



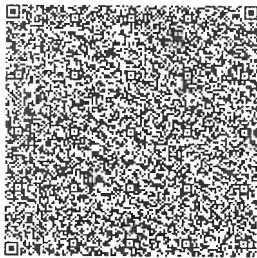
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL84263323415439Q
Certificate Issued Date	: 05-Feb-2018 12:08 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1771894611839458Q
Purchased by	: SUDARSHAN KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SUDARSHAN KUMAR BANSAL
Second Party	: Not Applicable
Stamp Duty Paid By	: SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**.IN Registry**  
(NATIONAL INTERNET EXCHANGE OF INDIA)

**COMPLAINANT**  
MAN Truck & Bus, AG,

Vs.

**RESPONDENT**  
Abhimanyu Sikarwar

**ARBITRATION AWARD**

**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
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*S. K. Bansal*

**.IN Registry**  
(NATIONAL INTERNET EXCHANGE OF INDIA)

ADMINISTRATIVE PANEL DECISION  
SOLE ARBITRATOR: SUDARSHAN KUMAR BANSAL

INDRP Case No.958

**COMPLAINANT**

MAN Truck & Bus , AG,  
Recht –Marken, Designs and Brand Protection (FL),  
Dachauer Str.667  
Munchen -80995  
Germany

Vs.

**RESPONDENT**

Abhimanyu Sikarwar  
105 Sahar Cargo Estate  
JB Nagar, Andheri East,  
Mumbai-400 059  
E-Mail : [mantrucks00@gmail.com](mailto:mantrucks00@gmail.com)  
[postmaster@mantruckandbus.co.in](mailto:postmaster@mantruckandbus.co.in)

**ARBITRATION AWARD**

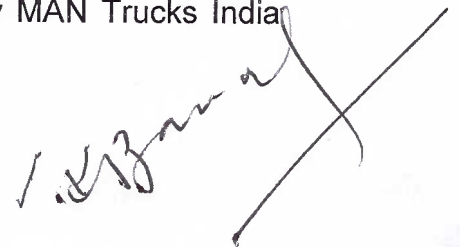
1. The Complainant is aggrieved by the Respondent's registration of the domain name [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in) registered through the sponsoring Registrar GoDaddy.com LLC (R101-AFIN) and has accordingly made this Complaint seeking the relief that this domain name [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in) (disputed domain name and/or impugned domain name in short) be transferred to the Complainant.

*S.K. Bansal*

2. The Complainant has preferred this Complaint on the basis of its claimed proprietary rights in its MAN and variants and labels trade marks, MAN TRUCK AND BUS trade name and various MAN formative domains including the domain mantruckandbus.com on the following averments in gist :-

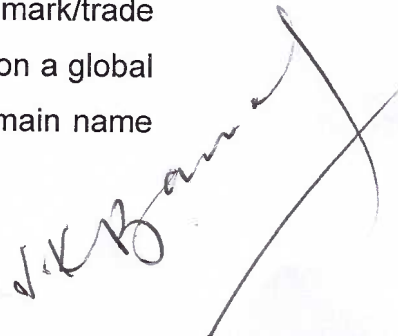
2.1 The Complainant MAN SE (formerly MAN AG) is the parent company of the MAN Group is one of Europe's leading manufacturers of commercial vehicles, engines and mechanical engineering equipment with annual revenue of approximately € 14.3 billion (2015) and around 55,000 employees worldwide (2015). The Complainant supplies trucks, buses, diesel engines and turbo machinery as well as turnkey power plants and its divisions hold leading positions in their respective markets. The Complainant claims to have an iconic corporate existence of more than 250 years. The MAN Truck & Bus AG (formerly MAN Nutzfahrzeuge AG) is subsidiary of the Complainant. The Complainant has a glorious history dating back to the year 1758.

