हरियाणा HARYANA

R 940004

RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

ETechAces Marketing and Consulting Private Limited
Plot No. 119, Sector – 44,
Gurgaon – 122001
Haryana, India .....Complainant

Multivertex Technologies Private Limited
Dwaraka Mor, Sewak Park,
Plot no. 13-14, New Delhi – 110059, India .....Respondent

Disputed Domain Name: www.licpolicybazar.co.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is ETechAces Marketing and Consulting Private Limited of Plot no. 119, Sector-44, Gurgaon-122001, Haryana. The Complainant is represented by its authorized representatives Kapil Wadhwa, Wadhwa Law Chambers of DD 13, Kalkaji, LGF, New Delhi – 110019, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Multivertex Technologies Private Limited of Dwaraka Mor, Sewak Park, Plot no. 13-14, New Delhi – 110059, India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.licpolicybazar.co.in. The Registrar is Webiq Domains Solutions Pvt. Ltd.

The Registrant is Multivertex Technologies Private Limited of Dwaraka Mor, Sewak Park, Plot no. 13-14, New Delhi – 110059, India

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

1. The complaint was produced before the Arbitrator on March 18, 2016 and an email was sent by NIXI to parties informing that Ms. Rachna Bakhru, Arbitrator, NIXI is handling the dispute relating to the domain name **'LICPOLICYBAZAR.CO.IN'** and also provided the details of the Arbitrator.

2. Vide email dated March 19, 2016 the Respondent Mr. Ojha has informed that *"I am not owner of this website . Mr Rajesh Jain is working for LIC , and He is owner of this website. His Contact number is 9810691106. His email id is rajeshjaynee@gmail.com. Multivertex is closed , Now i am working in other company. For any support I am available".*

3. Vide email dated March 21, 2016 the notice was issued to the Respondent at his email address and at Mr. Rajesh Jain's email address with a deadline of 10 days to submit his reply to the arbitration.

4. Vide email dated March 21, 2016 further email was received from Mr. Ojha informing the following :

   "I was working as IT consultant for this domain , its showing details because it was booked by my account. Actual owner of this domain is MR Rajesh Jain. His contact number 9810691106. And Email id is rajeshjaynee@gmail.com. Please contact to Rajesh Jain for this".

5. Vide email dated April 4, 2016 the Arbitrator granted final opportunity to file response on or before 14th April 2016 and further directed the Complainant to provide by email copy of complaint to the Respondent which was duly complied.

6. Vide email dated April 25, 2016 the Arbitrator informed the parties that in the absence of any response from Respondent within the stipulated time period, the complaint will be decided based on documents and submissions made by the Complainant and the order will be pronounced soon.

7. Vide email dated April 27, 2016 the Respondent Mr. Ojha informed that *"I have already given domain owner name details. For this domain i can only transfer this domain in your account after approval of Mr. Rajesh Jain Here my name is showing because its renew from my end. You can check first booking is not done from my end and you can check over the website all details is related to Rajesh jain".*

8. Vide email dated April 27, 2016 Mr. Rajesh Jain wrote that "You have informed that the website www.licpolicybazar.co.in" I am using is not lawful because you are the owner of similar domain. In this regard, I wish to inform you that I am the agent in Bhartiya Jeevan Beema Nigam for past 10 years and as per my past records I have never misused anyone domain. As far as I recall, I have created this website in 2013 and I was unaware that this is owned by you because my service provider never intimate me. I further write to tell you that this website was officially created by M/s. Multivertex Technologies Pvt. Ltd. and I am paying yearly charges to them.

If you still feel that I am wrong then I have no objection to transfer the domain name because this is not my domain this is my service provider domain.

Note: I have no actual intention to misuse the domain and apologize for the same.

9. Vide email dated April 28, 2016 Mr. Ojha wrote that "Earlier Mr. Rajesh Ji was using this domain with some other service provider and they instruct me to update this domain that's why my name is reflected on it. Further, as informed by Rajesh ji I can transfer the domain into your name"

In the circumstances, the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

a. The Complainant company incorporated in the year 04th August 2008 under Indian Companies Act 1996 and a wholly-owned subsidiary company under the name of Policybazaar Insurance Web Aggregator Private Limited on 25th September, 2014. It is pertinent to note that the Complainant, through Policybazaar Insurance Web Aggregator Private Limited owns and operates India's leading online insurance comparison portal www.policybazar.com.

