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BEFORE SHRI RAJEEV SINGH CHAUHAN
ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION
POLICY (INDRP)

IN RE:

Shri Jagdish Purohit,
118/134 Old Hanuman Lane,
Kalbadevi Road,
Mumbai-400 002.

Complainant

Versus

Mr. Stephen Koeing
M/s. I.P. Development Inc.
Street 1528,
Walnut Street,
Clear Water City,
Florida State,
Postal Code No. 33755
United States of America.

Respondent

1. THE PARTIES:

The complainant is Shri Jagdish Purohit, R/o
118/134 Old Hanuman Lane, Kalbadevi Road, Mumbai-
400002.

AWARD

(1)

The Respondent is Mr. Stephen Koeing of M/s.I.P.Development Inc. Street 1523, Walnut Street, Clear Water City, Florida State, Postal Code No.33755. United States of America.

2. DOMAIN NAME AND TRADEMARK IN DISPUTE:

Domain name of the respondent is INTERNET.IN.

The trademark of the complainant is "INTERNET". The registry is National Internet Exchange of India (NIXI).

3. BRIEF BACKGROUND:

This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed thereunder.

The complainant submitted his complaint in the registry of NIXI on 31.01.2003. Shri Rajeev Singh Chauhan was appointed as Sole Arbitrator in the matter by NIXI.

The respondent filed his reply on 17.03.2006.

The complainant and the respondent have filed various documents as Annexures in support of their contentions. They have also filed judgements/cases,

which are delivered by administrative panel constituted by World Intellectual Property Organization Arbitration and Mediation Centre. They are in respect of the complaint filed under Uniform Domain Name Dispute Resolution Policy (UDRP). The complainant and respondent have also filed written submissions.

It is alleged by the complainant that he is registered owner of the trademark "INTERNET" and the necessary certificate dt.13.07.2005 in respect thereof has been duly issued by the trademark registry at Mumbai. He has further alleged that the trademark has been issued in respect of the Tobacco, raw material or manufactured, smoker's articles, matches included in the class-34. It is further alleged by the complainant that he has been using this logo trademark since about two years and the same is also published in the journal.

The respondent has alleged that he got registered the domain name "INTERNET" with NIXI on 16.02.2005. He has further alleged that the domain name has related links with VSNL Internet, Internet, update profile, jobs, blast and transformer manufacturing, projects of electrical balls and transformers. The respondent is further alleged that

he is running various businesses on internet through various companies.

4. PARTIES' CONTENTIONS:

The complainant has alleged that domain name of the respondent is identical and confusingly similar to his trademark in which he has rights.

The complainant has further alleged that respondent has no rights or legitimate interest in respect of domain name and that respondent has no registered trademark of the said domain name and he has no affiliation with India.

The complainant has further alleged that the domain name is registered by the respondent and is used by him in bad faith. The complainant has further alleged that the respondent has no plans to develop domain name into business and his intention is to sell domain name to him or to any other organization. The complainant has further alleged that the respondent is speculator and had registered various domain names for which he has no right or trademark. The complainant has further alleged that the respondent has put domain name on website to lure customers and sticking them on clicks on advertisement for his profit. The complainant has

further alleged that the respondent has put other domain name such as AIR.IN, COMPUTER.IN, INK.IN, INTERNET.IN, TONER.IN, USA.IN, WISE.IN on website to lure customers to his website so as to gain profit.

The complainant has sought the relief of transfer of domain name INTERNET.IN to him.

The respondent has given the following reply to the contentions of the complainant that the domain name is identical and confusingly similar to the trademark:-

- (i) The complainant has not adduced single document to show the user of trademark so as to show that it has acquired secondary meaning in respect to trademark by quantum of sales, advertisement, consumer service, or by media recognition.

The respondent has given the following reply to the contentions of the complainant that the respondent has no rights or legitimate interest in respect to domain name:

- i) Internet i.e. the trademark is a generic word and that the complainant as such do not have any inherent right to use it as such the



respondent has legitimate right to use the same.

ii) The respondent intends to use the domain name as identifier of Internet related goods and services of website.

iii) Policy of registering domain name does not make it mandatory to take a trademark search in all classes before registering a domain name. The complainant has not produced any evidence to show that respondent knew about complainant's right of trademark 'Internet' or he ought to have known it.

iv) The complainant has not got registered .IN domain name containing word Internet so as to raise any inference or assumption that the respondent ought to have known about alleged right of complainant in said word.