2.2 The Complainant enjoys worldwide use, reputation, goodwill and commercial activities, advertisements and sales under its trade mark MAN, its variants and labels as well as of the trade name bearing the word/mark MAN TRUCK and BUS of its subsidiary and MAN formative domain names (collectively MAN trade mark/trade name/domain name for short) in relation to its business of manufacture and trade of a wide variety of goods which include trucks, buses, diesels and other engines and turbo machinery and to have noticeable commercial presence in India. The Complainant has been exporting its vehicles to more than 120 different countries, has joint ventures with local companies in India besides other countries, has vide activities in R&D, business relations and operations in India through its Indian subsidiary MAN Trucks India



Pvt. Ltd., through which it began its operations in India in the year 2006, state of art manufacturing facilities world over and in India and of the Complainant's various products being extensively used in India between the years 1958 until 1964 as part of cooperation between India and Germany under an Agreement dated 11.09.1958 entered into between the President of India and the Complainant's predecessors in-title. The Complainant claims about 75,000 units of its trucks in various configurations to be produced by 1996 in India and of its Indian subsidiary to have sold over 25000 trucks since its start of operations in India in the year 2006. The Complainant has pleaded of its being extensively advertising and carrying on its business through its trade mark MAN and variants through its various websites like [www.man.eu](http://www.man.eu), [www.truck.man.eu](http://www.truck.man.eu), [www.mantruckandbus.com](http://www.mantruckandbus.com) and [www.mantrucksindia.com](http://www.mantrucksindia.com) having global and Indian access. The Complainant has pleaded to have earned operating profits of about Euro 416 million in the year 2016 as against Euro 205 million in the year 2015. The Complainant claims to hold trade mark registrations for its MAN and MAN variant trade marks to be registered in India under various numbers as also of its ownership of various domain names consisting of the trade mark MAN under TLDs .EU, .com, .in, .co.in and to be having an enormous presence on the internet accessible through its said domains.

2.3 In gist the Complainant has pleaded the trade mark MAN and variants to be a valid trade mark of the Complainant ; of its trade name rights in the trade name MAN TRUCKS AND BUS being an essential feature of the trade name of its subsidiary; and of its various domains bearing the word/mark MAN as its dominant feature including the domain name [mantruckandbus.com](http://mantruckandbus.com) and under which trade mark/trade name/domain name it has been carrying on its said business on a global scale including in India and which trade mark/trade name/domain name





enjoy, global distinctiveness, goodwill and reputation and which are a source and quality indicator of its goods and business.

3. The Complainant is aggrieved by the Respondent's rival domain name www.mantruckandbus.co.in (the impugned domain name) which according to the Complainant is identical and/or deceptively similar to the Complainant's said MAN and MAN formative trademarks/trade name/domain name and being used by the Respondent for the same/similar goods/services to those of the Complainant. According to the Complainant, the Respondent has been using its impugned domain name and carrying on its impugned goods and business over its website accessible under the impugned domain name. According to the Complainant, the Respondent has no right, title or interest in the impugned domain name which, in addition, is in bad faith and in violation of the Complainant's said rights. According to the Complainant, the rival Respondent by the disputed domain name seeks to trade upon the immense goodwill and reputation of the Complainant in the Complainant's said MAN and MAN formative trademarks/trade name/domain name to make illegal pecuniary gains and to encash upon the goodwill and reputation associated with the Complainant's MAN and MAN formative trade mark/trade name/domain name. According to the Complainant, the Respondent's impugned domain name is without the authority, leave and license of the Complainant and by its use, loss and injury would be caused to the Complainant, its business and to the strength & standing in its said MAN and MAN formative trademarks/trade name/domain name. The Complainant claims the Respondent's rival impugned domain to be an act in bad faith and in which the Respondent has no legitimate rights or interests and actuated by the Respondent malafide to mislead innocent customers and perspective clients and/or thereby cause an unjust association or connection with the Complainant.

*IX Bannu*

The Complainant's alleges the Respondent to be a cybersquatter. The Complainant has filed this Complaint seeking the transfer of the disputed domain name to the Complainant.

