

कमिशनर तमिलनाडु TAMILNADU

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D. SARAVANAN
Advocate & Arbitrator
"Orient Chambers", 4th & 5th Floor
No. 90/73, Armenian Street,
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P.S. SHANKUGA SUNDARAM
STAMP VENDOR
T. No. 84 / 109, 88
HIGH COURT CAMPUS
CHENNAI-600104 (TAMILNADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: **OLXservices.in**

OLX B.V
Taurusavenue 105
2132 LS Hoofddorp
The Netherlands

.. Complainant

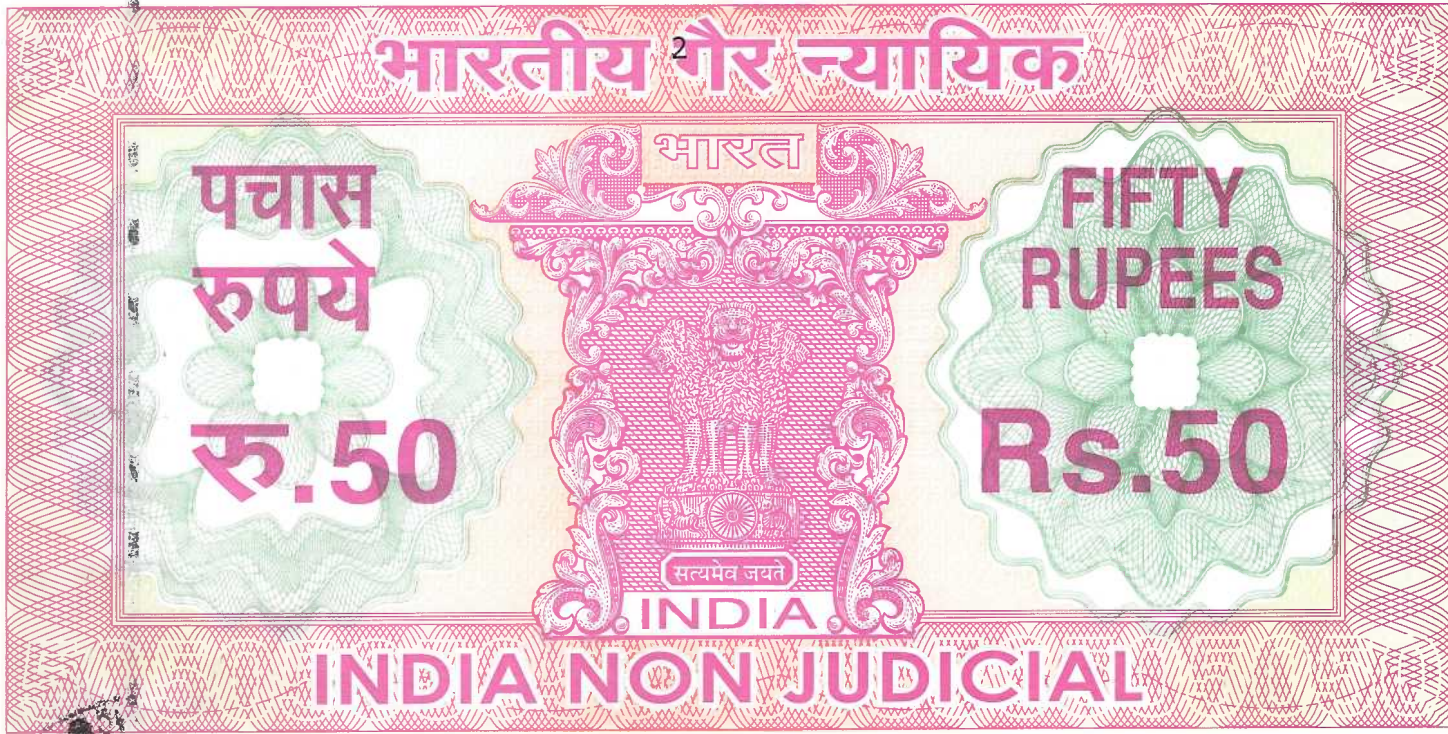
Vs.

Mr Singh /N/A
Mumbai, Mulund East
Mumbai, Maharashtra
400001
India

.. Respondent

...2..





AV 770701

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1. The Parties:

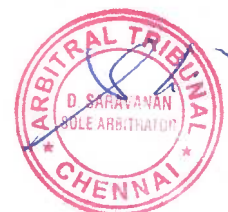
The Complainant is OLX B.V., B-244, Taurusavenue 105, 2132 LS Hoofddorp, The Netherlands, represented by its Power of Attorney, Craig George Allwright, the Director, OLX.B.V.

