

RAVI
rr,
Janakpuri.
New Delhi. 110058.

**THE RESPONDENT /
THE REGISTRANT**

**IN THE MATTER OF DISPUTED DOMAIN NAME: - 'MANYAVAR.IN'
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.**

SOLE ARBITRATOR

**DELIVERED ON THIS 10th DAY OF OCTOBER TWO THOUSAND
SIXTEEN AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- | | |
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| 01. Names and addresses
Of the Complainant: - | Vedant Fashions Pvt. Ltd.
Paridhan Garment Park,
No.19, Canal South Road,
SDF-1, 4th Floor, A-501-502
KOLKATA. 700015. |
| Through its authorized
representatives | Sudarshana Sen-Mitra
D.P.Ahuja & Co.
14/2, Palm Avenue
Kolkata. 700019. |
| 02. Name and address of
The Respondent: - | Ravi
rr
Janakpuri, New Delhi. 110058. |

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	20.09.2015
02	Hard copy of complaint received	24.09.2016
03	Notice of Arbitration issued with the instructions to the Respondent to file reply latest by 04.10.2016	24.09.2016
04	No reply filed by the Registrant / Respondent and hence suo-motu extension upto 08.10.2016 of time granted by Arbitrator	05.10.2016
05	No reply filed by Registrant / Respondent even within extended period and hence Notice of Closure of Arbitration was issued	10.10.2016
06	Award passed	10.10.2016

II PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is 'MANYAVAR.IN'.
2. Date of registration is 11.06.2013
3. Registrar is Endurance Domains Technology Pvt. Ltd. (R 173 - AFIN).

III PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. Arbitration proceedings were carried out as per INDRP read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
02. The parties were requested to expedite their submissions so as to enable this panel to pass award within the 60 days time frame prescribed.
03. Copies of all communications were marked to both the parties and NIXI.
04. No personal hearing was requested / granted / held.

III SUMMARY OF THE COMPLAINT: -

The Complainant's Complaint is based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF PARA (3), (4) AND (6) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP) :-

1. The Complainant states that the domain name registered by the Respondent is MANYAVAR.IN which is both similar and identical to the registered trademark 'MANYAVAR', of which the Complainant is the registered owner. In India the Complainant has registered / applied trademarks in class 25, 35 & 14 on 30.01.2002, 14.01.2009 & 27.11.2014. The Complainant has produced certified copy of registration certificate in respect of the registered trademark 'MANYAVAR' no. 1076837 dated 30.01.2002 and renewed on 30.01.2012.
2. Apart from above, the Complainant owns about 22 domain names either directly or beneficially, incorporating the word MANYAVAR in India and abroad, including countries like U.K. and including the suffix .com, .net, .info, .biz, .org., .co, .store, .salon, . online, .wedding etc. The complainant also states that it has initiated trademark infringement and passing off cases against the registrants of the domains 'manyavar.co.in', 'manyavarblr.com' and 'manyavarjewellers.com'.
3. The trade name 'manyavar' has been in continuous and extensive use at least since 01.07.1999 by late Deoki Nandan Modi of whom Mr.Ravi Modi, is the founder and Managing Director of the Complainant.

4. The Complainant, formed in 2002, is engaged in the business of high-end readymade fashion apparels and accessories. It has a production capacity of 30 lakhs units annually. It has more than 350 exclusive stores across 160 cities in India. It has also international stores in U.A.E., U.S.A., Bangladesh, Nepal and Saudi Arabia.
5. The disputed domain name includes the Complainant's registered trademark 'manyavar' in its entirety. It is identical and / or confusingly similar to the trademark and trade name and several websites of the Complainant.
6. The Complainant has relied upon the decided case of *ITC Ltd. V/s Travel India*, Case No. INDRP/065 for this purpose.

(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 3(b)(vi)(2) OF INDRP RULES READ WITH PARA 7 :-

The Complainant has legitimate interest in the disputed domain name MANYAVAR.IN, since the Complainant has registered the mark 'manyavar' which is adopted in the disputed domain name in its entirety. The Registrant / Respondent has provided incomplete and false registrant details relating to the disputed domain name. The Complainant has never assigned, granted, sold, licensed, transferred or in any way authorized the Respondent to use the distinctive mark 'manyavar' or to register the disputed domain name. The disputed domain name does not support a legitimate and functional website of Respondent. The website address initially directs internet users to unrelated pages and finally to a parking page which contains pay-per-click advertisements and misleading links unrelated to the Complainant. Monetized domain parking without the domain name being associated with any e-mail or website service can not be said to be bona-fide and active use of the domain.

Immediately after acquiring the disputed domain name, the Respondent had contacted the Complainant and declared his intention to sell the disputed domain name on sale for monetary consideration.

In support of his contentions the Complainant has relied upon the decision in *American Home Prod. Corp. V/s Malgioglio*, WIPO Case No.D2000-1602 and *Vestel Elektronik Sanayi ve Ticaret AS V.s Mehmet Kahveci*, WIPO case no. D2000-1244.