4. In support of its rights and use the Complainant has made numerous pleadings and filed documents as **Annexure-A to G** which would be dealt with in so far as they relevant in the course of this Award.

5. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws; rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives as well as to the Respondent. The .IN Registry served upon me the physical set of the entire Complaint paper book which was received by me through courier on 30.01.2018.

6. Thereafter, I (Arbitral Tribunal) issued a notice to the Respondent vide E-mail dated 02.02.2018 with the copy of the Complaint and documents wherein the Respondent was notified about my appointment as the Arbitrator and was given an opportunity to submit its written response to the Complaint stating its defence together with documents supporting its position within ten (10) days thereof. In the notice it was also specified that in the event of default this Tribunal would proceed and decide the Complaint in accordance with law. The copy of the said notice was also sent to the authorized representative/counsel for the Complainant.

7.1 The Respondent never responded to the said notice nor filed its response/defence. However the Complainant through its Ld. Counsel

*Subarna*

addressed E-mails dated 06.02.2018 and 13.02.2018 to this Tribunal informing that the Respondent is willing to transfer the subject matter domain to the Complainant and sought to know the transfer procedures.

7.2 On receipt thereof this Tribunal issued a E-mail notice dated 20.02.2018 upon the Complainant and the Respondent bringing to their notice the terms of the aforesaid E-mails of 06.02.2018 and 13.02.2018 and with the stipulation that the Complainant and/or the Respondent may file the assignment/transfer deed or any other document under which the Respondent has transferred/assigned the impugned domain alongwith supporting affidavits for consideration of this Tribunal. In the said Notice it was also mentioned that the Respondent despite notice dated 02.02.2018 has not filed any reply and a further period of ten (10) days was granted to the Respondent to so file its reply/defence with documents.

7.3 Thereafter the Complainant through its Ld. Counsel vide its E-mail of 23.02.2018 served upon this Tribunal a soft copy of the notarized affidavit on NJ stamp paper of Rs.100/- executed by the Respondent as partner of a firm namely Ottoedge Services LLP as the assignment document and the original thereof was sent to this Tribunal by the Complainant's Ld. Counsel through its letter dated 26.02.2018. This affidavit has been signed and notarized on 22.02.2018.

7.4 On receipt thereof this Tribunal addressed a E-mail Notice dated 27.02.2018 upon the Complainant and the Respondent bringing to their notice the receipt of the aforesaid affidavit and further that the affidavit has been purportedly executed by a partnership firm of Ottoedge Services LLP through Abhimanyu Sikarwar in its capacity as a partner thereof and that the said partnership was neither arrayed as a

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Respondent in the Complaint and that as per the WhoIS search result filed as Annexure-A to the Complaint the said Abhimanyu Sikarwar is the Registrant and administrator of the impugned domain name in his individual capacity. Accordingly in the said notice the following clarifications were sought within a period of seven (7) days :-

(a) Whether the Assignment document and the executed Affidavit attached with the afore-referenced E-mail of 23.02.2018 are the same ?

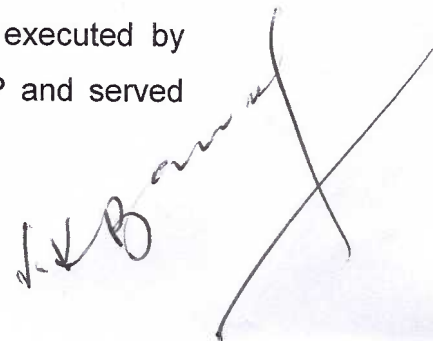
(b) Whether the said Affidavit of Abhimanyu Sikarwar can be accepted and acted upon by this Tribunal ?

7.5 This notice of 27.02.2018 was replied to by the Complainant through its Ld. Counsel vide its E-mail of 28.02.2018 addressed to this Tribunal wherein the Ld. Counsel confirmed Ottoedge Services LLP to be a partnership firm wherein Abhimanyu Sikarwar is the Managing Partner and the said Affidavit sent to this Tribunal vide the E-mail of 23.02.2018 be considered as a formal Assignment and which affidavit be taken on record and suitable orders be passed.

8. The Respondent by itself neither responded to any of the notices issued upon it by this Tribunal and nor filed any reply/response/defence to the Complaint.

9. In the aforesaid facts and circumstances and in light of the material on record I now proceed to adjudicate this Complaint.

10. As noticed above the Complainant has sought to rely on the afore noticed signed and notarized Affidavit dated 22.02.2018 executed by Abhimanyu Sikarwar as partner of Ottoedge Services LLP and served

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upon this Tribunal by the Ld. Counsel of the Complainant vide its E-mail of 23.02.2018 and original vide its letter of 26.02.2018. For the ease of adjudication the material part of the said affidavit is reproduced hereunder :-

BEFORE THE IN REGISTRY  
NATIONAL INTERNET EXCHANGE OF INDIA  
NEW DELHI

Disputed Domain Name: [ [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in) ]

IN THE MATTER OF:-

MAN Truck & Bus , AG,  
Recht –Marken, Designs and Brand Protection (FL),  
Dachauer Str.667  
Munchen -80995  
Germany

... Complainant

Abhimanyu Sikarwar  
105 Sahar Cargo Estate  
JB Nagar, Andheri East,  
Mumbai-400 059

... Respondent

**AFFIDAVIT**

I, Abhimanyu Sikarwar, S/o Pooran Singh Sikarwar, aged about 37 years, Designated Partner of M/s Ottoedge Services LLP, having office at 105 Sahar Cargo Estate, JB Nagar, Andheri East, Mumbai-400 059, do hereby solemnly affirm and state on oath as under:-

1. That I am the Designated Partner of M/s Ottoedge Services LLP, having office at 105 Sahar Cargo Estate, JB Nagar, Andheri East, Mumbai-400 059 and well conversant with the facts of the case and I am competent and authorized to swear this affidavit.

2. That my entity M/s Ottoedge Services LLP, had applied for and got registered, a domain name i.e. [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in) with GoDaddy.com in good faith, upon instruction and receipt of Purchase Order from M/s

*Handwritten signature: I K B...*

MAN Trucks India Private Limited, the wholly owned subsidiary of the Complainant.

3. That I have made an application for transfer of the domain name i.e. [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in), which is registered with GoDaddy.com, in favour of the Complainant.

4. That the process of transfer of domain name in favour of the Complainant has already been initiated and a confirmation in this regard is awaited from GoDaddy.com.

5. That I state that, upon receipt of confirmation from Godaddy.com regarding the transfer of domain name in favour of the Complainant, the same shall be filed before in Registry.

6. That the contents and the facts stated in paragraphs 1 to 5 hereinabove are true and correct to the best of my knowledge and nothing is concealed therefrom.

Hence this Affidavit

Place: Mumbai  
Date: 22.02.2018

Sd/-  
Abhimanyu Sikarwar  
Designated Partner  
M/s Ottoedge Services LLP

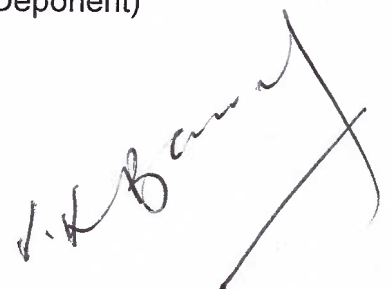
### VERIFICATION

I, the above named deponent hereby verify that the contents of my above deposition are true to the best of my knowledge and no part of it is untrue and nothing has been concealed therefrom.

Verified at Mumbai, this 22<sup>nd</sup> day of February, 2018

Seal/Stamp Notary

Sd/-  
Abhimanyu Sikarwar  
(Deponent)



11. Even if it was to be taken that the said Affidavit is an act in writing and has been accepted by the Complainant sub silento [Bharat Petroleum Corporation Ltd., Vs. The Great Eastern Shipping Co. Ltd., - (2008) 1 SCC 503] or through its E-mail dated 28.02.2018 addressed to this Tribunal even if the Complainant has not signed it, the said Affidavit cannot be accepted as an "Assignment" in favour of the Complainant of the disputed domain name in the present proceedings. This is so for the following reasons :-

(a) An "Assignment" has a distinct connotation in law and in gist is a transfer of ownership in the domain name whereby in result the Assignee stands in the shoes of the Assignor having acquired its rights titles and interests in the domain and where after the Assignor ceases to have any right or interest in the subject matter domain name [See Gopal Saran vs. Satyanarayan AIR 1989 SC 1141 ; Intellectual Property Law Lionel Bently Brad Sherman 3<sup>rd</sup> Edition Para 3.2 Page 962]. Fundamental to the Assignment is that only the owner of the subject matter domain can assign the domain either by itself or under its authority and not anybody else as no one can convey a title that it does not have.

(b) As per the WhoIS search result Annexure-A to the Complaint the owner/Registrant and administrator of the disputed domain name is Abhimanyu Sikarwar. It is this WhoIS search result that has been relied upon in the Complaint and on which the Complaint cause has been based. This Abhimanyu Sikarwar has been impleaded as the Respondent in the Complaint.

(c) As per the said Affidavit a partnership firm by the name of M/s Ottoedge Services LLP (said partnership for short) had applied for and

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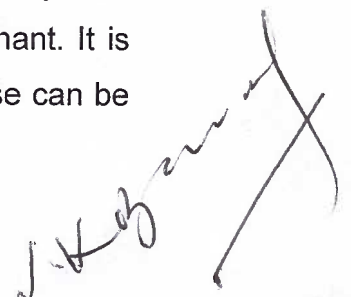
got registered the impugned domain name. It is this alleged partnership that has sought to assign the disputed domain name through Abhimanyu Sikarwar as its alleged partner. A bare perusal of the said Affidavit reveals the said Abhimanyu Sikarwar to have so sworn and executed the said Affidavit in his capacity as a partner of the said partnership.

(d) This partnership firm is a stranger to the Complaint and the Complaint cause and is even not a party to the Complaint. The Complainant has not sought the impleadment of this partnership despite acknowledging the existence and factum of the said partnership in its E-mail of 28.02.2018 addressed to this Tribunal. This partnership is even a stranger to the WhoIS search report **Annexure-A** on which the Complaint cause has been based in as much as the said WhoIS search report makes no mention of this partnership.

(e) In the Complaint Abhimanyu Sikarwar has been impleaded in his individual capacity and purportedly on the basis of the WhoIS search report **Annexure-A** which itself makes no mention or reference to the said partnership.

(f) Proceeding purely on the basis of the Complaint allegations and WhoIS report the said partnership is not the owner of the disputed domain and consequently it could not have made the Assignment. While the owner of the disputed domain as per the Complaint and the WhoIS report is Abhimanyu Sikarwar and this Abhimanyu Sikarwar has not made any such assignment in his individual capacity.

12. Consequently the said affidavit cannot be accepted by this Tribunal as an assignment conveying rights upon the Complainant. It is trite law that there must be a valid assignment on which a cause can be

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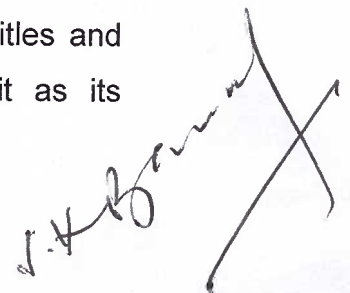
based. [Duli Chand Vs. The Registrar of Trade Marks & Anr., 18 (1980) DLT 478].

