Extract from the WHOIS search database for the domain name [www.mfs.com](http://www.mfs.com) is annexed as **Exhibit 7 with the Complaint** and the Complainant has also registered and owns other domain names that include the term "MFS," which have been mentioned in sub para (h) of para 5 in the Complaint.





- i) The Complainant further adds that it is worth mentioning that the online searches for the Complainant's name/mark 'MFS' on popular search engines such as Google, Yahoo, etc. show only about the Complainant's business among the top most hits or results. Printouts of the results of online searches for the term MFS are annexed as **Exhibit 8**. Also, the Complainant extensively promotes and advertises its products/ services through various social networking websites including Facebook, X (formerly Twitter), YouTube and LinkedIn. Relevant extracts from the Complainant's social media pages are annexed as **Exhibit 9 with the Complaint**. As per the Complainant, it is apparent that the Complainant has widespread presence over the internet through its websites, online blogs/ posts, and social media handles. Thus, the relevant class of people identify the Complainant through its trade mark/ trade name 'MFS' even on the internet.
- j) Therefore, according to the Complainant, in view of above, as submitted above, the Complainant is the *bonafide* adopter, user and registered proprietor of the acronym MFS as a trade mark and corporate name in respect of its financial products and services since the year 1969. Also, the domain name [www.mfs.com](http://www.mfs.com) stands registered since July 23, 1994. On account of the above discussed longstanding use, widespread promotions and registrations across the world, the mark and corporate acronym MFS has acquired distinctiveness, become a well-known mark and is exclusively associated with the members of the trade and public



worldwide, including in India, exclusively with the Complainant's products/ services and business.

**5. With regard to Registrant/Respondent, its activities and registration of the Domain Name, the Complainant has made following submissions in the Complaint:**

- According to the WHOIS extract provided by the NIXI on January 8, 2024, the Respondent's organization name is mentioned as 'Mandowara Finance', located at 502, Marble Arch Complex, Race Course Circle, Vadodara Gujarat 390005, India. It is evident from Exhibit 1 that the domain name [www.mfs.net.in](http://www.mfs.net.in) was registered on August 16, 2010, which is much later to the adoption and use of the name/mark MFS by the Complainant.
- The domain name [www.mfs.net.in](http://www.mfs.net.in) starts with and prominently incorporates the complainant's famous mark/ name MFS in its entirety and has been registered in bad faith. The addition of the common word 'net', being non-distinctive, does not help distinguish it from the Complainant's mark/ name and the term MFS remains to be the essential and most recognizable part of the domain name. The use of mark/ name MFS in the alleged domain name is clearly to take advantage of MFS brand reputation and to convey that the Respondent provides the products/ services that has authorisation of the Complainant.
- As per the information on the Respondent's website [www.mfs.net.in](http://www.mfs.net.in), they claim to offer a range of financial products/ services including Trading and Demat, Mutual Funds, Insurance, IPO, Loans, Small Saving Schemes and



Fixed Deposits, and professional services including Working Capital Management, Corporate Advisory, Financial Product Valuation, Wealth Advisory and Portfolio Management. They are indiscriminately using the MFS logo i.e., on their website. The Respondent is misusing and misappropriating the Complainant's mark/ name MFS as a part of their domain name [www.mfs.net.in](http://www.mfs.net.in) and as a trade name/ business acronym on the contents of their website to misrepresent trade connection with the Complainant and lend legitimacy to their business operations. Relevant printouts from the Respondent's website [www.mfs.net.in](http://www.mfs.net.in) have been annexed as Exhibit 10 with the Complaint.

- The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well-known trademark MFS in any manner whatsoever. The Respondent's purpose of registering the identical domain name in respect of identical financial products/ services including mutual funds and portfolio management is to ride upon the immense goodwill and reputation of the Complainant's mark/name MFS. Therefore, it is clear that the Respondent has copied the alleged domain name from the Complainant's MFS mark/ name to attract internet traffic by falsely claiming an association/connection with the Complainant and make illicit gains.

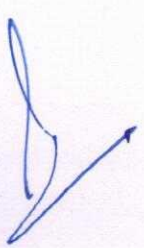




- The Complainant submits that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. In the present case, copying by the Respondent is evident from its adoption of an identical domain name. The Respondent being in the same trade (i.e., financial services including mutual funds, etc.) was clearly aware of the existence of the Complainant's rights in the mark/ name MFS when they adopted the disputed domain name. In the circumstances, the present case is clearly that of cyber-squatting. It is submitted that the Complainant, on coming to know about the misuse of the mark/ name MFS by the Respondent, sent them a Cease and Desist letter dated February 7, 2023 objecting to their unauthorized adoption/ use of the term MFS as their trade name/ business acronym, domain name www.mfs.net.in and mark/ logo in relation to financial services and provided an opportunity to resolve the issue amicably. After sending a reminder letter and making telephonic follow ups, the Respondent (Mr. S.I. Mandowara) replied vide email dated May 8, 2023, confirming that he is already retired and has closed his business operations. While he refused to transfer the domain name in favour of the Complainant, he confirmed that after the web subscription expires, the website will go offline i.e., on August 16, 2023. Based on the verbal and written assurances of the Respondent, the Complainant sent a closing letter dated July 6, 2023 thanking the Respondent for his cooperation in resolving the issue amicably. However, to the Complainant's surprise, the Respondent even after providing the written assurances, renewed the disputed domain name for another