b. The Complainant through Policybazaar Insurance Web Aggregator Private Limited owns and operates the domain name policybazaar.com, policybazar.co.in, policybazar.in etc amongst others which have been registered on 25th June, 2008 and onwards. It is submitted that registration of the said domain names are valid and subsisting. It is further submitted that the said website www.policybazaar.com has been fully functional and operational since 25th June 2008.

c. It is further submitted that the Complainant's website has a distinct presence in the country whereby since its inception in 2008, the Complainant through the aforesaid website has been providing insurance solutions to more than 5,00,000 Indian customers. In the year 2014 alone, PolicyBazaar receives

more than 8.1 Million pageviews by more than 1.6 Million users. At the time of filing the policybazaar.com domain had an Alexa ranking of 782 in India. The Google Analytics Audience Overview for the period 01.01.2015 – 31.12.2015.

d. It is further submitted that the Complainant's Website is a comparison engine which is the result of intense research and periodic updating by a team of more than 1500 employees at present. Leading funds such as Intel Capital (Mauritious) Limited, Tiger GlobalEight Holdings, Inventus Capital Partners Fund II Limited, Ribbit Capital II, L.P have invested millions of dollars in PolicyBazaar through multiple rounds, of funding. Since 2008 the Complainant has spent more than USD 18 Million over advertising, promotion and branding for PolicyBazaar. PolicyBazaar has also been awarded the best financial website in the country by the Internet & Mobile Association of India (IAMAI) for two consecutive years of 2013 and 2014.

e. The website POLICYBAZAAR.COM showcases an array of insurance plans offered by a reputed pool of insurers, thereby enabling its customers to pick out the plan that works best for them on the basis of their quality and price. Apart from POLICYBAZAAR.COM, the Complainant owns a large number of domain names containing the words POLICYBAZAAR & POLICYBAZAR as trademark, including but not limited to policybazaar.biz, policybazaar.asia, policybazaar.info, policybazaar.co.uk etc.

f. The Complainant is the proprietor of statutory and common law rights over the trademarks 'POLICY BAZAAR', 'POLICYBAZAR', etc. The Complainant is also the registered proprietor of the policybazaar.com logo trademark & the policybazaar.com word mark. The Complainant further owns all other intellectual property rights associated with the use of the "POLICY BAZAAR/POLICYBAZAR" trademark in relation to the online insurance business in India.

g. The Complainant has been using the aforesaid marks and applications since 04.06.2008 in relation to services providing an online portal www.policybazar.com for the comparison of a wide range of policies with respect to insurance. It is submitted that with respect to its e-commerce business, the Complainant has statutory and common law rights over the marks POLICY BAZAAR, POLICY BAZAR amongst its other variations. It is pertinent to note that the aforesaid marks are exclusive to the Complainant by virtue of their long, continuous and uninterrupted use since the year 2008.

h. It is further submitted that the Respondent has registered and adopted the impugned website www.licpolicybazar.co.in. That the said domain name has been registered by the registrant company Multivertex Technologies Pvt. Ltd. under the registrant name Kanhaiya and the same expires on 13th January 2017. It is also submitted that on a bare perusal of the website, the confusion as to the source of origin is apparent.

i. It is respectfully submitted that the Respondent has adopted a domain name which is confusingly and deceptively similar to the domain name of the Complainant. That the adoption of the impugned domain name is infringing upon the statutory and common law rights of the Complainant in the trademark POLICY BAZAAR and POLICY BAZAR.

j. It is humbly submitted that the Complainant had successfully restrained a previous Registrant from using this very domain name i.e www.licpolicybazar.co.in by issuing a cease & desist notice to the previous registrant on 2nd July 2013. That upon receiving the notice the erstwhile registrant had stopped using the impugned domain name. However, it recently came to the knowledge of the Complainant that the current registrant has lawfully and with a malafide intention adopted the same confusingly and deceptively similar domain name www.licpolicybazaar.co.in.

k. It is further submitted that the domain name registered by the Respondents 'licpolicybazar.co.in' is confusingly and deceptively similar to the trademark/domain names of the Complainant being 'POLICYBAZAAR.COM', 'POLICY BAZAR', 'policybazar.co.in' etc. That the Respondent is infringing statutory trademark rights of the Complainant in the mark 'POLICY BAZAAR/POLICYBAZAR' by adopting a confusingly and deceptively similar domain name. it is further submitted that such use would cause confusion and deception amongst consumers resulting in irreparable harm and damage to the Complainant's business.