13. Nevertheless the said Affidavit can be construed for the collateral purposes of ascertaining the character of the disputed domain i.e., whether it is individual property, partnership property, joint property or otherwise and as an admission of the Respondent in respect thereto [See R. Selvaraj vs. R. Radhakrishna Pillai AIR 1976 Madras 156 ; Inder Lal Vs. Abdul Salam AIR 1983 Rajasthan 57]. So construed the said Affidavit, signed and executed by the Respondent even though in his capacity as a partner clearly reveals that the Respondent Abhimanyu Sikarwar at least in his own individual capacity did not and does not have and nor had any rights titles or interests in the disputed domain. Having no such rights titles or interests this Respondent Abhimanyu Sikarwar could not have taken the impugned registration of the impugned domain name in his individual name as its registrant and administrator with the sponsoring Registrar.

14. Construing the said Affidavit in its gist and substance it is apparent that even the said partnership of Ottoedge Services LLP had no rights in the impugned domain name.

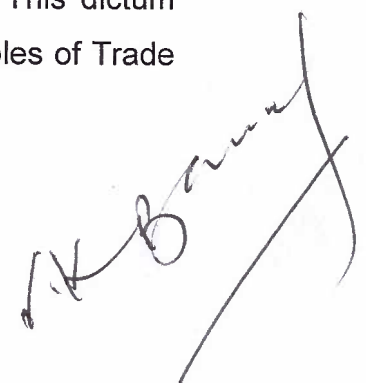
15. In addition, the Respondent's so registering the impugned domain name in his individual name and as its administrator with the sponsoring Registrar and the factum of the impugned domain name and its adoption alleged use and registration with the sponsoring Registrar is an act in bad faith amounting to malafide and fraud apparent from the following :-

(a) The Respondent despite knowing that it had no rights titles and interests in the impugned domain name despite filed for it as its



registrant and administrator with the sponsoring Registrar and so obtained the same in his individual name apparent from the WhoIS search report **Annexure-A**. It can reasonably be presumed that the Respondent did not make the right disclosures before the sponsoring Registrars and had misrepresented.

(b) The Complainant has placed on record as **Annexure-B** a print out of the web page obtained from the Respondent's website accessed from the impugned domain name. On this web page a preference is given to the person accessing this webpage as to whether he would like to buy this domain and at a price and a link is provided to go to the subordinate page where such information leading thereto can be obtained. A perusal of this **Annexure-B** clearly reveals the Respondent to be a cyber-squatter/cyber pirate and to be trafficking in the disputed domain name and whose only interest in the disputed domain name is to derive illegal money from its sale. "Cyber-piracy" has been defined as "the act of registering a well-known name or mark" (or one that is confusingly similar) as a website's domain name, usually for the purpose of deriving revenue" [**See The BLACKS LAW DICTIONARY 444 (9<sup>th</sup> Ed. 2009)**] while trafficking has been recognized by the Hon'ble Supreme Court of India in its decision of **American Home Products Corporation vs. Mac Laboratories Pvt. Ltd. reported in AIR 1986 SC 136** as a "cardinal sin" of Trade Mark law. In the very same judgment the Hon'ble Supreme Court has held trafficking to involve obtaining registration of Trade Marks without any intention to use it in relation to any goods but merely to make money out of it by selling it to others the right to use it. This dictum applies equally to domain names as the fundamental principles of Trade Mark Law apply to domain name dispute.



(c) The Respondent was always aware and/or deemed to be aware of the Complainant rights titles and interests in the Trade Mark MAN and trade name MAN TRUCK AND BUS at the time he sought the registration of the impugned domain name with the sponsoring Registrar. This is apparent from the said Affidavit itself wherein in para 2 whereof it has been stated that the application for registration of the impugned domain name was made upon instructions and receipt a purchase order from the wholly owned subsidiary of the Complainant and allegedly "in good faith". As such the Respondent was aware of the Complainant and its subsidiary prior to making of the application.

(d) No explanation has been furnished by the Respondent on its adoption of the impugned domain and seeking its registration with the sponsoring Registrar. This is more so as the Complainant's said MAN trade mark and trade name of its subsidiary is a unique and arbitrary combination respectively. The Respondent even otherwise must have possessed prior knowledge of the concepts of e-commerce and online markets actuated through the internet medium triggered through domain names. That being so the Respondent would have been aware of the Complainant and the Complainant's business activities which do enjoy commercial presence and visibility including over the internet. The Respondent's impugned adoption of the impugned domain and seeking its registration is tainted at inception having being deliberately so done with the view to make illegal gains and profits.

16. The Complainant has been able to establish its rights in the trade mark MAN and its various variants and formative labels ; trade name MANTRUCKANDBUS and its MAN formative domains This is established from the following :-

*V. B. Bannu*



(a) Trade Mark registrations filed as Annexure-F Colly, which consist of registrations under Trade Mark Nos.193046 in class 7, 193048 in class 12, 515029 in class 12, 515031 in class 12, 515032 in class 7 and 1826690 in class 12. The earliest such registration under No.193046 in class 7 date backs to the year 28.10.1959 with the user claim of 01.01.1924.

(b) In addition the Complainant has placed on record as Annexure-D Colly, being advertisements in media including electronic media, business reports from various journals highlighting the Complainant's activities, business, accreditations, products, credentials, achievements and participations in motor shows. All this is with reference to the trade mark MAN, its variants and labels. Some such write-ups are in the magazine-Buses, Bus world Mumbai 2015 ; on the web page accessible from the search engine Google, ; in the Newspaper The Hindu published from 22.10.2016. The Complainant has also placed on record as Annexure-E the search results procured from the search engine google.com leading to the web pages of the Complainant obtained by use of the keyword MAN. The aforesaid establish the Complainant and its business activities to have noticeable presence and visibility in the physical and cyber markets and of the market and trade to be aware thereof.

(c) The Complainant's Complaint allegations of its proprietary rights, worldwide and Indian use, goodwill, reputation, distinctiveness, registrations, public association and all benefits attached to the said MAN and MAN formative trade marks and domains, MANTRUCKANDBUS trade name have not being rebutted to by the Respondent despite sufficient opportunity being granted. The Complainant in addition can legitimately claim trade name rights in the

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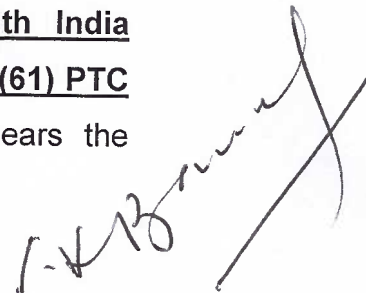


trade name of its subsidiary as the Complainant and its subsidiary constitute a single economic unit [George V. Records, SARL vs. Kiran Jogani 2004 (28) PTC 347 (Del)].

17. In the considered view of this Tribunal the word/mark MAN as well as the trade name MAN TRUCK AND BUS is an extremely arbitrary trade mark and trade name in relation to the aforesaid goods and business of the Complainant. The trade name MAN TRUCK AND BUS is an extremely arbitrary combination of three ordinary words giving to the resultant trade name a distinct connotation. As such the trade mark MAN as well as the trade name MAN TRUCK AND BUS can be construed to be inherently strong and distinctive trade mark and trade name respectively.

18. Per contra the rival disputed domain name as per the WhoIS search result being Annexure-A is registered with the Respondent as of 11.07.2017 with the sponsoring Registrar GoDaddy.com LLC (R101-AFIN). This is much subsequent to the afore noticed trade mark registrations of the Complainant.