one year i.e., until August 16, 2024. On noticing the same, the Complainant sent a follow up email on September 9, 2023 providing a final opportunity to the Respondent to transfer the domain name to the Complainant and deactivate the website to resolve the issue amicably. Despite sending a reminder email on October 6, 2023, the Respondent neither replied nor complied with the Complainant's requisitions. Copies of all aforesaid letters/ emails exchanged with the Respondent are annexed as Exhibit 11 with the Complaint. The Complainant has been active in safeguarding its intellectual property rights and accordingly, it has taken suitable legal actions against the third parties who were found to be misusing its mark/ name MFS. Copies of favourable orders/ decisions passed by the NIXI in favour of the Complainant concerning the domain names comprising the term MFS are annexed as Exhibit 12 with the Complaint. The registration of disputed domain name [www.mfs.net.in](http://www.mfs.net.in) amounts to infringement of the Complainant's intellectual property rights vested in the mark/name MFS. The Respondent's intention is clearly to ride on the Complainant's goodwill, divert the Complainant's business in an illegal manner and thus to make unjust monetary gains. Thus, the Respondent's activities are unlawful and likely to jeopardize the Complainant's reputation and goodwill under mark/name MFS.





6. In order to fulfill the mandatory requirements of sub clause (a) to (c) of Clause 4 of the INDRP, the Complainant has made following submissions and made this Complaint based upon the following legal grounds:

a) **The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.** To establish this requirement, the Complainant has made following submissions.

- The Complainant has continuously used the mark/name since 1969 i.e., over 5 decades prior to the registration date for the disputed domain name i.e., August 16, 2010. The Complainant owns the domain name www.mfs.com dating back to the year 1994 as contained in Exhibit 7. The Complainant had obtained trade mark registrations for MFS (as contained in Exhibits 5 & 6) much prior to the year 2010, the registration date of the Respondent's domain name. Each of these registrations remains valid and in full force. The Complainant's earliest registration for the mark MFS dates back to the year 1983 in the United States. Thus, the Complainant has rights in the mark MFS that predates registration date of the domain name.
- The disputed domain name www.mfs.net.in is identical with the Complainant's mark/name MFS, save for the addition of the common word/term 'net' which being non-distinctive has to be ignored when comparing the domain name. The most recognizable and distinctive element of the domain name is the term MFS that has

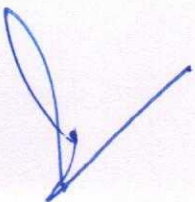


been copied by the Respondent. The Complainant has relied upon order passed in *Advance Magazine Publishers Inc. v. Vanilla Limited/ Domain Finance Ltd./ Minakumari Periasany*, WIPO Case No. D2004-1068 wherein it was held that the addition of a geographic modifier such as in <floridavogue.com> does not in any way remove or dilute the likely confusion that arises from the registration of the domain name.

- The Complainant has established its lawful rights in the mark/name MFS by virtue of prior adoption/use and registrations around the world including in India. The Complainant has filed sufficient evidence to show that it has prior rights in the mark/name MFS. Thus, according to the Complaint, the first condition is clearly satisfied.

**b) The Respondent has no rights or legitimate interests in respect of the Domain Name.** To meet this statutory requirement, the Complainant has submitted that:

- The Respondent registered the Domain Name in the year 2010; several decades after the Complainant invested millions of dollars in popularizing and seeking registration of mark MFS and domain name www.mfs.com. Moreover, by the time Respondent registered the disputed domain name, the Complainant had generated hundreds of millions of revenue under the mark MFS that is also used as an essential part of its company name. Accordingly, it is evident that the Respondent was well-aware of Complainant's prior rights in the mark MFS and domain name www.mfs.com at the time of registering the disputed





domain name in the year 2010. Complainant has relied upon *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, WIPO Case No. D2005-0179 and *Accord Young Genius Software AB v. MWD, James Vargas*, WIPO Case No. D2000-0591, wherein it was held that "Where a Respondent has constructive notice of a trademark, and yet registers a confusingly similar domain name thereto, the Respondent cannot be said to have a legitimate interest in the domain name."