The respondent has given the following reply to the contentions of the complainant that domain name is registered and used by the respondent in bad faith:

i) The respondent has not put domain name for sell

ii) There is no evidence to show that respondent knew about complainants right in 'Internet' trademark or he ought to have known it. Further the complainant has not got registered any domain name with word "INTERNET" so as to raise any inference or assumption that respondent ought to have known about the alleged right of complainant in the said word. As such there is no evidence to support the fact that the domain name is chosen by respondent keeping the complainant's business or trademark in mind or with any intention to profit or otherwise to abuse complainants trademark.

iii) The respondent is legitimate and bonafide trading entity and has developed Internet business like fax.de and toner.com for legitimate purposes, respondent got registered domain name in good faith to resolve a website to use domain name in respect to internet related goods and services. The complainant has lacked in proving bad faith for use of this generic word by respondent.

The respondent has further replied that the complaint has been filed to harass him and to usurp rights beyond complainant's

registration, which relates to tobacco. The complainant could get register domain names relating to his activities of tobacco, etc.

The respondent has further replied that the complainant work is limited to narrow field and registration of "INTERNET.IN" by respondent or its use would not constitute bad faith.

Respondent has further replied that the complainant has sought to monopolize several generic words such as business, jobs, and rupee, etc. without shred of evidence of use all these words as trademark. In fact these indicates bad faith of complainant.

5. OPINION/FINDING:

The para no. 4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:



- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

The para no. 6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

6. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the

purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or

ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of



a product or service on the
Registrant's website or location."

The para no.7 of the IN Domain Dispute Resolution
Policy (INDRP) is as follows:-

**7. REGISTRANT'S RIGHTS TO AND LEGITIMATE
INTERESTS IN THE DOMAIN NAME**

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii) :

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (as an individual, business, or other organization) has been commonly known by the domain name,

even if the Registrant has acquired no
trademark or service mark rights; or

iii) the Registrant is making a legitimate
non-commercial or fair use of the
domain name, without intent for
commercial gain to misleadingly divert
consumers or to tarnish the trademark
or service mark at issue."

It is to be noted that prior to INDRP Policy
there was other Dispute Resolution Policy, which was
formulated and approved by ICANN. It is called
Uniform Domain Name Dispute Resolution Policy
(UDRP) . The INDRP is substantially similar to this
policy. The cases cited by the parties are mainly
under UDRP policy and the respondent has at many
places referred to this policy in support of his
contentions and defence.

Before going into the merits and contentions
raised by the respective parties it has become
necessary to give a finding as to upon whom the onus
is there to prove the three conditions of para no. 4
of INDRP Policy.



Whether the complainant has to prove these to succeed or the respondent has to prove these conditions to save his domain name?

The complainant has argued that the para no. 4 of the INDRP and UDRP are similar but in the last of para no.4 of UDRP, the following words are mentioned "In Administrative proceedings the complainant must prove that each of these elements are present". The complainant further argued that this line is conspicuously absent in INDRP and as such onus/burden of proving the claims/three contentions of para no. 4 INDRP are not on the complaint. Rather the respondent must prove that he has not violated any of the above conditions and that he must produce evidence in support of it.

The complainant has further argued that the following words "In Administrative proceedings the complainant must prove that each of these elements are present" are not in INDRP and they are intentionally not kept to protect the sovereign of India like him from foreigners like respondent.

The respondent has refuted the above arguments of the complainant and has argued that even as per INDRP, onus is on complainant he has argued that the complainant has taken mistaken view that in INDRP



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onus is on respondent. He has argued that in Indian Evidence Act Section 101, 102, 103 clearly provides that onus of proof of a fact is upon a person who alleges that fact and whose case will fail if such fact is not proved. As such according to respondent the onus of prove of three conditions of para no. 4 of INDRP is on complainant and not upon him.

It is most be noted that the para no. 4 of the INDRP policy starts with following words, "Any person who considers that a registered domain name conflicts with his legitimate rights or interest may files complaint to the in registry on follow premises." This is a positive assertion and sentence.

Further paragraph 4(i) also constitutes a positive assertion and sentence. Paragraph 4(iii) and para no.6, which is supplementary/explanation to it, also have positive assertions/sentences.