l. It is submitted that the Respondent is attempting to piggy back ride on the established goodwill and reputation of the Complainant. That by deceptively using the trade mark 'POLICY BAZAAR' of the Complainant the Respondent is trying to associate themselves with the Complainant and diverting consumers to its impugned website resulting in unwarranted gains for the Respondent.

m. That the impugned domain name incorporates the words 'POLICY BAZAAR' which is the registered trade mark of the Complainant while omitting the letter 'a' from the word Bazaar (which means market) and adding a prefix of a third party trademark i.e LIC. It is submitted the close misspelling in the domain name is confusingly similar to the Complainant's mark. That the use of the mark "LIC" (which is owned by the State Owned Insurance Company Life Insurance Corporation of India and not the respondent) as a prefix further augments the confusion amongst users who would be led to assume the complainant to be the source in addition to an assumption of a collaboration between POLICY BAZAAR and LIC, both being well-known companies in the Indian Insurance sector.

n. It is humbly submitted that the Complainant through the website 'www.policybazaar.com' as operated by its wholly owned subsidiary compares various insurance plans, health insurance policies amongst other policy plans enabling a consumer to choose a suitable policy based on quality and price. That the Respondent is also carrying on a similar e-commerce business

through the impugned domain name www.licpolicybazar.co.in providing information and an enquiry form to consumers soliciting the sale of life insurance policies. That an internet user who wishes to visit the Complainant's site namely www.policybazaar.com regarding the Complainant's service with respect to life insurance policies but not being completely familiar with the web address of the Complainant's site could enter in www.licpolicybazar.co.in through web advertisements or spam email messages and would be redirected to the website of the Respondent instead. It is pertinent to note that the domain names and URL's form part and parcel of the 'online' identity of a company and serve the function of its trade/service mark upon the Internet. It is respectfully submitted that since the Respondent is carrying on a similar business using a deceptively and confusingly similar domain name there is a strong likelihood of confusion and association of the Respondent's services with that of the Complainant.

o. It is further submitted that the Respondent had knowledge and was aware of the Complainant's reputation and the trademarks exclusively associated with the Complainant being 'POLICYBAZAAR', 'POLICYBAZAR' amongst other trademark violations.

p. It is thereby submitted that no entity other than the Complainant, has any right or justification to use the registered trademark 'POLICY BAZAAR.COM' 'POLICYBAZAR' or any mark deceptively and confusingly similar to the aforesaid marks or on the Complainant's well known domain name www.policybazaar.com which are exclusively associated with the Complainant.

q. The respondent does not have any authority to register and use the confusingly similar and/or identical domain from the Complainant. It is therefore respectfully submitted that since the Respondent's Domain comprises of the entire trademark with a slight misspelling and the mere addition of a third party mark "LIC" and the use of the Indian country code .co.in, that the impugned Domain name is identical and/or confusingly similar to the marks in which the Complainant has rights.

r. It is humbly submitted that the Respondent does not have any rights or legitimate interest in incorporating the mark POLICYBAZAR within the domain name 'www.policybazar.co.in' and using the same. It is pertinent to note that the Complainant is the rightful owner and proprietor of the registered trademarks 'POLICY BAZAAR', 'POLICYBAZAR', 'POLICYBAZAAR.COM' etc. That the Complainant/its subsidiaries have continuously and uninterruptedly been using the said trademarks and domain name www.policybazaar.com since its inception in the year 2008 and the same is exclusively associated with the services of the Complainant. Furthermore the Complainant has not granted any permission or consent to the Respondent to use the trademark 'POLICYBAZAAR', 'POLICY BAZAAR' etc or any deceptively similar mark thereof.

s. It is respectfully submitted that the Complainants mark POLICYBAZAAR is a well-known mark in India and hence the respondent is assumed to have knowledge of the same. It is humbly submitted that the adoption and use of a confusingly and deceptively similar domain name by the Respondent despite having knowledge of the Complainant's well known mark 'POLICY BAZAAR' amongst others is being used to ride upon the goodwill and reputation of the Complainant and does not constitute a bonafide offering of goods and services.