The Respondent is Mr. Singh, N/A, Mumbai, Mulund East, Mumbai, Maharashtra, 400001. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is <OLXservices.in>, the domain name has been registered with .IN REGISTRY

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3. Procedural History:

October 10, 2017	:	Date of Complaint.
October 16, 2017	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
October 16, 2017	:	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure along with the statement of declaration of impartiality and independence.
October 17, 2017	:	The .IN Registry had sent an e-mail communication to all the concerned intimating the appointment of Arbitrator. The .IN Registry had also sent another e-mail communication to the Respondent along with a complete set of the soft copy of the Complaint with Annexure.
October 21, 2017	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
November 01, 2017	:	Due date for filing response.
November 13, 2017	:	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant is OLX B.V., B-244, Taurusavenue 105, 2132 LS Hoofddorp, The Netherlands, represented by its Power of Attorney, Craig George Allwright, the Director, OLX.B.V.

4.2 Complainant's Activities:

The Complainant states *inter-alia* that they operate online classifieds sites that enable users to buy and sell goods, including vehicles, real estate, tickets and electronics, solicit and offer services, such as baby sitting, event services, and



repairs; design ads to post on the Complainant's website; display ads on profiles across social networking sites, such as Facebook; and search for jobs across numerous locations and industries under the mark/label "OLX" which is short form for "online exchange". (see **Annex 6 and Annex 9**). They further claim that they along with its affiliated Company OLX Inc, has registered over 1000 domain names incorporating the OLX trademark in several countries across the world (see **Annex 4**). The Complainants further state that they are one of the world's leading free online classifieds platform and is currently present in over 40 countries (including India) and its services are available in 50 languages making the complainant one of the largest online marketplaces in the world and the largest online marketplace in several other countries. The Complainant states that OLX.com received an estimated 153,589 unique visitors in August 2017 and is ranked the 52,748th most popular website worldwide and 61,518 in India and OLX.in is ranked 837th globally and is the 55th most popular website in India. (see **Annex 5**). Further, their mark OLX is a "well known trademark" and has also acquired common law rights derived from extensive trading under the name "OLX" and also their trademark "OLX" is in possession of substantial inherent and acquired distinctiveness, well recognized by consumers, industry peers and the broader global community in the Complainant's markets. The Complainant also states that they have made significant investments over the years to advertise, promote and protect Complainant's marks through various forms of media, including the internet and based on its extensive use and trademark registrations, Complainant owns the exclusive right to use the OLX mark.

4.3 Complainant's Trading Name:

The Complainant states *inter-alia* that the Complainant is founded in 2006 and is based in Hoofddorp, the Netherlands and a user of the mark "OLX" since then and carrying on the above mentioned activities under several domain names with the mark OLX in it and in particular, "OLX.com" and "OLX.in"



4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Mr. Singh who has registered the domain name **OLXservices.in** on August 25, 2017. The Respondent is using the Domain name to redirect internet users to a website featuring links to third-party websites, some of which directly compete with Complainant's business. Further, the Respondent's website also features a link that directly references Complainant and its business. It is presumed by the Complainant that the Respondent receives pay-per click fees from the linked websites that are listed at the Domain name's website. As per the WHOIS record, the Respondent is based in India and also identifies the Registrant as 'Mr.Singh /N/A, which does not resemble the impugned domain name in any manner whatsoever.

5. Dispute

The Complainant had the domain names OLX.COM and OLX.in inter alia and carrying on business of operating online classifieds sites that enable users to buy and sell goods, including vehicles, real estate, tickets and electronics, solicit and offer services, such as baby sitting, event services, and repairs; design ads to post on the Complainant's website; display ads on profiles across social networking sites, such as Facebook; and search for jobs across numerous locations and industries under the mark/label "OLX". It came to the knowledge of the Complainant that the Respondent has registered the domain name OLX services.in on August 25, 2017. The Respondent has no connection to or link with the Complainant and also has not been given any authorization to use the Complainant's mark. The Respondent clearly establishes misuse of the Complainant's domain name and 'ride on coattails' of the Complainant by carrying out similar services of the Complainant.

6. Parties contentions:

A. Complainant:

- (i) The domain name www.OLXservices.in is identical or confusingly similar to the Complainant's trademark:



The Complainant states that by virtue of its trademark and service mark registrations, it is the owner of the Complainant's trademark. The Respondent's impugned domain name is identical to and comprises in entirety the Complainant's well known trademark, OLX. The Respondent's domain name can be considered as capturing in its entirety, complainant's OLX trademark and had simply added the generic term 'services' to the end of the trademark. Even the mere insertion of such generic terms after their well-known trademark will cause confusion among trade and public.

(ii) The Respondent has no rights or legitimate interest in the domain name OLXSERVICES.IN:

The Complainant states that Intellectual Property India (IPI), the European Intellectual Property Office (EUIPO) and the U.S. Patent and Trademark Office(USPTO) granted them registrations for the OLX trademark which is prima facie evidence of the validity of ownership of OLX as a trademark and the their exclusive right to use the OLX trademark in commerce on or in connection with the goods and/or services specified in the registration certificate. Further, the Respondents had no connection to or link with the Complainant or was given any authorization to use the Complainant's mark. Further, the Respondent is not commonly known by the Domain Name which evinces a lack of rights or legitimate interests under INDRP 7(ii). The Whois information also identifies the Registrant as "Mr.Singh /N/A, which did not resemble the domain name in any manner. Accordingly, where the Whois record for the domain name suggests that the Respondent is commonly known by the Domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the Domain name within the meaning of 7(ii). The Respondent is using the Domain name to redirect internet users to a website featuring links to third-party websites, some of which directly compete with Complainant's business. Further, the Respondents website also features a link that directly references Complainant and its business and is therefore not using the Domain name to provide a legitimate non-commercial or fair use as allowed under 7(iii). Further, the Complainant is carrying out various



activities under the trade name OLX since 2006 and the Respondent has only registered the impugned domain name on 27.08.2017. The Registrant therefore has no rights or legitimate interests in respect of the impugned domain name.

(iii) The domain name was registered and is being used by the Respondent in bad faith:

The Complainant states that its OLX trademark is known internationally and had marketed and sold its goods and services using the trademark since 2006 which is very well before the Respondent's Registration of the domain name on August 25, 2017. Therefore, at the time of registration of the domain name by the Respondent, he must have known or known of the Complainant's well known trademark and the registration of the similar trademark by the Respondent is per se bad faith. It was further stated by the Complainants that in addition to the numerous trademarks filed in connection with the its business prior to Respondent's registration of the Domain name, the Complainant is one of the world's leading free online classifieds platform and is present in over 40 countries including India. Even while performing searches across a number of internet search engines for "olx services" returns multiple links referencing Complainant and its business. The Respondent also creates a likelihood of confusion with Complainant and its trademarks by registering a domain that capturing in its entirety, complainant's OLX trademark and simply adding the generic term "services" to the end of the trademark which demonstrates that the Respondent is using the domain name to confuse and to mislead internet users as to the source of the domain name and website. By means of which the Respondent intends to capitalize on the fame and goodwill of the Complainant's trademarks in order to increase traffic to the domain name's website for Respondent's own pecuniary gain as evidenced by the presence of multiple pay-per-click links posted to his website, some of which directly reference complainant and its competitors. The mere addition of the generic term 'services' after the Complainant's well known trademark reveals that the Respondent wanted to act in bad faith. Further, the Respondent had also ignores complainant's attempts to resolve the dispute outside this administrative proceeding by sending a cease and desist letter via email on June 26, 2017 which also shows the Respondent's bad faith. (see **Annex 10**)



B. Respondent:

The Respondent, in spite of notice dated 21st October, 2017 and default notice dated 13th November, 2017 did not submit any response.

7. Discussion and Findings:

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

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

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "OLX" (see **Annex 3**). The Tribunal finds from **Annex 3** that the Complainant has registered the domain name OLX prior to the Respondents. Thus, this Arbitral Tribunal finds that the disputed domain name **<OLXservices.in>** is identical or confusingly similar to the Complainant's mark. (See **Annex 8**)

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy and Para 3(b)(vi)(I).



(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy (hereinafter referred to as the Policy) sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP (See **Annex 13**). In spite of that, the Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "OLX" from the WHOIS lookup. (See **Annex 7**). The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply (See **Annex 13**). The Complainant also asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) Registration and Use in Bad faith:

i) This Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a mala fide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

(ii) Further, the Respondents had also not responded to the cease and desist letters dated 26.06.2017, 03.07.2017 and 10.07.2017 which was sent through e-mail by the Complainant, thus clearly establishing bad faith on part of the Respondent. (See **Annex 10**)

iii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name **<OLXservices.in>** be transferred to the Complainant.


D. SARAVANAN

Sole Arbitrator

November 14, 2017
Chennai, INDIA.