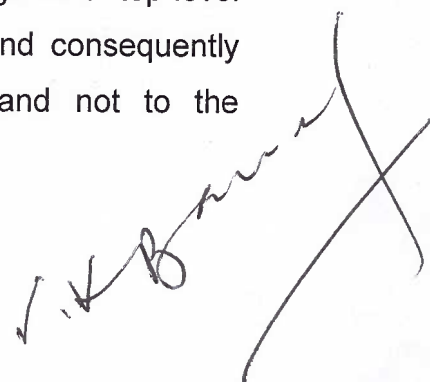
19. In the considered view of this Tribunal the disputed domain name is identical with and deceptively similar to the Complainant's prior and well established trade mark MAN as well as the trade name MAN TRUCK AND BUS. The word/mark MAN is an essential dominant and distinguishing feature of the disputed domain name. It is with reference to the word/mark MAN that the disputed domain name would be remembered or accessed to by an average consumer who may or may not remember the full disputed domain name. [See South India Beverages Pvt. Ltd., vs. General Mills Marketing Inc., 2015 (61) PTC 231 (Del) (DB)]. In addition the disputed domain name bears the



essential feature of the trade name of the Complainant's subsidiary MAN TRUCK AND BUS AG. The nature of goods and services being offered on the website accessible through the impugned domain name as per the screenshots and print out obtained there from and filed as Annexure-B relate to vehicles being the related links offered on the webpage accessible there from.

20. Thus having regard to the close similarity of the impugned domain name to the MAN trade mark/domain and to the trade name MAN TRUCK AND BUS and of the goods and business there under the market and trade would definitely take and construe the rival domain to be an extension or part of the Complainant's MAN trade mark and MAN BUS AND TRUCK trade name or in some way related, sponsored, affiliated, associated or connected thereto. Consequently, this Tribunal is of the considered view that by the impugned domain and its use whether present or prospective an unjust association would be formed between the Complainant and the Respondent leading to market and consumer deception. [See Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 (16) PTC 142 Del (DB) ; Ravenhead Brick Company Ltd., Vs. Ruaborn Brick & Tera Cotta Co. Ltd., (1937) 54 RPC 341 (Ch.D) ; Semigres TM (1979) RPC 330].

21. A consumer or internet user seeking to access the Complainant or its services by erroneously or inadvertently suffixing the "second level" domain name i.e., MAN and MAN TRUCK AND BUS with the ccTLD (country code top-level domain) .in or the gTLD (generic top-level domain) .co.in. would be misled to the Respondent and consequently would be deceived by reaching somewhere else and not to the Complainant as it had intended.



22. On reaching the Respondent such consumer would find the same nature and business as that of the Complainant. Such a consumer would not get what he intended and instead would be deceived and would adversely relate the impugned website to the Complainant or do business in the impugned website.

23. Besides the Complainant would have no hold on the Respondent or its licensee/assignee impugned domain name usage and would always suffer by any inferior quality of services being rendered by them thereunder. The Complainant's goodwill and reputation would be left in the hands of the Respondent or a third party over whom the Complainant would have no control. **[See Baker Hughes Limited Versus Hiroo Khushalani 1998 (18) PTC 580 (Del)].**

24. All these violative acts of the Respondent through the impugned domain would perpetually and irreparably not only tarnish the business of the Complainant but also diminish, erode and eclipse the distinctiveness attached to the Complainant's registered and prior adopted and prior in use trade mark and domains MAN and trade name MAN TRUCK AND BUS.

25. In my considered view the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its MAN and MAN formative trade mark, domains and MAN TRUCK AND BUS trade name. The Respondent has not traversed nor challenged the Complaint facts against him. Such a non-traverse has to be taken against the Respondent **(Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740).**

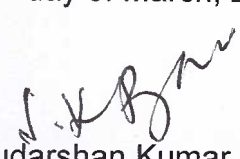
*J. K. Bawa*

26. Trade Marks, trade names and domains have been accepted to be valuable business assets to be protected against their wrongful adoption and use as rival domains and such violations have to be removed in the interest of the right holder as also of the consumers.

27. In the aforesaid view of the matter I have no reservation in holding that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name [www.mantruckandbus.co.in](http://www.mantruckandbus.co.in) be transferred to the Complainant.

Signed at New Delhi, India on this 15<sup>th</sup> day of March, 2018.

  
Sudarshan Kumar Bansal  
Sole Arbitrator