



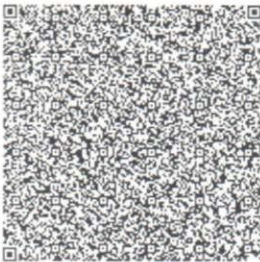
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## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL84671466187415L  
Certificate Issued Date : 06-Nov-2013 04:56 PM  
Account Reference : IMPACC (IV)/ dl700603/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL70060367327426402159L  
Purchased by : DEEPA GUPTA  
Description of Document : Article Others  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : DEEPA GUPTA  
Second Party : Not Applicable  
Stamp Duty Paid By : DEEPA GUPTA  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF  
NATIONAL INTERNET EXCHANGE OF INDIA**  
IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA  
IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure

**ARBITRATION AWARD**

**DATED: November 7, 2013**

**In the matter of:**

**Orange Brand Services Limited  
3 More London Riverside, London  
United Kingdom, SE1 2AQ**

**Complainant**

**Vs**

**Fayaz/ Exberant Services and Solution Pvt. Ltd.  
T.C 2/100 Sydney Lane  
Kesavadasapuram,  
Trivandrum, Kerala-695004, India**

**Respondent**

**1. THE PARTIES:**

The parties to domain name dispute are:

- (a) Complainant firm is **Orange Brand Services Limited, 3 More London Riverside, London, United Kingdom, SE1 2AQ.**
- (b) Respondent firm is: **Fayaz/ Exberant Services and Solution Pvt. Ltd. T.C 2/100 Sydney Lane, Kesavadasapuram, Trivandrum, Kerala-695004, India.**  
It has presence on internet with domain name of www.orangeinfosolutions.in which is subject of dispute.

**2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY**

- i. The disputed domain name is www.orangeinfosolutions.in registered with the DOT IN Registry through the Direct Internet Solutions Pvt. Ltd.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
  - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
  - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and





- (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.

### **3. BRIEF BACKGROUND**

#### **FACTUAL AND LEGAL GROUNDS**

Orange SA, is a French company engaged in providing a wide variety of services and associated goods under the trademark Orange Trade Marks including mobile telephony, fixed line, internet television broadcasting and transmission services. Separate divisions and subsidiaries of the Orange Group conduct activities in advertising services; healthcare services; financial services; research and development of IT and communications products and services; and charitable services.

Complainant is part of the Group of Companies known Orange Group and ranked as the 8<sup>th</sup> largest telecommunications company in the world, valued as one of the top 50 most valuable brands in the world with an estimated brand value of more than US\$10 billion.

Complainant is the proprietor (worldwide including India) of mark "Orange" and its variants in all forms in multiple classes. Orange Trade Marks are in continuous use by the Complainant since launch of the Orange Brand in the UK on 28 April 1994. Company expanded year on year since 1999 over 200 territories worldwide, including India, and is registered throughout the world. Orange Brand trade mark portfolio includes marks registered and used internationally including word "Orange" such as "ORANGE ADVERTISING", "ORANGE LABS", "ORANGE INSTITUTE", "ORANGE FOUNDATION", "ORANGE MONEY", "ORANGE MUSIC", "ORANGE STORE", "ORANGE PARTNER", "ORANGEWORLD", "ORANGEPAGES", "ORANGEMAIL", "THE ORANGE SHOP" reflecting the activities of the complainant's international licensees.

Complainant makes significant use of the Orange Trade Marks in relation to goods, services peripheral to the core & non core business, complainant's ORANGE PARTNER encourages third party developers. The Orange Trade Marks are globally expanding into new business areas.

Orange Mark forms an integral part of corporate names of Orange SA Group companies. Launch of the Orange Brand in the United Kingdom in 1994 received large publicity internationally. Subsequently it expanded around the world and launched in India in February 2000. It has Commendable presence in India.

Orange Group has sponsored a large number of international events which are reported upon in the international press, receive global television coverage, include prominent coverage of the Orange Brand.

Sponsorship of international cultural events include sponsorship of the British Association of Film and Theater Awards from 1997 to 2012 and the Orange Prize for Fiction, an internationally recognized annual literary award. Amount spent on advertising and promotion for the years 1997 to 2001, has been in excess of \$50 million per year worldwide & in the years 2002 to 2006

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in excess of £150 million per year worldwide , global advertising to over 700 million Euros per year during the period 2007 – 2011, including over 30 million Euros in 2010 relating to its activities under the Orange Business Services Divisions.