t. That the respondent is also assumed to have knowledge of the state owned life insurance entity i.e Life Insurance Corporation of India (LIC) being a well-known entity of the Government of India. It is therefore submitted that by incorporating the letters 'LIC' in addition to the misspelling of the Complainant's trademark 'POLICY BAZAAR' the Respondent is attempting to associate with and ride upon the goodwill of not only the Complainant but also of the state owned organization Life Insurance Corporation of India (LIC) and upon the confusion being caused as a result of the two brands being used together. That such malafide adoption of the marks 'LIC' and of the Complainant would amount to immense confusion amongst consumers who would mistakenly assume the Complainant's service with the Respondent's and would also mistakenly associate LIC with the Complainant. It is pertinent to note that the Respondent through the impugned website is soliciting business for sale of insurance policies. In view thereof, the adoption and use of the impugned domain name www.licpolicybazar.co.in for commercial purposes by the Respondent cannot be termed as bonafide offering of services.

u. It is further submitted that the Respondent is not commonly known by the mark/domain name 'LIC POLICY BAZAR' or www.licpolicybazar.co.in. That LIC is a state owned insurance corporation dealing in life insurance since the year 1956. That the Complainant herein has been providing insurance solutions under the trademark POLICYBAZAAR uninterruptedly since the year 2008. That the respondent has created the impugned domain name only on 13th January, 2015. That the company formation information of the respondent shows that the respondent company was formed on 2nd April 2014. That the Respondent is presumed to be well aware of the Complainant's mark 'POLICY BAZAAR' and it's well established reputation which led to the mala fide adoption of a deceptively similar domain name. That as the Respondent has adopted the domain name to associate itself with the Complainant & LIC, it cannot be said to have been carrying any bona fide business and is therefore not commonly or distinctly known in the market under such name.

v. It is submitted that the use of a domain name LICPOLICYBAZAR.CO.IN by the Respondent that is identical and/or confusingly similar to the complainant's trademarks providing the same services as of the Complainant, is not a bona fide use as the disputed domain name serves as a "bait" to attract customers to Respondent's website.

w. That the intention of the usage of the 'POLICYBAZAAR' mark and the third party mark of "LIC" is to confuse the Internet users into believing that they have assessed a website which is under the control of either of the two reputed organizations. Therefore, the same does not create a legitimate interest for the usage of the domain name and cannot be a bonafide offering of goods and services.

x. It is submitted that the Respondent is carrying on commercial activity under the domain name www.licpolicybazar.co.in whereby it offers information on various products and services pertaining to life insurance policies similar to the business of the Complainant's website.

y. The Complainant further submitted that Complainant's POLICY BAZAAR mark is a well known and the Respondent is presumed to have knowledge of the Complainant's mark at the time of registration of the domain name www.licpolicybazar.co.in wholly incorporating the Complainant's mark. The subsequent adoption of the aforesaid mark by the Respondent within its domain without the permission or authorization of the Complainant is prima facie evidence of the Respondent's bad faith use and registration.

z. It is further submitted that despite having prior knowledge as well as notice of the Complainant's existing domain name, the Respondent still registered the impugned domain name primarily to divert internet users or consumers from the Complainant's website and attract commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or location.

5) Respondent

The Respondent has not filed any formal response to the Complaint though they were given an opportunity to do so. Through, their informal response, the Respondent has provided its consent to transfer of the domain. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by the Complainant in support of use and registration of the mark 'POLICYBAZAR' leads to the conclusion that the Complainant has superior and prior rights in the mark 'POLICYBAZAR'. Thus it can be said a) the web users associate the word 'POLICYBAZAR' with the goods and services of the Complainant b) the web users would reasonably expect to find the Complainant's products and services at the www.licpolicybazar.co.in which is nearly identical to the Complainant's domain and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

(1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'POLICYBAZAR'. The Complainant has in support submitted substantial documents. In my view, the addition of the word LIC which is well-known on its own, does not help distinguish the Respondent's domain name from that of the Complainant's. By using the word LIC as a prefix to the Complainant's domain name, the Respondent is attempting to establish their association amongst the consumers with the Life Insurance Corporation as well as the Complainant.

(2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'POLICYBAZAR' domain name. Further, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his legitimate interest in protecting his own rights and interest in the domain name.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.licpolicybazar.co.in'.

(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any formal response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'POLICYBAZAR' identified with the Complainant's products, therefore adoption of a similar domain LICPOLICYBAZAR for offering same services by the Respondent shows 'opportunistic bad faith'.

7. <u>Decision:</u>

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name 'www.licpolicybazar.co.in' is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name 'www.licpolicybazar.co.in' be transferred from the Respondent to the Complainant.

RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA

May 5th 2016