The above clearly indicates that the onus of proving the contents of para no.4(1) and 4(iii) are upon complainant. To succeed he must prove them.

Para no.4(ii) has also positive assertions/sentences but para no.7, which is supplementary and explanation it indicate **besides**

others, the circumstances whereby the respondent could show that he has right or legitimate interest in the domain name. The contents of para no. 7 have positive assertions/sentences, and they are the facts, which could be proved by the respondent himself. These facts are in special knowledge of respondent.

Since para no.4(ii) has positive assertions and since the circumstances mentioned in para no. 7 are not exhaustive, as such there could be circumstances by which complainant can show that respondent has no rights or legitimate interest in Domain name. Thus the combined effect of para no.4(ii) and para no. 7 is that, the initial burden of proof of their contents, is on complainant, which should not be very strict and if he is prima facie able to discharge this burden, then it' , would heavily shift upon respondent, who has to prove the positive assertions made in para no. 7, that he has right and legitimate interest in domain name. He can prove this by direct positive and congeat evidence, which is in his special knowledge and power.

The complainant himself in his arguments has quoted WIPO's website "nt EP/larbiter.WIPO.int domains/search.overnew/index btml", wherein it is stated that "if complainant makes out a prima facie



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case, that respondent has no rights or legitimate interest, and respondent fails to show one of the circumstances of paragraph 4(c)", (similar to para no.7 of INDRP).

The respondent has cited WIPO case-D-2000-1816 and WIPO case-D-2000/797, which also states that burden of proof in arbitral proceeding in respect to para no.4 are upon complainant.

The UDRP & INDRP policy are substantially same and they have similar characteristics. The clause in UDRP policy "In the administrative proceedings the complainant must prove that each of these elements of paragraph no. 4 are present" is only a clarifying clause, which clarifies that all the three elements of paragraph no.4 are to be proved and if any one of them is not proved, then, complainant would not succeed. This is also evident from WIPO cases, relied upon by parties. The deletion of this clause in INDRP does not shift the onus on respondent. Moreover as discussed above the language of paragraph 4(i) to (iii) and para no.6 and 7 is clear and unambiguous, which show as to upon whom the onus if there.



The provisions of sections 101 to 103 of Indian Evidence Act also show that onus in present proceedings is primarily on complainant.

Further if the complainant fails in proving his complaint then he could be made liable for reverse domain hijacking. This also shows that complainant prima facie has to prove the contents of the complaint or else he could face adverse consequences of his failure/false complaint.

The other fact, which is to be dealt with before going into merit is, that, as to whether, the cases decided by WIPO - Administrative Panel could be considered, while deciding the present controversy. It is pertinent to mention that both the parties have referred and relied upon WIPO cases. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

In Indian decision M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, it has been held that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. The complainant has referred WIPO case D-2005-1087 in which Domain names 'Jded word biz' and trademarks JD EDWARDS/JDEDWARDS & Co., and JDED words and computers, were in question. It was held that Domain name has trademark in it entirely and as such they are identical. In the present case the domain name is 'Internet.in' and trademark is 'internet'. They are phonetically, similar and they both consist of similar 'letters or words' except that in Domain name letters, 'in', are added. The domain name also contains trademark in entirety. They are also similar in appearance. As such they both are identical and confusingly similar.

The other aspect, which is asserted by parties is that the spheres of user of trademark and domain name, and the manner in which they are used or sought to be used. The respondent has alleged that domain name is to be used for internet related services and it cannot be confused with trademark



registered for tobacco etc. He further alleges that he will not use the domain name in tobacco related goods. The complainant has referred WIPO case D-2002-0693, wherein it's held that it's irrelevant that domain name or trademark carry on business in different fields, when they are similar phonetically or in appearance. It is held in Indian case JT.2004 (5) SC 541, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that the domain name was got registered in February 2005, whereas the trademark was applied



earlier but the certificate of registration was issued in July 2005. Thus the domain name was in existence at time of issuance of certificate of registration of trademark of complainant. The trademark of complainant is 'internet'. It is a common word, has a dictionary meaning, it is extensively used. Thus it's a generic word, which can be used by anyone and not exclusively by one person as a matter of right. Reference is also drawn to sections 9 and 32 of The Trademark Act 1999, which prohibit use and registration of trademarks, which consists of common or generic words. To acquire exclusive right to use words like 'internet' as trademark, the complainant must show that the word had/has acquired secondary meaning before registration or after registration. He has acquired reputation or goodwill in it or that he is known or recognized or associated with it in or outside market. He must show that he has acquired these by extensive user, length and extent of sales, advertisement, consumer surveys, or by media recognition. Reference is also made to cases 2003(7) AD. Delhi 405, 2002(95) DLT-3 and 2002(97) DLT-1.

The above is the settled proportion of law. The complainant has referred WIPO case No. D-2002-0693 in this regard and respondent has also referred

WIPO case D-2000-1816 and D-2001-0083. This principle is settled in many above Indian cases and referred case JT 2004(5) SC 541 and 2004(5) SCC 287. The complainant has contended that INDRP does not say that for generic word like his trademark some special policy is there. But this contention cannot reverse the settled proposition of law stated above. The complainant has only made submission that he has legitimate trademark in India, he and his company are Indian, he is using trademark for two years and has huge business in India. The trademark is also mentioned in journal. But these are bald submissions, which are not substantiated by any evidence. These facts could have only been proved by complainant himself by direct positive and cogent evidence, more so when the respondent has challenged that complainant has not acquired exclusive right to use the trademark as it's a generic word. In fact complainant has also got registered various other trademarks mentioned in reply of respondent, and the complainant has not proved their user also in business or trade.

Thus the conclusion is that though the domain name 'internet.in' is identical and confusing similar to the trademark of complainant 'internet', but the complainant has failed to show/prove that he has right in the trademark, which is a generic word.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

As already stated that paragraph 4(ii) of INDRP is to read with paragraph no.7. The complainant and respondent have relied upon two judgements i.e. WIPO D-2000-0782 and WIPO D-2000-1816 respectively. Both these cases lay down same principle that, the respondent to prove his right or legitimate interest in domain names, must show that he is using the domain name for offering of goods and services or that he is making demonstrable preparation to use the domain name for offering goods and services. In the case cited by complainant D-2005--0736, it is further held that such use of domain name by respondent should be bonafide without intent to mislead internet users or consumer or to divert them to his website and without our intent to tarnish trademark of complainant. The above propositions are also in consonance with INDRP Policy.

The complainant has argued that as per paragraph no.111 of INDRP and registration agreement (section 8.1), it's duty of respondent to ensure at time of registration of domain name, that it does



search by respondent would have shown that complainants trademark is already registered with trademark registry of Mumbai. It is further argued that as per above para no. 111 of INDRP and as per registration agreement, the respondent cannot knowingly use the domain name in violation of any applicable, laws or regulation or agreement, and that use of domain name by respondent is for lawful purposes. The complainant has further argued that respondent has not shown use or demonstrable preparation of use of domain name and he has also violated the INDRP policy and registration agreement. Complainant has made positive assertions and has argued that, he has proved prima facie that respondent has no right or legitimate interest in domain name.

The respondent has argued that complainant has not made out prima facie case. He has further argued that one of his company is an internet provider and he is also member of D.E. registry. He further argued that he has plans to actively use the domain name for Internet related services. It is also argued by respondent that at time of registration of domain name on 16.02.2005, the complainant had no valid trademark as the certificate show seal of 13.07.2005. As such



respondent argued that he has proved and satisfied the conditions of paragraph 4(ii) & 7 of INDRP.

As already stated that paragraph 4(ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and there is no evidence of its use or demonstrable preparation of use by respondent. He has made positive assertions regarding the fact that respondent has got registered various other domain names, which are not actively used by him. The respondent has got registered various domain names as are already mentioned above. This is also not disputed. As such in above circumstance its clear that the complainant has prima facie discharged the initially onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not provided positive, cogent and specific evidence that he is known or recognized by domain name, by its user and

that he in fact uses it for providing goods or services. At least he could have shown that he made demonstrable preparations to use the domain name for providing goods or services. The respondent has neither put forth and has nor provided such evidence, except that he has only made bald assertions. More so when he knew that his alleged user or preparations to use domain name is challenged by complainant. Thus the respondent has not discharged the onus positively, which had shifted upon him. The other aspect is as to whether the respondent has violated any laws, rules, regulations or policy as is alleged by the complainant. If paragraph nos.3,4 & 7 of INDRP is seen then such violation can only be, when the respondent uses or demonstrates preparation to use the domain name in a particular manner, like to divert or mislead internet users to his website, or to tarnish trademark of complainant malafidely or for commercial gain etc. When the complainant himself asserts that there is no evidence of use or demonstrable preparation to use of the domain name by respondent also, and when there is no such evidence provided by respondent, then it cannot be said that respondent has caused any violation. The argument of complainant is that the respondent at time of registering his domain knew or ought to have known about his trademark and so he has violated