Complainant is recipient of numerous and prestigious accolades such as: listed in Business Week Global 1000. In 2006 ORANGE Brand was adjudged the 62<sup>nd</sup> most powerful business brand. In year 2010 it valued at 15.35 mill US \$ and 50<sup>th</sup> most powerful business brand in the world above other well-known brands such as Nike and Sony. Value has increased to US\$15.351 million by the end of 2011 according to the 2012 BRANDZ study.

Adjudged “Best Mobile Operator ” and “ Best Branding Campaign” at the World Communication Awards in 8 out of the past 10 years. Winner of the World Communications Awards – Best Cloud Service, Best Global Operator and User's Choice Award 2012. In a survey by Interbrand entitled “2001 Brand of the Year” in European and African section of the survey.

Entry for Orange brand in the 2004 edition of the “cool brand leaders”.

“Superbrands International” awarded orange SA Group a place in its coveted 2006 list of the strongest brands in Asia.

Complainant incurs vast expenses worldwide advertising, monitoring infringement plus its Intellectual property rights in the Orange Trade Marks and also in promoting its services and products under the said Marks having wide circulation/ viewership throughout the world through its 900 plus websites, containing the word ORANGE clearly associates the Marks with the Complainant.

Orange Trade Marks have cross- border reputation and has become radically distinctive to the Complainants products and service & associated throughout the worlds with quality and reliability for such services offered by the Complainant.

Around November 2012 Complainant discovered that the Respondent registered the Disputed Domain Name which incorporates the Orange Trade Marks, without its consent and using the Disputed Domain Name in connection with a website offering services and products identical/similar to those provided by the Complainant.

Complainant sent a cease and Desist letter 19 November 2012 to the Respondent informing the Respondent of the Complainant's rights in and to the Orange Trade Marks(s) and related domains and requesting that the Respondent immediately cease all use thereof.

Complainant sent a reminder notice dated 05 January, 2013.

Complainant send final reminder letter to the Respondent dated 02 February, 2013 no communication has been received from the Respondent.





#### **4. PARTIES CONTENTIONS:**

##### **A. COMPLAINANTS CONTENTIONS:**

- a) **The Registrant's domain name (Disputed Domain Name) is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

Complainant's Orange Trade Marks have been used and associated with the Complainant, its predecessors and related companies since as early as 1994. Complainant is the owner of many trademark registrations and applications, domain and corporate/trading names incorporating the Orange Trade has well-established rights in respect of the word ORANGE and ORANGE formative marks.

Complainant has well-established rights in respect of the word ORANGE and ORANGE formative marks.

Complainant submits that the Disputed Domain Name is identical and /or confusingly similar to the Complainant's Orange Trade Marks & Incorporates and reproduces the Complainant's ORANGE mark in its entirety and differs only in respects of the words "INFO" & SOLUTION", which are insufficient to allow for differentiation. Word "INFO" & "SOLUTIONS", are positioned at the end of the Disputed Domain Name and are thus significantly less noticeable than the word ORANGE & the words are purely non-distinctive.

It is well-established that the addition of generic or descriptive terms to trademark in a domain name does nothing to distinguish it from the trademark.

It follows from the above that the fact that the term " INFO" & SOLUTIONS" are attached to the word ORANGE is not sufficient to avoid confusion between the Disputed Domain Name and the Trade Marks of the Complainant and simply amount to deliberate attempt by the Respondent to deceive and entice public that the service offered by him are those of the Complainant.

"INFO & SOLUTIONS" actually increase the risk of confusion, as the words "INFO" & SOLUTIONS" are precisely the products and service for which the ORANGE mark is most renowned. The consumers would perceive a nexus between the business of the Complainant, the Disputed Domain Name and the content of the Respondent's website.

Accordingly, the Disputed Domain Name is identical and / or confusingly similar to the Complainant's Mark.

##### **B) THAT RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME**

Respondent has no rights or legitimate interests in the Disputed Domain. Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the



Respondent to register or make use of its Marks. Respondent has never used the Disputed Domain Name or any name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.

"INFO & SOLUTIONS" added to the word ORANGE in the Disputed Domain deceive the public into believing that some association exists between the Complainant and the Respondent, which is tarnishing the goodwill and reputation enjoyed by the Complainant worldwide.

Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trade marks or service mark rights in the Disputed domain Name and, therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name.

Complainant's established use of the Orange Mark for more than 17 years, and guarding its intellectual property, it is exceedingly unlikely that the Respondent is commonly known by the name Orange Info Solutions.

Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain misleadingly to divert consumers or to tarnish the Complainant's Marks and, therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name. Respondent has made an illegitimate, commercial gain and to deliberately divert consumers by leading them to believe that the Respondent's website is somehow associated with the Complainant.

Complainant enjoys exclusive rights in the distinctive word "ORANGE" by dint of its long term extensive worldwide usage and trans-border reputation thereof. There is no justification for the Respondent's use of the Disputed Domain Name. It is a commercial exploitation of the well known ORANGE Mark, along with all of its positive associations and goodwill.

**C) THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND BEING USED IN BAD FAITH**

Disputed Domain Name should be considered as being registered and being used in bad faith by the Respondent.

Complainant has a commendable presence in India through activities of Orange Business service, Orange Service India Pvt. Ltd., Orange Labs, Orange Partner and Orange Foundation. Complainant's Orange Trade Mark(s) has significant reputation and substantial goodwill in respect of a range of telecommunications and IT- related products and service. Respondent is fully aware of the use, goodwill and reputation of the Complainant's marks both India and worldwide .

Respondent registered the Disputed domain name on 28 June 2010. Respondent is not making any use of the Disputed Domain Name, is passively holding the same. Examples of what may be cumulative circumstances found to be indicative of bad faith include the





complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity.

Orange is a well known, internationally recognised Mark, registered in numerous countries and geographic regions worldwide. This demonstrates that the Respondent must have not only been aware of the Complainant's Mark, but must also have known of the Complainant related domain names and constitutes strong evidence of bad faith.

Complainant's rights in the Orange Trade Marks pre-date the Respondent's registration of the Disputed Domain Name by 19 years. Respondent has acquired the Disputed Domain Name to "cash in on" or unfair profit from the considerable investment the Complainant has made in creating and maintaining the high profile and goodwill in the ORANGE Brand over the years. Complainant tried to establish contact with the Respondent by several different means. No response has been received from the Respondent to date.

It is submitted that the Disputed Domain Name was registered and is being used in bad faith. If the Respondent is not restrained from using the Disputed Domain Name and the same is not transferred to the Complainant irreparable loss and hardship will be caused to the Complainant.

## **B. Respondents Contentions**

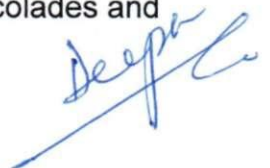
Not responded at all.

## **5. OPINION:**

- I. **Issue:**
- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
  1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
  2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
  3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1994 and is using the mark 'ORANGE' since then, has a huge customer base and has made massive efforts to promote the brand name 'ORANGE' by consuming various resources available at his end. Complainant has sponsored large International events and got International media coverage. It has received several prestigious accolades and awards from different respectable forums.





Word 'ORANGE' has certainly acquired a popular Brand name across the length and breadth of Britain, USA, INDIA and a prominent place in internet electronic media.

On the basis of the records submitted by the complainant it's proved that the domain name 'orangeinfosolutions.in' is related to the business of Complainant and is being used for purpose related to his work.

It is confirmed that Complainant is user of name 'ORANGE'. The allegation made by the Complainant that the traffic of Complainant is being diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark 'ORANGE' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in the world as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the 'ORANGE' marks throughout global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'ORANGE' mark and design as a domain name.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

Registrant failed to fulfill its responsibility to find out before registration whether the domain it is about to register violates the rights of a brand owner.

The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence at the various registries of internet, of the domain name wishing to be registered and without understanding whether he has rights to register such a name or not, still the respondent proceeded with registration of the domain name in question to intentionally trade on ORANGE incorporated, its reputation, goodwill and trademarks & was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has not shown any fair or legitimate non-commercial use, but instead has just remained silent and non responsive. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with ORANGE reputation and

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services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the Respondent registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'ORANGE' is a registered and protected trademark of the Complainant.

Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark. Due to the strong reputation of the trademarks ORANGE, Internet users will apparently and reasonably expect it an offer of the Complainant or authorized or affiliated enterprises under 'orangeinfosolutions.in'.

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'ORANGE' and similar domain names, i.e., 'ORANGE.com', 'ORANGE.net', 'ORANGE.org', 'ORANGE.biz', 'ORANGE.hu', 'ORANGE.hk', 'ORANGE.asia', 'ORANGE.ca', 'ORANGE.tw' etc were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. It profusely empowers them with the First right to the domain name 'orangeinfosolutions.in' and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant. The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.



## **II. Domain name hijacking**

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

## **III. Conclusion**

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name orangeinfosolutions.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 10000/- on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 7<sup>th</sup> day of November 2013.

  
**Deepa Gupta**  
Arbitrator