- The Complainant has further submitted that there is no credible legitimate reason for the Respondent to have chosen to adopt the identical domain name consisting of MFS mark. The Respondent's purpose in selecting the disputed domain name was clearly to use fame of the Complainant's mark MFS to generate web-traffic and to confuse internet users visiting the Respondent's website/domain name [www.mfs.net.in](http://www.mfs.net.in) when looking for the Complainant and their services.
- Further, on information and belief, the Respondent is not commonly known by the name or nickname of the disputed domain name or any name containing Complainant's mark/name MFS. The Respondent has not been authorized by the Complainant to register or use the mark/domain name MFS. As held in *SAP Systeme/ SAP India Systems v. Davinder Pal Singh Bhatia*, WIPO Case No. D2001-0504, June 8, 2001, the panel finds force in contentions of the Complainant that the Respondent is not, either as an individual, businesses or other organization, commonly known by



the name SAP. Secondly, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark SAP or to apply for any domain name incorporating this mark. Thus, the Respondent has no legitimate interests in respect of the disputed domain names <sapmaster.com> and <sapwizard.com>. Thus, registration of the disputed domain name by the Respondent is a typical example of "cybersquatting". Such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the domain name.

- Therefore, according to the Complainant, the abovementioned facts establish a *prima face* case that the Respondent has no right or legitimate interest in the disputed domain name and that pursuant to the Policy, the burden shifts to the Respondent to show if it does have a right or legitimate interests.

#### 7. RESPONSE BY THE RESPONDENT

Vide email dated 25.01.2024, the Respondent submitted as under:-  
"We are surprised to receive notice in respect to domain name "MFS.NET.IN". Please note that domain name was obtained at VADODARA, GUJARAT, INDIA in the year 2009 for several services aspect as per government guidelines as per name availability in INDIA only. Since then we are operating at small scale for local usage only without any affiliation outside India. Therefore complaint is not justified which please note".

From above, it is clear that the Respondent admitted that they have registered disputed domain name in the year 2009 and is using the



same for several services and have further stated that they are operating a small scale for local usage only without any affiliation outside India.

8. **DISCUSSIONS AND FINDINGS:**

From the pleadings and evidence on record, it is clear that the Complainant is absolute owner of the trademark "MFS". In fact, the Complainant is commonly known as "MFS" since 1969. It is also established on record that the Complainant is the registered proprietor of MFS per se and MFS Formative Marks in Class 36 Worldwide in several countries. The Complainant also owns website/ domain name WWW.MFS.COM and also registered and owns other domain names that include the term "MFS" which are not limited to ones which finds mention in the Complaint. It is also established on record that the disputed domain name WWW.MFS.NET.IN was registered on August 16, 2010 which is much later to the adoption and use of the name/Mark MFS by the Complainant. From the facts and documents on record the undersigned is of the view that the Respondents act of registering the impugned domain name WWW.MFS.NET.IN of which Complainant's trade/service mark 'MFS' forms a conspicuous part is an infringement of the Complainant overwhelming common law and statutory rights as is vested in its registered and well known mark 'MFS'. Further, the disputed domain name, 'WWW.MFS.NET.IN' attempts to associate itself with the Complainant. The malicious intention of the Respondent is evident from its blatant misappropriation of the Complainants trade/service mark 'MFS' and the Respondent is impersonating as part of the 'MFS' group. Moreover, in view of the Tribunal, any use of the word MFS is



understood only as making a reference to the Complainant. Also, the disputed domain name WWW.MFS.NET.IN is identical to the well known trade mark MFS of the Complainant who is its sole legitimate owner and proprietor. The act of the Respondent registering the impugned domain name WWW.MFS.NET.IN incorporating an identical mark as that of the Complainant's registered and well known trademark 'MFS' is a malafide attempt on its part to scam the innocent members of the Public and make illegal economic gains and profits by misusing and free riding on the goodwill and reputation associated with the registered and known trademark 'MFS' of the complainant.

Further, in the present case, the Respondent has not challenge the pleadings and documents on merits and has submitted a vague reply. From the unchallenged pleadings and documents on record, the Complainant has been able to sufficiently prove its absolute ownership and complete authorization in respect of trademark "MFS" and its variations established worldwide. The Complainant has also been able to prove 3 ingredients of the policy and it has been established that: a) *The disputed domain name is confusingly similar to the trademark in which Complainant has right, and b) The respondent has no rights or legitimate interest in the domain name, and c) The respondent's domain name has been registered and is being used in bad faith.* The decisions cited by the Complainant are also applicable to the facts of the case.

9. **CONCLUSION:**

As evident from the findings above, since, the Complainant has proven its case as required under the INDRP Dispute Resolution Policy, therefore, the Complaint is allowed and the following award



is being passed in favour of the complainant and against the Respondent.

**10. AWARD:**

In view of above, it is awarded that the disputed domain name <WWW.MFS.NET.IN> be transferred to the complainant. Accordingly, the registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark <WWW.MFS.NET.IN> and therefore, shall immediately be ceased to use the said domain name in any manner whatsoever.

**11. COST:**

In view of the facts and circumstances of the Complaint fully detailed in the Award, the cost of the proceedings are also awarded in favour of the Complainant and against the Respondent.



(Sajal Koser)  
Arbitrator  
12.02.2024