(C) REGISTRATION AND USE IN BAD FAITH: -

The complainant alleges that the Registrant, after registering the disputed domain name on 11.06.2013, approached the Complainant with a proposal to sell the same to the Complainant, vide his email dated 21.06.2016. The Complainant's trademark attorneys offered Respondent Rs.10,000/- plus reimbursement of his costs towards registration and renewal of the domain name. The Respondent indicated his unwillingness to transfer the domain name at this price. Thereafter the negotiations failed. By stating this sequence

of events, the Complainant claims that the Registrant was fully aware of 'manyavar' trademark and brand name and value of the disputed domain name.

The Complainant also alleges that on 16.07.2016 the Complainant announced opening of its Manyavar-Moohey store in North Brunswick Township, New Jersey, USA. Immediately on 3.08.2016 the Respondent acquired 'manyavar.us' and promptly put the domain name on auction page on GoDaddy.com, for sale for US \$3000 with the Reserve Price of INR 2,00,000/-. The Complainant further alleges that the Respondent has also registered domains like 'abusandeep.in', 'rituberi.in', 'rinadhaka.in', which are named after the well known fashion designers. By this information the Complainant suggests that the Registrant is habitual cyber squatter, which further proves the bad faith of the Respondent in registering the disputed domain name.

From the time of its acquisition till date of filing of complaint, the Respondent has not made any legitimate use of the disputed domain name. Non-use and passive holding are evidence of bad faith registration. In support of this argument, the Complainant has relied upon the decided case *HSBC Holdings Plc V/s Hooman Esmail Zadeh, Case No. INDRP 032*.

Rejecting the Complainant's fair offer for compensation against the transfer of the disputed domain name again proves the bad faith of the Respondent in registering the disputed domain name. The Complainant has cited decided case of *ITC Ltd. V/s Travel India - INDRP 065 in its support*.

The Complainant has also stated that an act of providing knowingly incomplete and inaccurate details regarding the Registrant's address, contact etc., at the time of registering the domain name, itself is intended to avoid legal repercussions and is in bad faith.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the disputed domain name to it.

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In reply to the complaint, the Registrant / Respondent has NOT filed any reply / say, even within the extended period.

VII] REJOINDERS OF THE PARTIES: -

Since the Registrant / Respondent has failed / neglected to file any reply / say, no rejoinder was called for.



VIII] MERITS OF THE COMPLAINT: -

The Registrant / Respondent has not filed any say / reply to the complaint or Notice of Arbitration, even within the extended period. Presumably, he has accepted the contents / allegations of the Complaint because no person having lawful rights in the domain name, will keep mum and will not defend his case. The well known legal maxim 'silence amounts to acceptance' is applicable to this case. Based on this premise and on the basis of the Complaint and attachments to it, this Arbitration panel records the following observations: -

(a) The Complainant has registered trademark and websites which include the word 'MANYVAR'. All of them have been in use for several years and much before the registration of disputed domain name by the Respondent.

Against this the Registrant does not have any registered trademark, other similar prior website or any business mark / identity containing the words or part thereof 'manyavar.' He is also not commonly known by these words or any part thereof.

(b) The Respondent's domain name contains the word MANYAVAR. It is a well settled legal position in many decided cases so far that, the mere addition and difference in top level domain name '.in' does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for legitimate business purposes. Much less, he has not cared to even create website with this registered domain name.

(c) It is duty cast by law, on every person aspiring to register any domain name, to first verify if any similarity exists of the domain name proposed to be registered with the existing trademarks, similarity with existing domain names of others, prior use of the domain name by others and INDRP with Rules made thereunder. Ignorance of law is no excuse.

(d) The Registrant has proposed to transfer the domain name for monetary consideration which in the opinion of the Complainant is unreasonable. This very act of the Respondent of offering the domain name for sale for unreasonable amount, establishes his bad faith, mala fides and plans to profit from the goodwill, creditworthiness and reputation of the Complainant.

(f) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights according to the requirement of para 4(a)(i) of the INDRP Rules

(g) The Registrant / Respondent has no rights or legitimate interests in respect of the domain name as required by Para 4(a)(ii) of the Rules.

(h) If use of disputed domain name by the Registrant / Respondent is allowed in future, the same would be offered for sale at unreasonable consideration to the competitors of the Complainant. This would also lead to businesses losses to the Complainant and would also result in damage to the Complainant's goodwill and creditworthiness.

From all above findings, it can be concluded that the Complainant has proved its case for the entitlement to the disputed domain name.

In any case the Respondent has failed / neglected to establish his bona fides, legitimacy, legal rights, prior use of the domain name for lawful purpose or any type of nexus between him and the registered domain name. All this leads to only one conclusion that the Registrant has registered domain name with mala fides and with the ulterior motive of making profits at the disadvantage to the Complainant.


On the basis of my findings on issues and foregoing discussion, I pass the following award: -

[1] The Complainant is entitled to the disputed domain name – 'MANYAVAR.IN' and hence the same be transferred to the Complainant.

[2] The Registrant shall also pay to the Complainant the cost of these arbitration proceedings.

Dated: - 10.10.2016

Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR

