

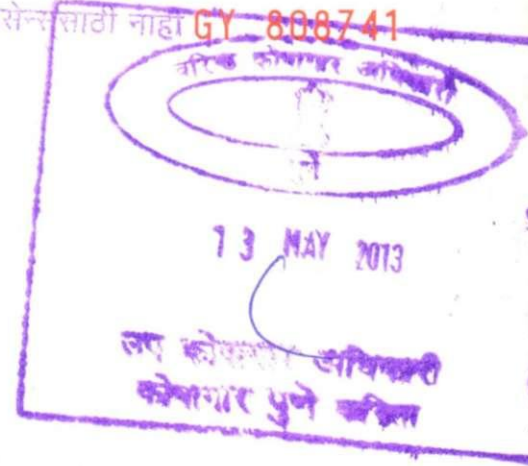
महाराष्ट्र MAHARASHTRA

सदरका मुद्रांक लिफ्ट ऑण्ड लायसेन्ससाठी नॉ. GY 808741

अनुक्रमांक २२५६ दिनांक २०५१२३ रुपये १०००/-
मुद्रांक कोणत्या कारणासाठी वापरण्याचा आहे. डा. २२/१२/१३
मुद्रांक मुद्रांक अधिनियम १९५८ च्या तरतुदीनुसार
मुद्रांक वापरणाराचे संपूर्ण नाव. विनीत विनायकी आगव
संपूर्ण पत्ता. २५४ शांतिवाड, पुणे, महाराष्ट्र
होते व्यक्तीचे संपूर्ण नाव. सुधीर शांतिवाड शांति
पत्ता. A3/१२ सुधीरवाड, पिंपरी, पुणे-४११००९

स्वाक्षरी (मुद्रांक विक्रेता)
(सौ. जयश्री गि. बेलसरे)
परवाना क्र. २२०९०९९/९९९९
परवान्याची मुदत ३१/३/२०
पत्ता. ६२५ ब, शनिवार पेठ, पुणे-४११००९

मुद्रांक प्राप्त्याची होते व्यक्तीची राहणी



**AWARD
IN ARBITRATION**

'NICK.IN'

Viacom International Inc.
1515, Broadway, New York.
NY 10036. U.S.A.

THE COMPLAINANT

AND

Domain Manage Inc.
(Authorised rep. Justin)
75, Wenyi Road, Hangzhou,
Zhejiang, 310000. CN

**THE RESPONDENT /
THE REGISTRANT**

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

SOLE ARBITRATOR

**DELIVERED ON THIS 27TH DAY OF MAY TWO THOUSAND THIRTEEN
AT PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. **Names and addresses**
Of the Complainant: - Viacom International Inc.
1515, Broadway, New York.
NY 10036. U.S.A.
- Through its authorized
representative ALG India Law Offices
30, Siri Fort Road
New Delhi. 110049. India
02. **Name and address of**
The Respondent: - Domain Manage Inc
(Auth. Rep. Justin)
75, Wenyi Road, Hangzhou,
Zhejiang. 310000. CN.
03. **Registrar** Directi Internet Solutions Pvt. Ltd.
04. **Calendar of Major events:**

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	02/05/2013
02	Hard copy of the complaint received and Notice of Arbitration was issued (with the instructions to file say / reply latest by 19/05/2013)	09/05/2013
03	Reminder notice sent (with instruction to file say latest by 23/05/2013)	20/05/2013
05	Notice of closure of arbitration	24/05/2013
06	Award passed	27/05/2013

I] PRELIMINARY: -

- 1) Viacom International Inc., a corporation incorporated under the provisions of the laws of New York, U.S.A., having its principal office at 1515, Broadway, New York, U.S.A. (**The Complainant**) has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**NICK.IN**' (**the disputed domain name / domain name**), through its authorised representative **M/s ALG India Law Offices, 30, Siri Fort Road, New Delhi. 110049, India.**
- 2) The Complainant has disputed the registration of domain name '**NICK.IN**' in the name of **Domain Manage Inc. # 75, Wenyi Road, Hangzhou, Zhejiang, 310000, CN (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 9th May, 2013 with the instructions to file his reply / say latest by 19th May 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, *suo-moto*, the period to file say / reply, if any, latest by 23rd May, 2013. However no reply / say was filed by the Registrant / Respondent, even within the extended period.
03. In view of no reply by the Respondent no rejoinders were called for.
04. Copies of communications were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complainant, founded in 1971, is a leading global entertainment content company across television, motion picture, online and mobile platforms in over 160 countries. It has four channel groups: Music & Logo, Nickelodeon, Entertainment and BET networks. They include Nick Jr, Nickelodeon, Teen Nick, Nicktoons, Nick at Nite MTV, VHI, CMT, LOGO, BET etc.

NICK is a well known mark having international fame and recognition. The Complainant also has worldwide enforceable and exclusive trademark rights in the mark NICK arising out of first adoption, registration, use secondary meaning without prejudice to its inherent distinctiveness. The Complainant also owns a successful record of enforcement of the mark NICK. For instance in Viacom International Inc. V/s Paulo Kann, (WIPO Case No.D2011-0058), Viacom International Inc. V Transure Enterprises Ltd. (WIPO Case No.D2009-1616) wherein disputed domain names containing the word NICK were ordered to be transferred to the Complainant. The Complainant has provided list of such disputed cases successfully won by the Complainant.

The Complaint is based on the following points / issues in brief: -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

-

1. The Complainant is the owner of following registered trademarks: -

Sr. No.	Trademark	Trademark Registration No.	Class
01	NICK	1448911	9
02	NICK	1457180	38
03	NICK	1402017	16
04	NICK	1402025	18
05	NICK	1402032	24
06	NICK	1402039	25
07	NICK	1402045	28
08	NICK	1402050	41

The Complainant has several websites including www.nickindia.com, whereon cartoon and educational shows, online games, free wallpapers e-cards etc. are provided.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF THE COMPLAINANT: -

1. The Registrant's domain name www.nick.in directly uses the trademark / trade name NICK as one of the operative words and this name is identical to that of the registered trademark of the Complainant. The impugned domain name is also extremely similar to the Complainant's international website. The Complainant has no past or present dealings with the Respondent. Therefore ordinary internet users are likely to be confused by the presence of the impugned domain name on the internet, ostensibly offering goods and services similar / identical to those of the Complainant and thus cause loss of business and reputation to the Complainant.
2. The impugned domain name 'nick.in' is identical to the Complainant's registered domain names.

3. The Registrant has no affiliation, past or present, with the Complainant and hence has no rights or legitimate interests in respect of the domain name. By registering the impugned domain name the Registrant is blatantly seeking to cash in on the brand value and reputation of the Complainant's trademark NICK for his personal gain.
4. The Registrant does not have rights to and legitimate interests in the domain name because: -
 - a. The Registrant is hosting a pay-per-click web page under the domain name 'nick.in' and is diverting consumers to third party websites offering goods / services similar to those in which the Complainant deals.
 - b. The Registrant is NOT commonly known by the said domain name.
 - c. According to the knowledge of the Complainant, the Registrant has not acquired any trade / service mark rights with the name 'nick'.
 - d. The Registrant is not making any legitimate, non-commercial or fair use of the domain name.
5. **The Registrant has registered the disputed domain name in bad faith because: -**
 - a. The Registrant registered the disputed domain name on 19th September 2008, by which time the Complainant had been using the trademark NICK for over three decades.
 - b. In view of the Complainant's registered and common law rights in the mark NICK, use of the mark by the Complainant for several years prior to Registrant's registration of the disputed domain name, Complainant's prior and extensive use of the mark NICK on the internet and other domain names, significant fame, goodwill and reputation associated with the mark and the content of the Registrant's website, it is impossible to conceive of any circumstance in which the Registrant could have registered the disputed domain name in good faith or without the knowledge of the Complainant's rights in the said mark.
 - c. The very fact that the Registrant is using the disputed domain name in relation to a pay-per-click webpage itself shows that the Respondent has registered the disputed domain name in bad faith.
 - d. Above acts of the Registrant including making money by luring customers to the website and deceiving them by diverting to ads/ hyperlinks etc. are relevant factors in presuming or judging the intention of the Respondent of selling, renting or transferring etc. of the domain name and his intention to prevent the owner of trademark or service mark from reflecting the mark in the corresponding domain name.