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complainant's right and the respondent has also violated paragraph no. 3 of INDRP and clause 8.1 of registration agreement. This argument is fairly met by respondent, as at time of registration of domain name in February 2005, the certificate of registration of trademark of the complainant was not issued. How respondent could have known about it. It was issued in July 2005.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name and he has not proved/shown this.

C) Whether the respondent's domain name has been registered or is being used in bad faith

As already stated & opined that there is no positive and congest evidence of use of the domain name by respondent, as such question of domain name being used in bad faith do not arise at all.

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4(iii) and 6 are relevant and as already stated, the onus is primarily upon complainant. The complainant has alleged and argued that the respondent has got registered the domain name for selling it and that he also hijacks domain name to



sell it. By referring to annexure-17 (a source of website) the complainant has alleged that the respondent has put meta tags such as "by and sell domain, domain auctions, domain market, appraisal domain, domain handle". The complainant has alleged that this website is parked with SEDO company, which is world's largest selling market place for buying and selling domain names. He has further argued that respondent has put meta tags to sell domain name and even otherwise in WIPO case it held that parking of domain name with SEDO is bad faith. The complainant has relied upon WIPO case D-2002-0693 in this regard. But in this case the domain name holder attracted internet users to the website and he got remuneration for it, but this is not the case here, as such this case is not applicable. The complainant has also relied upon WIPO case-D-2005-0736 wherein it was held that domain name parked with the SEDO are 5 times more likely to be sold and as such show the intention of selling, of domain holder. To counter this the respondent has referred to a WIPO case D-2000-0797 wherein it was held that if respondent has many domain names and even if he offers to sell them then it will not constitute bad faith and complainant must prove the bad faith. This is an old case, but the case D-2005-0736 is recent case and it will prevail. The complainant has also relied upon WIPO

case D-2005-1057 wherein its held that use of domain name as 'MSN address' and it was designed to generate profit by attracting customers who sought for complainant on internet, would constitute bad faith. This case also does not affect the facts and circumstances of present case. The complainant has further referred to WIPO case D-2004-0787, wherein it was held that past history of respondent raises presumption of bad faith, but in this case past history became relevant when there were several past WIPO cases decisions against the said respondent. In present proceedings, it is not shown that any case has been decided against present respondent. As such also this case would not apply to present proceedings. The complainant has also referred WIPO case D-2005-1057 wherein it's held that if the domain name is got registered by respondent by knowing or keeping in mind the trademark of the complainant then this will constitute bad faith. To counter this the respondent has reflect to WIPO case D-2000-1151 wherein it's held that knowledge of trademark while registration of domain name does not constitute bad faith. The case cited by the complainant is recent one and it reflects the correct view, but it already observed in this award that the respondent didn't knew or ought to have known about the registration of trademark at time of registration of domain name, as the certificate of

registration of trademark was issued latter to registration of domain name. As such the case cited by complainant lays down correct view, but it is no help to complainant.

Thus from above discussion it's clear that the parking of domain name with company like SEDO and putting up of meta togs etc. are relevant factors in presuming or judging the intention of respondent of selling, renting or transferring etc of domain name and his intention to prevent owner of trademark or service mark from reflecting the mark in corresponding domain name.

The complainant has alleged and argued that respondent had registered 1747 domain names in de-registry for purpose of selling them. In evidence there of he has filed annexure 1 excerpt from Greman page. The respondent has countered this by alleging that registration of domain names does not show that he is a speculator, but it shows his genuineness to carry out business transactions on internet via the said domain names. This argument is not tenable. One does not requires so many domain names to carry business and more so when there is no evidence of such substantial business or use of domain name for providing of goods or services. Obviously, the domain name is got registered to sell, transfer or

rent it or to prevent other owner of mark to reflect the mark in corresponding domain name. Parking with SEDO and putting up of meta tags on domain name also reflect such intentions (WIPO Case - D-2005-0736).

The complainant has alleged and argued that respondent has squatted domain names for personal gain. He has given example of loss of domain name 'Apple de', which was latter found with respondent and complainant alleges that it was resold for higher prices to its previous owner. In support of it he has filed annexure 2 to 4. The respondent has countered this by stating that he is not a cyber squatter and that when 'Apple de' of company 'Apple Corporate' was lost, he promptly contacted Apple corporate to retransfer apple de to them so that it may not fall in hand of squatter. He further states that the apple de was ultimately retransferred by him to Apple corporate with nothing in exchange. Respondent has filed letter of Apple corporate as Annexure (A) which also show this position. As such the above contention of the complainant regarding domain name apple de is not tenable.

The complainant has also filed annexure 5 wherein it's mentioned that 'mds de' domain name was lost and it was found with the respondent and that it's owner requested respondent to resell it to him,



but the price of 1000 Euros was stated to less by the respondent. The respondent has countered it by filing annexure D, which is letter from Mr. Joachim Strabbach, Head of ops. German Registry Den. K., which states that respondent never owned mds.de domain name. It is also alleged Mr. Joa Theisen a representative of owner of 'mds.de', 'M/s M. Dumont Schanber GmbH & Co.' has also confirmed that this company held the domain name for considerable period and it has never been in control of any third person. Thus contention of complainant regarding domain name mds.de is not tenable. The website has been quoted by complainant in which it is reported that domain name has been stolen and sold by respondent at higher price. The respondent has filed envelope sent by postage to owner of this website, which has been returned with the remark of 'not such person'. Further the respondent has obtained injunction person to not to defame him, against magazine "Focus", which has quoted the above website. It is filed as Annexure "C". As such contention of complainant regarding above website is doubtful in above facts and circumstances.

The complainant has further alleged and argued that as per Annexure 8 the respondent being the resident of Hamburg, Germany is in USA as in Germany domain grabbing is crime punishable with five years

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imprisonment. To avoid this the respondent is in USA. Complaint has further alleged that respondent set up U.S. Address and to avoid suspicion of extraction and tax evasion. He relied upon annexure 6. The respondent has countered this by letter of accountants in Germany and USA annexure F&G, which show clear accountably and taxation of respondent. Moreover, the complainant has not provided any evidence to show criminal conviction of respondent. As such above contention of complainant are not tenable.

The complainant has further alleged and argued that respondent is a spanner and has no hesitation in using inappropriate means to promote his business interests. He has relied upon annexure 7 in this regard. The respondent has refuted this by saying that his domain name "toner in" due to mistake and virus warning got listed on website, but on detection, it was remedied. The E-mail of administration of website in this regard in annexure "H" Respondent further argues that on current website www.rhyolite.com there is no mention of domain name toner.com Respondent has also filed the letter of SEDO with his reply, which states that domain names is not put up for sale.



Respondent has further argued that the contents of complainant regarding formulation of INDRP and general practice of cyber squatter in India and policy protection to Indians are highly discriminatory on the basis of race and are without any basis. The other submissions of respondent that he has friends in India and is commended for a study project in India, which has 3000 pupils or that he is backing a project in Gujarat, are not supported by any cogent material. They are also not relevant.

Keeping in view above facts and circumstances it's this clear that the respondent has countered many contentions of complainant, but it is also evident that he got registered his domain name in bad faith. The respondent has got registered so many domain names and he has not provided any substantial evidence of using them for business or for offering of goods and services. Moreover, one does not need so many domain names to do business. Moreover respondent has put meta tags and had also parked domain name with company SEDO. The obvious purpose for registering domain names is to sell, rent or transfer it or to prevent other owner of mark from reflecting it in corresponding domain name. The WIPO case D-2005-0736 also show such intentions and presumptions, which are not cleared

and rebutted by respondent by positive, direct and congest evidence. Thus the conclusion is that the respondent has got registered his domain name "internet" in bad faith.

CONCLUSION:

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name and it is to be struck off from registry. The complainant is also not entitled to transfer of domain name to him, as he has also not established his bonafide rights in trademark as per law discussed above. The claim of the reverse hijacking of respondent also cannot be alleged in above circumstances.

Domain name may be confiscated by registry and may be kept with it.

Delhi

Date:05.07.2006



(Rajeev Singh Chauhan)

Arbitrator