- e. The Respondent has put up the disputed domain name for sale at sedo.com. The offer price is mentioned at US \$ 3000 which is considerably higher than out of pocket expenses incurred by the Respondent in registering the domain name.
- f. The Respondent is a cyber squatter and has registered many other domain names featuring third party trademarks like 'utv.in, snaldeal.com, puma.co.in etc.

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

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

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

As stated earlier the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Therefore other side of the dispute has not been brought before this panel. In view of no reply by the Respondent / Registrant, this panel has assumed that he has nothing to say and by this act he has accepted all allegations / contentions of the Complainant.

VII] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No

04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interest in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes
07	Has the Registrant 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?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

VIII] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of various trademarks as stated in the table above. The Complainant also owns various domain names which include the words 'NICK'. The said trademarks have been registered and are extensively by the Complainant for more than three decades.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'NICK' is an integral / prominent component of subject domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its global presence, as also its strong presence on the internet, it is very hard to believe that the Registrant was not aware of the same. Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'NICK'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he does not have / he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Domain Manage Inc. (contact person Justin). As such he is not commonly been known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'NICK'. He is not commonly been known by that name or any variation or combination thereof. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant to use the word 'NICK' in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant has created webpage, on the basis of pay-per-click, under the disputed domain name for offering third party goods / services which are similar to that of the Complainant. It is also up for sale. Obviously the Registrant has registered it in bad faith for obtaining illegal monetary gains by trading on the goodwill, reputation and strong market presence of the Complainant for several years.

Therefore my finding on this issue is affirmative.

7. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and for any bona fide business on the part of the

Respondent. Therefore it is squarely established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The Registrant has created a webpage offering goods / services in which the Complainant regularly deals. This is on the pay-per-click basis which means any visitor when clicks on any of the links provided on the webpage, the Registrant earns money. After clicking on any of the hyperlinks provided on the webpage, the visitor is diverted to third party websites offering similar goods or services that of the Complainant.

Similarly the disputed domain name is up for sale and hence internet users are being confused as to the ownership of the disputed domain name. It is beyond doubt that the fact that the disputed domain name is up for sale which creates confusion with the Complainant's identity, name or mark and presence in Indian market.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion this panel has reached the conclusion that: -

1. Since the Registrant has not replied to complaint or Notice of Arbitration at all, it leads to only conclusion that registration of the disputed domain name has been done with criminal and deceitful intentions and for the purposes of gaining illegally and immorally. This Arbitral panel is of the opinion that any person having legitimate interests in the disputed domain name would at least try to make out his case before the concerned authority. Total silence by the Registrant, even within the extended period offered to him suo-moto by this panel, leads to only one conclusion that the Registrant has no argument in his favour. It is well established legal principle that 'silence tantamount to acceptance'.

On the other hand the Complainant has made out his case very strongly touching upon every issue related to the disputed domain name and in accordance with the INDRP Rules of Procedures. All this can lead to only conclusion that the Registrant does not have any legitimate interest and right in the disputed domain name.

2. The disputed domain name includes the registered marks and registered domain names of the Complainant. It means the Complainant's rights, interests and reputation are at stake in the disputed domain name.

3. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'NICK' and hence does not have any legitimate interest in the disputed domain name. Similarly he has not been authorised by the Complainant to register the said domain name at any time.
4. The Registrant has **not** been commonly known by the disputed domain name.
5. The Respondent / Registrant has completely failed to establish his nexus, rights or interests in or with the disputed domain name in any way.
6. The disputed domain name is up for sale at sedo.com which clearly establishes the intention of the Registrant to gain by selling/transferring the disputed domain name for monetary consideration. It is also brought to the notice of this panel that the Registrant is habitual cyber squatter.
7. The Complainant has proved that the Registrant is guilty of infringing upon or otherwise violating its rights in terms of Paragraph 3(b) of INDRP AND the Registrant's domain name is identical or confusingly similar to the Complainant's Trade mark / name.
8. The Registrant has failed to establish / prove his rights to or legitimate interests in the disputed domain name as required by Paragraph 4(ii) of INDRP.
9. The Complainant has established that the registration of a disputed domain name by the Registrant has been done in bad faith in terms of Paragraph 4(iii) of INDRP.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits by selling or transferring it for valuable consideration.

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

- 01. The Complainant is entitled to the disputed domain name – 'NICK.IN' and hence the same be transferred to the Complainant.**
02. No orders as to the costs.

Dated: - 27.05.2013
Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR